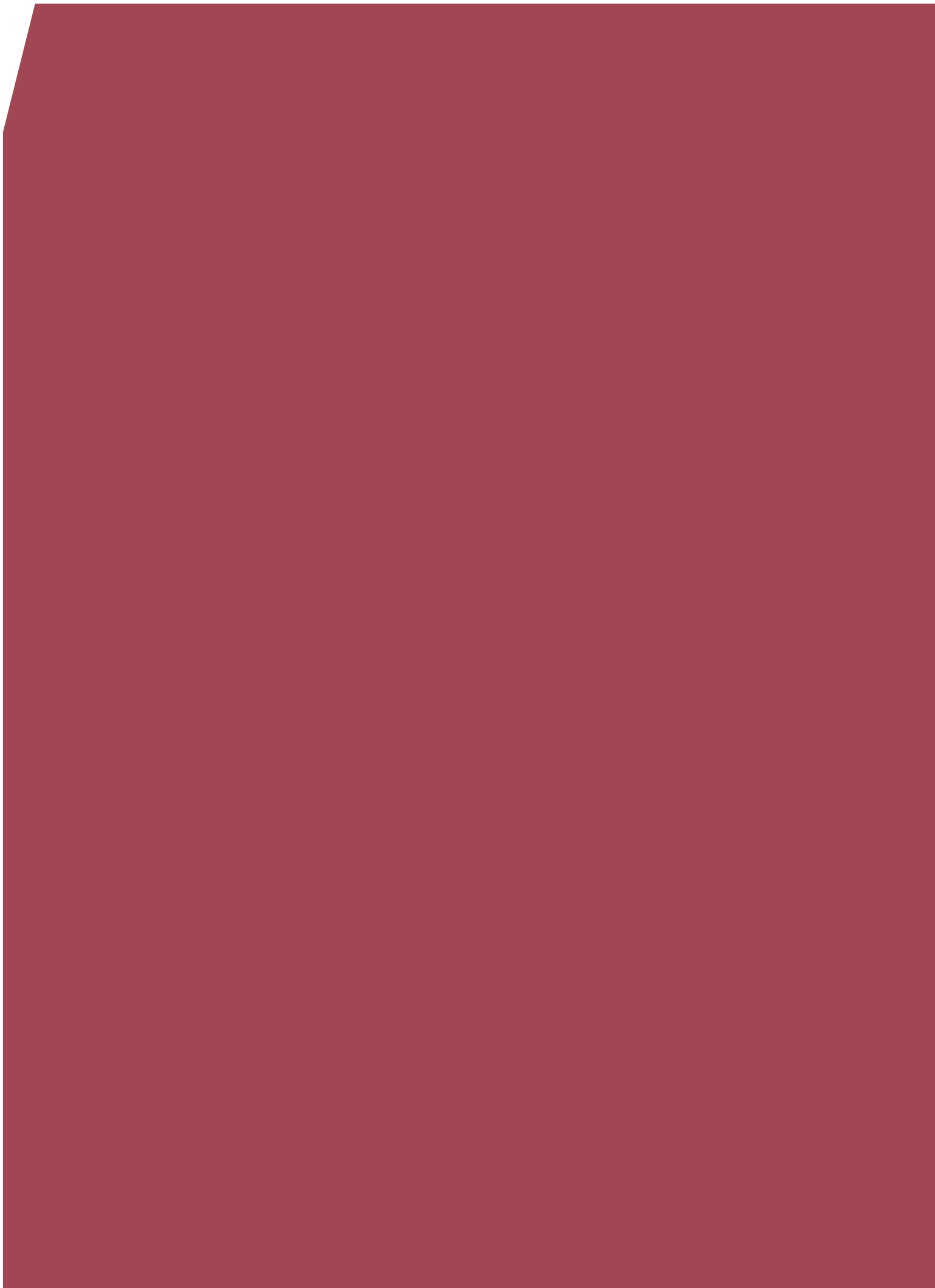


Insurance: Coverage defences in Europe





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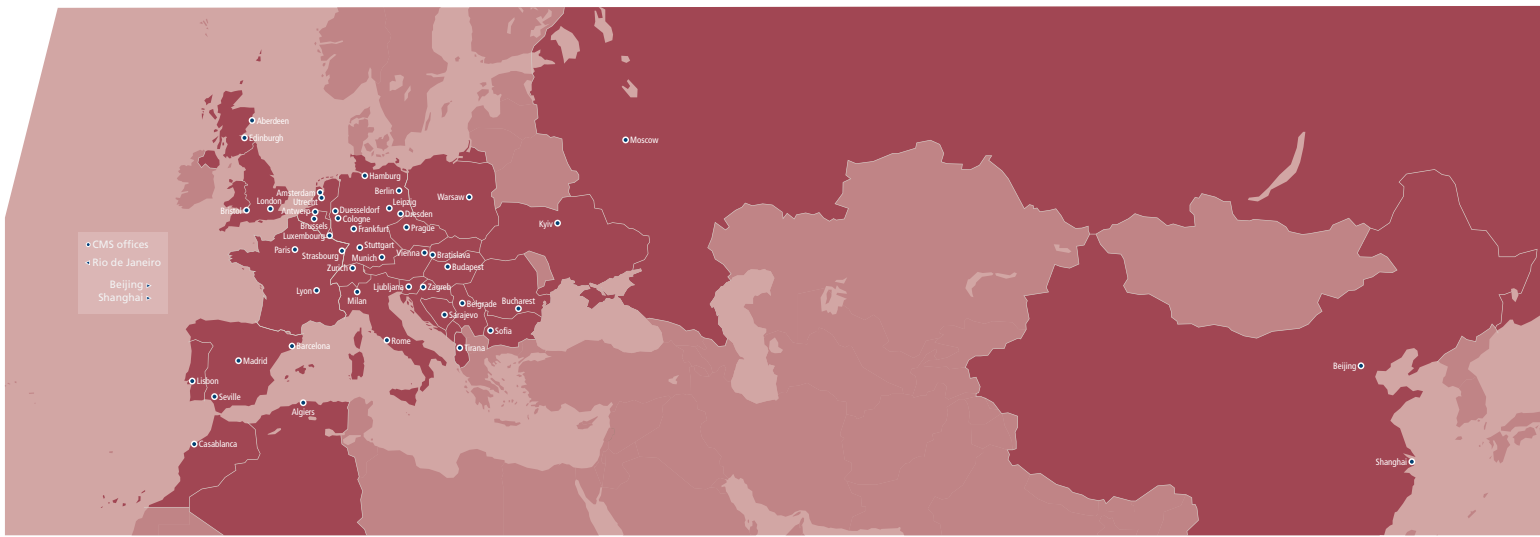
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Introduction

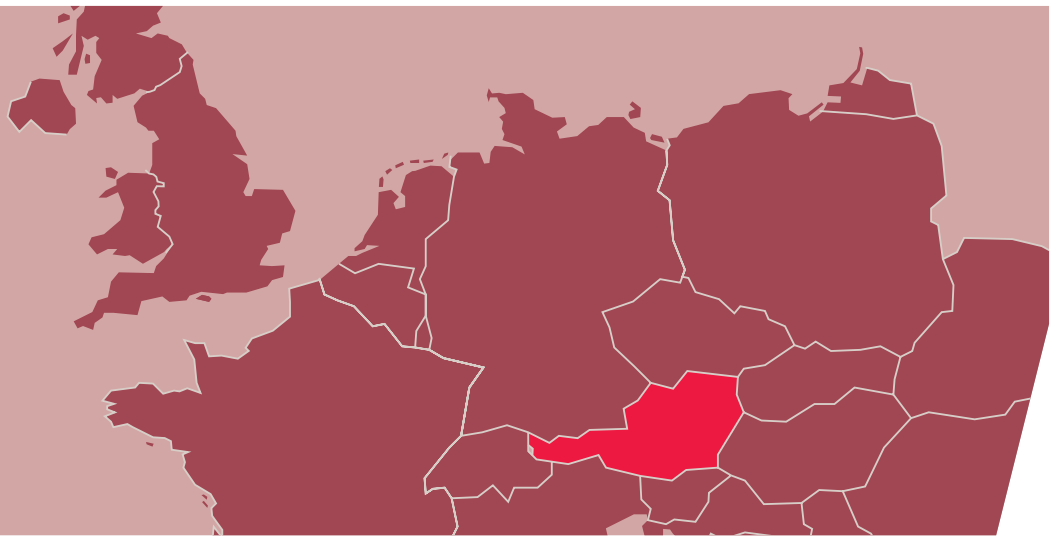
One of the questions we are asked by our clients is what are the remedies available to insurers in Europe and how do they compare from jurisdiction to jurisdiction? This guide is intended to provide an overview of some of the key coverage defences and the extent to which these defences exist and are available to insurers in European jurisdictions.

