

## Portugal

Vieira de Almeida  
Lisbon

### An EU directive causes confusion

**D**ecree no 219/2006 of November 2 transposes the EU Takeover Directive and part of the EU Transparency Directive into Portuguese legislation. It has modified article 20 of the Portuguese Securities Code (PSC). The article establishes the set of situations where voting rights are attributable to a given entity, for the purpose of calculating qualified shareholdings (*participações qualificadas*) in publicly traded companies (*sociedades abertas*), including listed companies. This modification, reflected mainly in the insertion of new paragraphs 20.1.h and 20.4 of the PSC, extends the range of situations where a qualified shareholding is considered to exist. But when put into practice, some of these situations are somewhat bizarre.

Consider, for instance, A, B and C, shareholders of a company listed on Eurolist by Euronext Lisbon. Each holds shares corresponding to the following voting rights:

- A: 1%
- B: 0.5%
- C: 0.9%.

Let's imagine that C has a pre-emption right over B's shares. B in turn has a pre-emption right over A's shares. Taking into account these pre-emption rights, and following the new paragraphs 20.1.h) and 20.4 of the PSC, one can conclude that A's voting rights (1%) are attributable to B, whose voting rights are deemed to increase from 0.5% to 1.5%. This shareholding is attributable to C who, further to his 0.9% holding, ends up with a deemed total shareholding stake of 2.4%.

As he passes the 2% threshold, C will publicly disclose the new 2.4% substantial shareholding, in accordance with the general terms of articles 16 and 17 of the PSC. Although the attribution to C of the voting rights held by B and A may seem odd (and, from a certain perspective, tenuous), this seems to be the implication of paragraph 20.1.h, ex-vi paragraph 20.4.

Even stranger is the fact that under a certain interpretation of the law, the attribution of voting rights under paragraph 20.1.h is reciprocal. This amounts to saying that the attribution of

voting rights has a boomerang effect. It results in the 2.4% shareholding attributable to C, bounces back and is attributed to B and to A. Unless each of these shareholders demonstrates to the Comissão do Mercado de Valores Mobiliários (CMVM) that they are not acting in concert (*concertação*), in accordance with paragraph 20.5 of the PSC, each of their substantial shareholdings will have to be disclosed to the market.

In light of the above, one may wonder whether the Portuguese legislator has gone too far. Rather than clarifying the situation, the new mechanism for calculating the voting rights of a given shareholder may become a source of confusion for the market and its players.

*Helena Vaz Pinto and Orlando Vogler Guiné*