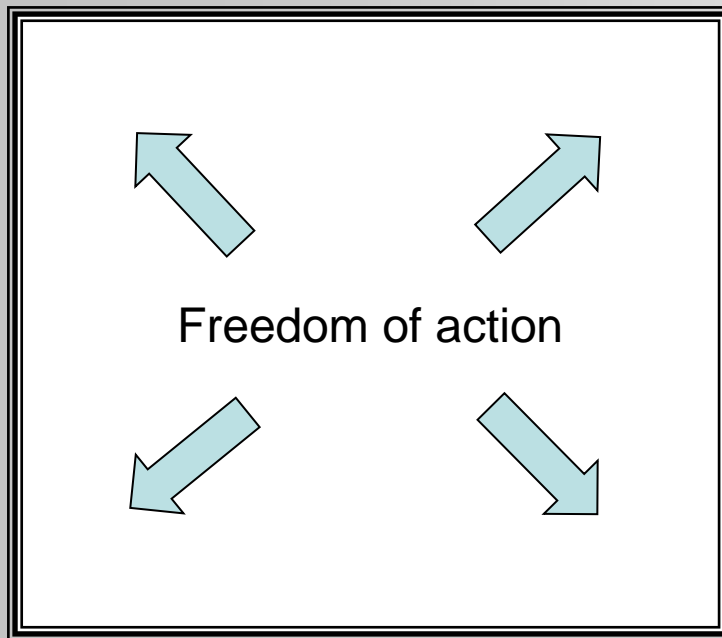




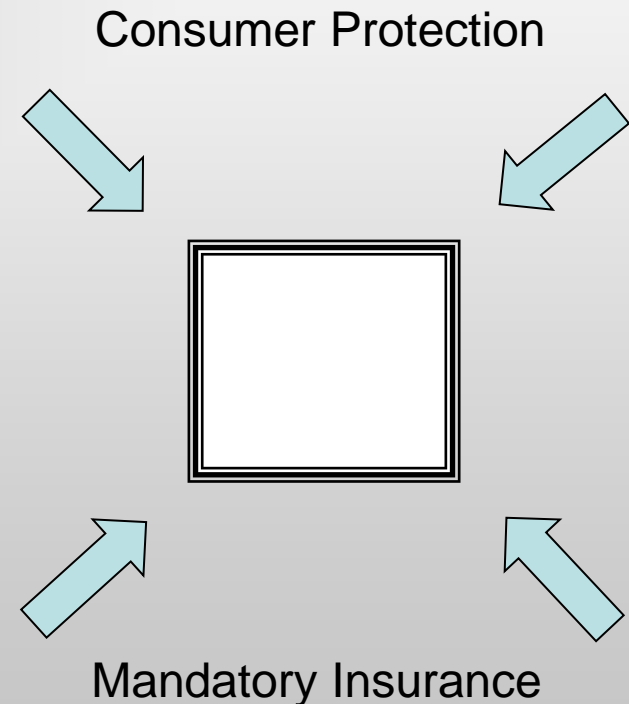
Mandatory Insurance And Compelling Insurers to Contract

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Liberal Legal System



Welfare State



Possible reasoning: Where person's freedom of action reduced by forcing to seek insurance, insurer's freedom should be reduced by obligating to contract.



Para. 5 subpara. 2 Obligatory Motor Vehicle Insurance Act [PfIVG]:

“Insurer that have been authorised to offer domestically obligatory motor vehicle insurances are obligated to grant those persons enumerated in para. 1 insurance cover against liability pursuant to the legal requirements.”

