Summary

My work researches default rules in contracts from the economic point of view. Not enough attention is paid to this topic in Czech Republic, although it is necessary to know answers on questions „How default rules should be formulated?“ and „Why default rules are accepted or set aside?“. In order to be able to answer these questions, my work examines what causes private parties to accept default rules or set them aside. On the basis of these findings is proposed how should be gaps in incomplete contracts filled with default rules set by legislator or courts.

The basic criterion of enacting default rules should be efficiency and minimalization of transaction costs incurred by private parties in the course of concluding a contract. In order to fill gaps in a contract efficiently legislator should enact default terms that contracting parties would have adopted, were the transaction costs zero. These default rules increase welfare of the contracting parties. Default rules can be evaluated by economic concepts such as Pareto efficiency and Kaldor-Hicks efficiency. On the other hand incompleteness can occure also because of strategic behaviour of more informed parties. These gaps should be filled by default rules that force relatively informed parties to contract around and thereby reveal their information. These default rules give both contracting parties incentives to reveal information to third parties, especially courts or give a more informed contracting party incentives to reveal information to a less informed party. Unlike default rules set at what the parties would have wanted penalty default rules are disfavoured by the contracting parties. Thereby parties are encouraged to reveal information. According to the transactions costs and asymetric information approach default rules matter only under certain assumptions. If transaction costs are low and information is distributed symmetrically between the parties they will negotiate efficient contract regardless of the content of default rules.

The transaction costs and strategic behaviour based theories do not provide complete theory of contract default rules. Both these theories are based on assumption that contracting parties‘ preferences for contract terms are exogenous to the content of the default rule. These theories must be expanded by adding also factors that are endogenous to the content of the default rule. These factors are „learning“ and

„network“ benefits which occur when the default rule is commonly used by other unrelated parties. These benefits affect the decision-making process of contracting parties towards acceptance of the default rule since „learning“ and „network“ benefits are positive externalities of default rules. Empirically identified bias in favour of default rules is, however, according to empirical and experimental data caused by status quo bias of the parties and their preference for inertia. Status quo bias increases utility of contract parties if they accept default rules. The decision-making process of contract parties whether accept or set aside default rule is therefore affected by status quo bias. Status quo bias with factors that have been mentioned above forms part of the cost-benefit analysis that will determine whether parties accept or set aside the default rule.