CMS has a dedicated Insurance Sector across Europe and beyond. We have a team of lawyers who work closely with each other and can combine local knowledge with international delivery. These are lawyers who work with the insurance industry and understand the business and issues faced by insurers.

As part of the CMS network we can offer the services of a total of 53 offices across 28 countries in Europe and beyond and, thanks to the way we are structured, we can provide specialist insurance lawyers who understand the local legal and commercial markets.

A list of contacts, who are representatives for many insurance lawyers in their jurisdiction, is at the back of this booklet.

Austria



Non-disclosure/misrepresentation

Remedy:	<p>Insurer has the right to avoid the insurance contract where material information supplied by the policyholder is incomplete or is deemed a misrepresentation. (The Insurer must exercise the right within one month of becoming aware that the insured misrepresented or did not disclose material facts at the time of entering into the contract). The Insurer must return premium (less a pro rata amount for the period of the policy that has already elapsed) plus interest, and can recover claims paid from the policyholder (plus interest).</p> <p>The right to avoid the policy does not exist where there was no fault on the part of the policyholder or where the insurer was aware that the information was incomplete or misrepresented.</p> <p>The standard of care owed by the policyholder is nevertheless high. Negligence on the part of the policyholder in providing information that the policyholder should have realised would affect the Insurer's assessment of the risk is sufficient to release the Insurer from its contractual obligations under the policy. Where the Insurer has not explicitly asked for specific information, however, the policyholder must have acted with gross negligence.</p>
Test:	<p>The Insurer must establish (1) that the information provided by the policyholder was incomplete or misrepresented and (2) that it would have influenced the Insurer's decision to enter into the contract or to write the risk on the particular terms agreed.</p> <p>There is no general test for establishing materiality but information the Insurer has explicitly asked for in writing is deemed material.</p> <p>Note that the duty is on-going and extends beyond placement.</p>

Breach of warranty

There is no equivalent concept under Austrian law.

Breach of condition precedent

Remedy:	<p>Breach of condition precedent does not entitle the Insurer to damages.</p> <p>If provided for in the policy wording, the Insurer may be released from liability under the policy and entitled to terminate the contract.</p> <p>If the contract is terminated, the Insurer must return premium (less pro rata premium for the period of the contract that has already elapsed).</p>
Test:	<p>Depending on the condition precedent in question, the Insurer must show that the insured has acted with negligence, gross negligence or intentionally.</p>

Breach of condition

The Insurer is entitled to avoid the insurance contract if the policyholder is in default of payment of the first premium (*Erstprämie*) for a period of at least two weeks and the Insurer has issued a payment request to the policyholder.

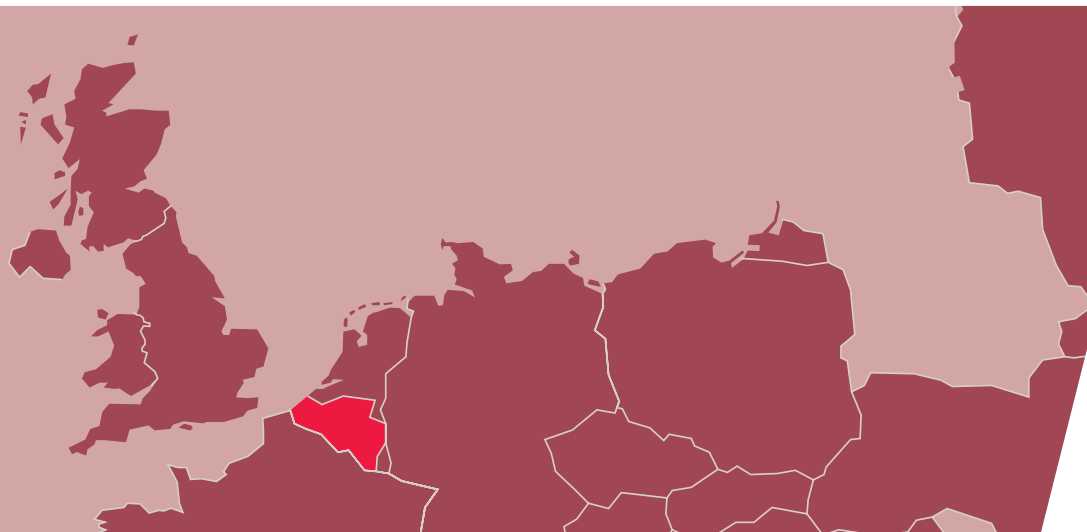
The Insurer is released from liability under the insurance contract, unless there is no fault on the part of the policyholder with regard to the default in payment, in which case the Insurer is still entitled to off-set the premium against any claim due to the policyholder.

If the policyholder does not pay a renewal premium ('*Folgeprämie*') in a timely manner, the Insurer is entitled to terminate the contract if it has issued a payment request in writing including a final deadline for payment of at least another two weeks and a clear reference to its option to terminate the contract in case of further delay in payment.

The Insurer remains liable under the insurance contract until the termination notice has been served upon the policyholder. If a loss occurs prior to such service, the Insurer is entitled to off-set the premium against any claim due to the policyholder.

The Insurer is entitled to claim the premium for the contract period ending with the (valid) termination of the contract.

Belgium



Non-disclosure/misrepresentation

Remedy: The Insurer can (1) avoid the contract for fraudulent non-disclosure/misrepresentation (the Insurer retains the paid premiums and has the right to claim for the premiums due until the misrepresentation was brought to his attention), or (2) terminate the contract if the non-disclosure/misrepresentation was material. Otherwise the Insurer cannot avoid or terminate the contract but can re-offer cover on amended terms.

Test: Under (1), the Insurer must establish that the non-disclosure/misrepresentation was fraudulent.

Under (2) the Insurer must establish that the non-disclosure/misrepresentation was material; and that the underwriter would not have written the risk had he known the true position.

Breach of warranty

Warranties as to past or present facts are prohibited under Belgian law.

As far as promissory warranties are concerned:

Remedy: Insurer can reject claim if breach is fraudulent. Belgian law also allows the Insurer to reject claims in specific circumstances (for example, breach of contractual prevention obligations), providing that the rejection of claims is provided for in the contract and there is a causal connection between the breach and the loss. Otherwise, the cover is reduced by the amount the Insurer is prejudiced.

Test: Matter warranted is untrue.

Breach of condition precedent

Remedy: Insurer is entitled to reject claim if breach is fraudulent. In other cases the cover is reduced by amount Insurer prejudiced.

Test: Condition precedent not satisfied.

Breach of condition

Remedy: Insurer is entitled to reject claim if breach is fraudulent. In other cases the cover is reduced by the amount the Insurer is prejudiced.

Test: Condition not complied with.

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A map of Europe with the country of Bulgaria highlighted in a bright red color. The word "Bulgaria" is written in a white, sans-serif font in the upper left area of the map. The rest of the European landmass is shown in a dark grey color, with white outlines for national borders.

Non-disclosure/misrepresentation

Remedy: In case of fraudulent non-disclosure/ misrepresentation of a circumstance, the Insurer is entitled (1) to terminate the agreement (if the Insurer would not have concluded the contract because of that circumstance) and to retain premium on a pro rata basis for the period until the date of termination; or (2) to offer amendment of the agreement. The Insurer must exercise these rights within one month of becoming aware of the non-disclosure/misrepresentation.

Remedy: In case of fraudulent non-disclosure/ misrepresentation of a circumstance, the Insurer is entitled (1) to terminate the agreement (if the Insurer would not have concluded the contract because of that circumstance) and to retain premium on a pro rata basis for the period until the date of termination; or (2) to offer amendment of the agreement. The Insurer must exercise these rights within one month of becoming aware of the non-disclosure/misrepresentation.

If the insured event has occurred, the Insurer is entitled: (1) to reject the claim (fully or partially) where there is a causal link between the misrepresented/non-disclosed fact and the insured event or (2) to reduce the claim payment accordingly where the non-disclosure/misrepresentation results only in an increase in the loss.