- Obligation triggered by the application of a person under an obligation to insure
- Obligation limited to a contract within the minimum requirements necessary to fulfil the duty to insure



Instruments to compel insurers to abide by this duty to contract:

1. Irrebuttable Presumption: Contract deemed concluded in application of the general principles, conditions and tariffs of the insurer if the insurer does not reject an application within 2 weeks (para.5 subpara.3)
2. Civil Remedies
 - a) Damages
 - b) Specific Performance, i.e. claim for acceptance of offer
3. Public Remedies (in Germany only supervisory measures)



To not unduly burden the insurer, it may refuse to contract with an applicant if (para. 5 subpara. 4):

1. Substantive or territorial limitations of the insurer's business plan preclude the granting of cover, or
2. Applicant had previously been insured by the insurer in question and the contract was
 - a) Avoided for threat or fraud
 - b) Rescinded due to a breach of duty to disclose or non-payment of first premium
 - c) Cancelled for default of payment of premium or after the occurrence of insured event

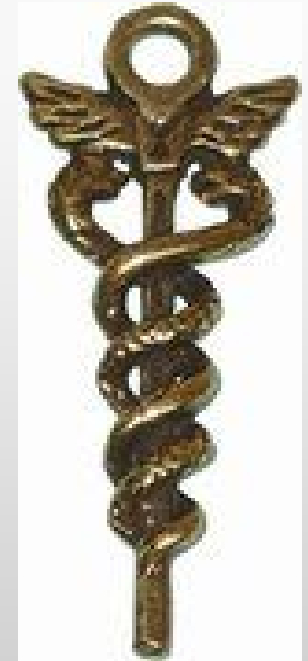


Medical Expenses Insurance



Obligatory Medical Expense Insurance (one must keep in mind that Germany has a very broad public health care system) as introduced in 2009:

- Obligation to contract triggered by the application of a person enumerated by para. 193 subpara. 4 VVG
- Obligation limited to a contract under the so-called *Basistarif* (a base rate/condition contract as described by para. 12 subpara. 1a Insurance Supervisory Act



Exclusions due to past behaviour of applicant:

- Threat or fraud
- Breach of duty to disclose

Remedies in case of breach:

1. Damages and/or claim for conclusion of contract
2. Supervisory measures

Long Term Care Insurance



Long Term Care Insurance:

- Obligation to contract triggered by the application of a person under a legal obligation to insure para. 110 subpara. 1 n° 1 and 2 Social Security Act XI
- Obligation limited to the conclusion of a rather rudimentary insurance contract

No explicit exclusions to the duty to contract
→ unwritten exception where compelling insurer would seem undue

- Remedies in case of breach, same as medical expenses insurance, i.e.:
1. Damages and/or claim for conclusion of contract
 2. Supervisory measures



In Germany every private health insurer is obligated to retroactively grant cover to any policy holder's child as long as said policy holder applies for the child's inclusion into the cover within two months of its birth (para. 198 subpara. 1 Insurance Contract Act).

-Pursuant to one opinion this is not an obligation to contract *strictu sensu* but an automatic inclusion which the policy holder may unilaterally bring about

-Pursuant to the other opinion the application must be accepted by the insurer – hence obligation to contract
→ if this opinion is followed, the same legal remedies apply as for medical expenses insurance



- Possible obligation to contract where insurer in a monopoly position (currently no eminent cases, due to strong competition on the market)
- Possible obligation to contract where the rejection of the applicant's offer would constitute an unlawful discrimination in the sense of the Equal Treatment Act
→ very disputed if a person discriminated against may claim for contract conclusion or only for damages

Summary of Means to Compel



1. Silence deemed acceptance (Mandatory Motor Vehicle Insurance) or even automatic inclusion by unilateral declaration by the policy holder (as favoured by one opinion concerning dependant coverage in private health insurance)
2. Civil remedies: Damages and or a legal claim for the declaration of acceptance
3. Public measures: Under German law a breach of the insurer's duty to contract is in no instance defined as an administrative offence (*Ordnungswidrigkeit*) or as a criminal offence. The only possible public law repercussion would be that the Supervisory Authority (BaFin) might deem necessary to take supervisory measures if the insurer systematically fails to fulfil its duty to contract