The research network on worker participation in the European Company (SE)

Transposition into Maltese Law of Directive 2005/56/EC on Cross-Border Mergers of Limited Companies

Saviour Rizzo, September 2008

Directive 2005/56/EC on Cross-Border Mergers of Limited Liability Companies has been transposed into Maltese law under two subsidiary items of legislation in the form of Legal Notices: one as an amendment (Legal Notice 415 of 2007) to the Companies Act (Chapter 386 of the Laws of Malta) and the other (Legal Notice 165 of 2008) as an amendment to the Employment and Industrial Relations Act (Chapter 452). The purpose of the latter Legal Notice – Employee Involvement (Cross-Border Mergers of Limited Liability Companies) Regulations 2008 – was to transpose Article 16 of the Directive.

Rules for employee participation in cross-border mergers, provided for in Article 16 of the Directive, are by and large well transposed into Maltese law. The 500-employee threshold is transposed verbatim in Regulation 7. In accordance with Article 2 (b) of the Directive, Regulation 7(c) does not provide an entitlement to exercise participatory rights that are enjoyed by legal provision in the member state in which the company resulting from a cross-border merger has its registered office to employees of companies resulting from a cross-border merger in countries which do not provide such entitlement.

There are no specific rules in the Maltese legislation transposing this Directive with regard to the calculation of employee thresholds which determine whether the rules on codetermination shall apply or not. Negotiation procedures and standard rules are in accordance with the provisions of the Employment Involvement (European Company) Regulations of 2004 (Legal Notice 452 of 2004) which transposed the SE Directive.

Regulation 8 provides for penalties in case of failure to comply with an obligation imposed under the above Legal Notice. These penalties include fines ranging from not less than €1,164.69 to not more than €11,646.87.