

# Formalized Determination of Applicable Law in International Contracting

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Typical Contract Elements  
Private International Law Procedure  
Formalized Applicable Law Determination  
IPRG Excerpts  
Challenges and Solution  
Applicable Law in Europe  
Summary and Conclusions



## Typical Contract Elements

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**Contract parties** (identity, applicable geographic location, contact details)

**Language** (contract and communications)

**Validity** (offer, contract duration)

**Offerings** (goods, services, main characteristics)

**Price and terms** (price, delivery, costs, payment)

**Warranty, after-sales service, termination, remedies**

**Restrictions** (conditions of purchase, geographic/time restrictions)

**Dispute resolution** ([applicable law](#), jurisdiction, alternative dispute resolution)

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**Focus:**

Determine applicable law automatically

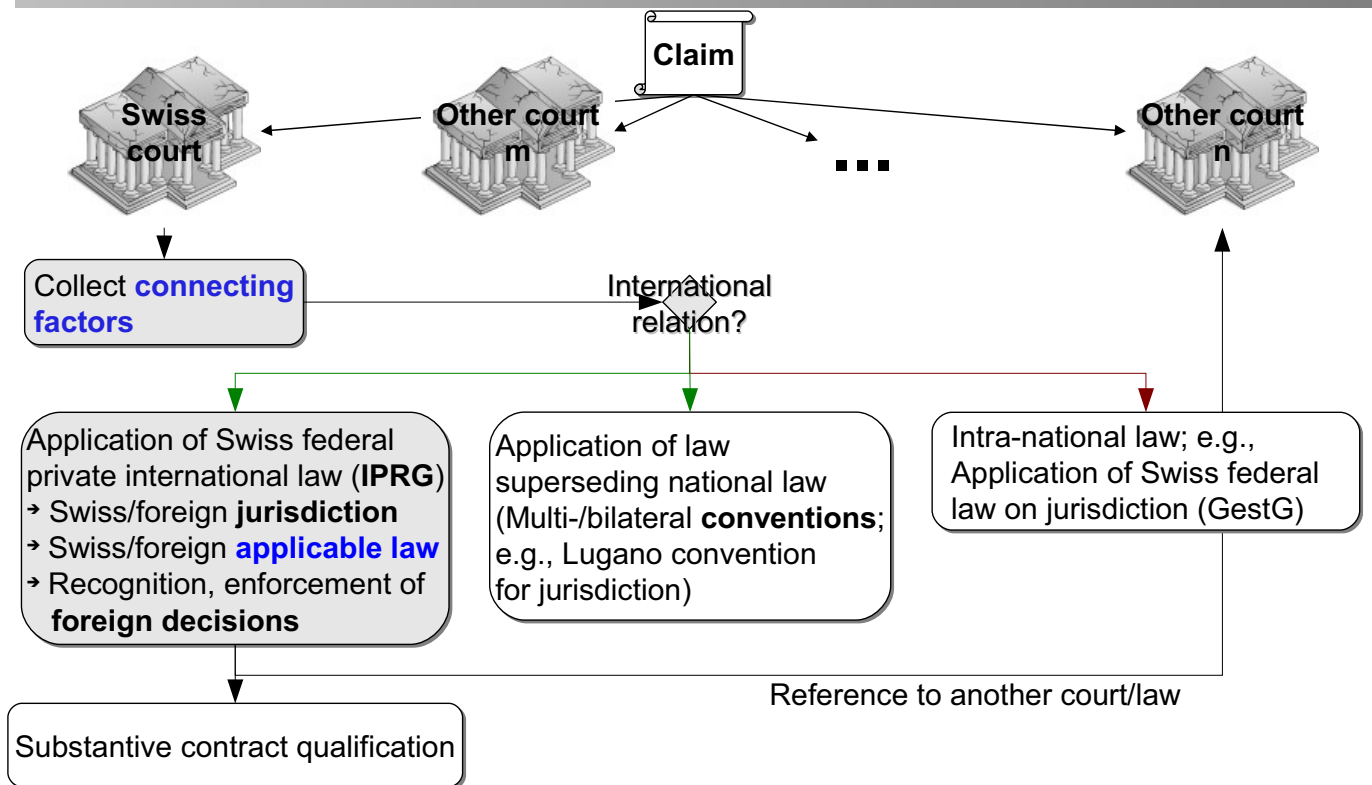
**Consequence:**

- Formalize private international law procedures
- Collect connecting factors

**Approach:**

Example of Swiss law (IPRG) given

# Private International Law Procedure



## Direct IPRG Formalization

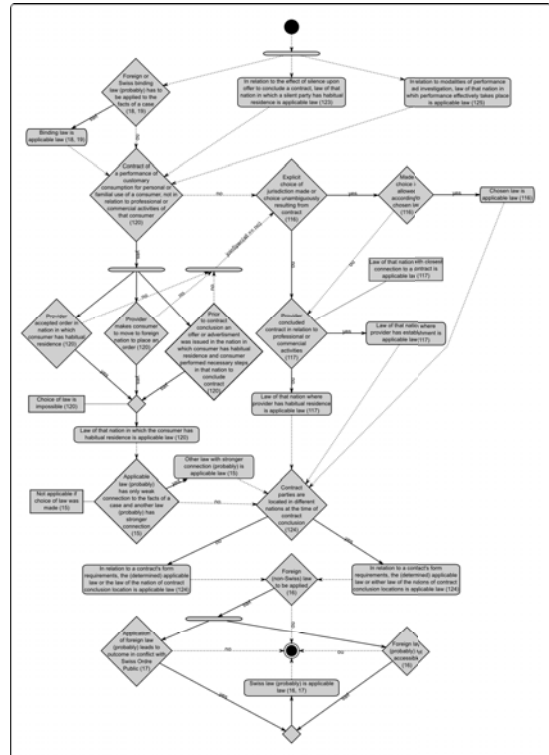
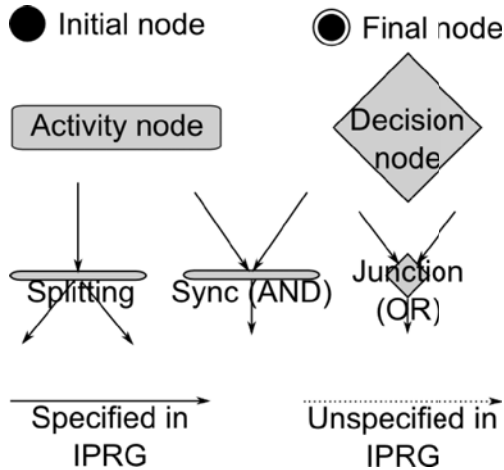
(Attempt)

