23.427

The management of the federal authorities in the context of the CS crisis

Report of the Parliamentary Commission of Inquiry

from December 17, 2024

Dear President of the National Council
Dear President of the Council of States
Ladies and Gentlemen

The Parliamentary Commission of Inquiry submits its report on the conduct of business by the federal authorities in the context of the CS crisis. It requests that you take note of it.

December 17, 2024

On behalf of the Commission

The President: Isabelle Chassot, Member of the Council of States

The Vice-President: Franziska Ryser, National Councillor

Summary

1. Initial situation

Following the emergency merger between Credit Suisse (CS) and UBS on March 19, 2023, fundamental questions arose regarding the management of the players responsible for financial market stability. The focus of interest was on the entire Federal Council, the Federal Department of Finance (FDF), the Swiss Financial Market Supervisory Authority (FINMA) and the Swiss National Bank (SNB). Against this backdrop, on June 8, 2023, the Federal Assembly set up the Parliamentary Commission of Inquiry (PCI) "Management of the Authorities - CS Emergency Merger". Its remit was to investigate the "conduct of business in recent years by the Federal Council, the Federal Administration and other federal authorities in connection with the emergency merger of Credit Suisse with UBS, insofar as they are subject to parliamentary oversight".

Investigation of the PUK

The most important results of the PUK's investigation are summarized below. This overview serves as a guide, but cannot replace reading the report. The overall report contains facts and findings that make the conclusions and recommendations of the PUK fully comprehensible.

The commission held a total of 45 between June 2023 and December 2024. It pursued the goal of its investigation on the broadest possible information and data. On the one hand, it held a total of 79 hearings with current and former federal officials involved in the authorities' management of CS, as well as with representatives of CS and UBS. The committee also a very large number of internal administrative and bank documents. In addition to documents that were not publicly accessible, it also consulted public reports by the authorities involved, academic publications and media reports. The PUK also awarded nine expert mandates to clarify various highly technical issues (see section 1.4.3, Table 2).

At the beginning of its investigation, the PUK drew up an investigation concept and defined the investigation period. This should cover a sufficiently long period before the emergency merger of CS with UBS in order to adequately classify the events and identify any relevant aspects of the authorities' management. The PUK chose 2015, the year of publication of the Federal Council's first evaluation report on systemically important banks, as the starting point.

In its study, the PUK distinguished between the following four main phases:

- *The first phase (management before the crisis) covers the events from 2015 up to and including summer 2022, i.e. before the actual crisis.*
- *The second phase (management in the first crisis phase) lasts from fall 2022 to mid-March 2023 and includes the massive liquidity outflows at CS at the beginning of October 2022, the authorities' switch to crisis mode and the accentuation of the crisis until mid-March 2023.*
- *The third phase (management in the acute crisis phase) covers the events in the period between March 15 and 19, 2023, during which the merger was negotiated and prepared.*
- *The fourth phase (implementation of the emergency merger) includes the completion of the merger after March 19, 2023 until the closing of the transaction between UBS and CS on June 12, 2023.*

The PUK's investigation focused on the first three phases, up to and including the emergency merger. In the interests of completeness, phase four was also examined and presented in the report, but not in the same level of detail. The recommendations and parliamentary initiatives of the PUK are derived from the findings of the investigation into the first three phases. Unless otherwise stated, they relate to the regulation and supervision of systemically important banks.

2. Years of mismanagement by the CS Board of Directors and the CS Executive Board at the origin of the crisis

As a body of parliamentary oversight, the PUK was tasked with investigating the management of the federal authorities. The management of CS was therefore outside its remit. However, the Commission included the development of the bank in its investigation insofar as this was necessary to assess the management of the authorities. The Commission at the outset that, in its opinion, the near-collapse of CS and the resulting emergency merger were due to CS's self-inflicted crisis. This is summarized below.

