Implementation of the Takeover Directive in Greece

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This presentation will discuss the implementation of the takeover bid directive in Greece in the context of EU Law. The choices of the Greek legislature will be analyzed in the light of the internal market of the European Union and more specifically in the light of the Community fundamental freedoms (freedom of establishment and free movement of capital).
EU fundamental freedoms (esp. Freedom of establishment) =
“Visible Hand” in the area of EU corporate law. They could impose certain safeguards which derive directly from the Treaty on the Functioning of the European Union. The Market in Corporate Control, as well as the Mergers and Acquisitions market (M&As market), is a fragment of the internal market and as such all the corporate financial mechanisms of this market must comply with the Community fundamental freedoms.
Introductory comments

• The object of the interpretation of the freedom of establishment by the European Court of Justice (ECJ), as well as of the harmonising company law, is to ensure that companies can exercise efficiently this fundamental freedom and establish themselves in other Member States. This choice of companies to establish themselves in other Member States should be accompanied by the necessary flexibility for corporate restructuring; should not be disadvantaged due to the cross-border nature of their establishment; and should not incur excessively high costs or burdensome formalities, which could potentially result in obstacles (e.g. Dutch legislation in Inspire Art). For these reasons, companies should enjoy the possibility to launch takeover bids which constitute an exercise of the freedom of establishment and a quite effective method of corporate restructuring.
Introductory comments

• The legal basis of the Takeover Directive is Art. 44 EC Treaty (Art. 50 TFEU).
• Hence, the Takeover Directive is supposed to contribute to the freedom of establishment in the internal market context (Arts. 43, 44, 48 EC Treaty\Arts 49, 50 and 54 Treaty on the Functioning of the European Union).
• Does it really facilitate this EU fundamental freedom?
The SEVIC ruling discussed the subject of a cross-border merger supported directly by the freedom of establishment of the EC Treaty.

The ECJ stated that cross-border merger operations, like other company transformation operations, respond to the needs for cooperation and consolidation between companies established in different Member States. They constitute particular methods of exercise of the freedom of establishment, important for the proper functioning of the internal market, and are therefore amongst those economic activities in respect of which Member States are required to comply with the freedom of establishment laid down by Art. 43 EC Treaty (Art 49 TFEU).

The ECJ confirmed the argument of AG Tizzano and stated that the right of establishment covers all measures which permit or even merely facilitate access to another Member State and the pursuit of an economic activity in that State by allowing the persons concerned to participate in the economic life of the country effectively and under the same conditions as national market participants.
The SEVIC could possibly be expanded into takeovers. It could be assumed that the ‘other company operations’ also cover takeover bids.

Hence, takeover bids could fall within the protective scope of the Community fundamental freedom of establishment.
The relationship between harmonisation and the fundamental freedoms

- In SEVIC, the ECJ had confirmed its stance towards the relationship between harmonisation and the fundamental freedoms. It stated, in para. 26 of the judgement, that, whilst Community harmonisation rules are useful for facilitating cross-border mergers, the existence of such harmonisation rules cannot be made a precondition for the implementation of the freedom of establishment laid down by Art 43 and 48 EC Treaty (see, to that effect, Case C-204/90 Bachmann).

- The same could possibly be assumed for takeover bids which constitutes an effective method of corporate restructuring.
Scrutinising the Takeover Bid Directive in the light of the freedom of establishment.

- Art. 2(1)) of the 10th company law directive on cross-border mergers describes three methods of conducting a merger.
- ‘…a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital.’
- The third method of conducting a merger might follow a successful takeover bid (maybe after a mandatory bid, a squeeze-out or sell-out).


The conduct of a takeover bid involves an exercise of the right of establishment. The EU market for corporate control is a part of the internal market, and thus its integration is a prerequisite for the integration of the other. Therefore, the third method of conducting a merger constitutes not only an exercise of the right of establishment itself, but also facilitates the exercise of the freedom of establishment through a takeover bid by providing an additional subsequent tool of corporate restructuring (a successful takeover bid followed by merger). Therefore, an exercise of the freedom of establishment through a takeover bid could be followed by an exercise of the freedom of establishment through a merger.
The relationship between the ECJ’s Case Law and the implementation of the Takeover Bid Directive.

