

## CHAPTER 16.

# CORPORATE REORGANIZATION IN REPUBLIC OF SERBIA - LESSONS FROM EU PRACTIS<sup>1</sup>

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### Abstract

*New Law on business companies in Republic of Serbia adopted in 2011 gives a opportunity to analyze certain regulations important for business activity of commercial entities. One of such regulations is on reorganization of company or corporation. Although the new law has brought changes in regulation of companies, it did not make important modifications in issues of corporate reorganization. Legislator in Republic of Serbia adjusted legal regulations on companies with the EU legislation in its previous reform in 2004. All EU directives regarding issue of business activity already adopted by the EU Council were adopted in Serbian company law. Corporate reorganization is of great importance for survival and functioning of one company. It shows clearly how its participant's interests may be different – majority interest, management interest, minority interest, interest of its creditors, interest of state etc. In this paper are analyzed the most present problems in the corporate reorganization operation.*

### INTRODUCTION

The corporate reorganization represents modification of commercial entity with the purpose of its adaptation to the changed circumstances. The meaning of the

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term of reorganization is very broad. It is regulated in Republic of Serbia by the Law on business companies<sup>4</sup> as “reorganization of company”. In law science “reorganization” is most often used term, while “restructuring” is more in use in economics. However, its essence is the same. In the legal systems of the EU countries, this term has a narrow sense. Only structural changes in company, such as fusion or division can be understood under the term of reorganization. Some authors see also changes in capital of a company as reorganization. Legal notion of reorganization in Republic of Serbia exists also in Law on Insolvency from 2009. Basically, some of measures in reorganization in insolvency proceedings as well as those in accordance with this law can be applied also in corporate reorganization operation. However there are big differences between corporate and insolvency reorganization. The term of corporation is not a legal notion in Republic of Serbia. Corporation came in Serbian legal system from Common Law, but is in the last few years broadly accepted. Today is company law studied in Serbia, as well as its special part corporate governance. There is no difference in meaning between company and corporation, since one notion is used in UK, and another in the USA<sup>5</sup>. The notion of company should include all existing forms of collective commercial activity in Serbia. Some authors include hereby all commercial legal persons. Contrary to them, there is a entrepreneur as a physical person performing commercial activity. Although its name refers only to collective forms of commercial activity, new adopted law, coming into force on 1<sup>st</sup> of February 2012 regulates both companies and entrepreneur. However, under “corporations” are understood business entities with legal personality, its organs and clearly separated property of shareholders and company itself. In this sense, real corporative characteristics have joint stock company and private limited company. In the perspective of the EU integration process of Republic of Serbia some new legal forms of commercial activity are to be expected, such as European company, European cooperative society and European Economic Interest Grouping<sup>6</sup>. New Law on business companies regulating foundation and activity of companies in Serbia includes all adopted directives of EU Council and represents a legal system harmonized with the EU legislation<sup>7</sup>. The subject of this paper will be the reorganization of those commercial forms that have real corporative characteristics, i.e. joint stock companies.

Law on business companies does not define the notion of reorganization, but by defining of changes of status of commercial entities, it explains that commercial

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<sup>4</sup> Zakon o privrednim društvima (“Službeni glasnik RS” br. 125/2004).

<sup>5</sup> VASILJEVIĆ, M. Kompanijsko pravo, Pravni fakultet u Beogradu, Službeni glasnik RS, 2009., p. 23.

<sup>6</sup> STEFANOVIĆ, Z., Pravo Evropske unije, Beograd, 2008.

<sup>7</sup> Law on companies (“Official Gazette RS” N° 36/2011).

entity or company “is reorganized” by transferring on the other entity its capital and obligations, as his shareholders acquire shares or parts in this entity<sup>8</sup>.

