

Financial Law Institute

Working Paper Series

WP 2001-06

April 2001

*Company Law in Europe and
European Company Law*

Eddy Wymeersch

The **Financial Law Institute** is a department within the Law School of the Ghent University, 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>

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.

Published in:

Company law in Europe and European Company Law, 1st European Jurists Forum, p. 85-163, Nomos Verlagsgesellschaft, Nürnberg, 2001, ISBN 3-7890-7572-8.

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.