# Formalized Applicable Law Determination

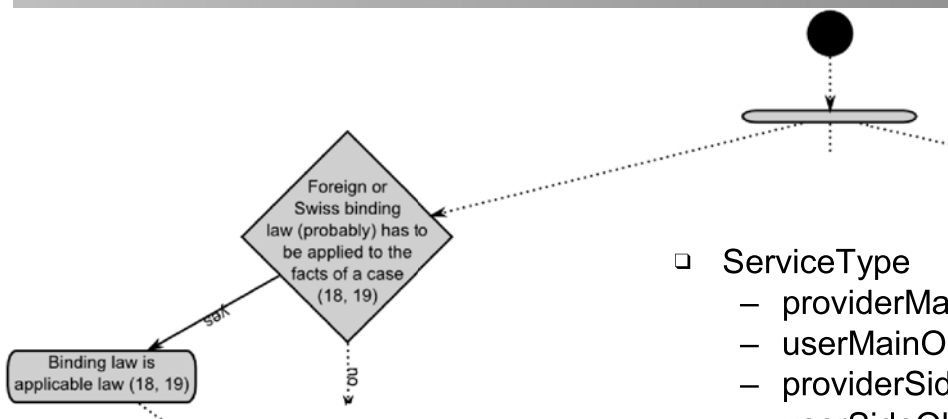
## UML2 Activity Diagram

- Details on handout
- Parameters abstracted

## Legend



## IPRG Excerpt 1: Binding Law

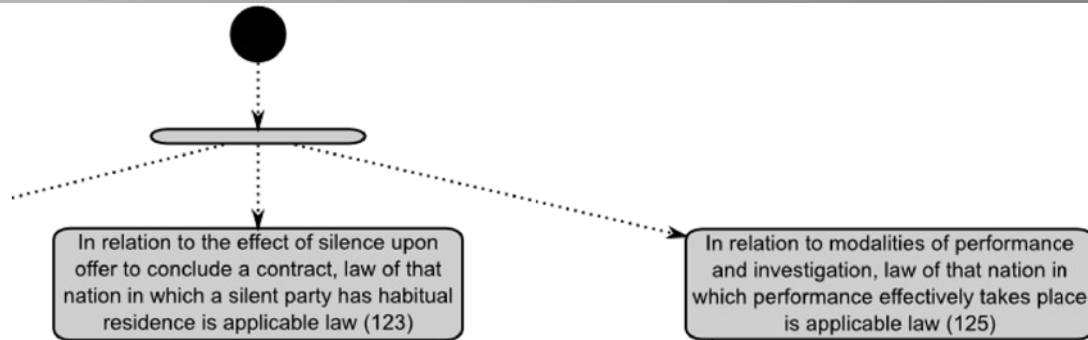


- Contract
  - jurisdiction : NationalCourt[]
  - applicableLaw : ApplicableLaw
  - offerings : ServiceType
- ApplicableLaw
  - generalApplicableLaw : NationalLaw
  - probableBindingLaw : NationalLaw[]