The term of corporative reorganization should be distinguished from the reorganization of company in insolvency proceedings. Although their essence is the same, these two institutes have big differences<sup>9</sup>. Their basic differences are: legal basis, financial situation of a company, voluntary vs. compulsory process, objectives and process. So, the main legal source for corporative reorganization is the Law on business companies. Till 1996 this issue was regulated by the Law on enterprises. The broad reform in 2004 brought modern and Law on business companies harmonized with EU regulations. After seven years of its implementation, new law is adopted under the same name. This new law regulates reorganization of solvent company or company capable for payment. As for insolvent companies, the issue of reorganization or bankruptcy is regulated by Law on Insolvency from 2009<sup>10</sup>. The process of the corporate reorganization is initiated by the company itself i.e. its organs. The objective of reorganization is to improve commercial activity in changed business circumstances. The form of reorganization process is performed in extrajudicial proceedings and by company organs or persons appointed by the company as a legal person. Nevertheless, the fact that a corporation is reorganized indicates important changes of business environment of corporation.

Law on business companies prescribes that in reorganization process participate one or more corporations of the same or different legal forms. When the reorganization process is performed within only one company, legal basis of reorganization is decision of the main body of corporation – meeting of shareholders, or eventually its administrative board. When in the reorganization process participate more commercial entities, its legal basis is their contract. One corporation is reorganized through changes in its capital structure, changes in its legal forms or changes of its status<sup>11</sup>. This is a broad understanding of the notion of reorganization. Restricted understanding includes only changes in status and legal form. The objective of this paper is to present legal possibilities of corporative reorganization in Republic of Serbia, and to point to the important experiences of the EU countries in this area. Some of those experiences already became part of Serbian legislation through adoption of directives of the EU Council regulating company’s activity.

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<sup>8</sup> Idem, Art. 483, COZIAN, M., VIANDIER, A., DEBOISSY, F., *Droit des sociétés*, 22 éd., 2009.

<sup>9</sup> MALBAŠIĆ, V., *Reorganizacija kao mera za sprečavanje stečaja*, SEF, Beograd, 2005.

<sup>10</sup> SLIJEPČEVIĆ, D., *Pravni aspekti reorganizacije stečajnog dužnika*, Beograd, 2009.

<sup>11</sup> STEFANOVIĆ, Z., HRLE, J., *Statusno privredno pravo*, II izdanje, Beograd, 2007., DEDEIĆ, P., ĐURIĆ, Đ., *Poslovno pravo*, Fakultet za bankarstvo, 2009.

## **CORPORATE REORGANIZATION IN REPUBLIC OF SERBIA**

In the Republic of Serbia, corporations are reorganized in three manners. Firstly, if there is only one subject of reorganization, then the corporation itself performs reorganization process through changes in its capital or shares. In this way, capital of the corporation may be increased or reduced. Also, the corporation may acquire or annule its own non-voting shares. Corporate reorganization has only one participant if it changes its legal form. In this case, corporation transforms to higher or lower level of corporate organizing. Nevertheless it continues to exist as a legal entity. For example, legal forms such as joint stock company or private limited company transforms from one form to another, or in some form of partnership. If one joint stock company making public offer is reorganized, the special law regulating capital markets is to be applied. It demands also adequate participation of competent state authority for supervision of capital markets. The changes which resulted from the process of corporate reorganization are registered in Central securities depository and clearing house and the legal consequences come into the force on the day of the registration<sup>12</sup>.

Reorganization of corporate capital or shares. Increasing of capital is a way of corporate reorganization. Its legal basis is normally the decision on the “meeting of shareholders” with the qualified majority. However, this rule has an exception, when the meeting of shareholders authorizes the administrative board to make such a decision. The increasing in capital may be performed through new investments in capital, conversion of claims or by increasing the corporate capital from its reserves. The increasing can be done in two ways: by issuing new shares to shareholders or by increasing their nominal value. In the case of increase in capital, the existing shareholders have the preferential right to buy newly issued shares in proportion to the nominal value of their shares<sup>13</sup>.

Corporate reorganization may be performed also by capital reduction. This form of reorganization requires change in the corporation’s founding act<sup>14</sup>. This change must be made by the decision of meeting of shareholders. It also requires consent of shareholders, whose rights are to be modified or reduced. Reorganization of nominal share capital may be performed by: reduction in regular procedure, simplified procedure, procedure of conversion in reserves and procedure of simultaneous reduction and increase in corporate capital (“coup d’accordeon”).