In the case of unintentional or innocent non-disclosure/misrepresentation, either party can re-offer cover on amended terms within two weeks of becoming aware of the relevant circumstance (if there is no consent between the parties the agreement can be terminated, in which case the Insurer will retain the pro rata premium for the period until termination). If the insured event occurs before the amendment / termination, the Insurer can reduce the claim payment to take into account the circumstances.

Test: A fact is material if (1) it is relevant to the assessment of the risk by the particular Insurer and (2) the Insurer has asked a question about it in writing.

Test: A fact is material if (1) it is relevant to the assessment of the risk by the particular Insurer and (2) the Insurer has asked a question about it in writing.

Breach of warranty

No equivalent concept under Bulgarian law.

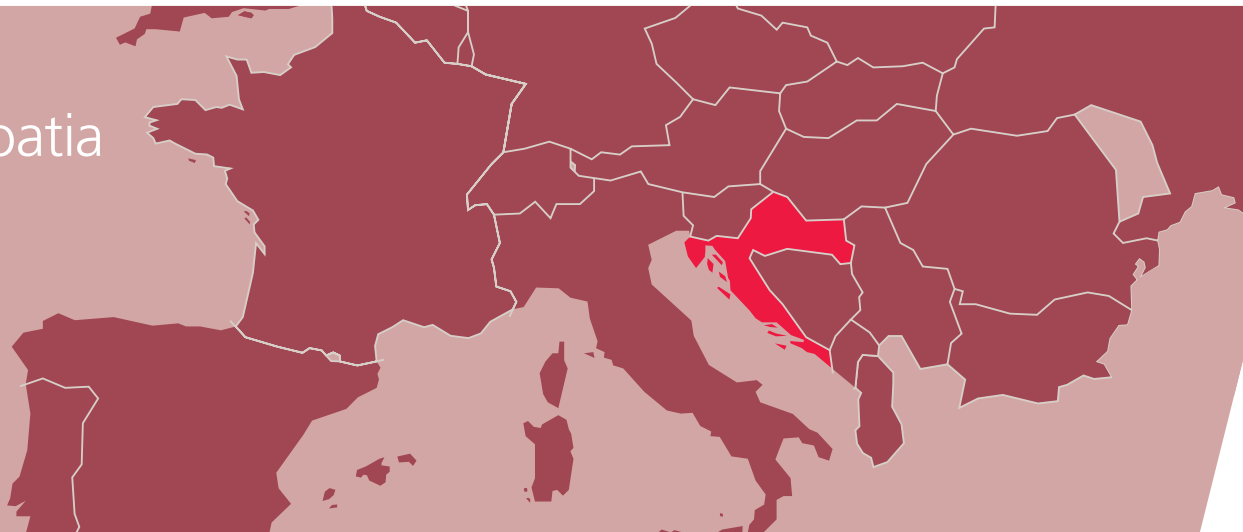
Breach of condition precedent

No equivalent concept under Bulgarian law.

Breach of condition

No equivalent concept exists.

However, there are statutory rules allowing underwriters of property insurance to reduce coverage or terminate the policy or reject the claim in full or in part (depending on the case) if the insured has failed: (1) to execute due payment of the premium; (2) to report an occurrence in a timely manner; (3) to comply with its obligations to limit the risk.



Non-disclosure/misrepresentation

Remedy:	<p>Insurer has the right to avoid/annul the insurance contract for deliberate/gross negligence in representing material facts (the Insurer has the right to retain and charge premium, but it is also obliged to pay claims (insurance compensations) arising before the date of annulment). The Insurer will not be entitled to seek the annulment if it does not inform the insured of its intention to exercise the right within three months of the day it becomes aware of the non-disclosure/misrepresentation.</p> <p>Insurer has the right to terminate the contract or propose a premium increase in cases of non-deliberate misrepresentation within one month of the day it becomes aware of the non-disclosure/misrepresentation. (Insurer is obliged to return the balance of the premium calculated from the date of termination, i.e. the Insurer is entitled only to the premium for the time period from entering into contract until its termination).</p> <p>(The insured is obliged to disclose material facts to the Insurer at the time of entering into the insurance contract. There is also an obligation on the insured to inform the insurer of a risk increase).</p>
Test:	The Insurer must establish that the insured's answers to questions (or matters closely related to those questions) are incomplete or are misrepresentations and that it would not have entered into the contract if it had known what the real situation was.

Breach of warranty

Remedy:	Insurer's remedies are the same as for non-disclosure and misrepresentation and depend on whether the insured acted deliberately/with gross negligence or non-deliberately.
Test:	The matter warranted is untrue and is causally connected with the loss (unless fraud involved when no causal connection is required).

Breach of condition precedent

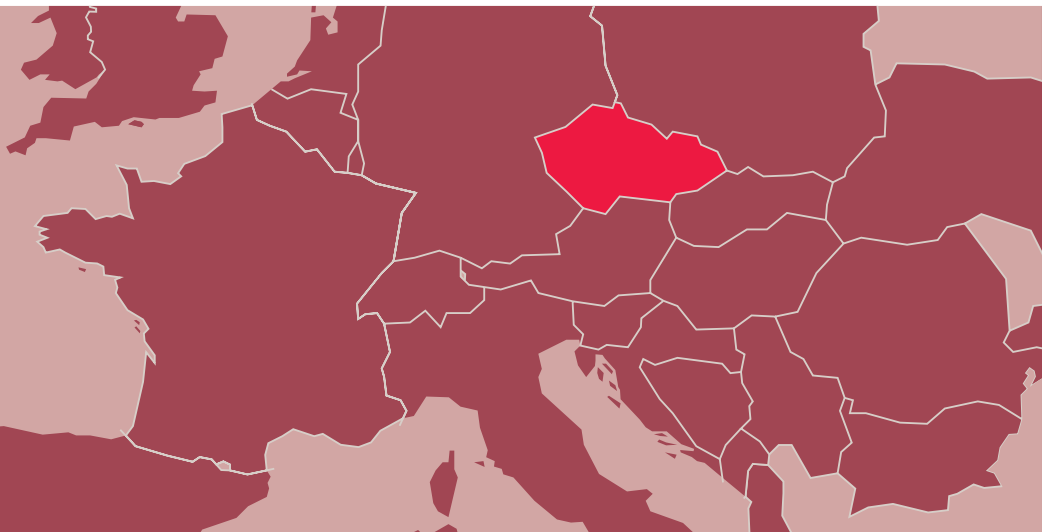
Remedy:	Condition precedent not generally recognised but the parties to a contract may agree differently if the law provides for such a possibility or if what is agreed is undoubtedly in the interests of the insured. The consequences of breach will depend on the terms of the respective contract.
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Breach of condition

Remedy:	<p>Consequences based on the level of culpability. (In the case of an intentional act by the insured or fraud, the Insurer does not have to make any payments whatsoever).</p> <p>A provision in the contract stating that the insured loses its right to benefits under the policy (the insurance compensations) if certain conditions are not fulfilled after the event covered by the insurance has occurred, would be deemed null and void. (The parties may however agree, for example, that the Insurer will be entitled to damages or that the insurance premium will be reduced). The insured is obliged to inform the Insurer of the event within three days of its occurrence; however, if the insured fails to do so, the Insurer will (only) be entitled to damages.</p>
Test:	Condition not satisfied and relates to a matter causally connected to the loss (unless fraud involved when no causal connection is required).

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Czech Republic



Non-disclosure/misrepresentation

Remedy: The Insurer is entitled to withdraw from the insurance contract if the policyholder or the insured, wilfully or negligently, provides untrue or incomplete answers to the Insurer's written questions. (The right must be exercised within two months of the date the Insurer learns of such facts, otherwise the right is lost). Upon withdrawal, the insurance contract is treated as null and void from its commencement. The Insurer shall be obliged, without unnecessary delay (and no later than 30 days after the date of withdrawal), to refund any premium paid less the amount of any benefits already paid and the cost of the inception and administration of the insurance. The policyholder (or the insured if he is not the policyholder) shall be obliged, within the same period of time as the Insurer, to refund to the Insurer any insurance benefits that have been paid and that exceed the amount of the premium paid.

Test: The insurer must establish that he would not have concluded the insurance contract if truthful and complete answers had been provided.

Remedy: In addition, the Insurer may refuse to pay insurance benefits if, when making a claim, the beneficiary has deliberately stated untrue or severely distorted information related to the scope of the insured event, or has concealed material facts relating to the insured event.

