

## Table of contents

Preface	VII
List of abbreviations	XV
References	XIX
List of materials	XXIII
Chapter 1: Challenge: Climate change as the starting situation	1
I. Global climate change	1
1. IPCC—global reference for a global problem	1
2. The IPCC as the initial spark for the UNFCCC and the Kyoto Protocol	2
3. The results of the Copenhagen “climate summit”	3
4. What awaits us worldwide	7
A. The prognoses	7
B. Adaption to and mitigation of climate change as a way out?	13
II. Climate change in Switzerland	16
1. The prognoses for Switzerland until 2050	16
2. The ramifications	17
III. Consequences for insurance against natural hazards	18
1. Effects on insurance against natural hazards	18
A. Climate change—no surprise for the insurance sector	18
B. The effects on insurance against natural hazards in detail	21
a) Current loss trends	21
b) The change in actuarial benchmark figures	23
C. The increasing significance of insurance against natural hazards	25
2. Future demands on protection against natural hazards and insurance of buildings against natural hazards	25
Chapter 2: Insurance systems today	29
I. Types of insurance systems	29
1. General information	29
2. Type 1: Statutory insurance	29
3. Type 2: Compulsory insurance (obligatory insurance)	29
4. Type 3: State aid and optional insurance according to market supply	30

II.	Germany	30
1.	State aid and insurance option according to market supply	30
A.	Market supply in residential buildings as well as supplementary insurance according to the ZÜRS	30
B.	Ad hoc state aid	32
2.	Comparison with the situation of the German statutory insurances until 1994 and the Swiss statutory insurances	33
A.	Comparison with the situation of the German statutory insurances until 1994	33
B.	Comparison with Swiss statutory insurances	33
a)	Loss coverage and insurance density	34
b)	Promptness of claim settlement	34
c)	Conclusion	34
III.	France	35
1.	Compulsory insurance in the sense of obligatory extension of coverage	35
2.	Effective defrayment of loss in the natural disasters sector by the state reinsurance Caisse Centrale de Réassurance (CCR)	37
3.	Adaption of the French system due to moral hazard and negative selection	38
4.	Differences to the German and the Swiss as well as the Spanish system	40
IV.	Spain	41
1.	Statutory insurance for extraordinary risks	41
A.	State-owned enterprise Consorcio de Compensación de Seguros as risk carrier	41
B.	Statutory insurance due to statutory coverage clause and statutory surcharge	41
2.	Prevention of negative selection and maximum solidarity	45
V.	Switzerland	46
1.	Overview—Coexistence of statutory insurance with integrated loss prevention/abatement and compulsory insurance	46
2.	The system of statutory insurance with integrated damage prevention and damage abatement	46
A.	The Kantonale Gebäudeversicherungen (KGV) as solidary insurances	46
B.	The Interkantonale Rückversicherungsverband (IRV) as an enhancement to the protection policy	50
C.	The Interkantonale Risikogemeinschaft Elementar (IRG)—solidary defrayment of losses in the event of natural disasters	52

D.	The protection policy has proven itself in practice against natural disasters	54
E.	“Securing and insuring”—integrating the prevention of damage caused by natural hazards and damage abatement in the statutory insurance system	56
a)	The basic idea—strengthening the insurance system and solidarity	56
b)	Integrated prevention of damage caused by natural hazards	58
c)	Integrated damage abatement	62
F.	Prevention of negative selection and moral hazard	64
3.	The compulsory insurance system	64
A.	Compulsory insurance in the sense of obligatory extension of coverage	64
B.	The Swiss insurance pool for damage caused by natural hazards for balancing of risks and prevention of negative selection	66
C.	The compulsory insurance system as a statutory market and price system in accordance with antitrust law	67
D.	Comparison between the KGV statutory insurance system and compulsory insurance	69
VI.	USA	69
1.	Insurance option based on market supply with state support	69
A.	National Flood Insurance Program (NFIP)	69
B.	Florida Hurricane Catastrophe Fund (FHCF)	72
2.	Hurricane Katrina and the consequences	73
A.	Basic problems of charity and moral hazard and negative selection	73
B.	Lack of solidarity in the US system and what can be done about it	74
C.	The consequences of the “design defects” using the example of Hurricane Katrina	75
Chapter 3: Interim conclusion—suitable protection system against natural hazards in response to climate change		79
I.	Overview of requirements	79
II.	The appropriate response to climate change	80
1.	Type 3: State aid and optional insurance according to market supply	80

2. Type 2: Compulsory insurance	80
3. Type 1: Statutory insurance	81
 Chapter 4: Legitimacy of statutory insurance against natural hazards using the example of the KGV	 83
I. Admissibility under Swiss law	83
1. Starting situation—cantonal legal monopoly	83
2. Compatibility with economic freedom	84
A. Economic freedom as part of a socially and environmentally committed economic system	84
B. No right to protection from government competition or subsidiarity of government economic activity	88
C. Statutory insurance as a monopoly that is justified in socio-political and police terms	89
a) Legal requirements for compatibility with economic freedom	89
b) Socio-political and police reasons and hence public interest exist	90
c) Sufficient legal basis	93
d) Proportionality	93
e) Conclusion	96
3. Compatibility with the antitrust law	96
4. Statutory insurance as a basic service provision within the meaning of art. 43a par. 4 BV?	97
5. The SUVA as a comparable example of public service	98
6. Conclusion	102
7. Excursus: system competition as the third method?	102
A. System competition between the KGV and private insurances	102
B. Positive effect of system competition	103
II. EU compatibility of the KGV statutory insurance system	104
1. EU compatibility as a permanent issue for the Swiss legislature	104
2. Conflicting priorities: internal market—competition—common good	105
3. Basis for EU compatibility of the statutory insurance system—an overview	106
4. Statutory insurance as the exercise of official authority	107
A. Starting situation: neither a substantive privatisation obligation nor a monopoly ban based on EU law	107
B. No application of the free movement of services in the exercise of official authority	108

C. The Consorcio de Compensación de Seguros solution—qualification as tax	109
5. Statutory insurance as an expression of overriding public interest	112
A. The broad term of overriding public interest	112
B. Considerable threat to the financial equilibrium of a social security system as overriding public interest	113
C. Statutory insurance against natural hazards as an expression of overriding public interest	115
D. No exclusion of overriding public interest by harmonisation	116
6. Statutory insurance as a provision of general interest services and as a service of general (economic) interest	118
A. Terms	118
B. From Amsterdam and Nice to Lisbon—strengthening of services of general interest	119
C. Statutory insurance as an undertaking within the meaning of EU competition law?	121
D. The significance of art. 14 and 106 TFEU	123
a) The wording of the relevant provisions	123
b) The significance of art. 14 and 106 TFEU	125
E. Statutory insurance against natural hazards as a facility for the provision of general interest services and as a service of general economic interest	130
F. Conclusion—no application of EU competition rules	130
G. No application of the General Service Directive	130
7. Statutory insurance against natural hazards as a permissible compensation scheme according to the EU law governing State aid	134
A. Configuration as a facility for the provision of general interest services as state aid?	134
B. Balancing of risks in a solidary insurance system does not represent aid	135
C. Conclusion	138
8. Outlook—Protection against natural disasters as a new EU goal	138
9. Final conclusion	139
Index	141