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<sup>12</sup> Law on the Market of Securities and Other Financial Instruments (“Official Gazette RS” N° 47/2006).

<sup>13</sup> Exemption, see Art. 237-260 Law on companies (“Official Gazette RS” N° 125/2004).

<sup>14</sup> DEDEIĆ, P., ĐURIĆ, Đ., Poslovno pravo, Fakultet za bankarstvo, 2009.

Reduction of corporate capital in regular procedure applies when a corporation operates with profit. This requires shares owned by corporation itself to be annulled, as nominal i.e. book value of shares is to be reduced, and the amount of partially paid-up shares is to be paid off. In the procedure of reducing corporate capital, corporate creditors enjoy special rights of protection. Reduction of corporate capital can not be performed by inflicting prejudice to corporate creditors. As in the legal systems of the EU member countries creditors have at disposal the right to oppose or to block procedure of capital reduction, so they have the right to require guarantees and finally pay-off of their due claims<sup>15</sup>. However, only creditors with non-secured claims have this right.

If corporate capital is reduced in the simplified procedure, it indicates that corporation operates with losses. At first, shares owned by corporation need to be annulled. As the corporation has no reserve, it is necessary to harmonize the capital with the market value<sup>16</sup>. Because of the simplified procedure, the rule of protection of creditor's rights does not apply. Corporate capital is reduced to the limit prescribed for the specific legal form by the Law on business companies. This rule does not apply in the case of simultaneous reducing and increasing of corporate capital.

Finally, corporate capital can be reorganized through the acquisition of the shareholders' stocks. It may acquire these shares directly or indirectly. For any acquiring of its own shares, it is required that corporation has the approval of meeting of shareholders or the decision of administrative council with the authorization of the meeting of shareholders. In this last case, the validity of the authorization is limited to 18 months. The corporation may acquire all kinds of preferential shares and other securities. However, it can not acquire all regular voting shares as its own, but only a part of them. There are two main systems of acquiring own shares by a corporation: anglo-saxons (with no limits) and European-continental (limited to 10 - 33% and in the case of preventing prejudice for a corporation). In Serbia the rule of 10% limit of acquiring corporations own shares is applied, with some exceptions. Similar limitations exist in the legislations of neighboring countries<sup>17</sup>. Limitation of acquiring of own capital does not apply in case of corporate reorganization through modification of status (merging, division etc.). If the corporation acquires its own shares from its shareholders, it has to respect the principle of equity of shareholders. Corporation

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<sup>15</sup> VASILJEVIĆ, p.333; MERLE, Philippe, *Droit commercial, Sociétés commerciales*, 12 éd., Dalloz, 2009, p.888.

<sup>16</sup> VASILJEVIĆ, p. 335.

<sup>17</sup> VASILJEVIĆ, p. 341.

is obliged to sell all own shares within 3 years or to annul them<sup>18</sup>. This operation has to be declared to the Central securities depository and clearing house any time it is performed. To conclude, corporation may also perform the reorganization of its shares through their fusion, division or annulations.

Modification of legal form. Transformation or modification of legal form of corporation may be performed horizontally or vertically<sup>19</sup>. In the first case, transformation from one to another type of company is performed, joint stock company to private limited company or vice versa. In the second case, corporation is transformed into the form of partnership. Transformation of legal form is normally voluntary decision of corporation, except in the case when law imposes it<sup>20</sup>.

Transformation of legal form of corporation supposes modification in its founding act. New Serbian Law on business companies prescribes that in future a founding act of corporation will not be modified, but only its articles of association. Decision on transformation is to be made by meeting of shareholders. It requires a qualified majority including 2/3 of votes. Eventual transformation into a partnership (unlimited business risk) requires unanimous decision of shareholders. With the registration of the legal form modification, corporation continues to exist as legal entity in new legal form.