The Insurer does not have to return the premium because, until written Insurer's notice of the refusal to pay the insurance benefits is delivered to the insured, the policy remains in force. The insurance terminates on the date of delivery of the Insurer's notice of the refusal to pay the insurance benefits.

Breach of warranty

The concept of warranties and the remedies for breach of warranty do not exist under Czech insurance law. Breach of a term in the insurance contract will, depending on the wording of the clause and the stipulated consequences if it is breached, be considered either as a misrepresentation or breach of a condition.

Breach of condition precedent

The concept of conditions precedent and the consequences of breach of a condition precedent do not exist under Czech insurance law.

The insurance contract and the Czech Act on Insurance Contracts will stipulate the consequences of a breach of an obligation under the contract on the part of the insured, and/or the policyholder.

Breach of condition

The remedy will depend on the type of condition broken and the effect caused by the breach in practice but might include rejection of payment of the insurance benefits, and withdrawal or termination of the relevant insurance contract.

England and Wales

Non-disclosure/misrepresentation

Remedy: Insurer has the right to avoid the policy so that it is treated as if it had never existed. This involves the insurer returning premium (except in cases of fraud) and recovering any claims paid from the policyholder.

Test: Insurer must establish (1) that the non-disclosure/misrepresentation would be material to a prudent hypothetical underwriter in his assessment of the risk; and (2) that the actual underwriter who wrote the risk was 'induced' by the non-disclosure or misrepresentation. This means that they would not have written the risk at all, or not on the terms they did, if the non-disclosure or misrepresentation had not been made.

(Note that the legal position for consumer insureds will be different when the Consumer Insurance (Disclosure and Representations) Act 2012 is brought into force. The Insurer's remedies will be limited to misrepresentations and will depend on the state of mind of the insured).

Breach of warranty

Remedy: Insurer is discharged from any liability under the policy from the date of breach. Insurer is not required to return premium to the policyholder.

Test: The breach does not have to be material to any loss suffered by the policyholder.

Breach of condition precedent

Remedy: Insurer is entitled to reject claims but the policy remains in force. Premium does not have to be returned to the policyholder.

Test: Insurer is entitled to rely on any breach of a condition precedent. Insurer does not have to show that the failure to comply with the condition precedent was causative of the loss.

Breach of condition

Insurer has a right to damages only and there is no right to reject claims.

France



Non-disclosure/misrepresentation

Remedy: Where the insured has intentionally misrepresented or not disclosed a fact, the insurance contract is void even if the non-disclosure or misrepresentation had no impact on the loss. The insurer is entitled to the agreed premium.

In the case of non-intentional misrepresentation or non-disclosure, where no loss has yet occurred the Insurer can either increase the premium (providing the insured agrees) or cancel the policy (with 10 days' notice) and return pro-rated premiums for the remaining policy period.

If the Insurer becomes aware of the non-disclosure/misrepresentation after the loss has occurred, the policy cannot be cancelled but the Insurer is entitled to reduce the claim payment in line with any increase in premium that would have been payable had the non-disclosure/misrepresentation not occurred (the 'rule of reduction'), (i.e. if the premium would have been 20% higher only 80% of the compensation will be payable). There is no limit to this rule of reduction and it could reduce the indemnity payable to zero.

Test: The Insurer must establish that the non-disclosure or misrepresentation either changes the subject of the risk or the Insurer's assessment of the risk.

Breach of warranty

Concept of warranty not recognised. The consequences of breach will be stipulated in the insurance contract.

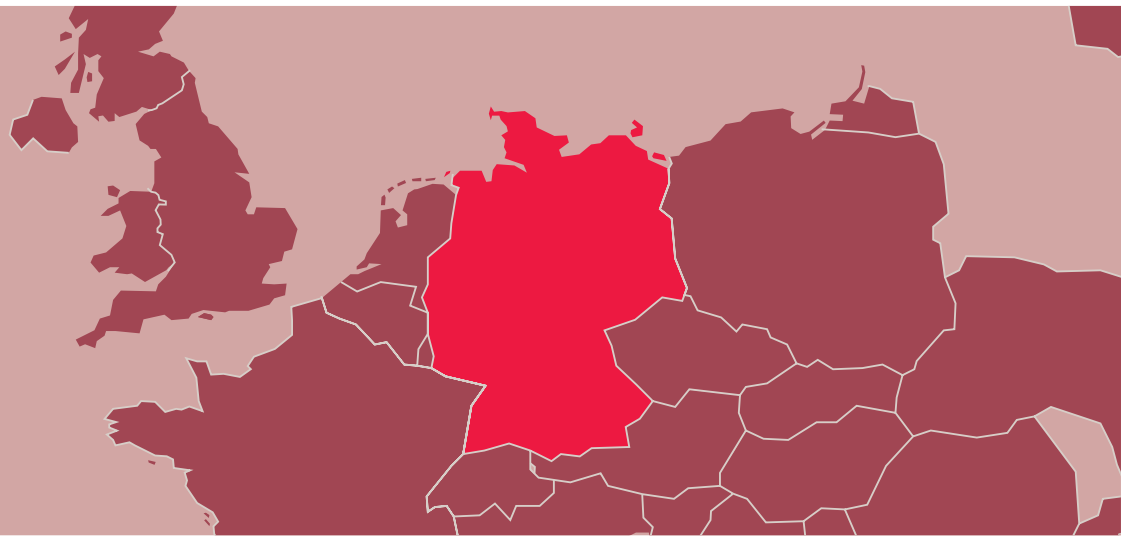
Breach of condition precedent

Concept of condition precedent not recognised. The consequences of breach will be stipulated in the insurance contract.

Breach of condition

The insurance contract must stipulate the consequences of the breach. If the contract is silent, the insurer must indemnify the insured for the insured loss.

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Non-disclosure/misrepresentation

Remedy:	<p>The policyholder must disclose all known circumstances that are relevant to the Insurer's decision to insure the risk and about which the Insurer has expressly asked in so called 'textform' (e.g. writing, fax, e-mail).</p> <p>Acting intentionally or with gross negligence: The Insurer has the right to withdraw from the contract. If the insurance agreement is terminated by the Insurer's withdrawal, the Insurer is entitled to the insurance premium up until such time as the declaration of withdrawal becomes effective.</p> <p>If the Insurer withdraws from the contract after occurrence of the insured event, the Insurer remains liable if there is no causal link between the misrepresentation and the occurrence or the scope of the insured event.</p> <p>Acting without intention or gross negligence: The Insurer has the right to terminate the contract subject to a notice period of one month. The Insurer is entitled only to that share of the premium which corresponds to the period in which the insurance coverage existed. In cases of innocent breach or simple negligence the Insurer remains liable for claims already notified.</p> <p>Acting fraudulently: In cases of fraud, the Insurer is entitled to avoid the contract notwithstanding that he did not expressly ask about the information the insured has failed to disclose or has misrepresented. The Insurer is entitled to the insurance premium up until such time as the declaration of avoidance becomes effective.</p>
Test:	<p>The Insurer must establish that the facts that the policyholder has not disclosed or has misrepresented were relevant to the Insurer's decision to insure the risk.</p> <p>If the Insurer would have insured the risk, albeit on a different basis, if he had known the true position then (except in cases of fraud where the remedy of avoidance remains), the Insurer's remedy is to amend the cover retrospectively (if the premium increases by more than 10% the policyholder may cancel the contract).</p> <p>The Insurer's right to withdraw, terminate or amend is lost if the Insurer had knowledge of the non-disclosure/misrepresentation by the policyholder.</p> <p>The Insurer has to inform the policyholder about the consequences of misrepresentation (except avoidance in case of fraudulent misrepresentation) in so called 'text form' before asking questions about the risk (see above). Otherwise these rights are lost.</p>

Breach of warranty

No specific concept exists in the German Insurance Contract Act (VVG).

Therefore, any 'warranty' contained in the insurance contract must be construed/interpreted under German law in accordance with how it fits with German legal principles.

Note: Under German law there is a regulation about 'aggravation of risk':

If there is an increase in risk of which the policyholder is aware, the policyholder must notify the Insurer without undue delay. If the policyholder does not comply with this obligation, the Insurer may terminate the contract, or demand higher premium, or exclude the increased risk from the cover.

In cases of deliberate or grossly negligent omission, the Insurer is fully or partly discharged from liability.