• When the EU legislature adopts full harmonisation, national measures must be examined in the light of the provisions of the harmonising instrument and not of the fundamental freedoms.

• Exceptions apply to cases where a directive only determines a minimum standard and Member States can adopt stricter provisions. In these latter cases, the implementing provisions are scrutinised on the basis of the Treaty provisions on the fundamental freedoms. This could be proved to be very interesting for the relationship between the ECJ’s case law and the implementation of the Takeover Bid Directive.
The relationship between SEVIC and the Takeover Bid Directive Directive

• After SEVIC, national regulations that exceed the minimum standards of the Takeover Bid Directive became subject to scrutiny, since they were restrictions on a fundamental freedom. Without the effect of SEVIC, Member States would have needed to comply only with the minimum standards of the Directive, and been free to adopt more restrictive national laws in order to protect their national interests or to pursue other policy objectives (national legislation is found between the Directive’s ‘floor’ and the fundamental freedom’s ‘ceiling’). Any national provision stricter than the Directive’s provision must fulfil the conditions of the ‘Gebhard Test’.
The relationship between SEVIC and the Takeover Bid Directive

• None of the provisions and formalities of national law, to which reference is made in this Directive, should introduce restrictions on freedom of establishment or on the free movement of capital, save where these can be justified in accordance with the case-law of the Court of Justice and, in particular, by requirements of the general interest, and where they are both necessary for, and proportionate to, the attainment of such overriding requirements (Gebhard Test).
The relationship between the ECJ’s case law and the Takeover Bid Directive

• A directive should seek to solve possible clashes between different national rules which try to regulate the same subject matter. Thus, this coordination of national legal orders by means of a Directive will result in a more efficient and harmonious exercise of the freedom of establishment.
Another issue which pertains to the relationship between the ECJ’s case law and the 13th Company Law Directive has to do with the possibility of extension of the ‘Gebhard Test’ to the provisions of EU Law instruments, such as Directives, in order to benefit from the non-application of the overly strict and rigid effect of Treaty articles. Thus, an article of a Directive could infringe the freedom of establishment, but this infringement would be upheld as a justified one. This kind of justification must, of course, fulfil completely the conditions of the ‘Gebhard Test’. The European legislature is equally bound by the ECJ’s interpretation of the fundamental freedoms.
Example

- Mandatory Bid Rule (Art. 5 of the Takeover Bid).
- When a Member State adopts national legislation which provides additional protection and safeguards to minority shareholders in case of takeover bids, the freedom of establishment may have been breached. This infringement of freedom of establishment derives from the additional requirements which aim at the protection of minority shareholders, but which could in fact delay or annul the conduct of the takeover bid.

- The regulatory aim of protection of minority shareholders is definitely an accepted one; yet, the national legislative means for the achievement of this goal must comply with the conditions of the ‘Gebhard Test’.

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-Article 3-Scope:
1. This Law’s provisions apply to takeover bids made for the acquisition of securities issued by a company which has its registered office in Greece and which has admitted all or part of its securities to trading on a regulated market operating in Greece the day that the decision to make a bid was made public according to article 10.

2. The provisions of this Law do not apply in case that:
   a) The takeover bid concerns the acquisition of securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which, upon their holder’s request, may be repurchased or redeemed, directly or indirectly, out of the assets of those companies. Actions taken by such companies to ensure that the Stock Exchange values of their units do not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.
   
   b) The takeover bid concerns the acquisition of securities issued by the Bank of Greece.
Article 4
Competent Supervisory Authority

• The Greek Capital Market Commission is the competent authority to supervise the compliance to this Law’s provisions and the application of the procedure of the bid in general.
Competent Supervisory Authority - Article 4, paragraph 2

