

Financial Law Institute

Working Paper Series

WP 2000-01

January 2000

*Les défenses anti-OPA après la
treizième directive*

Eddy Wymeersch



The **Financial Law Institute** is a department within the Law School of the University of Ghent, Belgium. The research activities undertaken within the Institute focus on various issues of company and financial law, including private and public law of banking, capital markets regulation, company law and corporate governance.

The **Working Paper Series**, launched in 1999, aims at promoting the dissemination of the research results of different researchers within the Financial Law Institute to the broader academic community. The use and further distribution of the Working Papers is allowed for scientific purposes only. Working papers are published in their original language (Dutch, French, English or German) and are provisional.

For more information and a full list of available working papers, please consult the **homepage** of the Financial Law Institute at: <http://www.law.rug.ac.be/fli>

© Financial Law Institute, Universiteit Gent, 2000

*Les défenses anti-OPA après la
treizième directive*

Eddy Wymeersch

Abstract

In the forthcoming European directive on take-over bids, provisions restrict the action of the target board to defend itself against the take-overs, especially by forbidding any action or “completing any action” that is likely to jeopardise the take-over. This provision will have significant impact on actual practice in several member states, as it sometimes was usual to issue subscription rights to controlling shareholders or to authorise the board to place additional securities in case of “an imminent and grave danger”. The limits of the prohibition of defensive techniques are analysed. However the directive does not prohibit defensive techniques, put into place before the take-overs is imminent, but not involving any board action. In a last section, the policy issues most underlying these rules are analysed, especially the contradiction between this prohibition of the so-called defensive action against the continuing validity of protective action. Also the differences with the U.S. attitude as to defences is mentioned.

Published in:

Mélanges en l'honneur de Jean Stoufflet, L.G.D.J., 2000.

As this working paper has been published in the abovementioned book, it is no longer available in working paper format. Readers are kindly referred to the published article.