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***“COMMERCIAL LAW FROM A
EUROPEAN PERSPECTIVE:
BETWEEN OVERREGULATION AND DEREGULATION,
MANDATORY RULES AND PRIVATE ORDERING,
HARMONIZATION AND FLEXIBILITY”***

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L'exit del socio in caso di operazioni straordinarie transfrontaliere nel percorso di armonizzazione del diritto societario

Cross-Border Mobility and Dissenters' Rights Towards the Harmonization of Company Law

The paper analyzes the relationship between companies' cross-border mobility and exit, adopting a comparative approach. First, it describes the enactment of the minimum protection required by Directive 2019/2121 across some relevant EU state regulations, underscoring the differences between national regulations and their impact on this topic. Then, it takes into account the evolution towards a more flexible company law and the prospective enactment of a common framework (so-called 28th company law regime).

The reduction of limits to freedom of contract is unlikely to lead to a different solution and to an amendment of the recently adopted Directive. This is also confirmed in light of a comparative view of some relevant US

state regulations, which tend to provide similar rights to minority shareholders.

The 28th company law regime could potentially impact in a relevant way on the topic, which is connected to a change of applicable law, as such a change could radically differ in a hypothetical scenario of complete harmonization. However, at least looking at the available drafts, a reduction of the scope of application of dissenters' rights, or the possibility to opt out from such a protection, does not seem to be the predictable outcome.

The analysis will allow both to construe dissenters' rights under current regulations and to make proposals to lawmakers that contribute to finding a correct balance between the different and contrasting interests involved.