If the offeree company has not its registered office in Greece, the Capital Market Commission is competent to supervise the bid according to the provisions of this Law, provided that one of the following requirements applies:

a) The offeree company’s securities are admitted to trading only on a regulated market in Greece.
b) The offeree company’s securities were first admitted to trading on a regulated market in Greece and later on a regulated market of another member-state, other than the one in which the offeree company has its registered office.
c) The offeree company’s securities were admitted simultaneously on a regulated market in Greece and on a regulated market of another member-state other that the one in which the offeree company has its registered office and the offeree company has appointed the Capital Market Commission as the competent authority to supervise the bid by notifying it on the first day of trading following the disclosure of the decision to make a bid. The offeree company discloses, according to article 16, and without any delay the above-mentioned decision.
d) The offeree company’s securities were admitted for trading on a regulated market in Greece and on a regulated market of another member-state, other than the one in which the offeree company has its registered office, by the date this Law came into force and the supervising authorities of the relevant member-states have designated the Capital Market Commission as the authority competent to supervise the bid within four weeks following the date that this Law came into force or, otherwise, if the offeree company has designated the Capital Market Commission as the authority competent, on the first day of trading following this four-week period. The offeree company makes public, according to article 16 and without any delay the decisions referred to above.
Competent Supervisory Authority
In the cases referred in the paragraph above, any matters relating to the consideration offered in a bid, particularly the price, and any matters relating to procedure of the bid, particularly the information on the offeror’s decision to make a bid, the content of the offer document and the disclosure of the bid, shall be regulated according to this Law’s provisions, provided that the Capital Market Commission is designated as the competent authority for the supervision bid. Regarding matters relating to the information to be provided to the employees of the offeree company, concerning the Company Law, the percentage of voting rights which confers control of a company and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the member-state in which the offeree company has its registered office.
**Competent Supervisory Authority**
The Capital Market Commission cooperates with all other member-states supervisory authorities and exchanges information wherever necessary for the implementation of this Law, particularly in cases of paragraph 2 (b), (c) and (d). This cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities regarding to the bids, as well as any other assistance that may be reasonably requested by the competent supervisory authorities for the purposes of investigating any actual or alleged breaches of the rules of the bid.
Article 5-General Principles
The purpose of all principles concerning the bid is to ensure the following:
(a) All holders of the securities of the offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires, directly or indirectly, control of a company, the other holders of securities must be protected.
(b) The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid.
(c) The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.
(d) False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of prices of the securities becomes artificial and the normal functioning of the markets is distorted.
(e) An offeror must announce a bid only after ensuring that he/she can fulfill in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.
(f) An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.
General principle of Art. 5(c): The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.

- It is probably the most important general principle.
- It corresponds to the general principle of Art. 3(1)(c) of the Takeover Bid Directive.
- It plays an overarching role.
- The fact that Arts 9 and 11 of the Takeover Bid Directive are optional at both national and company level hints that at least some defensive measures are against market integration. However, this situation is mitigated by the fact that the opt-out of Arts 9 and 11 is still caught by the general principle of Article 3(1)(c) of the Takeover Bid Directive and by the fundamental freedom of establishment; otherwise we would have infringement of a general principle of the Directive and consequently of a fundamental freedom.
- Any defensive measures must comply with the general principle of Article 3(1)(c) of the Takeover Bid Directive and, as a result, of the freedom of establishment.
- This means that, in case of a national or corporate opt-out, the board of the company should obstruct only inadequate offers and should not frustrate adequate bids. Even in the case of an opt-out, the board of the company should not deprive shareholders of the opportunity to decide on the merits of an adequate bid which would be beneficial for them; otherwise, the board of the company is not acting in the interests of the company as a whole.
General principle of Article 3(1)(c) of the Takeover Bid Directive

- An opt-out of Articles 9 and/or 11 does not entail an opt-out of the general principles of Article 3 or a derogation from the fundamental freedom of establishment.
- Whatever limitations may exist in this context on the horizontal effect of the Treaty provisions on freedom of establishment, it is argued that Member States are obliged to take all appropriate measures, i.e. having company law provisions which prevent the board from frustrating an advantageous public offer by the bidder and the shareholders' decision making, to ensure that private individuals do not interfere with the effective exercise of fundamental freedoms.
- Member States should definitely take into account the liberalizing effects of the freedom of establishment and the free movement of capital, when they implement the Takeover Bid Directive.
Article 6 of the Greek Law-Voluntary Bid

1) When a person launches a voluntary bid for the acquisition of securities of a company, he/she is obliged to acquire the total of the securities offered unless he/she has previously defined a maximum number of securities that he/she has undertaken to accept. The offeror can also define a minimum number of securities which shall be offered to him/her in order to consider the bid valid.

