

The Law Applicable to Contract Concluded within “Multilateral System” for Financial Instruments Trading in EU Law — A Comparative Study of Rome I Regulation and MiFID (Summary)

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The Art. 4 (1) (h) of the *Rome I Regulation on the law applicable to contractual obligations* 593/2008-/EC (Rome I), establishes a “single law” approach. According to that, the same national law governing a “multilateral system” for trading in financial instruments should be also applicable to a contract concluded within the system.

However it remains still unclear how we can determine what law is the “single law” that the system is subject to and how we can define the “multilateral system” in meaning of Art. 4 (1) (h) Rome I. The Rome I itself doesn't provide sufficient explanation for those issues. Thus the other EU legislation in financial sector (*Markets in Financial Instruments Directive 2004/39-EC* (MiFID)) which is referred in Art. 4 (1) (h) Rome I and its recitals (18) should be considered substantially to resolve those questions.

Author of this paper proposes complementary elucidations of those questions by considering current academic arguments on Art. 4 (1) (h) Rome I and the related provisions of MiFID.

1) What is the conceptual component of the “multilateral system” ?

The “multilateral system” which the Rome I expresses is the word adopted in the draft from Commission on 15. March 2007, 7418/07 JUSTCIV 55 CODEC 228, in the place of the word “financial market”, meanwhile conceptual difference between those two words still remained unclarified.

The “multilateral system” in meaning of the MiFID, according to definition in MiFID's recital (6), can be understood as a sort of organized entity (or corporation) equipped with autonomous execution arrangements or an internal autonomy. To describe concretely, representative model of the “multilateral system” is Regulated Market, i.e. Stock Exchange, and MTF (Multilateral Trading Facility) in meaning of MiFID. The “multilateral system” in MiFID should be also considered as an organized entity serving market-infrastructure services, which can receive benefits from Free Movement of Service in EU law.

Argument in the draft working of Art. 4 (1) (h) Rome I suggests that the “multilateral system” in this article should inherit the same component as the concept in MiFID, meanwhile Art. 4 (1) (h) and recital (18) Rome I refer merely to autonomous execution arrangements, not to internal autonomy of a multilateral system.

2) What law is the “single law” which the multilateral system is subject to?

The Rome I has no explanation about what law is the “single law” that governs the multilateral system nor how this “single law” should be determined.

The multilateral system, as an organized entity equipped with intern autonomy, possesses generally a set of internal rules, i.e. the conditions for the operation of the system, the conditions for access to the system and the conditions that must be satisfied by a financial instrument before it can be dealt within the system effectively.

Regulated Market in meaning of MiFID requires from Member States to have proper intern rules for management of the operations of the system (Art. 39, 40, 42 MiFID and Art. 1 (13) of Investment Service Directive 93/22/EEC (ISD)). Therefore the “single law governing a multilateral system” means the law of the country issuing or approving regulations which govern the intern rules of the system. Then in Regulated Market, the single law governing the system is the regulatory *law* (*public law*) of its home Member State.

When the intern rules of the system have a choice of law clause, the “single law” can be determined on autonomy of the system. And when the intern rules of the system are obviously subject to a national regulatory law, that law should be the “single law”. As the multilateral system is considered as an organized entity or corporation, this “single law” must be the law under which the system was incorporated.