

Crisis and reform: the Insurance Supervision Act of 2004

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By the end of the 1990s Swiss insurance law consisted of five separate federal statutes: the Act of 1978, the Kautionsgesetz of 1919, the Sicherstellungsgesetz of 1930 and the two Swisslex statutes of 1992 and 1993. The Federal Council later remarked that the division of the subject matter among several statutes made the texts difficult to understand. More serious than the complexity was the solvency framework. Swiss solvency rules, like the Community's Solvency I, calculated the required solvency margin as a percentage of premiums or technical provisions. They took no account of the risks that insurers actually ran on the asset side of their balance sheets. As long as assets were valued conservatively and markets were calm, the hidden reserves in undervalued assets acted as an implicit buffer for investment risk. The message on the new statute noted precisely this effect: in stable times the undervaluation of assets had provided an implicit surcharge for investment risk.¹

That buffer disappeared when share prices fell after 2000. Swiss life insurers had invested heavily in equities during the boom of the late 1990s while guaranteeing minimum interest rates on life policies and on occupational pension contracts. When markets collapsed in 2001 and 2002, several large groups needed fresh capital. The Rentenanstalt, which had been converted into a joint-stock company in 1997 and traded as Swiss Life from 2002, came close to ruin in these years after a phase of forced expansion.² The crisis of the Zurich-based insurers coincided with public controversy about occupational pension business, in which life insurers managed the retirement savings of hundreds of thousands of employees through collective foundations.

The crisis also turned into a crisis of the supervisor. In the summer of 2002 the Federal Department of Justice and Police appointed two commissions to investigate the Federal Office of Private Insurance: the commission on

“Transparenz” under Professor Martin Janssen and the commission on the “Aufgaben und Kompetenzen des BPV” under Professor Gerhard Schmid. The reports of the two commissions contained proposals for a reorientation of insurance supervision. A task force formed in November 2002 then reviewed the draft of a new supervisory statute. The message of the Federal Council stressed the goal of strengthening the “Stärke, Integrität und Vertrauenswürdigkeit der Versicherungswirtschaft”, the strength, integrity and trustworthiness of the insurance industry.³

The Federal Council adopted its message on 9 May 2003. It proposed a single statute replacing the five existing ones, with several central innovations. The required solvency margin should reflect the risks of the undertaking in addition to the volume of its business. Every insurer should appoint a responsible actuary. Brokers should be entered in a central register, and supervision of insurance groups and financial conglomerates should be strengthened.⁴ The message also proposed to replace systematic preventive product control by subsequent control in most branches, keeping preventive approval where the protection of policyholders required it.

Parliament adopted the Insurance Supervision Act (Versicherungsaufsichtsgesetz, VAG) on 17 December 2004. Together with a totally revised Supervision Ordinance (Aufsichtsverordnung, AVO) issued by the Federal Council, it entered into force on 1 January 2006. A partial revision of the Insurance Contract Act took effect at the same time. The statute carries the systematic number SR 961.01, the ordinance the number SR 961.011. Under the new law, supervision aimed at protecting insured persons against the insolvency of insurers and against abuse, a formula that has remained in Article 1 VAG ever since.⁵

The Federal Office of Private Insurance described its new approach in a strategy paper of May 2006. It named three lasting objectives: the protection of policyholders against abuse and disadvantage, their protection against the consequences of insolvency, and the maintenance of functioning competitive markets. The paper committed the office to risk-based and principles-based supervision, to competition-oriented oversight, to professional competence and to international alignment. It added a sentence that sums up the culture the BPV wanted to create: principles-based supervision could only work “wenn sich die Aufsichtsbehörde als kompetenter und anerkannter Gesprächspartner” established itself.⁶ In practice this meant a supervisor that engaged with boards and chief risk officers on the substance of their risk models, an

approach that asked much of both sides and that became characteristic of the Swiss regime.

1 Notes

1. Botschaft VAG of 9 May 2003 (cited above): “Die Aufteilung der Materie auf mehrere Gesetze... erschweren das Verständnis der Texte.” The message also discusses the implicit surcharge for investment risk created by the undervaluation of assets under the old solvency rules. ↩
2. HLS, Bernard Degen, “Rentenanstalt”, version of 2010, last revised 30 October 2025, <https://hls-dhs-dss.ch/de/articles/041816/2025-10-30/>: “Die forcierte Expansion endete 2001-2002 beinahe im Ruin.” The company history is treated in chapter E.I of this book. ↩
3. Botschaft VAG of 9 May 2003 (cited above): “Im Sommer 2002 setzte das Eidgenössische Justiz- und Polizeidepartement zwei Kommissionen zur Untersuchung der Tätigkeit des BPV ein ...”. The message also mentions the task force of November 2002 and refers to the EU directives on insurance groups (1998) and financial conglomerates (2002) as international points of reference. ↩
4. Botschaft VAG of 9 May 2003 (cited above), which refers to a solvency margin taking account “nicht nur dem Geschäftsumfang, sondern auch den Risiken”, the duty to appoint a “verantwortlichen Aktuar”, the “obligatorischen Eintrag für Makler” in a central register and the additional supervision of insurers belonging to a group. ↩
5. Bundesgesetz vom 17. Dezember 2004 betreffend die Aufsicht über Versicherungsunternehmen (Versicherungsaufsichtsgesetz, VAG), bilingual edition at [droit-bilingue.ch](https://www.droit-bilingue.ch), <https://www.droit-bilingue.ch/de-fr/9/96/961.01-index.html>. Bundesamt für Privatversicherungen (BPV), Strategie der Versicherungsaufsicht in der Schweiz, 23 May 2006, <https://www.finma.ch/finmaarchiv/bpv/download/e/bj.pdf>, which states that the VAG and the AVO entered into force on 1 January 2006; see also SVV, “Rückblick auf 140 Jahre Versicherungsregulierung” (cited above), on the simultaneous partial revision of the VVG. VAG, consolidated version as at 1 September 2024 (cited above), Art. 1. ↩

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6. BPV, Strategie der Versicherungsaufsicht in der Schweiz (cited above). ↩

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