2) A voluntary bid for the acquisition of securities which are admitted for trading on a regulated market in Greece and which do not incorporate any voting rights, is allowed. In that case this Law’s provisions apply respectively.
Article 7-Mandatory Bid

Where a natural person or a legal entity, as a result of his/her acquisition in any way, directly or indirectly, on his/her own or in cooperation with other persons acting on his/her behalf or in concert with him/her, holds securities of a company and due to the said acquisition the percentage of voting rights which that person possesses, directly or indirectly, on his/her behalf or with any other person acting on his account or in concert with him, exceeds the threshold of one third (1/3) of the total voting rights of the offeree company, is obliged to launch a mandatory bid, within a 20-day time period from the acquisition, for the total securities of the offeree company by paying an equitable and fair consideration, pursuant to article 9. The same obligation arises for each person holding over one-third (1/3) without exceeding one-second (1/2) of total voting rights of the offeree company, acquired within twelve months, directly or indirectly, on his/her own or in cooperation with other persons acting on his/her account or in concert with him/her, acquires securities of the offeree company representing over three percent (3%) of total voting rights of the offeree company. The obligation of the previous paragraph is not applicable in case that the offeror has already launched a mandatory bid.

As voting rights acquired or possessed by the liable person or the persons acting on his/her account or in concert with him/her are also considered the voting rights acquired or possessed following to a contract, pledge, tenancy of securities, custodian or management of securities provided that those voting rights can be exercised at their holder’s discretion.
Article 9-Consideration

1) By way of consideration the offeror may offer titles which represent securities admitted or not to trading on a regulated market, or cash or a combination of both. In case of a mandatory bid, the offeror shall offer to the shareholders who will accept the bid a cash consideration at least as an alternative.

2) In case that the offeror or a person acting on his/her account or in concert with him/her, over a time period beginning at the time the decision to make a bid was made public and ending when the offer closes for acceptance, has acquired securities of the offeree company, which are the subject of the bid, at a price higher than the offer price, the offeror shall increase the his/her offer so that it is no less than the highest price paid by him/her or by the persons acting on his/her account or in concert with him/her during the same time period for the securities so acquired.
Article 9-Consideration

3) In case of a cash consideration, the offeror produces a certificate provided by a credit institution established in Greece or in another member-state, which ensures that, assuming all the shareholders of the offeree company were to accept the offer, the offeror has the means to pay in full. In case of a consideration offered in securities, the offeror produces a certificate provided by a company of investment services or by a credit institution established in Greece or in another member state, certifying that the offeror possesses the securities offered as a consideration or, as the case may be, that he/she has assumed any necessary measure in order to make the consideration payment.

4) In case of submission of a mandatory bid, an equitable and fair consideration, in accordance with article 7, paragraph 1, is a cash consideration per share which cannot be inferior to:

a. The average market value of the securities to which the bid is addressed over a six (6)-month period preceding the date when the offeror had an obligation to make the bid, neither

b. The highest price in which the liable person (the offeror) or the persons acting on his/her account or in concert with him/her, over a twelve (12)-month period preceding the date when the offeror had an obligation to launch a bid, have purchased securities, to which the bid is addressed/ or of the offeree company.
Article 14-Obligations of the board of the offeree company

1) With the exemption of seeking for alternative takeover bids, the board of the offeree company, during the time period from the date it has been informed according to article 10, paragraph 1 and until the disclosure of the result of the bid or of its revocation, cannot perform any action different from the ordinary activities of the company which may result in the frustration of the bid without any prior authorization by the general meeting of shareholders.

2) The general meeting of the shareholders of the offeree company has to approve or confirm any decision concerning an action of the paragraph 1, which has been taken before the beginning of the foreseen, in the same paragraph, time period and has not been totally or partly implemented yet.
The offeree company may, upon decision of the general meeting taken not earlier than eighteen (18) months prior to the date the bid was made public, not apply paragraphs 1 and 2 in case that the bid comes from a company not applying them or from a company controlled, in the meaning of article 42e, paragraph 5 of Codified Law 2190/1920, by a company not applying paragraphs 1 and 2. The company shall, without any delay, communicate this decision to the Capital Market Commission as well as to the competent supervising authorities of member-states to the regulated markets of which the securities have been admitted to trading or request to be admitted.
Article 15-The administrator’s opinion concerning the offeree company

1. The board of the offeree company shall draw up and make public a document setting out its justified opinion of the bid. This obligation also exists in case of revision of the bid or of competing bids.

