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LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI
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Dottorato di ricerca in “Diritto ed Economia” - XX ciclo

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**CROSS-BORDER MERGERS, HARMONIZATION AND REGULATORY
COMPETITION IN EUROPE**

Abstract

The constantly developing process of integration of markets renders cross-border mergers a crucial means of cooperation between corporations for the undertaking of a transnational business.

Yet, until the recent past, cross-border mergers were seriously hindered across the European Union. The first difficulty was related to the interpretation and application of the EC Treaty's establishment rules (art. 43 and 48 EC), that was still too narrow. The second difficulty was represented by the heterogeneity of the national legislation that had to be applied in the absence of a harmonized European regulation on mergers. Both kinds of difficulties have been now overcome thanks to the contribution of the European Court of Justice and the European legislator.

On one side, the Court of Justice (*Centros*, *Überseering* and *Inspire Art*) has widely interpreted and applied the EC Treaty's provisions on the right of establishment of corporations. This trend has been recently confirmed in the *Sevic* case (2005), where the Court of Justice has recognized cross-border mergers as a particular means of establishment and has removed the remaining barriers to the exercise of the right of establishment by European corporations.

On the other side, almost simultaneously with *Sevic*, the adoption of the Tenth Directive concerning cross-border mergers (Directive 2005/56/EC) has introduced a regulation on cross-border mergers in order to facilitate the implementation of this kind of operations. The Directive overcomes the barriers represented by the heterogeneity of national legislations through the introduction of harmonized rules, including a series of rules of conflict of law, that leave to national legislators the duty of regulating certain aspects of the discipline of cross-border mergers.

Structured as it is, the Directive seems to be able to foster a process of regulatory competition between EU member States, especially in the field of corporate law. By facilitating the implementation of cross-border mergers, the Directive encourages the mobility of corporations within the European Union and the possibility for corporations to choose to be subjected to the law of that national legal system that, more than others, meets their own needs.

The purpose of this thesis is to find out whether the Cross-Border Mergers Directive will be really able to foster regulatory competition in the European Union. The question will be discussed from a comparative perspective. The answer to this question will be provided by the results of a comparison between the political and legislative framework of Europe and United States, where regulatory competition is well developed. Lastly, it will consider whether the Tenth Directive provides a fair balance between harmonization and incentives for regulatory competition. The outcome of a cost-benefit analysis will provide the answer to this question.