The law of cross-border contracts
Introduction
In the case of contracts concluded between individuals or legal (moral) person having their usual residence or headquarters in different states, the question is which of the laws of the states will apply to the contracts. This situation is called a conflict of laws and one of the most important issues in cross-border trade is to resolve this conflict by determining the applicable law of the contract. Why is it so important? Because depending on the contract law one can determine the rights and obligations of the parties, the elements of the contract etc. Thus, for example, a Romanian consumer buys from internet an MP3 player from a French dealer. In this situation, if the applicable law will be the French one, the Romanian consumer will have 7 days to exercise his right to cancel the contract and if the applicable law will be the Romanian one, he will have 10 working days.

The European Union has been concerned with finding a solution to the problem (conflict of laws and finding the applicable law) as simple and uniform for all Member States. A first step was taken in 1980 by adopting the Rome Convention on the applicable law to contractual obligations, which have been gradually joined by all the EU Member States, including Romania (The Convention came into force in Romania on 15 January 2008). Later, in 2008, the European Union has made another important step in resolving the problem of conflict of laws through the adoption of Regulation 593/2008 on the applicable law to contractual obligations, which has come into force on 17 December 2009 in all Member States, replacing Rome Convention from 1980.

The current situation - Regulation 593/2008 (Rome I)

1. The general principle - freedom of choice
Regulation 593/2008 keeps the same solution for resolving conflicts of law like Rome Convention - a contract shall be governed by the law chosen by the parties. The choice must be expressed (clearly established in the contract) or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case (for example, the parties assume, in drafting contract terms, certain parts of laws). By their choice the parties can select the law applicable to the whole or a part only of the contract. Finally, the parties can choose the law of one of their states or of a third state.

2. Applicable law in the absence of choice
Regulation 593/2008 provides that in the absence of choice of parties, the applicable law be determined depending on the type and scope of contract: a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence; a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence.
If a contract does not fall within those listed in Regulation, the applicable law will be of the state where the debtor of the characteristic performance has his habitual residence.

3. Consumer contracts

a. **Principle** - a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:
   - pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
   - by any means, directs such activities to that country or to several countries including that country and the contract falls within the scope of such activities.

b. **Principle** - The parties may choose the applicable law to the contract, but this choice can not deprive the consumer of the protection offered by the mandatory rules of the State of his habitual residence, in the two situations described above. In other words, if the trader is in one of two situations and the parties choose the applicable law of the dealer, the consumer can not be deprived of the protection offered by the state of his habitual residence. If the parties are not in the two cases above, the applicable law is determined by general rules (choice or, in the absence of choice, by the type/object of the contract or characteristic performance).

c. **Exclusions** - The special rules do not apply to a number of contracts:
   - contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence
   - a contract of carriage (but not package travel contracts)
   - real estate contracts (but not timeshare) etc.

4. How to determine the applicable law of the contract?

**A. There is a written contract:**
1. Check the contract if there is an express statement which refers to the applicable law.
2. if there is an express statement which refers to the applicable law or this is resulting from the content, and this is not the law of the state in which you have the residence, you have to check if it is falling in any of the two situations when are applicable the special rules for contracts concluded by consumers.
3. If I am in one of the two situations, the applicable law of the contract will be of the state where I have the residence.
4. If I am not in any of the two cases, the applicable law will be the one specified in the contract or resulting from the content.
B. There is not an express statement which refers to the applicable law or the applicable law is not established in the contract

1. Check if you fall into one of the two situations when are applicable the special rules for consumer contracts.
2. If I am in one of the two situations, the applicable law will be of the state where I have the residence.
3. If I am not in any of the two situations, the applicable law will be determined according the type/object of the contract or will be of the state where the debtor of the characteristic performance has his habitual residence.

These steps represent a simplification of the rules established in the Regulation and are more like an informative guide. Typically, in practice, the situations are more complex and determining the applicable law requiring a specialist and examining all the circumstances of the case.

For more information see:

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