In case of termination the Insurer is entitled only to that share of the premium for that period of insurance which corresponds to the period in which the insurance cover existed.

Breach of condition precedent

No specific concept exists in the German Insurance Contract Act (VVG).

Therefore, any 'condition precedent' given in the insurance contract must be construed/interpreted under German law as to how it fits to the German legal principles.

Breach of condition

Termination:

In the event of non-observance of an incidental obligation prior to the occurrence of an insured event, the Insurer has the right to terminate the contract, without prior notice, within one month of learning of the non-observance, unless the non-observance was not intentional or grossly negligent.

In case of termination the Insurer is entitled only to that share of the premium for that period of insurance which corresponds to the period in which the insurance cover existed.

If the non-observance is innocent or based on simple negligence there is no right to terminate.

(Partially) free from liability:

If the contract provides that the Insurer is not obliged to provide an indemnity in the event of non-observance, the Insurer is free of liability if the policyholder intentionally breaches the obligation.

If the breach of obligation is grossly negligent, the Insurer is entitled to reduce any benefits payable commensurate with the severity of fault.

Being free from liability does not affect the contract. The premium has to be paid.

Insurer must establish (1) that the breach has caused or increased the extent of the loss and (2) that the Insurer has notified the insured in so called 'textform' of the possible consequences of breach.

If the non-observance is innocent or based on simple negligence the Insurer remains liable.

Hungary



Non-disclosure/misrepresentation

At the conclusion of the contract, the insured must disclose all material circumstances of which he is or should have been aware. The parties may agree that the insured and the policyholder are obliged promptly to report in writing to the insurer any change in material circumstances.

The consequences of failing to disclose all material circumstances may be twofold:

- In the event of a breach of the obligation to make disclosure or report changes, the Insurer can reject the claim, unless it is proven that the Insurer was aware of the undisclosed circumstance at the time the contract was concluded or that such circumstance was not causative of the loss. In this case other obligations under the insurance contract remain in force.
- If the insurer becomes aware of any material circumstance after the contract has been concluded, it may, within 15 days, make a written proposal to amend the contract or, if this would be contrary to the Insurer's own regulations terminate the contract in writing with a notice period of 30 days. If the insured does not accept the proposal for amendment or fails to respond to it within fifteen days, the contract shall be terminated on the thirtieth day following the day on which the proposal for amendment was communicated. If an insurer does not exercise these rights, the contract remains in force with its original contents.
- In the case of a life insurance policy the insurer may only reject the claim if the insurance event occurs within five years (after the conclusion of the contract) and may only amend/terminate the contract in the first five years of the term.

Upon termination the insurer is entitled to premiums due until the last day of the month when the insurer's liability (insurance cover) ceases to exist, any other amounts shall be returned to the insured/policyholder. (In case of a life insurance a certain portion of the premiums shall be returned, i.e. the 'repurchase value'.)

Breach of warranty

No specific concept exists under Hungarian law.

Breach of warranty can be seen as a sort of breach of the obligation to report changes in material circumstances. For the consequences, therefore, please see the first column.

Breach of condition precedent

No specific concept exists under Hungarian insurance law.

The insurer may reject the claim (unless otherwise stipulated in the general terms & conditions).

Breach of condition

No specific concept exists under Hungarian insurance law.

The insurer may reject the claim (unless otherwise stipulated in the general terms & conditions).

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Non-disclosure/misrepresentation

Before and during the policy period the insured must disclose all relevant information to the Insurer.

Remedy: The Insurer has the right to annul the contract in cases of fraud or gross negligence. The Insurer is released from the obligation to provide cover and remains entitled to the premiums agreed upon for the entire period.

In cases where the insured has not acted fraudulently or with gross negligence, the contract remains in effect but the Insurer is entitled to withdraw from the contract.

If the insured event occurs before the non-disclosure or misrepresentation has come to knowledge of the Insurer, the indemnity under the policy is reduced proportionally to the difference between the premium agreed upon and the premium that the Insurer would have applied if the true situation had been known.

Test: The fact is deemed material - on a case by case basis - whenever it has an impact on the premium calculation (i.e. premium would have been higher or contract would not have been underwritten by the Insurer).

Breach of warranty

Remedy: Termination of the contract if the parties have explicitly and clearly agreed this in the policy wording.

Test: Breach of any condition explicitly and clearly agreed upon by the parties.

Breach of condition precedent

Remedy: No specific concept exists: it will depend on the consequences of the breach that have been contractually agreed (if any), or (if none agreed) on the relevance (to the innocent party's contractual interests) of the breach.

With reference to claims notification condition precedent, where no claim has been notified, in cases of fraud, no cover is due; in cases of negligence, cover is due, but will be reduced in proportion to the prejudice caused.

Test: Condition precedent not satisfied; what prejudice has the breach caused to the innocent party's contractual interests?

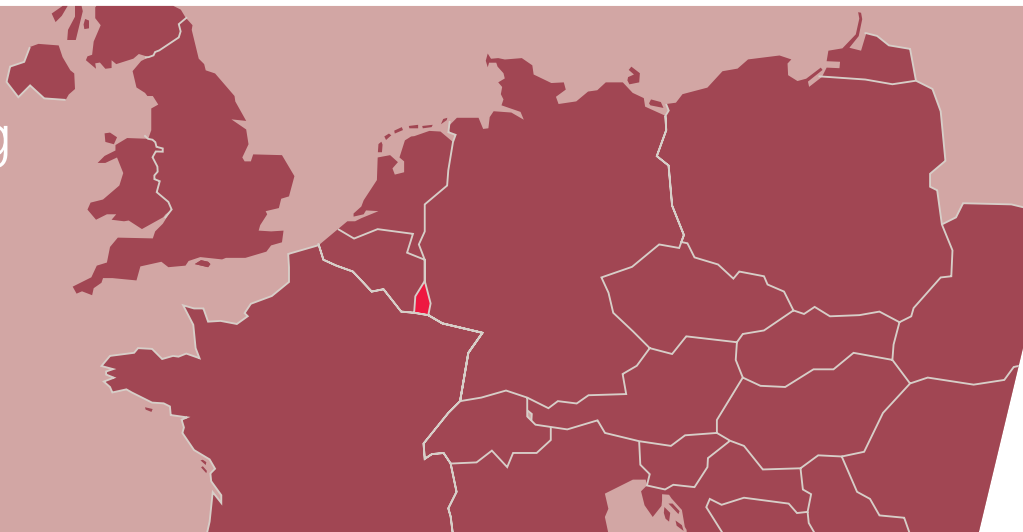
Breach of condition

Remedy: Will depend on the relevance of the breach.

The innocent party can refuse to comply with its own counter-obligation.

If the breach is relevant to the innocent party, that party can terminate the contract; if the breach has not prejudiced the Insurer's position, compliance with the condition can be required. In addition, in either case, damages can be claimed.

Luxembourg



Non-disclosure/misrepresentation

Remedy: The Insurer has the right to avoid the insurance contract if he can show that the insured acted in bad faith (and does not have to repay the premium). Where the insured has not acted in bad faith, the Insurer may adjust the premium (the amount of adjusted premium must be agreed by the insured) or can terminate the contract if the parties cannot reach agreement on the premium (in which case the Insurer must repay the premium).

The Insurer must exercise these rights within one month of becoming aware that there has been a misrepresentation or non-disclosure otherwise he will lose the right to raise these defences.

Test: The Insurer must establish (1) that the non-disclosure/misrepresentation was material and (2) that the underwriter in question would not have written the risk had he known the true position.

Breach of warranty

Remedy: The Insurer has the right to avoid the insurance contract if he can show that the insured acted in bad faith (in which case the Insurer does not have to return the premium). Where the insured has not acted in bad faith, the Insurer may adjust the premium (the amount of adjusted premium must be agreed by the insured) or can terminate the contract if the parties cannot reach agreement on the premium. (If the Insurer terminates the contract he must return the premium).

The insurer must exercise these rights within one month of becoming aware that there has been a breach of warranty, otherwise he will lose the right to raise these defences.

Test: The Insurer must show that the matter warranted is untrue.

Breach of condition precedent

Remedy: The Insurer's remedy will depend on the wording of the insurance contract. The contract may provide for a partial or full forfeiture of the insured's rights if an obligation is not complied with.

Test: Condition precedent not satisfied. The Insurer does not have to show that the breach is causally connected to the loss.