- ServiceType
  - providerMainObligation : ObligationType
  - userMainObligation : ObligationType
  - providerSideObligations : ObligationType[]
  - userSideObligations : ObligationType[]
- ObligationType
  - legalDomains : Nation[]
  - bindingLawCandidates : NationalLaw[]

Probability?      Timely order?      Multiple jurisdictions, appl. laws?

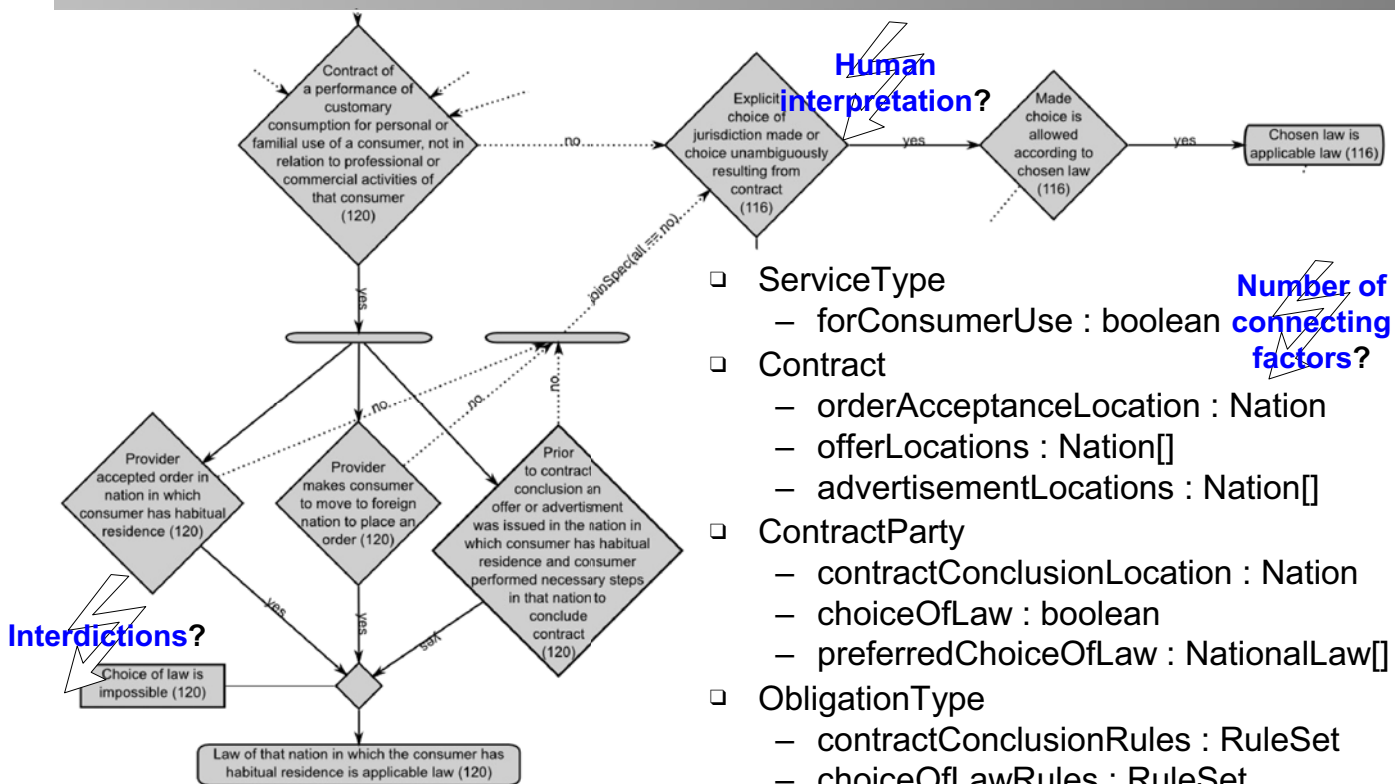
# IPRG Excerpt 2: Effect of Silence and Modalities



