

From the Act of 1978 to the European agreements

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The Act of 1885 remained the legal basis of Swiss insurance supervision for more than ninety years, supplemented by the security statutes and by an extensive body of ordinances and administrative practice. A total revision came only with the Federal Act of 23 June 1978 on the supervision of private insurance institutions. On the same occasion the Federal Insurance Office was renamed Bundesamt für Privatversicherungen (BPV), the Federal Office of Private Insurance.¹ The Act of 1978 codified much of the earlier practice, including the preventive approval of tariffs and general conditions in many lines of business. It did not change the basic philosophy, which remained one of detailed product control combined with rules on reserves and investments.

The external environment changed faster than the statute. From the 1980s the Swiss insurance cartels came under pressure. After the Cartel Commission had examined the property insurance market in 1988, the Federal Supreme Court struck down by 1996, in several steps, all provisions in association statutes that obliged members to observe price and condition agreements. The third Cartel Act of 1995 then gave priority to competition over industry agreements.² Supervision based on preventive tariff approval and a market organised in cartels had supported each other for decades. When the cartels fell, the case for detailed product control weakened as well.

European integration provided the second impulse. On 10 October 1989 Switzerland and the European Economic Community concluded an agreement on direct insurance other than life assurance. It granted reciprocal freedom of establishment to non-life insurers, allowing Swiss insurers to open agencies and branches in Community member states, and Community insurers to do the same in Switzerland, without separate solvency calculations for each branch. The agreement covered neither life insurance nor reinsurance nor social security schemes. Nor did it extend to

cross-border services. Approved by the Federal Assembly on 30 January 1992, it entered into force on 1 January 1993.³ For Swiss groups such as Zurich and Winterthur, which had large non-life branches in Community countries, the agreement secured market access at a moment when the Community was building its single market for insurance.

The rejection of membership in the European Economic Area in the popular vote of 6 December 1992 closed the multilateral route to the single market. The Federal Council responded with the Swisslex programme, which adapted Swiss law autonomously to Community standards in many fields. In insurance, the Schadenversicherungsgesetz of 20 March 1992 had already implemented the non-life agreement before the vote. The Swisslex programme then added the Lebensversicherungsgesetz of 18 June 1993, which introduced Community-style rules for life insurance. In substance, these statutes moved Swiss law towards the Community model of the third generation of insurance directives, which had abolished systematic preventive control of tariffs and conditions within the Community. Switzerland followed gradually. Preventive product control was abolished in most non-life lines during the 1990s, while it was maintained for occupational pension business, supplementary health insurance and certain other lines where policyholders were regarded as particularly vulnerable.⁴

Bilateral arrangements with neighbouring and partner states completed the picture. Switzerland and Liechtenstein concluded an agreement on direct insurance and insurance intermediation on 19 December 1996, followed in 2015 by an agreement on insurance against natural disasters. After the departure of the United Kingdom from the European Union, the two countries concluded an agreement on direct non-life insurance on 25 January 2019 that preserved the effects of the 1989 agreement in their bilateral relations. The Berne Financial Services Agreement with the United Kingdom, in force since 1 January 2026, went further. It allows British insurers to provide cross-border services in Switzerland in selected areas of non-life insurance for wholesale clients, on the basis of mutual recognition of each side's regulatory outcomes.⁵

1 Notes

1. Botschaft VAG of 9 May 2003 (cited above), which refers to the “Bundesgesetz vom 23. Juni 1978 betreffend die Aufsicht über die privaten Versicherungseinrichtungen” as the principal statute then in force. HLS, “Versicherungen” (cited above), and SVV, “Rückblick auf 140 Jahre Versicherungsregulierung” (cited above), both of which date the renaming of the office to 1978. ↩

2. Swiss Re, Geschichte der Versicherung in der Schweiz (cited above), p. 37: “Schliesslich hob das Bundesgericht bis 1996 in mehreren Schritten alle Bestimmungen in den Verbandsstatuten auf, die Mitglieder zur Einhaltung von Preis- und Konditionsabsprachen verpflichteten.” SVV, “Rückblick auf 140 Jahre Versicherungsregulierung” (cited above), which notes that the Cartel Act of 1995 made market competition the priority and ended the earlier industry agreements. ↩
3. FINMA, “International treaties”, <https://www.finma.ch/en/documentation/legal-basis/international-treaties/>, listing the “Agreement of 10 October 1989 between the Swiss Confederation and the European Economic Community on Direct Insurance other than Life Insurance”. Federal Department of Foreign Affairs, Directorate for European Affairs, “Insurance”, <https://www.europa.eda.admin.ch/en/insurance>. The page also records that the agreement was updated in 2018 to take account of the Swiss Solvency Test and of Solvency II. ↩
4. Botschaft VAG of 9 May 2003 (cited above), which lists the Direct Non-Life Insurance Act of 20 March 1992 and the Direct Life Insurance Act of 18 June 1993 and explains their connection with the agreement with the EEC, the rejection of the EEA and the Swisslex programme. The message also notes that non-life insurance had already moved away from systematic preventive product control “seit einigen Jahren” and proposes to replace it generally by subsequent control, with exceptions for particular branches. ↩
5. FINMA, “International treaties” (cited above), listing the agreements with Liechtenstein of 19 December 1996 and 10 July 2015 and the agreement with the United Kingdom of 25 January 2019. FINMA, “Berne Financial Services Agreement”, <https://www.finma.ch/en/documentation/legal-basis/international-treaties/berne-financial-services-agreement/>, stating the entry into force on 1 January 2026 and the scope for British insurers in selected areas of non-life insurance. ↩

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