After the 2007/2008 financial crisis, the recovery of the financial sector was extremely sluggish (see section 5.1.1). In particular, the European banking sector was characterized by lower profitability and interest income remained modest due to the low interest rate environment. The difficult business environment led to falling share prices and a deterioration in credit quality. In addition, uncertainty about future developments increased due to numerous international political upheavals (e.g. the US elections in 2016 or the war in Ukraine that broke out in 2022), the Covid-19 pandemic and the unexpectedly high inflation between 2022 and 2023 (see section 6.1.1).

CS was less affected by the financial crisis than other financial institutions such as UBS. In comparison, it was considered a solid banking institution (see section 5.1.2). However, extensive adjustments to the bank's strategy, particularly to reduce risks in investment banking, and court-ordered fines led to high costs that could not be covered by income, which was lower than expected in various sectors. Between 2010 and 2022, CS had to pay around CHF 15 billion for fines, settlements and compensation. At the same time, CS's variable compensation always remained between CHF 1 billion and CHF 5 billion per year (see section 5.1.2), totaling CHF 39.8 billion. In the same period, the sum of the annual results resulted in a total loss of CHF 33.7 billion. The share price has behind the European banking index since 2012, and the market's valuation of equity has steadily declined.

Negative headlines occasionally led to a great deal of public attention, particularly in the wake of the Mozambique scandal in 2016 and the tails affair in 2019. The scandals surrounding Greensill and Archegos, which became public in 2021, increased scepticism about CS's resilience and profitability. As a result, its share price plummeted and never recovered. CS closed the 2021 financial year with a loss. In the first two quarters of 2022, CS also recorded high losses due to a lack of income in several areas and the outbreak of the war in Ukraine. As a result, several rating agencies downgraded CS for the first time in May 2022.

Not least due to these negative developments, there were several changes to the Board of Directors and Executive Board of CS in 2021 and 2022. In summer 2022, CS a further strategic review. The result was to be communicated at the end of October 2022 (see section 6.1.2). At the beginning of October 2022, an Australian journalist's tweet about the collapse of a G-SIB speculation about CS, resulting in huge capital outflows at CS.

CS. The presentation of the new strategy at the end of the month was received cautiously by the markets and was unable to calm the situation in the long term.

A regional banking crisis broke out in the US at the beginning of March 2023 (see section 7.1.1). Although CS had no links to the banks affected, its share price fell sharply at times, as did that of other European banks. The value of CS shares came under further pressure when the Chairman of Saudi National Bank publicly announced on March 15 that further investments in CS were ruled out. Cash outflows increased once again, forcing CS to apply to the SNB for liquidity assistance in the night of March 16 in order to remain solvent.

3. Too-big-to-fail legislation: initial situation, players and further development

Initial situation

The too-big-to-fail legislation in Switzerland (TBTF legislation) dates back to the global financial and economic crisis and the related state rescue of UBS in 2008. The TBTF legislation was intended to minimize the risk of insolvency of a systemically important banking institution. At the same time, the state's scope for action in the event that a systemically important bank gets into financial difficulties should be clearly defined.

The revision of the Banking Act (BankA) in 2012 marked the beginning of the development of TBTF regulation in Switzerland (see section 4.2.2). The revised Banking Act and various ordinances such as the Liquidity Ordinance (LiqO), the Capital Adequacy Ordinance (CAO) and the Banking Ordinance (BO) set out special requirements for systemically important banks with regard to capital, liquidity, risk diversification and organization. The subsequent further development of TBTF regulation was based on international standards (see section 4.1), in particular the Basel III standards of the Basel Committee on Banking Supervision (BCBS) and the Guiding Principles of the Financial Stability Board (FSB).

Supervision of the stability of the Swiss financial market - players and coordination

Maintaining financial stability in Switzerland involves close cooperation between several players. FINMA is responsible for microprudential supervision in accordance with the Financial Market Supervision Act (FINMASA) and the financial market laws. It licenses financial institutions operating in Switzerland, monitors them on an ongoing basis, enforces financial market supervisory law in so-called enforcement proceedings and is responsible for the resolution of systemically important banks (see section 3.2). In contrast, the SNB is responsible for macroprudential supervision. It contributes to financial stability at the level of the system as a whole by analyzing risks for the entire financial system, monitoring systemically important financial market infrastructures and helping to shape the framework conditions for the Swiss financial centre (see section 3.3).