2. The document of the previous paragraph should be accompanied by a detailed report of a financial counselor accomplishing the conditions of paragraph 1 of article 12. This document should at least:
   a) define/determine the number of securities of the offeree company possessed or controlled, directly or indirectly, by the members of the board and its managers,
   b) lay out the actions which the board of the offeree company has taken or intents to take in regard to the takeover bid,
   c) report any agreement existing between the board of the offeree company or its members and the offeror,
   d) explicate the opinions of the board of the offeree company concerning the takeover bid and allege the reasons which led to these opinions, referring particularly to the effects of a successful outcome of the bid on the company interests, included the interests of the company’s employees, and also to the offeror’s strategic plans concerning the company, as set out in the offer document, and finally to the possible consequences/repercussions on the employment at the locations of the offeree company’s places of business.
Article 15-The administrator’s opinion concerning the offeree company

3. The document of paragraph 1 shall be filed with the Capital Market Commission and the offeror within a 10-day time period from the disclosure of the offer document. In case of revision of the bid, the abovementioned time-limit shortens in one working day from its approval by the Greek Capital Market Commission. This document shall be made public by the board of the offeree company without any delay.

4. The board of the offeree company communicates the document of paragraph 1 to the representatives of its employees or, if there are no such representatives, to the employees themselves within the time period of paragraph 3. If the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on the employment, this separate opinion shall be attached/ appended to the document of paragraph 1.
Article 17-Breakthrough

1. Each company, which has its registered office in Greece, after the general meeting of shareholders decision taken under an increased quorum and majority of votes, according to articles 29, paragraph 3 and 31 paragraph 2 of Codified Law 2190/1920, may choose the implementation of the following par. 2 until 6, having the power to recall its choice. The company shall inform without delay the Capital Market Commission and the competent supervising authorities of member-states, in which the company’s securities are admitted to trading or their admission is requested, about its abovementioned decision, as well as, about the decision of par.7.

2. Any restrictions on the transfer of securities, provided for in the articles of association of the offeree company, shall not apply against/vis-à-vis the offeror during the time allowed for acceptance of the bid. Any restrictions on the transfer of securities provided in contractual agreements between the company of paragraph 1 (the offeree company) and holders of the company’s securities or in contractual agreements between holders of the company’s securities entered into after April 21, 2004 (date of adoption of the takeover bids Directive), shall not apply against/vis-à-vis the offeror during the time allowed for acceptance of the bid.
Article 17-Breakthrough

3. Any restrictions on voting rights provided for in the articles of association of the offeree company of par. 1 shall not have effect at the general meeting of shareholders which decides on the defensive measures according to article 14. Restrictions on voting rights provided for in contractual agreements between the company of par. 1 (the offeree company) and holders of its securities or in contractual agreements between holders of the company’s securities entered into after April 21, 2004, shall not have effect at the general meeting of shareholders which decides on the defensive measures according to article 14.
Article 17-Breakthrough

4. In case where, following a bid, the offeror holds securities of the company of par. 1 (the offeree company), which represent at least percentage of seventy-five per cent (75%) of the total voting rights of the offeree company, no restrictions on the transfer of securities or on the exercise of voting rights, in accordance with paragraphs 2 and 3 of this article nor any extraordinary rights of the shareholders concerning the appointment or removal of members of the board provided for in the articles of association of the offeree company shall apply at the first general meeting of shareholders following the closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint the members of the board.
Article 17-Breakthrough

5. The holders of rights removed on the basis of par. 2 until 4 shall receive equitable compensation for any loss suffered by them on these rights.

6. Paragraphs 3 and 4 shall not apply to securities for which the restrictions on voting rights are compensated by special pecuniary benefits/advantages.

