

Implementation of the Takeover Directive (2004/25EF) in Denmark

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(changed and amended 1 December 2006)

The implementation process took place in spring 2005. The directive was transposed through a law (L155) which contains amendments to four different business laws, among them the law on public limited companies. The act was proposed to parliament on 13 April and adopted on 16 June. The law entered into force the day after its publication in *Lovtidende* on 24 June.

The provisions in the directive concerning information and consultation with regard to takeover bids, in the offeree as well as the offeror company, are not to be found anywhere in the transposition law. The reason for this was explained as follows in the ministry's official comments on the act:

"The Directive on takeover bids contains a number of provisions on information and consultation of the employees ... According to Art. 14 it is the Danish rules on information and consultation of employees in the offeror and offeree company that apply."

"[The EU framework Directive on information and consultation] must be implemented in Danish law no later than 23 March 2005 ... The transposition of the directive is handled by the Ministry of Employment, cf. Act L 17 proposed 23 February 2005. As a consequence of this, no special provisions on information and consultation of employees are proposed with this act."

In the parliamentary discussions of the act transposing the Takeover Directive, none of the political parties raised the issue of information and consultation. In the hearing process the LO replied that it had no comments on the act. The only union organisation that took up the question was *Finansforbundet* (the union for employees in the finance sector), which declared, "We assume the obligation to inform will be integrated in a departmental order".

If we look at the Danish law (L 17 adopted 26 April 2005) implementing the Framework Directive on information and consultation (2002/14/EF) there is no reference to the Takeover Directive, and there are no provisions regarding

specifically takeover bids. The closest we get is Art. 4.2 which states the obligation to give “information on the employment situation of the enterprise, among other things if employment at the enterprise is threatened, and plans about major changes and measures that will affect employment”. And Art. 4.3 which adds, “information about decisions of the enterprise that may lead to considerable changes in the organisation of work and employment relations”.

However, an explicit transposition of the information and consultation provisions of the Takeover Directive subsequently took place in May 2006. The form was a departmental order (*bekendtgørelse*) issued by the Danish Financial Supervisory Authority (*Finanstilsynet*) under the Ministry of Economic and Business affairs. It is called *Bekendtgørelse om overtagelsestilbud samt om aktionærers oplysningsforpligtelser, 416*. It was issued 8 May 2006 and entered into force 20 May. Regarding information and consultation of employee representatives it essentially repeats the formulations of the Takeover Directive.

This means that Danish employee representatives have the opportunity to be involved in discussions of takeover bids at two levels. First at board level, where the proposal or reception of a takeover bid will be discussed, and second, following from the Directive, at the level of the cooperation committee or, if no such body exists, in communications between the board and individual employee representatives. The former of these opportunities existed already prior to the Takeover Directive by virtue of the Danish legislation on employee representation on company boards.

It is debatable whether the above-mentioned implementation through a departmental order under the Ministry of Economic and Business Affairs is an effective form of implementation. The information and consultation rights in relation to a takeover bid would clearly have been more visible for employee representatives if they were written into the law and collective agreements which implement the 2002 Framework Directive on Information and Consultation.