

BANKING
SWITZERLAND

Bonus battles: Swiss court reins in EFD over Credit Suisse pay cuts

Guy Deillon of [Prager Dreifuss](#) examines how a Swiss Federal Administrative Court ruling regarding the cancellation and reduction of Credit Suisse bonuses reinforces the legal limits on crisis-driven regulatory intervention



In a landmark judgment dated March 31 2025 (Case B-3655/2023), the Swiss Federal Administrative Court (*Bundesverwaltungsgericht*) ruled on the legality of a controversial order by the Swiss Federal Department of Finance (EFD) to cancel or reduce deferred variable compensation ('bonuses') of Credit Suisse employees. The court partially annulled the EFD's order, underscoring the limits of regulatory intervention and the importance of respecting legal principles, even during systemic crises.

Background: the Credit Suisse collapse and state intervention

Following a prolonged erosion of trust in Credit Suisse, the crisis peaked in March 2023, prompting emergency state action. The Swiss National Bank and the Swiss Financial Market Supervisory Authority (FINMA) intervened with liquidity assistance totalling CHF168 billion. Amid fears of contagion, the federal government engineered a takeover of Credit Suisse by UBS, backed by a public liquidity backstop and an asset loss guarantee of CHF9 billion.

As a condition of this support, the EFD, invoking Article 10a of the Banking Act (BankG), ordered Credit Suisse to withhold and reduce unpaid bonuses. The order targeted about 1,000 employees across the top three management levels and applied to deferred compensation from prior years, as well as variable remuneration accruing post-crisis

but pre-transition to UBS systems. The most senior executives saw their bonuses entirely cancelled; others were subject to 25%–50% reductions.

These measures, announced in a tense political and economic atmosphere, echoed the frustrations of a public that had witnessed significant losses of taxpayer-backed guarantees. The legal basis and proportionality of these measures, however, remained contested, triggering judicial review.

Legal dispute: scope and limits of Article 10a of the Swiss Banking Act

Twelve affected individuals challenged the order, arguing that the measures lacked legal basis, violated their property rights, and were disproportionate. The Federal Administrative Court sided with the appellants on key points:

- No retroactive effect – the court ruled that Article 10a of the BankG does not permit retroactive cancellation of already vested remuneration. The EFD’s attempt to reframe these as ongoing or pending entitlements failed to persuade. Already accrued remuneration enjoys constitutional protection under the Swiss property guarantee (Article 26, Swiss constitution), which requires a clear and specific legal basis for interference.
- Insufficient causality – the EFD did not establish that the affected employees bore individual responsibility for the crisis, undermining the rationale for such sweeping punitive measures. The court emphasised that measures must be tailored, based on identifiable misconduct or breach of duty.
- Procedural rights – by denying the affected employees party status, the EFD violated procedural guarantees under Swiss administrative law. The court affirmed that those materially impacted by an administrative act must have the opportunity to be heard (Article 29a, Swiss constitution; Article 6, European Convention on Human Rights).

The court’s assessment draws a firm line around the limits of executive discretion: while systemic risk may justify emergency measures, these do not negate the foundational principles of legal certainty, proportionality, and the rule of law. It

should be noted, however, that the ruling is not yet final – the Swiss Federal Council has publicly declared its intention to appeal the decision before the Swiss Federal Supreme Court.

Broader legal context: regulatory authority v constitutional constraints

The ruling revisits a fundamental issue in Swiss administrative law: the balance between regulatory pragmatism and individual legal protection. Article 10a of the BankG, introduced in 2012, was designed as a tool of conditionality, allowing the state to impose requirements on financial institutions benefiting from extraordinary public support. However, the legal construction of this tool was intentionally narrow.

As the court noted, the provision allows temporary restrictions during the active phase of state support. It does not provide for ex post facto retribution, nor does it explicitly authorise intervention at the level of individual employment contracts. The regulatory framework, built on principles of subsidiarity and targeted enforcement, does not support generalised collective punishment.

The judgment implicitly critiques the EFD’s expansive interpretation of the law, suggesting that its view conflated political expediency with lawful execution. This echoes criticisms from academic and regulatory observers that Swiss financial regulation, while robust in architecture, occasionally lacks the procedural rigour demanded by fundamental rights jurisprudence.

Commentary: structural reform v case-by-case justice

Prof Dr Urs Zulauf, in his March 2025 analysis ([“Neue Instrumente für die FINMA – 4 Bonusregeln?”](#), March 28 2025), has emphasised that Credit Suisse’s failed remuneration policy contributed significantly to its downfall. He supports enhancing FINMA’s powers to intervene through clearly codified enforcement tools, particularly against “key risk-takers” responsible for serious breaches of supervisory duties.

However, he cautions against one-size-fits-all punitive approaches. The Credit Suisse ruling reinforces this view: legal certainty, proportionality, and due process

cannot be sidelined in pursuit of public accountability. Zulauf suggests empowering FINMA through legislation to initiate clawbacks in enforcement proceedings – but only where misconduct is clearly proven.

Zulauf also observes that previous attempts by FINMA to intervene in bonus structures, such as post-2008 measures targeting UBS, were limited by the absence of clear statutory mandates. In contrast, the proposed new powers would need to be grounded in a robust legal framework that provides for individualised scrutiny and judicial oversight.

Legislative outlook: the Swiss Federal Council’s reform agenda

In response to the Credit Suisse crisis, the Swiss Federal Council proposed new rules in its April 2024 report on banking stability ([Bericht des Bundesrates zur Bankenstabilität](#), Section 15.4.4, April 10 2024). Key elements include:

- Statutory binding of variable compensation to long-term performance and risk alignment;
- Empowering FINMA to recover paid bonuses via enforcement against individuals;
- Mandatory clawback clauses in contracts of systemically important banks; and
- Establishment of a “senior managers regime” to improve personal accountability.

The report advocates an enforcement architecture that shifts responsibility from the institution to the individual. This approach aligns with international trends, such as the UK’s Senior Managers and Certification Regime, which emphasises personal accountability and proactive governance.

Notably, the Swiss Federal Council rejected a general cap on bonuses, citing evidence that such measures can lead to inflated fixed salaries and reduced flexibility in downturns. Instead, it favours a model combining ex ante regulatory design with ex post enforceability.

As outlined in the EFD’s factsheet ([“Too-Big-To-Fail-Regulierung: Boni”](#), EFD Faktenblatt, April 2024), bonuses should only be restricted or reclaimed where necessary to mitigate excessive risk-taking or where management failures are demonstrated. The proposal to empower

FINMA to enforce clawbacks – even post-payment – reflects a notable shift towards regulatory intervention at the individual level.

Conclusion: legal boundaries in crisis governance

The Credit Suisse case represents a watershed moment in the evolving relationship between Swiss regulators and financial institutions. While it underscores the necessity of swift action during systemic shocks, it also reaffirms that regulatory discretion must operate within the rule of law.

This ruling may serve as a constitutional compass for future legislative initiatives, establishing that systemic importance does not override individual rights, and that remedial measures require not just political will but statutory clarity and procedural safeguards.

As policymakers move towards more robust legislative frameworks, the judgment offers a cautionary tale: effective governance reforms must balance enforcement with fairness, and expediency with legality.



Guy Deillon
Associated partner
Prager Dreifuss