

## **Interpretatio non praesumitur, sed explicatur - efficacy and transaction costs of contractual interpretation mechanisms**

While contract interpretation is a cornerstone of private law, civil law systems lack a systematic framework for how parties can proactively shape it. This project addresses that gap by developing a systematic typology of interpretative mechanisms — grouped into informational, structural, and procedural tools — which captures subtle doctrinal nuances and practical variations and studying their foundations and efficacy (weighting expected benefits against transaction costs). The overarching goal is to facilitate contract interpretation in a way which can be reasonably administered by parties and courts, by providing a guideline of how to draft and amend contracts, as well as argue contractual disputes, in a way which respects the intended interpretation.

The project's central thesis is that the mechanisms which parties to a contract implement to influence its interpretation are effective to varying degrees and come with certain transaction costs, which both can be aligned to best serve the purpose of the agreement. The project is built around two main hypotheses: 1. interpretative mechanisms are most effective when their legal function aligns with strategic goals of the parties and the stage of contract lifecycle and 2. the legal and institutional context—including dispute resolution mechanisms and legal tradition—affects the enforceability, cost-efficiency, and overall impact of interpretative mechanisms. The project will cover a comparison between common and civil law systems in this regard. Since mandatory use of contextual supplementation and generalised principles are characteristic of civil law jurisdictions, courts may invoke these principles to moderate strict adherence to structural clauses, allowing for equitable outcomes that sometimes override formal contract terms and parties to a contract may want to prevent this intervention *ex ante*. An example of a research question being explored is how arbitration's procedural flexibility interacts with contractual design choices to impact the effectiveness and cost-efficiency of interpretative mechanisms, advancing understanding of how legal context shapes contract enforcement. An important aspect of the research is studying strategic vagueness and (inherent) incompleteness of contracts. In some situations, deliberately avoiding maximum precision is strictly optimal. For example, contracts concluded under technological uncertainty, or those designed for long-term cooperation, may be intentionally left incomplete to preserve adaptability. The project will take into account key insights from the relational theory of contracts to investigate how civil law systems accommodate or resist sectoral contracting cultures, and how these tensions affect the interpretability and enforceability of specific mechanisms in practice.

To answer these questions, the project will utilise dogmatic (doctrinal) legal research to clarify the legal framework, identify structural, procedural, and informational interpretative mechanisms, and understand judicial attitudes towards them. A second methodology of the project is a two-fold economic analysis. Theories such as transaction cost economics, contract theory, and game theory provide the basis for understanding issues such as incomplete contracts, uncertainty, and information asymmetry. The research focus will be on how parties use interpretative mechanisms strategically, examining incentives, equilibrium outcomes, and the efficiency of different contractual design choices in reducing transaction costs and managing interpretative risks. The project will also employ a simplified game-theoretic models to examine the strategic choices parties face when drafting contracts with their future interpretation in mind. This approach forwards analytical clarity and rigor to normative questions surrounding contract law, thus fulfilling a central objective of the project. The project will also use the comparative method, which combines awareness of the institutional and economic context with doctrinal studies to allow for theoretical reflection on the role of interpretative design within diverse legal environments.

The results will be disseminated in three primary ways. First, a publication in Polish which will provide an in-depth doctrinal and empirical analysis of the mechanisms by which parties influence the interpretation of contracts, emphasising their efficacy and transaction costs in civil law systems. The second paper will target an international economics or law & economics journal and will emphasise the economic dimensions of interpretative autonomy, transaction costs, and behavioural contracting alongside the simplified game-theoretic models developed to clarify parties' strategic choices in contract drafting under uncertainty. Transposing the results of economic research pertaining to the formation and interpretation of contracts, as well as the insights of behavioural economics about contracting behaviour, onto the framework of contract law in civil law jurisdiction, represents a crucial step. This integration promises to advance the development of law and economics and provide valuable tools for both practitioners and academics. Thirdly, the core findings of the project — including the proposed typology of interpretative mechanisms and the transaction cost framework — will form a crucial part of a monograph, covering the PI's doctoral research.