Modification of status. Law on business companies prescribes following types of modifications of status of a corporation: incorporation, fusion, division and separation<sup>21</sup>. In such a way one or few companies may be incorporated in another, by transferring all capital and obligations to the other, which implies that company transferor ceases to exist without performing its liquidation. By division two or more companies found new company and transfer to it all capital and obligations, which is followed by their cessation.

There are several different possibilities of division. First, a company can be divided and the whole its capital and obligations can be transferred to two or more

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<sup>18</sup> Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, OJEC n° L. 26 from 31<sup>st</sup> of January 1977.

<sup>19</sup> VASILJEVIĆ, p. 563.

<sup>20</sup> Law on companies, Art. 430-442, ("Official Gazette RS" N° 125/2004).

<sup>21</sup> MIĆOVIĆ, M., Reorganizacija privrednog društva putem odvajanja, Pravo i privreda, 2005, vol. 42, br. 5-8, p. 128-136.

newly founded companies, which implies division with founding. Furthermore, it is possible that a company is divided with transfer of capital and obligations on two or more existing companies, which implies division with incorporation. Then, it is possible that capital of a company is transferred to one or more newly founded companies or already existing companies, which is a mixed division of company. Finally, company may perform its reorganization by separating, so that only part of its capital and obligations is transferred on one or more newly founded or existing. In all previous cases, company transferor would cease to exist. In this last case, company continues to exist. All incited types of reorganization may be performed in the regular and shorter procedure. Legal consequences of corporate reorganization come into force on the day of their registration.

### **CORPORATE REORGANIZATION IN EU MEMBER STATES**

The experiences of European countries have shown that corporate reorganization is not always performed without difficulties. Different types of reorganization began to be applied in the late 19th and early 20th century, first in the USA, and than in the United Kingdom. The first country with Continental European legal system which has conducted reorganization of the companies was Germany. In France this process began after the Second World War. Processes of corporate reorganizations, received new momentum after the signing of the Treaty of Rome in 1957. This made it possible to increase the profitability of companies and their international competitiveness.

As already mentioned, in some EU countries, corporate reorganization generally involves structural changes in the form of division or merger (fusion). Change of legal form in turn, are considered as special term - transformation of the company. In other countries it is a concept that includes all these features, except for changes in capital, which is considered as special type of change.

At the national level, but also at the EC (now EU), particular attention was drawn to the reorganization that led to the concentration. In France, this matter is regulated primarily through Commercial Code. It was amended numerous laws and regulations. A very important rule is the law of a new economic organization of the 15th of May 2001, which introduced new concepts and harmonized national legislation with the European Union. In Germany, this subject is regulated by the law of reorganization from 1994.

On gaining independence from the former Yugoslavia in 1991, a mass-privatisation programme began in Slovenia during 1992 that established the

private ownership of capital. This was reinforced with the passage of the first framework Companies Act in 1993<sup>22</sup>.

A virtue of the Slovenian privatisation process is that by progressing slowly and in a manner compatible with the existing business culture, political support for privatisation, and transition more generally, was easier to maintain.<sup>23</sup> These benefits didn't come without costs. High and widely dispersed internal ownership and ineffective external ownership in many companies provided management with insufficient incentives to restructure enterprises<sup>24</sup>. Ownership distribution resulted in the two main groups of shareholders contending for control and the right to exercise voting rights at general meetings: outside block holders on one hand, and dispersed insider owners on the other hand. Post-privatization adjustments to share ownership in Slovenia reveal an increase in managerial ownership while employee ownership is reported to be declining<sup>25</sup>.