The FDF is represented in the area of financial market policy by two bodies, the State Secretariat for International Financial Matters (SIF) and the Federal Finance Administration (FFA). As the FDF's main responsible body, the SIF draws up the principles of financial market policy and financial market regulation and represents Switzerland in various bodies such as the FSB and the International Monetary Fund (IMF). The FFA is involved in the coordination of authorities as part of the tripartite Memorandum of Understanding (see below), but does not explicitly deal with financial market stability beyond this (see section 3.1).

In the area of financial stability and financial market regulation, there are two memoranda of understanding on cooperation and coordination between the various players. The first is the tripartite memorandum of understanding on cooperation in the area of financial stability and financial market regulation between the FDF, FINMA and the SNB. This governs the exchange of information and cooperation, particularly with regard to the prevention and management of crises. Coordination takes place in two committees: While the Financial Crises Committee (FC) is responsible for the operational preparation of crisis measures - e.g. by drawing up the basis for decisions and assessing the situation - the Steering Committee (SC) is responsible for the strategic coordination of the crisis organization and any interventions. The frequency of meetings of the two bodies differs depending on the initial situation. Outside of a crisis, the AF meets twice a year and the LG as required. In times of crisis, the frequency of meetings increases accordingly (see section 3.6.1).

Secondly, the bilateral memorandum of understanding in the area of financial stability regulates the responsibilities between the SNB and FINMA in the context of financial stability (see section 3.6.2). The exchange between the two authorities takes place at a strategic level in the SNB-FINMA Steering Committee, which meets twice a year, i.e. not only in crisis situations.

Further development of TBTF regulation

Until around 2015, Switzerland was one of the countries with the most advanced (or earliest implemented) TBTF regulation overall. Swiss TBTF legislation was also further developed thereafter (see section 5.2), e.g. with the change from the system with participation deductions and simplifications in accordance with Art. 125 CAO to risk weighting (2017/2019) or with the introduction of a net stable funding ratio (NSFR). However, a slightly different trend was observed after 2015: Out of consideration for the competitiveness of the Swiss big banks, international standards were not to implemented more quickly than in other financial centers. Opposition to stricter banking regulation and a further tightening of the existing TBTF regime ("pushback") became increasingly apparent in politics and, as a result, in the administration. The Federal Council accommodated the big banks on various occasions in the further development of TBTF regulation, although FINMA and the SNB in particular opposing positions with regard to financial stability. The ordinance on the Financial Market Supervision Act, which the Federal Council issued in implementation of the Landolt motion of 4 May 2017 (17.3317 "Clear responsibilities between financial market policy and financial market supervision"), was also part of these developments.

When the CS crisis became more acute in fall 2022 and then in spring 2023, the Swiss authorities lacked important instruments that other jurisdictions had already had at their disposal for several years. The reason for this was the partially inadequate further development of TBTF regulation (see sections 9.1.1 and 9.1.2). From the Commission's perspective, it is particularly important that the Federal Council was too hesitant in introducing a public liquidity backstop (PLB) (see section 9.1.1). Although the most important financial centres quickly followed the FSB's 2016 recommendation to introduce a PLB and both FINMA and the SNB called for the introduction of a PLB from 2018 at the latest, the Federal Council did not adopt the key parameters of a PLB proposal until spring 2022. At the time of publication of this report, the proposal was pending in the Councils.

The Commission is of the opinion that certain fundamental adjustments need to be made to the future direction of TBTF regulation based on the lessons learned from the CS crisis. In particular, the international interdependencies and the comparatively significant size of the remaining Swiss global systemically important banks must be taken into account.

The interests of the global systemically important bank (G-SIB) must be given appropriate consideration. In addition, more weight should be given to the interests of financial stability and the economy as a whole (see section 9.1.2).

