From concept to practice: a snapshot of proactive law after 25 years

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This special issue of the *TalTech Journal of European Studies (TJES)* is dedicated to *proactive law*—a forward-looking approach that sees law as an enabling tool for achieving goals, creating value, fostering successful relationships and preventing problems and disputes. Originating in the Nordic countries in the late 1990s, the proactive approach first gained prominence in the context of contracting (e.g., Haapio, 1998; 2006), and later in other areas (e.g., Berger-Walliser, 2012). The integration of visualization and design methods into what became known as proactive contracting and proactive law was instrumental in this development, giving rise to fields such as contract design and, later, legal design (e.g., Berger-Walliser *et al*., 2017; Haapio, 2022). More recently, the incorporation of artificial intelligence (AI) into these practices has further enhanced their effectiveness and opened new avenues for research and practice.

As early pioneers of these research and practice streams, we have observed with great excitement their spread to new regions in Europe, the Americas and beyond. This special issue presents a snapshot of the current state of these interrelated fields with examples of their progress, applications and evolving implications in different subject areas and parts of the world.

As those familiar with the origins of the proactive approach know, we built on the work of Louis M. Brown, a US law professor and attorney, who is considered the father of preventive law, to develop the concept of proactive law. This special issue coincides with the 75th anniversary of Professor Brown's seminal book, *Preventive law* (Brown, 1950). Brown's groundbreaking ideas shifted the focus from traditional reactive or curative law to preventive law, and from anticipating court decisions to anticipating human behavior. With his colleague Edward A. Dauer, Brown adapted concepts from preventive medicine to the field of law, such as the three levels of prevention: first, preventing the cause from occurring; second, mitigating the cause's potential for harm; and third, minimizing the damage when harm does occur (e.g., Dauer, 1998).

In developing the proactive approach, we and other early adopters (e.g., Pohjonen, 2006; Barton, 2008) built on this foundation by adding a promotive

https://doi.org/10.2478/bjes-2025-0001 *TalTech Journal of European Studies*, 15(1(41))
Tallinn University of Technology (ISSN 2674-4619)

dimension. In addition to preventing undesirable outcomes such as disputes and litigation, we emphasized the importance of promoting desirable outcomes and ensuring goal success. Early scholarship in this area focused on the achievement of *business* goals, but its scope has since expanded to include *societal* goals, such as environmental sustainability (e.g., Berger-Walliser *et al*., 2016) and the role of law as a constructive, positive and transformative force (e.g., Haapio and Ketola, forthcoming).

A significant step forward in recognizing the opportunities of the proactive approach was taken in 2009, when the European Economic and Social Committee (EESC) issued an 'Opinion on the proactive law approach: a further step towards better regulation at EU level' (2009/C 175/05, 2009). It was published in the *Official Journal* in all EU languages. This Opinion referred to the work of the Nordic School of Proactive Law and its predecessors (e.g., Haapio, 2007) and recommended that the proactive approach be systematically integrated into all stages of lawmaking and implementation throughout the EU. In particular, the EESC stated that "a piece of legislation is not the goal; its successful implementation is", continuing that implementation does not only mean enforcement by institutions, "it also means adoption, acceptance and, where necessary, a change of behaviour on the part of the intended individuals and organisations" ('Opinion of the European Economic and Social Committee 2009/C 175/05', 2009, paras. 2.5 and 6.1). According to the Opinion, the success of legislation should be measured by how its objectives are achieved at the level of the users of the law—that is, EU citizens and businesses—and the legislator should be concerned with producing operationally efficient rules that are communicated in a way that is understood and can be followed by those affected by them. "The laws should be communicated in ways that are meaningful to their intended audience, first and foremost to those whose behaviour is affected and not just to the relevant institutions and administrators" ('Opinion of the European Economic and Social Committee 2009/C 175/05', 2009, paras. 1.9 and 6.11).

The need to influence and guide human behavior "on the ground", both in contracting and in legislation, made it clear that it was insufficient to target only lawyers or to limit the application of the approach to the "law office laboratory" (Brown, 1956). Instead, it became essential to involve people with no legal background and foster collaboration in interdisciplinary teams in which lawyers worked alongside other professionals (e.g., Waller, Passera and Haapio, 2022). This broader perspective introduced visualization and design as key elements in advancing the proactive approach. Not

surprisingly, we found early enthusiasm and support for these innovations not in traditional lawyers' associations but in associations such as the World Commerce and Contracting (WorldCC) association and the Academy of Legal Studies in Business (ALSB), and also not in traditional law schools but in business schools, technical universities, executive education programs and universities of applied science.

Change is indeed underway, with increasing interest emerging even within law schools, as evidenced by some contributions to this special issue. Books such as *Design in legal education*, edited by Emily Allbon and Amanda Perry-Kessaris (2022) and *Transforming higher education with human centred design*, edited by Radka Newton, Jean Mutton and Michael Doherty (2024) are paving the way for a new generation of legal professionals who approach law with a more innovative and user-centered perspective.

On the research side, proactive law has always benefited from and contributed to interdisciplinary perspectives. Early on, it was influenced by the work of relational contracting scholars, such as Stewart Macaulay and Ian Macneil (Macaulay, 1963; Macneil, 1978). It then turned to organizational contracting scholarship for inspiration and academic exchange of ideas (e.g., Weber and Meyer, 2008). In the 2010s, proactive law offered a values-oriented perspective to the emerging law and strategy research in the United States (Siedel and Haapio, 2010) and continues to do so as multiple contributions on proactive law in the *Oxford handbook on law and management* (forthcoming) exemplify. More recently, proactive law has offered a legal lens to the functional contracting approach in organizational studies (Hurmerinta-Haanpää and Berger-Walliser, 2024), and multiple contributions in this special issue look towards non-legal disciplines to enhance a theory of proactive law.

As this special issue highlights, the journey of proactive law—from concept to practice—over the past 25 years has been remarkable. We are confident that this milestone snapshot will not only celebrate the progress made but also inspire new scholars and practitioners to develop and apply the approach and contribute to the evolution of a mature proactive legal theory. Several articles in this special issue emphasize that despite proactive law's achievements, much still needs to be done to truly change the reactive legal mindset still prevalent in legal education and practice. These articles offer innovative ideas on how to overcome these and other barriers. As the fields of proactive law, contract design and legal design continue to evolve, the integration of AI represents a significant advancement that offers new

methods for effectively implementing proactive legal strategies that are prominently featured in this special issue.

As pioneers of proactive law, we are delighted that Tallinn University of Technology (TalTech) is championing the approach and promoting its development by publishing this special issue of its journal. This milestone reflects the growing recognition of the proactive approach's potential to drive meaningful change in business, legal practice and society at large.

We extend our sincere thanks to the editors and contributors to this special issue, who demonstrate that proactive law is not only alive and well but is breaking new ground and opening promising new avenues for research and practice. Coming from many countries and even continents, these contributors show the truly global resonance of the approach. Their work ensures that this innovative perspective continues to evolve and inspire, fostering collaboration and positive change across disciplines and diverse settings. With this open-access special issue, we hope that the proactive approach will continue to find new allies among scholars and practitioners, further strengthening its potential to transform theory, practice and education.

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