Breach of condition

Remedy: The Insurer's remedy will depend on the wording of the insurance contract. The contract may provide for a partial or full forfeiture of the insured's rights if an obligation is not complied with.

Test: Condition not satisfied and the breach relates to a matter causally connected to the loss.

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A map of Europe with the British Isles (Great Britain and Ireland) highlighted in red. The rest of Europe is shown in a light beige color with black outlines for country borders.

Remedy: In the case of intentional non-disclosure the Insurer has the right to terminate the contract with immediate effect within two months of discovering the non-disclosure. The Insurer retains the premium and does not have to pay any claims. The Insurer also has the right to terminate the contract if the Insurer, with knowledge of the true state of affairs, would not have concluded the insurance contract.

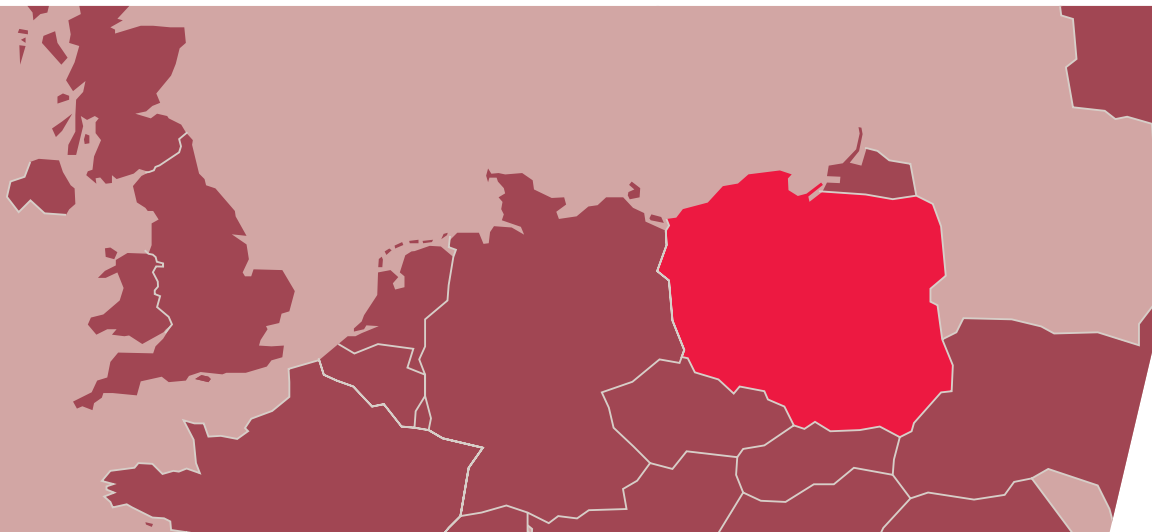
The Insurer can refuse payment of a claim if the Insurer can establish that had the Insurer been aware of the true state of affairs, he would not have written the risk. If the Insurer would have written the insurance on amended terms and conditions, the claim is dealt with as if the hypothetical amended insurance were in place.

Breach of warranty

Breach of condition precedent

Breach of condition

Poland



Non-disclosure/misrepresentation

Remedy: The Insurer is relieved from the obligation to pay claims resulting from material facts that were not disclosed or were misrepresented by the insured/policyholder (subject to a three-year time limit for life insurance policies). The Insurer is not required to return premium.

Test: The Insurer must establish (1) that the insured's answers to questions in the proposal form were incomplete or misrepresentations (if the Insurer entered into the insurance contract notwithstanding that some answers were left blank, these questions are deemed irrelevant), (2) that the facts misrepresented or not disclosed were material to the risk and that there is a causal link between loss and the non-disclosed/misrepresented facts.

Breach of warranty

No specific concept exists under Polish law.

Treated as misrepresentation or breach of condition.

Breach of condition precedent

No specific concept exists under Polish law.

Remedy: The insurance contract stipulates the consequences of breach, which are subject to statutory limitations.

Breach of condition

No specific concept exists in Poland.

Remedy: The insurance contract stipulates the consequences of breach, which are subject to statutory limitations.

Test: Condition not satisfied (it is usually necessary to show that the insured acted with gross negligence) and that there was a causal connection between the breach and the loss.

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Portugal



Non-disclosure/misrepresentation

Remedy: The Insurer has the right to avoid the contract of insurance if the insured has acted with bad faith/intent (it is not necessary to show that the non-disclosure/misrepresentation was material). The right must be exercised by the Insurer issuing an annulment notice to the insured within three months of the date of knowledge of the non-disclosure/misrepresentation. In the case of avoidance of the policy for bad faith/intent, if no loss has occurred the Insurer is entitled to premium for the three month period in the notice or, if the Insurer can show that the insured intended to obtain an advantage by the non-disclosure/misrepresentation, the premium to the end of the contract period (except where the Insurer itself has acted intentionally or with gross negligence). If a loss has occurred, the Insurer does not have to pay the claim and can recover any claims previously paid and, if the Insurer can show that the insured intended to obtain an advantage by the non-disclosure/misrepresentation, the premium due until the end of the contract period (except where the Insurer itself has acted intentionally or with gross negligence).

If the insured has acted negligently, and if the non-disclosure/misrepresentation is material, the Insurer can elect to adjust the premium, alter the policy terms or terminate the contract. (These remedies are not available to the Insurer where the insured has omitted to answer questions in a questionnaire, given inaccurate answers to an overly generic question, there is inconsistency or obvious contradiction between the answers provided or the omission or inaccuracy would be obvious to a prudent underwriter). In the case of negligent non-disclosure/misrepresentation, if no loss has occurred the Insurer must return the premium on a pro rata basis. If a loss has occurred (and the occurrence of the loss or its consequences were influenced by the non-disclosure/misrepresentation), the Insurer must pay a proportion of the loss based on the difference between the premium paid and the premium that would have been payable if the Insurer had been aware of the non-disclosure/misrepresentation at the time when the contract was concluded, or (if the Insurer can establish that it would not have written the risk if it had been aware of the non-disclosed or misrepresented facts) the Insurer does not have to pay the claim but must return the premium.

Test: In the case of negligent non-disclosure/misrepresentation, the Insurer must show that the non-disclosure or misrepresentation would be material to a prudent underwriter in his assessment of the risk.

Breach of warranty

Warranties are not recognized under Portuguese law.

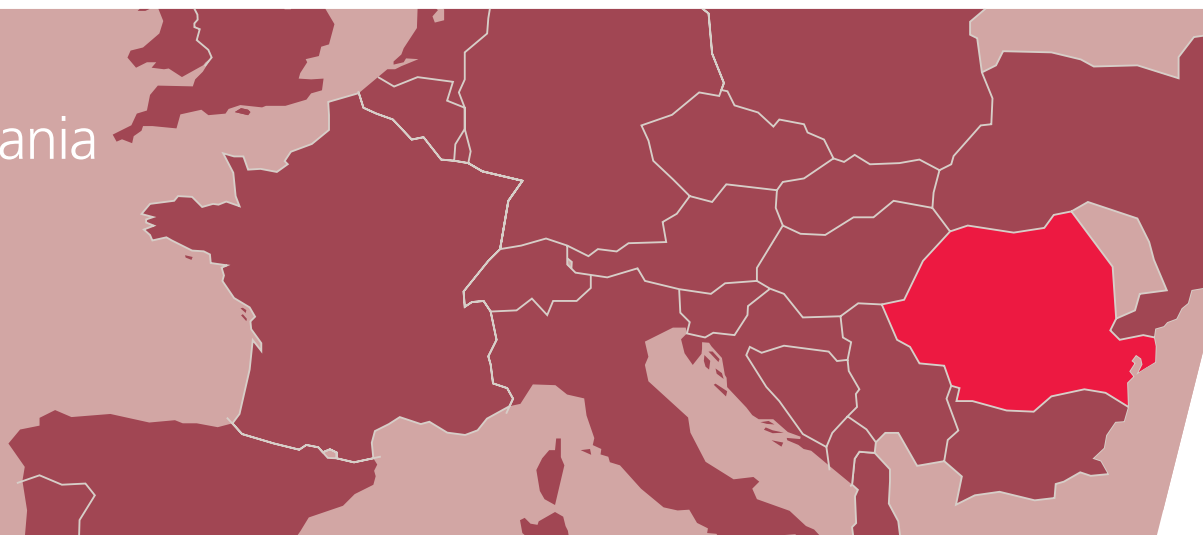
Breach of condition precedent

The consequences of the breach must be expressly set out in the insurance contract. In the case of intentional/bad faith breach of condition precedent the contract may provide that the Insurer's liability is excluded. In all other cases the contract can only provide that the Insurer is entitled to damages.