Monitoring TBTF regulation

In compliance with Article 52 Banking Act, the Federal Council has been reporting annually on TBTF regulation in Switzerland by means of evaluation reports since 2015 (see section 5.2). In the view of the PUK, these reports up to and including 2021 were too summary (see section 9.1.1). Specifically, there was no strategic discussion of the further development of TBTF regulation and no reference to the recommendations of the previous reports. The Federal Council also refrained from taking an external view during these years, which led, among other things, to an incomplete comparison of Swiss regulation with international standards. The Federal Council should improve these aspects (see section 9.1.2).

4. FINMA supervision in the years before the crisis

As a systemically important bank, CS was subject to special regulatory requirements. These related in particular to own funds and liquidity, the development of emergency, stabilization and resolution plans and the bank's risk management and compliance.

In its annual assessment letters to CS, FINMA addressed the bank's strategy, organization and management, its risk management, its capital and liquidity situation and its resolution planning (see section 5.3.1). It informed CS of its current assessment of the situation, the existing areas for action, developments since the last assessment letter and communicated its expectations, stating a deadline. In addition, FINMA out numerous on-site inspections and stress tests at CS and appointed auditors. Finally, FINMA exercised its supervision of CS together with foreign supervisory authorities in various committees.

As part of its ongoing supervision, FINMA repeatedly raised various issues with CS. From 2015 at the latest, it regularly requested that CS inform it proactively and transparently of significant developments of regulatory importance. However, CS did not comply with this request. In addition, the Financial Market Authority had doubts about the sustainability of the bank's strategy and particular its remuneration policy. It also drew CS's attention to the risks associated with the numerous changes at management level. The risks identified included gaps in the anti-money laundering system and in decentralized risk control. FINMA also repeatedly its concern that CS was building up its equity capital not from the income from its business activities, but from capital increases and financing by other Group companies. This concern with the increase in regulatory requirements for subsidiaries abroad. FINMA regularly imposed additional requirements on CS and demanded improvements in reporting on its capital and liquidity situation almost every year (see section 5.3.1). Following an analysis by the committee, FINMA made intensive use of its supervisory instruments against CS, in particular the annual assessment letters, on-site inspections and various stress tests. Nevertheless, CS made hardly any progress. Overall, this questions about the effectiveness of FINMA's interventions (see section 11.1.1).

The Commission also notes that FINMA regularly communicated its expectations to CS in writing, namely in the form of assessment letters. It had to repeat certain demands for years. However, in the Commission's view, it rarely resorted to formal rulings. To the

For the purpose of better enforceability, but also for the legal protection of the supervised G-SIBs, the PUK considers it appropriate for FINMA to issue the measures it requires in the form of formal rulings.

Regulatory filter

As part of its microprudential supervisory duties, FINMA issued a ruling in 2013 to regulate the capital requirements of the parent bank of CS (Credit Suisse AG; also known as the Parent Bank). The regulation was amended in a second ruling in 2017. In this ruling, FINMA ordered the staggered risk weighting of the parent bank's participations, although the relevant ordinance at the time provided for the full deduction of participations (so-called regime change). The reason for this regime change was that the law in force at the time provided for mandatory simplifications with the deduction of participations under certain conditions. Several stakeholders saw a need for action: FINMA told the PUK that these mandatory simplifications were non-transparent and unacceptable (see section 5.3.3).

FINMA also granted a regulatory filter in the same 2017 ruling. The PUK was unable to fully clarify the circumstances under which this was granted. According to FINMA, the granting of a regulatory filter was the condition for CS to agree to the regime change described above and therefore also the condition for the Federal Council to agree to the abolition of Art. 125 CAO. However, the PUK was unable to obtain any evidence of this (section 5.3.2). The SNB, which was consulted by FINMA at the time, took a critical view of the filter.

The regulatory filter made it possible to neutralize the then imminent change to the accounting regulations relating to investments in the Swiss Code of Obligations. The regulatory filter thus effectively became part of the designated regulatory capital. It was granted by FINMA on the condition that CS disclosed the filter on a quarterly basis and that a third party regularly reviewed the relevant valuations of the holdings in its subsidiaries. The filter had an impact on the regulatory capital and the equity ratio (ratio of common equity tier 1 capital to risk-weighted assets) of CS AG and did not affect the accounting (see section 5.3.3).

