# Precontractual liability in obligations with an international element

# Abstract

The thesis deals with the issue of precontractual liability in contractual relations with an international element. The focus is mainly on an analysis of the approach of selected foreign legal systems, namely Germany, the United Kingdom, the United States of America and Ukraine, but also on unification efforts aimed at bridging the differences between the individual national regulations.

Precontractual liability is a very complex legal institution. While Czech law is relatively detailed in this respect and no major problems arise, the application of *culpa in contrahendo* in international trade practice still raises more questions than answers.

The application of the concept in the international environment is problematic mainly due to the different conceptions of *culpa in contrahendo* in individual countries. Most striking is the difference between the approach taken by continental and common-law legal systems, respectively. Common law, which does not recognize precontractual liability as a legal institution at all, works with the doctrine of promissory estoppel, which in some situations is able to replace the missing institution of *culpa in contrahendo*. Of course, the conflict-of-laws rules on precontractual liability also differ, especially since some states treat it as a contractual institution (Germany), while others treat it as a non-contractual institution (Czech Republic).

In its last two chapters, the thesis takes a look at unification documents that seek to remove barriers to international trade. The most important of these is undoubtedly the UN Convention on Contracts for the International Sale of Goods, which regulates the substantive law of international sales contracts. However, it does not explicitly address precontractual liability. For this reason, in view of Article 7(2) CISG, disputes arise as to whether the convention can be applied to precontractual liability (i.e. whether the concept should come within the purview of the internal gap regime) or not (i.e. whether the concept should come within the purview of the external gap regime). While the majority of the scholarly community is inclined to locate *culpa in contrahendo* outside the scope of the CISG, there are also opposing views, which are of course given space in the thesis. Finally, the thesis does not neglect to address unification efforts within soft-law documents such as the UNIDROIT Principles, the Draft Common Frame of Reference and the Principles of European Contract Law.