

Bank Compensation

When the government lends money, the bonuses dry up

Par Besart Buci le 26 October 2026

The Federal Court upholds the cancellation and reduction of variable compensation awarded—but not yet paid—to Credit Suisse executives. Contrary to the lower court's ruling, it held that [Art. 10a of the Banking Act \(LB\)](#) constitutes a sufficient legal basis to permanently cancel or reduce such compensation, and is not limited to allowing a deferral of payment for the duration of government support ([Decision 2C_322/2025, 2C_323/2025 of September 16, 2026](#)). A summary diagram is [available](#).

On March 19, 2023, the acquisition of Credit Suisse by UBS was announced. On the same day, the Federal Council amended the [emergency ordinance](#) it had adopted on March 16, 2023, to support the bank, in order to adapt it to this transaction. The Confederation granted the Swiss National Bank (SNB) a guarantee of CHF 100 billion for liquidity assistance loans provided to Credit Suisse, and granted UBS a loss guarantee of CHF 9 billion. Article 10(2) of this ordinance mandates the Federal Department of Finance (FDF) to take measures regarding compensation in accordance with Article 10a of the Banking Act (LB).

According to Article 10a of the Banking Act (LB), when a systemically important bank (SIB) receives direct or indirect financial assistance from the Confederation, the Federal Council shall order measures regarding compensation “for the entire period during which the support is provided” (para. 1). In particular, it may prohibit, in whole or in part, the payment of variable compensation (para. 2).

By decision of May 23, 2023, the FDF ordered the complete cancellation of variable compensation already awarded but not yet paid to members of the Executive Board, and a reduction of 50 % and 25 %, respectively, for the two lower hierarchical levels. These measures apply to variable compensation awarded through the end of 2022 and not yet paid as of March 21, 2023. They also extend to variable compensation that accrues, is awarded, or becomes payable in 2023, for the period from March 22, 2023, until, at the latest, the repayment of government financial aid or the complete transfer of Credit Suisse's employment relationships to UBS (see [Summary Chart](#)).

Following a petition filed by twelve executives—whose average loss amounts to approximately CHF 68,000 (out of an average cash compensation of approximately CHF 1.4 million)—the Federal Administrative Court [overturned](#) these measures. In its view, Art. 10a of the Banking Act (LB) authorizes only temporary measures, limited “to the entire period during which the support is granted.” The FDF could therefore, at most, prohibit the payment of variable compensation

until the end of the government aid, which ended no later than August 11, 2023, but could not permanently eliminate or reduce the executives' entitlements. The Confederation and UBS, the successor to Credit Suisse, appealed to the Federal Supreme Court.

On the merits, our High Court must determine whether Art. 10a of the Banking Act (LB) permits the permanent elimination or reduction of variable compensation that has been awarded but not yet paid, or only allows for the deferral of such payments for the duration of the state support. To answer this question, it engages in the judge's primary task : the interpretation of the law. It combines the literal, systematic, historical, and teleological methods, without any order of priority (pragmatic pluralism).

In the Federal Supreme Court's view, the text of Art. 10a of the Banking Act, contrary to the Federal Administrative Court's finding, is ambiguous and does not resolve the issue. The phrase "for the entire period during which the support is granted" may in fact also mean that the Federal Council must order the measures while the aid is being granted, without their effects ceasing with the support. Paragraph 1 thus establishes the conditions and the time at which the measures must be ordered, while paragraph 2 lists possible measures by way of example ("in particular"). Finally, paragraph 3 requires the SIBs to include a binding provision stating that the entitlement to variable compensation "may be limited." If the legislature had intended only a temporary prohibition (i.e., deferral of payment), it would have preferred to use the term "defer" the entitlement, as in [Art. 30a LB](#).

The historical and teleological interpretations, which the Federal Supreme Court applies jointly, are decisive. The Federal Council's TBTF message of April 20, 2011, expressly contemplates the total or partial elimination of variable compensation in order to prevent public funds from financing it ([FF 2011 4365, 4446](#)). The legislative report on the *public liquidity backstop* (PLB, [FF 2023 2165, p. 36](#)) further proposes the recovery of variable compensation already paid (*clawback*) in the event of state aid. According to the Federal Supreme Court, it would be inconsistent to permit recovery in the future while prohibiting its elimination today.

In this case, the Federal Supreme Court finds that the conditions of Art. 10a of the Bank Act (LB) are met. The SNB loans guaranteed by the Confederation constitute state aid, which was not disputed. The cancellation and permanent reduction of variable compensation also serve an important public interest and are proportionate ([Art. 5, para. 2 of the Constitution](#)). A mere deferral would have allowed executives to benefit indirectly from the aid (moral hazard). Furthermore, the cancellation—staggered according to hierarchical level—remains modest (approximately CHF 68,000 on average) relative to their compensation (approximately CHF 1.4 million on average). Any potential infringement of the guarantee of property rights ([Art. 26 and 36 of the Constitution](#)) is therefore justified.

This ruling, the Federal Supreme Court's first on Art. 10a of the Bank Act, calls for three observations.

First, our High Court gives precedence to the legislature's historical and teleological intent over a text it deems ambiguous. The solution is convincing on its merits. It is regrettable, however, that a definitive infringement of contractual claims is based on a provision whose wording might suggest the opposite. The draft Banking Act ([23.062](#)), currently under consideration in Parliament, amends Art. 10a of the Banking Act but leaves paragraph 1 intact ; the legislature could seize this opportunity to clarify its scope.

Second, the Federal Supreme Court emphasizes the preventive—rather than punitive—nature of Art. 10a LB : the measure applies collectively, regardless of fault. It thus differs from [Articles 5b and 10b](#) of the preliminary draft of August 12, 2026, which penalize wrongful conduct (for a commentary on this preliminary draft, see Buci, cdbf.ch/fr/1474). Two regimes would therefore coexist, distinguished by their trigger : one collective regime linked to state aid ; the other individual, linked to fault and applicable at all times.

Third, the Federal Supreme Court holds that the concept of variable compensation under Art. 10a LB coincides with that under supervisory law. However, [FINMA Circular 2010/1](#) includes sign-on bonuses and severance payments within this concept (Commentary 12). The FDF had, however, excluded *replacement awards* and the cash portion of severance payments from its decision, on the grounds that these forms of compensation were not variable (para. 4, subsections d and f of the operative part). As this exclusion was not contested before the Federal Supreme Court, it appears difficult to reconcile with the definition adopted by the Court.

This leaves the issue of the repayment of variable compensation already paid, which Art. 10a of the Banking Act (LB) does not currently allow to be ordered. The draft Banking Act ([23.062](#)) provides for this, but only with respect to executives who are “largely responsible” for the need for state aid ([Art. 10a, para. 2, subpar. c of the draft Banking Act \(P-LB\)](#)) . The Council of States’ Committee on Economic Affairs and Taxation adopted it in a block vote during its session on [October 13, 2026](#) ; the Chambers have yet to vote on it.

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