Breach of condition

The insurance contract must stipulate the consequences of the breach. If the contract is silent, the insurer is still obliged to indemnify the insured for the insured loss.

Romania



Non-disclosure/misrepresentation

Remedy:

(1) If the insured/policyholder (i.e. the person who enters into the insurance contract and pays the premiums but who is not the insured person) acts in bad faith (e.g. intentionally), the Insurer may apply to court for avoidance of the contract providing the information that was not disclosed or was misrepresented is essential to the Insurer's decision to write the risk and/or would have determined the Insurer to offer different terms and conditions, regardless of whether the non-disclosure/misrepresentation had any effect on the occurrence of the insured event. In such cases, cover ceases (and should in theory be treated as never having existed, as per any ordinary avoidance case), while the Insurer is specifically entitled by law to retain premiums that have already been paid and to ask for the payment of premiums due until the date the Insurer become aware of the non-disclosure/misrepresentation (as an exception from the general rules of avoidance, i.e. exception from the principle '*restitutio in integrum*').

Intentional non-disclosure/misrepresentation may also, in certain circumstances, lead to criminal prosecution for contractual fraud.

(2) Non-disclosure / misrepresentation not committed in bad-faith does not entitle the Insurer to avoid the insurance contract.

If the Insurer becomes aware of the non-disclosure/misrepresentation before the insured event has occurred, the Insurer is entitled (1) to maintain the contract and claim for a premium increase or (2) to terminate the contract providing 10 days have elapsed from the date on which the insured/policyholder is given notice, and the Insurer must return any undue premium amounts that have been paid (i.e. premium amounts corresponding to the period when the risk has not been covered).

If the Insurer becomes aware of the non-disclosure/misrepresentation after the insured event has occurred, the indemnification to which the insured is entitled will be reduced proportionately by reference to the premium actually paid and the premium that would have been paid if full and correct disclosure had been made.

Test: In order to rely on the defences available in cases of bad faith, the Insurer must establish/prove that the insured/policyholder has committed the non-disclosure/misrepresentation in bad faith.

Breach of warranty

Remedy:

The concept of 'breach of warranty' does not exist under Romanian law. Nevertheless, as a rule, failure of the insured/policyholder to comply with any of its contractual obligations entitles the Insurer to obtain termination of the contract, should such failure be significant or repeated. Furthermore, the insurance contract may provide that the Insurer is not obliged to pay claims nor has the right to terminate the contract in the event of a specific material breach, (e.g. the insured's obligation to act as necessary to limit the loss.)

Generally, in cases of termination for such breaches there is no refund of premium except for periods when the risk was not effectively covered. However, the parties may provide other refund arrangements in respect of termination, within the terms and conditions of the insurance contract.

Test: The insurance contract will usually provide that, if a claim is made under the policy, the Insurer is entitled to ask for relevant documents proving that the warranties were valid or correctly performed.

Breach of condition precedent

Remedy: Failure to notify the occurrence of the insured event within the time limit stipulated in the policy entitles the Insurer to refuse to indemnify the insured, if such failure prevents the Insurer from determining the cause or the extent of the loss.

Failure to provide relevant documentation about the loss may also entitle the Insurer to decline indemnity, subject to the policy terms and conditions.

Test: The policy terms will usually provide that the Insurer is entitled to ask for relevant documents to prove that the conditions precedent to claim payment have been observed.

In the case of late notification of the occurrence of the insured event, the Insurer must establish/prove that he has thereby been prevented from determining the cause or extent of the loss, in order to rightfully refuse indemnification.

Breach of condition

Remedy: According to the Civil Code, if a breach of a term or condition set out in the insurance contract occurs, the other party may ask for effective remedy or termination of the contract (the latter measure is applicable only if the breach is significant or repeated – see column ‘Breach of warranty’) and/or claim damages resulting from the breach.

However, specific remedies for breach of any particular policy condition can be validly provided for in the insurance terms and conditions.

Test: The insurance contract should expressly set out the breaches of conditions that will lead to termination (and/or other remedies), as well as the relevant rules applicable to such termination/remedies (e.g. in respect of effective date, procedures necessary to produce termination/remedy, etc. as agreed by the parties). Otherwise, the Insurer must establish/prove in court that a breach of condition is significant or repeated enough to justify termination.



Remedy: Avoidance or rescission of the contract for fraudulent misrepresentation only. No avoidance for fraudulent non-disclosure. This involves the Insurer returning the premium and recovering any claims paid from the policyholder. No remedies for negligent or innocent misrepresentation.

Remedy: Avoidance or rescission of the contract for fraudulent misrepresentation only. No avoidance for fraudulent non-disclosure. This involves the Insurer returning the premium and recovering any claims paid from the policyholder. No remedies for negligent or innocent misrepresentation.

Test: The Insurer must establish that the insured misrepresented facts in the proposal form that would have a material significance in determining the likelihood of the occurrence of the insured event and the amount of loss. The Insurer cannot avoid the contract where the facts misrepresented or not disclosed were known to the Insurer.

No equivalent concept exists under Russian law.

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No equivalent concept exists under Russian law.

No equivalent concept exists under Russian law.

Insurer may reject the claim (1) for late notification on the occurrence of the insured event, subject to proving prejudice or (2) where the insured event was intentionally caused by the policyholder and/or the beneficiary.

Insurer may rescind the contract and claim damages if an increase in risk is not disclosed.

A map of Europe with the United Kingdom highlighted in red. The rest of Europe is shown in a light beige color. The map includes the British Isles, Scandinavia, and the Mediterranean region.

Remedy: Insurers have the right to avoid the policy and treat the contract as having never come into existence. If the non-disclosure was fraudulent, the insurer may be entitled to retain the premium. If not, the insurer must return the premium but can recover any claims paid to the insured.

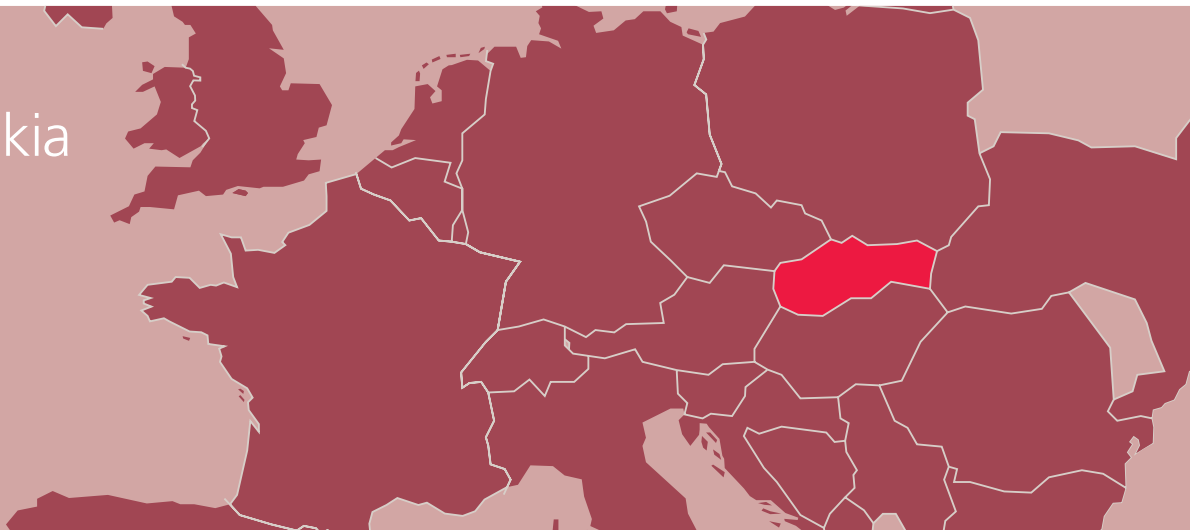
Breach of warranty

Test: A warranty may be future, past or present. They must be exactly complied with. The breach does not have to be material to any loss suffered by the policyholder.

Remedy: A breach or failure to comply with a condition precedent will mean that the insurer is not obliged to pay the claim, but other possible claims under the policy will not be affected.

Breach of condition

Damages only for any loss caused to the insurer by breach of the condition.



