

SEEurope country report: (3) Transposition

**Portugal: Transposition of takeover directive
increases workers' information rights**

Reinhard Naumann, Lisbon (November 2006)

On 2 November 2006, Decree-Law 219/2006 (DL 219/2006) was published. DL 219/2006 transposes the European Takeover Directive 2004/25/CE. The DL was passed by the government on 7 September and signed by the President of the Republic on 25 October.

With regard to workers' information rights, DL 219/2006 amends parts of national legislation on takeovers. One important change is the introduction of fines in case of violation of workers' information rights.

Article 138 (g) stipulates that prospectuses presented with public offers shall include information on the continuity or change of the nature of the target company's economic activity and in particular about whether jobs will be retained or lost and about working conditions in the target company.

Article 175 [c] obliges the offeror, immediately after the decision on a public offer, to send a preliminary note to the regulator (CMVM) and to the target company and to inform the workers' representatives – or, if there are no representatives, the workers – about the content of the documents on the offer when they are made public.

Article 181 [2c] stipulates that the administration of the target company shall include in its response to the offering company information about the repercussions of the offer in relation to the interests of the target company, and “particularly in relation to the interests of its workers and working conditions”. The same article further stipulates (point 4) that the administration of the target company shall distribute the workers' representatives' opinion as an annex to the administration's own report if the workers' representatives deliver it by the time the offer is registered with the regulatory body. Furthermore, Article 181-5 obliges the administration of the target company to

inform the workers' representatives – or, if there are no representatives, the workers – about the content of the documents concerning the offer and about its response when they are made public.

Article 393 (4d and j) establishes that violation of workers' information rights in relation to the offeror and to the target company (see above) shall be considered a severe infraction (*contra-ordenação grave*) of the law.

Article 245-A obliges “issuers of securities admitted to trading on a regulated market” to publish in a special chapter or annex of their annual report detailed information about the structure and practice of corporate governance. This report shall include information on (paragraph e) the control mechanisms in the workers' capital participation system (if there is one and if workers' voting rights are not exerted directly) and on (paragraph l) existing agreements between the company and managers or employees about compensation in case of dismissal (dismissal on the workers' initiative, dismissal “without just cause” or cessation of the work contract as a consequence of a takeover bid).