

**Summary of the thesis *The function and legal structure of tender offers for the sale or exchange of shares in public companies under the Polish and European law***

This dissertation concerns the function and legal structure of tender offers for the sale or exchange of shares in public companies under the Polish and European law. Locally, tender offers are governed mainly by the Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies, and in the Ordinance of the Minister of Finance of October 19, 2005 on forms of tender offers for the sale or exchange of shares of public companies, detailed terms of their announcement and terms of acquisition of shares in such tender offers. The European regulations concerning tender offers are formulated in the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (13th Directive).

The principal purpose of this paper is to determine the function of tender offers in the Polish and European law. In this respect, the paper first enumerates typical functions of tender offers in terms of their purposes (rationales) and results (consequences), based on selected distinctive models of this concept in the varying domestic regulations of tender offers in different countries. The dissertation then proceeds to show to the degree to which typical functions of takeover bids (their purposes and results) are implemented under the European and Polish regulations concerning tender offers. Additionally, the paper defines functions of tender offers as regulated in the EU and Polish laws: examines whether they tend to protect minority shareholders at the expense of takeover market dynamics, or vice-versa.

The second main goal of this dissertation is to present the structure of tender offers in the Polish and European law. In this respect, the paper determines the legal nature of a tender offers; in this respect the considerations are limited to the tender offers regulated by the domestic laws. Additionally, the paper discusses the key elements of a tender offer structure in the Polish and European law and identifies the factors which have driven the development of the existing European and domestic regulations concerning tender offers. The degree to which Polish tender offers regulations comply with the European law is also discussed.

This dissertation comprises nine chapters grouped in three parts which are not, however, formally distinguished. The first part of the dissertation (Chapters I-III) is dedicated to introductory and theoretical matters. Chapter I provides an overview of the concept of a tender offer, the kinds of the concept that would be further scrutinized, its legal nature and the generally accepted understanding of such terms as “*control*” or “*private benefits of control*”.

Chapter II discusses the purposes (rationales) and Chapter III – results (consequences) of five model tender offers regulations.

The second part of the dissertation (Chapters IV–VI) concerns the tender offers regulations provided in the 13th Directive. Chapter IV discusses the key structural elements of this concept in the European Law. Chapter V presents the European regulations concerning various matters related to benefits offered by the bidder to shareholders in consideration for their securities. Chapter VI examines the issue of supervision over tender offers, selection of the governing law and procedural regulations in the 13th Directive.

The third part of the dissertation (Chapters VII–IX) focuses on the Polish regulations concerning tender offers. Generally, the structure of this part is similar to that of the second part. Chapter VII reviews the key structural elements of tender offers in the Polish law, Chapter VIII examines the domestic regulations governing the benefits provided by the bidders to shareholders in consideration for their shares, and Chapter IX elaborates on the supervision over tender offers, the choice of governing law and procedural regulations.

The conducted analysis leads to the following conclusions:

1. the concept of a tender offers constitutes a formalized process of acquiring a shares of the public company, comprising a proposal to acquire all or some of its remaining shares (depending on the kind of the tender offer) and disclosure obligations to publish certain information that is not directly related to the transaction of acquiring securities in the tender offer document. On the grounds of the Polish law, the said proposal should be deemed to constitute an offer addressed to an unspecified party (within the meaning of Article 66 of the Civil Code) to conclude an adhesion agreement on sale or exchange of shares. On the other hand, the said disclosure obligations are performed by way of making certain statements of knowledge, understood as representations made without intent to modify the shape of the civil law relationship.
2. A straight proportional interrelation exists between the degree of protection granted to shareholders under tender offers regulations and the effect of that protection on the number of takeovers of public companies. The higher degree of protection granted to minority shareholders, the lesser dynamics of the takeovers market, and vice-versa. The conflict between these functions is inherent in the structure of tender offers.
3. The 13th Directive lets member states decide on the form of domestic takeover bids regulations. The domestic legislators may choose to implement norms granting extensive protection to the minority shareholders, or ones that will ensure higher dynamics on the market of takeovers of public companies.

4. In devising the domestic regulations of tender offers, the Polish legislator abstained from making the political and legal choice between protecting minority shareholders and the public companies takeovers market dynamics. In deciding on the foundations for tender offers in Poland it was, on the one hand, considered that interests of minority shareholders need protection, and on the other hand that limiting the number of issuers delisted from the stock exchange will be beneficial to the functioning of the Polish capital market. Nevertheless, the Polish regulations concerning tender offers are favorable for the entities which intend to acquire control over a public company or a major stake of its shares. However, the domestic regulations do not afford sufficient protection to minority shareholders.
5. In formulating the domestic regulations concerning tender offers, the Polish legislator significantly exceeded the minimum protection standard stipulated in the 13th Directive. Despite that, these regulations are to some extent noncompliant with the European law.