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REPRESSIVE MEASURES OF THE TARGET COMPANY IN CROATIAN LAW OF TAKEOVER JOINT STOCK COMPANY

Summary: The Law on Takeovers of Joint Stock Companies is the main legislative instrument that regulates the takeover procedure in Croatian law. An offeror who exceeds the control threshold is obliged to publish a bid for the takeover for all remaining shares of the target company. Minority shareholders are enabled to withdraw from the company under more favourable conditions in the event of a change of controlling shareholder and it is easier for the bidder to plan transaction costs. The bidding period, which begins on the day of the public announcement of the bid, is a particularly sensitive period for the target company, its shareholders, members of its bodies and employees and other stakeholders. For realisation of the legal and political goal of free decision-making by the shareholders of the target company on (non)acceptance of the published takeover bid and non-interference of the offeror; the operation of the management structure of the target company during this period is significantly limited. The radical exclusion of the basic standard of conducting the company's affairs in the process of taking over *de lege lata* is not appropriate, and therefore should be adjusted to the requirements of the Croatian legal and economic order. It is argued that strong passivation of the management is not a good solution due to the unbalanced interference with the competence of the bodies of the joint stock company. Deviation from the general coercive regime of competence of the bodies should be harmonized with the constitutional principles of adequacy and proportionality. It is proposed, *de lege ferenda*, to relax the strict rule of neutrality by allowing the management to take actions in the interest of the target company during the bidding period, which would be taken by an orderly and conscientious businessman. The paper analyzes five repressive defensive measures: criticism of the bid and the bidder, search for a competitive bidder, counter-offer to take over, change of assets or capital structure and creation of barriers based on competition law. The practical effect is determined for each measure.

Keywords: takeover of joint-stock companies, target company, repressive defensive measures, takeover bid, neutrality rule.