A second wave of privatisations is expected to provide a trigger for liquidity and the further adjustment of corporate ownership structures. As this further phase begins, a greater prominence is being given to EU-level norms and selfregulatory codes. The Slovenian corporate governance code was adopted against the background of adjustment to EU legal requirements in the run-up to Slovenia's entry into the Union. Unlike in other transition countries, the adoption of the Slovenian Code (in March 2004) almost exactly coincided with the Slovenian accession to the European Union (in May 2004). At this time, there was a perception that a number of outstanding issues – the question of minority shareholder protection, the lack of the robust pressure from foreign investor community, the role of the state as a powerful owner, and underdeveloped role of domestic capital markets as in sanctioning weak or inefficient managements – needed to be addressed. The adoption of the Slovenian code has not led to an alignment of the Slovenian system with the model of diffuse share ownership and liquid capital markets which is associated with the code model in general, and even allowing for the limited period of time which has elapsed since its adoption, it is not clear that it will have this effect in future. However, the code has played an important part in the wider process of assimilation of the legal system to

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<sup>22</sup> OECD (2011), *Corporate Governance in Slovenia 2011*, Corporate Governance, OECD Publishing

<sup>23</sup> Domadenik, P., Prašnikar, J., (2004), *Enterprise restructuring in the first decade of independence. Slovenia: from Yugoslavia to the European Union*. Washington: The World Bank, pp. 244-263.

<sup>24</sup> OECD (2011), *OECD Economic Surveys: Slovenia 2011*, OECD Publishing

<sup>25</sup> Simoneti, M. and Gregoric, A. (2004) 'Managerial ownership and corporate performance in Slovenian post-privatisation period' *The European Journal of Comparative Economics*, 1: 217-241



transnational norms, in particular those of EU company law directives, and has helped to smooth the transition process more generally.<sup>26</sup>

At communitarian level, several Directives that regulate matters connected to corporate reorganization were issued. Thus, the Third Directive<sup>27</sup> regulates the protection of the interests of shareholders and third parties in the event of a merger of joint stock companies. In addition, the Sixth Directive<sup>28</sup> regulates the division of joint stock companies and complements the previous one - Third Directive.

When it comes to cross-border corporate reorganizations, it is regulated by a special directive from the 26th of October 2005<sup>29</sup>. It is so called Fourteenth Directive. This directive concerns the legal status of mergers between corporations, which are located in different EU member states. It dictates for the appointment of an independent individual expert in the reorganization, especially in mergers. Cross-border reorganizations are in a very focus of interest. They are often the subject of arduous negotiations and international agreements<sup>30</sup>. Examples of significant cross-border reorganizations are mergers of the Barclays Bank and SEMA Group; Bank PSA Finance Holding SA and Belmart.

Countries generally seek to retain their sovereignty in largest possible extent. No matter how cross-border connectivity would be economically attractive, in every country there are fears that the takeover of domestic companies by a foreign company does not cause the relocation of economic activity from its territory and the loss of jobs for its citizens. That is why the laws of many EU countries, allowing this connection, also impose certain limitations. Thus, French law requires a unanimous decision of the shareholders and the complete takeover of the company.

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<sup>26</sup> Cankar, Nina K. and Deakin, Simon F., *The Reflexive Properties of Corporate Governance Codes: The Reception of the 'Comply-or-Explain' Approach in Slovenia*. *Journal of Law and Society*, Vol. 37, Issue 3, pp. 501-525, September 2010.

<sup>27</sup> Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies, OJEC n° L. 295 from 20th of October 1978.

<sup>28</sup> Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, OJEC n° L. 378 from 31st of December 1982.

<sup>29</sup> Second Council Directive 77/91/EEC of 13 December 1976

<sup>30</sup> F. Romano, "La fusion Boeing/mdd et l'accord conclu entre l'ue et les États-Unis sur l'application de leurs lois antitrust", *RDAI*, no 4/5, 1998, p. 509 et s. Fusion Boeing - McDonnell Douglas ou plus récemment l'affaire Honeywell - General Electric (" La fusion Boeing/mdd et l'accord conclu entre l'ue et les États-Unis sur l'application de leur loi antitrust ", F. Romano, *RDAI*, 1998, p. 509).

The legal conditions for the reorganization. The procedure of the reorganization involves appropriate decision making in the company or companies that participate in it. This is a previous or preparatory stage<sup>31</sup>. Namely, the competent authority of the company where the owners of capital are presented (Assembly) must adopt a decision amending the statute. Before the new company law came into force, Serbian law predicted the change of the Memorandum of Association. The experiences of European countries shows that in the case of mergers, but also in other forms of reorganization of the company, this phase takes place in secret, away from the eyes of employees or trade unions. One of the reasons to do so is to prevent possible misuse at the stock exchange by persons who have access to privileged information<sup>32</sup>.