7. Companies which have chosen to apply paragraphs 2 until 6 may, after the general meeting of shareholders decision taken no earlier than eighteen months before the bid was made public, not apply the dispositions of paragraph 2 until 6 where the bid launched by a company which does not apply the same paragraphs or by a company controlled according to article 42 (e), paragraph 5 of Codified Law 2190/1920, by a company which does not apply those paragraphs.[RECIPROCITY]

8. This article shall not apply where the Greek state holds securities in the offeree company which confer special rights on it. [LAWFUL GOLDEN SHARES]
Article 18-Acceptance of the offer

1. The persons who wish to accept the offer shall submit a written statement addressed to the credit institution or to the company of investment services, entitled to provide the service of article 2, paragraph 1 (d) of Law 2396/1996 in Greece, authorized by the offeror to serve this purpose. Alternatively the acceptance of the bid can be realized through the Central Securities Depository by submitting a written statement to the operators of the Treasury Bonds system, as stipulated in the Regulation Clearing and Settlement Systems. Without prejudice of article 21, paragraph 4, the statements of acceptance may be freely retracted/ revoked, with a similar statement until the end of the period allowed for the acceptance of the offer, unless the offer document includes a different reference.
Article 18-Acceptance of the offer

2. The time allowed for the acceptance of the bid may not be less than four weeks from the date of publication of the offer document. The Capital Market Commission, following the offeror’s request submitted at least two weeks before the closing of the bid, may decide to prolong this time period nor more than two weeks, with the prejudice of article 5 (f). The Capital Market Commission’s decision to extend the time period shall be communicated to the investment public by care of the offeror, according to article 16, paragraph 1.
Article 19-Satisfaction of acceptance statements

In case where the statements of acceptance of a voluntary bid concern an overall quantity of securities greater than the securities that the offeror undertakes to acquire, the statements shall be satisfied proportionately. The voluntary bid, during which the statements of acceptance are proportionately satisfied, may be subject to an additional condition of satisfaction by priority of a minimum percentage or quantity of securities per each shareholder.
Article 20-Revocation of the bid

1. In case of a competing bid the offeror may revoke the voluntary bid (according to article 26). The revocation of the bid shall be disclosed within a three (3) working days deadline following the Capital Market Commission’s decision by which the competing bid’s offer document was approved.

2. Moreover, in case of an unexpected and independent of the offeror’s will change of conditions which renders burdensome/onerous the maintenance of the takeover bid, the offeror, after receiving the Capital Market Commission’s permission, may revoke the voluntary bid.
Article 21-Revision of the bid

1. The offeror, no later than five working days following the period allowed for the acceptance of the offer, may improve the terms of the bid.

2. The revised offer is submitted to and is subject to the approval of the Greek Capital Market Commission, is communicated to the board of directors of the offeree company and, also, is disclosed by the offeror within the following working day, according to article 16(1). The Capital Market Commission decides whether to approve or not the revised offer within two working days following its submission. The Capital Market Commission’s decision of approval or not of the revised bid is disclosed by the offeror within the following working day, according to article 16, paragraph 1 and is also communicated to the representatives of the employees or, in case they do not exist, directly the employees.

3. The submission of the revised offer shall not automatically/de jure extend the time period allowed for acceptance of the bid.

4. The persons who have already accepted the initial offer are considered to have accepted also the revised offer, unless they indicate the contrary.
Article 22-Conditions to which the bid is subject
Except from the requirements included in the offer document concerning the provision/grant of necessary administrative permissions or approvals or the issue of new securities offered as consideration, the takeover bid shall not be subject to further conditions.

New approach
MODERNIZATION-SIMPLIFICATION-FACILITATION
1. The persons obliged to launch a mandatory bid shall not launch a competing to the initial bid.

2. Competing bids may be submitted no later than seven working days before the offer closes for acceptance. The Greek Capital Market Commission decides within a four working day period following the submission of the competing bid. The time period allowed for acceptance of the initial bid, if not recalled, is automatically extended until the end of the time period allowed for acceptance of the competing bid. The offeror of the competing bid shall make public the date when the offer closes for acceptance, as well as, any extension of the time allowed for acceptance of the initial bid, the next working day following the approval of the offer document by the Capital Market Commission. The competing offer document is made public, within a two working day period following the Capital Market Commission’s decision.