Non-disclosure/misrepresentation

The following remedies may be available to the Insurer.

Remedy: The Insurer may rescind the contract for intentional misrepresentation or non-disclosure in answering the Insurer's written questions concerning the risk. The right to rescind the contract must be exercised within three months of the Insurer becoming aware of the material non-disclosure or misrepresentation. The contract is rescinded *ab initio* and any payments already made under the contract must be returned.

Test: To avoid the contract, the Insurer must establish (1) that there has been an intentional non-disclosure or misrepresentation and (2) that the Insurer would not have entered into the contract if true and complete answers had been given.

Remedy: If the Insurer becomes aware of a deliberate misrepresentation or non-disclosure after the insured event has occurred, the Insurer may refuse to pay the indemnity under the insurance contract. The insurance cover expires at the moment when the indemnity is refused.

Test: To reject a claim, the Insurer must establish that he became aware after the insured event occurred that the event was caused by a fact of which he could not have learned at the moment of conclusion of the insurance contract by reason of the insured's knowingly false or incomplete answers and which was essential to the conclusion of the contract. On rejection of the claim, the insurance expires.

Remedy: The indemnity payable under the insurance contract may be reduced proportionately if (1) the non-disclosure or misrepresentation was not material but was knowingly false and had a substantial effect on the occurrence of the insured event or on the extent of the consequences of the insured event (the reduction in indemnity is calculated in accordance with the influence the breach had on the scope of the Insurer's duty to pay the indemnity), or (2) knowingly false or incomplete answers were provided to the Insurer's written questionnaire and these answers led to the calculation of a lower insurance premium.

Test: To reduce the level of indemnity payable in respect of a claim, the Insurer must establish that (1) the misrepresentation or non-disclosure was knowingly false and had a substantial effect on the occurrence of the insured event or on the extent of the consequences of the insured event, or (2) knowingly false or incomplete answers were provided to the Insurer's written questionnaire and those answers led to the calculation of a lower insurance premium.

Remedy: The Insurer may declare the insurance contract invalid by giving notice to the insured. If there is a dispute between the parties as to the validity of the contract, the court has to give the final decision. The consequences are the same as in case of rescission of the contract (see above).

Test: The Insurer must establish (1) that the person concluding the insurance contract provided untrue or incomplete answers to the Insurer's written questions (intentionally or unintentionally) and (2) that the Insurer decided to enter into the insurance contract based on a mistake arising from a circumstance (the untrue and incomplete answers) that was decisive to the Insurer's decision to enter into the insurance contract.

There is no separate concept of breach of warranty under Slovak law, so the general concept of breach of condition will apply (i.e. the Insurer can reduce the amount of indemnity, reject the claim or rescind the contract).

Breach of condition precedent

There is no separate concept of condition precedent under Slovak law, so the general concept of breach of condition will apply (i.e. the Insurer can reduce the amount of indemnity, reject the claim or rescind the contract).

Breach of condition

Remedy: The Insurer may reduce the level of indemnity depending on what influence the breach committed by the insured had on the scope of the Insurer's duty to pay the claim.

Test: The Insurer must establish (1) that the insured knowingly breached the duties either agreed in the insurance contract or stipulated in the Slovak Civil Code and (2) that the breach had a substantial influence on the occurrence of the insured event or on the scope of the consequences of the insured event.

Slovenia

Non-disclosure/misrepresentation

Remedy: The Insurer can demand the annulment of the contract and retain the premium in cases of fraudulent non-disclosure/misrepresentation (the right must be exercised within three months of the insurer becoming aware of the non-disclosure/misrepresentation). In cases of negligence the Insurer may terminate the contract or propose an increase in premium in proportion to the increase in risk. Where the Insurer terminates the contract or the insured does not accept the increase in premium, the Insurer must return the premium on a pro-rata basis. The Insurer must exercise the right to terminate the contract or propose an increase in premium within one month of becoming aware of the non-disclosure/misrepresentation.

Test: Insured's answers to questions in proposal form are incomplete or are misrepresentations.

Breach of warranty

Warranty not recognized if breach is fraudulent and insurer can reject claim. (Insurer has no remedy in the case of negligent/innocent breach of warranty).

Breach of condition precedent

No equivalent concept exists.

Breach of condition

Insurer may reject claim if the breach is fraudulent. (Insurer has no remedy in the case of negligent/innocent breach of condition).

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Non-disclosure/misrepresentation

Remedy: In the case of intentional misconduct or gross negligence on the part of the insured, the Insurer has the right to avoid the contract (the right must be exercised within one month of the Insurer becoming aware of the non-disclosure/misrepresentation). The Insurer is released from liability under the policy and is entitled to retain premium already paid.

If an insured event occurs and the insured has not disclosed or has misrepresented facts material to the risk, the Insurer has the right to reduce the claim payment in proportion to the difference between the premium paid and the premium that the insured would have had to pay had the information been disclosed or not misrepresented.

Test: The Insurer must establish:

(1) that the insured's answers to questions in the proposal form (or matters closely related to those questions) are incomplete or are misrepresentations; and (2) that the facts not disclosed/ misrepresented are connected with the loss.

Breach of warranty

Will be treated as a breach of condition.

Breach of condition precedent

Most conditions precedent will contravene statutory protections and will not be given effect.

Breach of condition

Remedy: Insurer has a remedy in damages only.

Test: Insurer must establish that the condition was not satisfied and relates to a matter causally connected to the loss.



Switzerland

Non-disclosure/misrepresentation

Remedy:	(1) Termination The Insurer may terminate the contract by written notice (and keep the premium for the period to the termination of the contract). The right to terminate the insurance contract expires four weeks after the Insurer becomes aware of the non-disclosure or misrepresentation.
Test:	The insured must answer the Insurer's written questionnaire and, based on the questions asked, must disclose to the Insurer in writing all facts of which he is aware or ought to be aware that are material to the assessment of the risk to be insured. A fact is material if it could influence the Insurer's assessment of the risk.
Remedy:	(2) Reject claim In addition, the Insurer may be entitled to reject the claim.
Test:	The disclosed fact must have been causative of the loss/damage (that forms the basis for the insured's claim).

Breach of warranty

No equivalent concept exists for insurance contracts – treated as a pre-contractual representation or breach of condition.

Breach of condition precedent

Remedy:	The Insurer's remedies depend on the seriousness of the breach. In the case of intentional/negligent breach of condition the Insurer may be discharged from liability and may keep the premium for the period to the termination of the contract. Statutory protections may apply.
Test:	The Insurer must establish that the condition precedent was not satisfied, that the insured fell below the standard of a reasonable person and that the breach was causative of the loss.

Breach of condition

Remedy:	Insurer's remedy will depend on the seriousness of the breach. In the case of intentional/negligent breach of condition the Insurer may be discharged from liability and may keep the premium for the period to the termination of the contract.
Test:	The Insurer must establish that the condition was not satisfied, that the insured fell below the standard of a reasonable person and that the breach was causative of the loss.

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Non-disclosure/misrepresentation

Remedy:	For non-disclosure/misrepresentation that the risk has already been insured, avoidance of the contract (the remedy exists whether the non-disclosure/misrepresentation, was innocent, negligent and fraudulent). This involves returning premium and recovering any claims paid from policyholder.
Test:	The Insurer must establish that there was non-disclosure/misrepresentation about the fact that the risk had already been insured.
Remedy:	For other types of fraudulent non-disclosure/misrepresentation, the Insurer can reject the claim, but will be required to pay the unearned (return) premiums back to the policyholder, (subject to the Insurer complying with time limits set out in the insurance rules).
Test:	The Insurer must establish that there has been a fraudulent non-disclosure or misrepresentation of material fact(s) about (a) the insured object (interest); or (b) the insured event.

Breach of warranty

Not recognised – treated as pre-contractual representation or breach of condition.

Breach of condition precedent

Remedy:	Insurers are entitled to reject a claim. Policy remains in force and premium does not have to be returned.
Test:	Insurers are entitled to rely upon any breach of a CP, stipulated in the insurance contract.

Breach of condition

Remedy:	The insurance contract must stipulate the consequences of the breach, but Insurer can reject claim if breach is fraudulent.
Test:	Condition not satisfied and relates to a matter causally connected to the loss (unless fraud involved when no causal connection is required).



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Turnover 2011	€808 million
Partners	>750
Fee earners	>2,800
Total staff	>5,000
Offices	53

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