The relationship between companies in terms of size. Is the relationship between the sizes of the companies of the crucial importance for reorganization? In practice, the question arises whether only large companies can absorb smaller ones or the reverse case is also possible. Practice has shown that it is possible. Namely, in 1993 the company UTA merged with Air France. Although UTA was smaller company, employees of Air France refused to vote for the mergers plan, since the reorganization led to changes of shareholders' rights devoted from employment right. Thus, Air France decided to be absorbed by the UTA. However, the company that has absorbed Air France decided to retain the name of the absorbed company. At the same time this is the first case in which court practice enabled the companies to freely choose the direction of the merger. The company which absorbed another company increased its capital and the shareholders of the incorporated company in the new merged company receive shares. However, there is no issue of shares and the value of capital increases is zero. The problem that remains is the realization of equality of shares and the equity assessment of companies.

The transfer of management's mandate from one Board, whose assets and liabilities are being absorbed, to the one that realized that action is very interesting. They can remain in their positions or be removed. Any change is in the jurisdiction of the Assembly of the company.

Protecting the shareholders rights. The reorganization of the company, as a rule, remains a secret at the preparatory stage, even for the minority shareholders. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should

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<sup>31</sup> MERLE, *Droit commercial*, p. 888.

<sup>32</sup> *Ibid*

have effective means of redress<sup>33</sup>. Therefore, the question arises about protection of their rights and interests. The practices of EU countries recognize litigation in this area. Namely, the authorities of the company have a duty of loyalty to the company, and therefore to the owners of capital. In this sense, the minority owners are entitled to equal treatment. In the case of *Beley c / Former SA*, which ended before the Court of Cassation in France, it has been ascertained that the management body of the company which is merging with another company is obliged to inform shareholders about the negotiations they led, and that they violated the duty of loyalty by not providing them with information that is of importance for their decision in the reorganization process<sup>34</sup>. In contrast, no such obligation exists for ordinary members of the company. Only members of the management are required to provide such information.<sup>35</sup>

Most of the regulations in the countries of the European Union prohibit abuse of a majority vote. However, it is logical that the majority owners decide the fate of the company. It just should not be at the expense of minority owners. It is the application of rules of equal treatment of shareholders. Minority shareholders have the opportunity to request appointment of auditors or experts to prepare a special report on the reorganization. They also have the right to inspect the documents of the company, especially records from the Assembly meetings. However, the abuse of majority rights is not intended as a mandatory ground for invalidating the decision. Such a provision is the result of the desire of legislators to prevent, on the other hand, the abuse of minority rights. Therefore, minority shareholders are able to successfully implement their right just in case that the decision of the majority shareholders is against the interests of the company, favors majority on the expense of minority shareholders, but in a way that abuses can be attributed to the responsibility of its decision makers<sup>36</sup>. This does not apply to the possible wrong decision or a decision that simply does not suit the minority shareholders. When the decision is made by majority shareholders as an abuse of their rights, it may be revoked, and the shareholders affected by it may claim. After the annulment of decisions of the company, a return is made in statu quo ante. Another question is what to do in if the minorities abuse their right. In European practice, there is the view that the court should then confirm the

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<sup>33</sup> OECD (2004), "OECD Principles of Corporate Governance", in OECD, OECD Publishing

<sup>34</sup> COURET, A., *Droit des groupements, Les conflits d'intérêts*, p. 30. N° 00-15.618, *Beley c/ SA Former* : *Juris-Data* n° 2004-023739 ; *Bull. civ.* 2004, IV, n° 94 ; *JCP G* 2004, I, 173, obs. A. Constantin ; *RTD civ.* 2004, p. 500, obs. J. Mestre, B. Fages. BELEY.

<sup>35</sup> *Cass. Com.*, 26 novembre 2003, decision « Manoukian », Official web page of Supreme Court of France, 01/11/2011.