- Contract
  - serviceProvider : ContractParty
  - serviceUser : Contract Party
  - locationOfPerformance : Nation
- ContractParty
  - habitualResidence : Nation
- ObligationType
  - performanceRules : RuleSet
  - investigationRules : RuleSet
- ApplicableLaw
  - effectOfSilence : NationalLaw
  - performanceModalities : NationalLaw
  - investigationModalities : NationalLaw

Potential inconsistencies? Location?

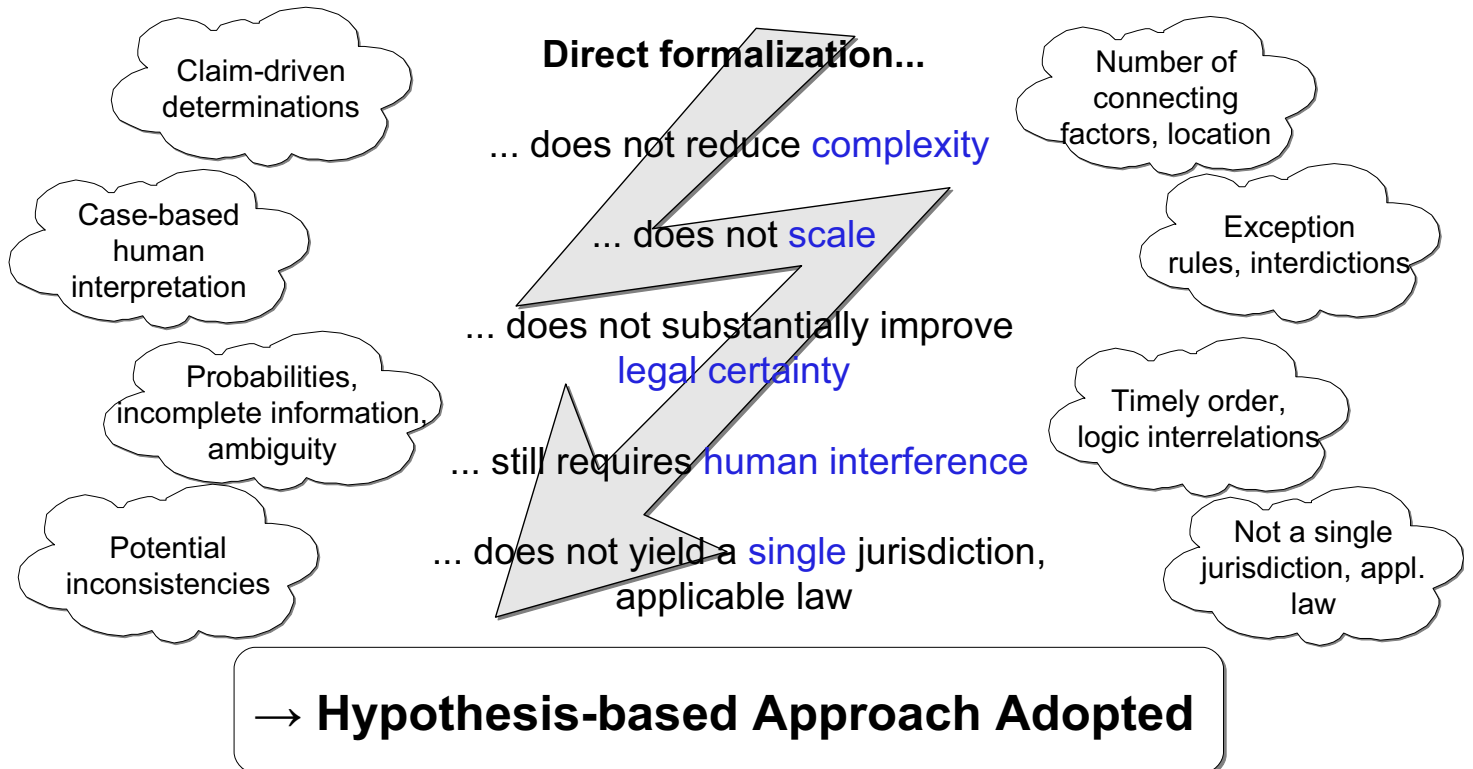
# IPRG Excerpt 3: Consumer Contracts and Choice of Law



