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*Company Law in Europe and  
European Company Law*

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# *Company Law in Europe and European Company Law*

*Eddy Wymeersch*

## **Abstract**

*This paper addresses some of the issues underlying the harmonisation of company law in Europe, especially in its relationship with company law developments in the Member states. It highlights that until now company law has attempted to engage in substantive harmonisation, and less in solving cross-border issues involving company establishment. By doing so, it has led to a pattern of cross border establishment that, being essentially based on the formation of subsidiaries under more or less comparable legal systems, is less efficient than if the companies in Europe had been allowed to freely and efficiently establish themselves under the form of branches. It also allows to situate the substantive harmonisation activity as a form of restricting the competitive forces in the company law field. By stressing substantive harmonisation, regulatory arbitrage has been stifled leading to less flexibility without reducing the need for rules on the cross-border aspects of the company activity.*

*Some recent developments are analysed, dealing with the SLIM report, the 14th pre-draft on the cross-border transfer of the seat, and the proposed rules on the European company statute.*

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