<sup>36</sup> LE CANNU, P., *Cass. Com.* 30 novembre 2004, *Bull. Joly* 2005, p. 241, n°42.

decision which minority shareholders are trying to prevent<sup>37</sup>. But that means interference of the court in the company's operations. Case law, however, states that court can decide only in the matters of awarding compensation for abuse of shareholders rights, with no court decisions on other issues.

One of the most important issues in the Republic of Serbia is the equity assessment of companies in the process of reorganization. The question of protection of shareholder rights is also addressed. Given the importance of company reorganization proceedings, the European legislation are prescribed certain methods of assessment of the economic value of companies involved. Thus, the objective criteria for assessing a company such as a book value, liquidation value, value based on revenue and profits and value of the company on stock exchange. These criteria are compared with subjective criteria such as complementary and merging of companies, the function of the new management, new Board, new access to financial markets etc<sup>38</sup>. Experiences from the privatization process in Serbia claim that the rights of minority shareholders were often violated and that their position is not taken into account.

During the reorganization process, those who are in possessions of privileged information can face a situation where they can achieve disproportionate gains, especially at the expense of others, usually minority shareholders.

Following decisions of national law of EU countries and the communitarian legislation, Serbian legislation adopted in 2004 numerous solutions that involve situations with conflict of interest. However, a number of situations especially in the capital market area (which is regulated by a special regulation) still remain not precisely regulated.

However, in large corporations there is a possibility of abuse of minorities. This raises the question of sanctions.

The protection of creditors. In general, creditors have no right to directly influence the process of reorganization. A reorganization of the solvent business entity is in accordance with the regulations of corporate, not bankruptcy law. It is completely different question if reorganization is, economically speaking, conducted in favor of creditors. Creditors are required to calculate the risk. The practices of EU countries permit creditors to emphasize their right of opposition on the court of law. Then it is up to the court to assess if there is a danger and risk for creditors settlement. If danger exists, the court may order the debtor (company) in reorganization to provide adequate guarantees, and even in extreme

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<sup>37</sup> COURET, A., *La décision valant acte*, Mélanges Spitéri, Toulouse, 2007.

<sup>38</sup> MERLE, p.889.

cases immediate payment of debt<sup>39</sup>. In some countries this right is limited. For example, the Court of Cassation of France restricted this right only to the claims of creditors who are established, liquid and matured, without a basis in legislation. In Serbia, this solution is adopted, but is primarily achieved amicably. Creditors of the company are sending the request to company, and if they are still convinced that their claims are at risk, they may address this issue to the court.

## **RECOMMENDATIONS AND CONCLUSION**

New corporate and company law in the Republic of Serbia is in force for only seven years. Although it follows the contemporary practice in EU countries, it just is not enough by itself to have impact on improving the businesses of companies in Serbia. The previous reorganization in the privatization process did not show a great success, especially because many of them were canceled and complete sale of the company took place. In addition, in Serbia there are no large corporations that could be merged or divided. The cross-border restructuring is even less present, due to the lack of attractiveness of the Serbian market for foreign investors.

Therefore, the existing regulations represent only a good starting point. By following experience of the European system, Serbia should closely monitor and streamline its regulations to the development of regulations at the European Union which membership it seeks. In this sense, not just the reform of company law, but also reform of other related regulations is necessary.

During corporate reorganization, the sovereign and the only decision is made by one or more majority shareholders. Minority shareholders usually have to accept the reorganization as something that is inevitable, and often suffer a loss in value of their capital account. Creditors, on their part, are more oriented on bankruptcy proceedings as a way of protecting their rights. However, it is a modern trend which points out to the importance of amicable settlement and also to favoring contract as the basis of establishing relationships in business. The reorganization is an opportunity to rearrange relations on a contractual basis. While preserving the necessary confidentiality of business operations, it is an opportunity for significant improvement in operating business of the companies. In this sense, corporate reorganization is not used enough to improve the legal institute of economic entities operating in Serbia.

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<sup>39</sup> LE CANNU, p. 27.

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