- ServiceType
  - forConsumerUse : boolean
- Contract
  - orderAcceptanceLocation : Nation
  - offerLocations : Nation[]
  - advertisementLocations : Nation[]
- ContractParty
  - contractConclusionLocation : Nation
  - choiceOfLaw : boolean
  - preferredChoiceOfLaw : NationalLaw[]
- ObligationType
  - contractConclusionRules : RuleSet
  - choiceOfLawRules : RuleSet

Number of connecting factors?

# Challenges and Solution

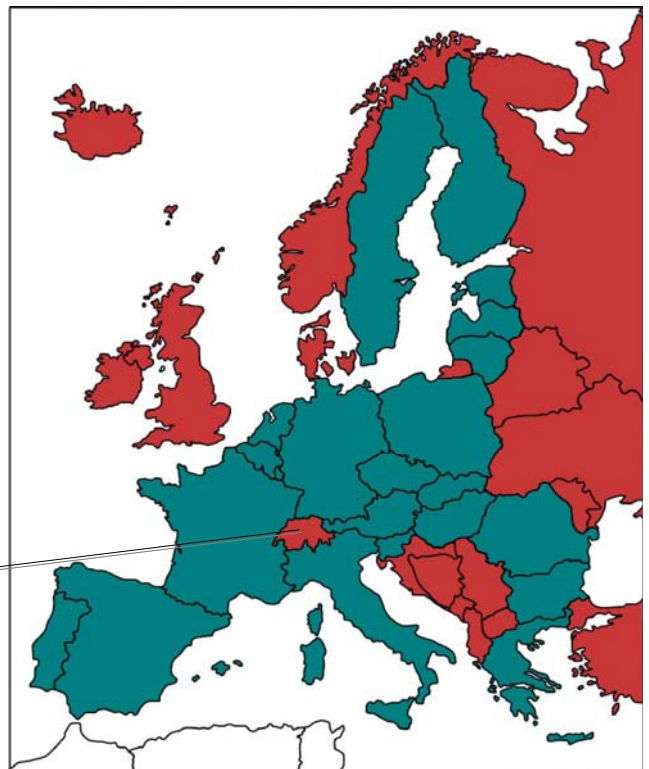


## Applicable Law in Europe

- Rome I regulation
  - Green area
  - Entry into force 2009
  - UK, Denmark not adopting
- National private law
  - Red area
  - Scalability (Europe, world)?

**Swiss IPRG:**

- 39 connecting factors
- Specific to applicable law
- More when considering jurisdiction etc.



# Summary and Conclusions

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Applicable law small part of contract,  
but of key importance to international contracting  
→ large set of location-related **connecting factors**

Direct formalization of private international law **challenging**  
→ not reducing complexity, nor improving legal certainty

**Hypothesis** working approach  
→ Determine relevant connecting factor settings  
→ Determine manageable set of hypotheses  
→ Estimate probabilities

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## Thank you for your attention



Questions, comments...