3. The persons who have already accepted the initial bid may accept the competing bid only if they have previously recalled their statement of acceptance of the initial bid.
Article 27-The right of squeeze-out

- Where the offeror, following the submission of the bid addressed to all the holders of securities of the offeree company for the total of its securities, hold securities representing not less than ninety percent (90%) of the voting rights in the offeree company, is able to require all the holders of the remaining to sell him/her those securities.

- The right of squeeze-out shall be exercised within three months of the end of the time allowed for acceptance of the bid, provided that the possibility to exercise this right has been included in the offer document.

- The right of squeeze-out shall be exercised by submitting a request to the Capital Market Commission, which shall be also communicated to the offeree company. This request shall refer to the amount and the form of the consideration offered. This request shall be made public by the offeree company no later than the following working day. Along with the request, a certificate provided by a credit institution established in Greece or in another member-state, which ensures that for all the remaining securities the offeror has the means to pay in full and in cash, shall be supplied.
Article 27-The right of squeeze-out

The Capital Market Commission, having ascertained that the offeror holds securities representing at least ninety percent (90%) of the total voting rights in the offeree company and the provision of the certificate of the previous paragraph, shall issue a decision according which the offeror shall pay the total consideration to the beneficiaries through the operator of the securities account where these securities are registered or by deposition to the Consignments and Loans Fund or by any other procedure provided in the Capital Market Commission’s decision as follows. The Capital Market Commission may, in its decision, specialise the procedure of payment or of the certification of payment of the consideration, the procedure of transfer of the securities and regulate any relevant matter and necessary detail.
Article 27-The right of squeeze-out

LITIGATION-PROCEDURAL RULES
The holders of securities of the offeree company, which were transferred to the offeror, may go to/seize the (single) Court of First instance in order dispute the amount of the consideration offered. This appeal shall be exercised within an exclusive six month period following the disclosure of the last paragraph. The transfer of the securities according is not prevented by this appeal or by any other legal mean.
Article 28-The right of sell-out

1. Where the offeror, following a bid made to all the holders of the offeree company’s securities for the total of its securities, hold securities representing not less than ninety percent (90%) of the voting rights in the offeree company, the offeror is obliged to buy from the holders of the remaining securities all those securities that would be offered to him/her in the Stock Exchange by offering a cash consideration equal to the consideration of the bid and within a three month period following the disclosure of the results of the bid. Upon request of the holders of the remaining securities of the offeree company, the consideration offered may consist of liquid securities, which were the subject of the bid and are equal to the consideration offered during the bid. The Capital Market Commission, in its decision, may specify the procedure of payment of the consideration and the certification of payment, the transfer of securities and may also regulate any other necessary detail.

2. The offeror makes public the right of sell-out attributed to all the holders of the remaining securities of the offeree company, simultaneously with the disclosure of the results of the bid.
Article 29-Sanctions

The Greek Capital Market Commission may decide to impose a fine up to the amount of three million Euro (€ 3.000.000) on any person who infringes the provisions of this Law. In case of infringement of the obligation to launch a bid, when the mandatory bid thresholds have been reached, the Greek Capital Market Commission may also decide the suspension of the voting rights or of any other rights attached on the securities of the offeree company held by the person who has an obligation to launch a bid and by the persons acting on his/her account or in concert with him/her, to the extent the above-mentioned thresholds are exceeded.
CONCLUSION

• National legislatures should take into account the EU fundamental freedoms, when they implement EU Directives.
• The Greek Legislature took advantage of the opt-out with regard to the breakthrough rule. However, the non-frustration rule is obligatory.
• The Greek Legislature implemented the Reciprocity Rule.
• This creates a quite complex, multi-level legal regime (opt-out coupled with reciprocity; it does not contribute to legal certainty)
• It remains to see if someone will challenge some of these provisions on takeovers and will argue their incompatibility with the freedom of establishment or even with the free movement of capital. National courts-preliminary reference process.
• Greek Golden Shares.
• The Takeover Bid Directive presents many structural and substantive disadvantages. However, it is better to have a deficient directive rather than no directive at all. This directive might be improved in a future amendment (2011).