The effect of the filter was estimated by FINMA at around CHF 8 billion when it was designed in 2017. When it was first applied at the end of 2019, CS reported the effect of the filter at CHF 15.3 billion, almost twice as high as originally estimated. The regulatory filter remained roughly the same in terms of amount in the period from 2019 to 2022. By contrast, CS AG's reported equity, calculated without the filter, fell significantly from the third quarter of 2021 due to the poor business performance. Without applying the filter, the equity ratio would have fallen from 10 % at the end of 2019 to 5 % in the third quarter of 2022 and thus well below the regulatory minimum. The filter allowed CS AG to maintain the appearance of sufficient capitalization until the end. The filter made it unnecessary for FINMA to order earlier or larger capital increases (see section 5.3.3). The audit firm commissioned by FINMA to check the plausibility of the market value calculations of the parent company's investments identified a sub- stantial overestimation of the market values (fair value) by CS AG at the end of 2019 and in mid-2021. FINMA limited the corresponding amount that the bank was allowed to add to the filter in each case, but this ultimately only indirectly influenced the filter (see section 5.3.3).

In the Commission's opinion, the impact of the regulatory filter on CS AG's regulatory capital situation was considerable (see section 11.1.1.3). Article 4 BankG provided a sufficient legal basis. FINMA's actions were therefore lawful. The Commission recognizes in the

Nevertheless, the ruling is based on an extensive interpretation of the legal bases and considers the decision to be inappropriate.

Furthermore, the Commission questions the extent to which the introduction of the regulatory filter should have contributed to achieving FINMA's objective of increased transparency (by publishing meaningful figures on reported equity capital). CS's parent company reported the amount of the filter in a way that was barely recognizable to outsiders. Furthermore, the Commission cannot understand why FINMA has reintroduced the regulatory filter at the same time as it initiated the abolition of mandatory simplifications (Art. 125 CAO).

The Commission notes that the regulatory filter did not the economic substance of the parent company's holdings. Nevertheless, the further development of CS was significantly influenced by the granting of the regulatory filter. The regulatory filter masked the real situation of CS AG. As result, CS was not forced to strengthen its capital situation when this would have been easier under certain circumstances. If CS AG's capital ratio had public without the filter, capital markets, and the media would have had a more transparent information basis for their decisions. Furthermore, based on an expert report, the Commission came to the conclusion that FINMA had incorrectly designed the regulatory filter in several respects and had not correctly assessed its impact. In the Commission's view, the effect of the regulatory filter should be critically assessed not only before but also during the crisis, and such facilitations should be reconsidered. For this reason, the Commission is submitting a motion to this effect (see section 11.1.1).

Enforcement proceedings

In addition to the ongoing supervision of CS, FINMA had to investigate breaches of supervisory law as part of enforcement proceedings and restore compliance with the law (see section 5.3.2). Between 1 January 2012 and 31 December 2022, FINMA conducted preliminary investigations in 42 cases due to suspected breaches of supervisory law by CS. eleven cases, the preliminary investigations resulted in the opening of enforcement proceedings to restore compliance. During the same period, eight enforcement proceedings were conducted against members of the CS Executive Board. Three of these were terminated when the persons concerned signed waivers. Five cases are still pending.

The PUK is of the opinion that FINMA acted lawfully in its enforcement cases and, in most cases, both appropriately and effectively. However, the PCC regrets that FINMA did not succeed in that CS's business practices complied with supervisory law despite the numerous enforcement proceedings. The Commission also finds it incomprehensible that, despite the bank's numerous misconduct cases, it was not possible to establish causal responsibility for the misconduct in question. The PUK has formulated a recommendation to improve the effectiveness of the enforcement proceedings (section 11.1.1).

5. Macroprudential tasks of the SNB in the years before the crisis

The SNB contributes to the stability of the financial system by performing various macroprudential tasks (see sections 3.3 and 5.5) together with FINMA. It does this in particular by defining the systemically important financial groups, continuous monitoring as part of the annual report on financial stability, granting extraordinary liquidity assistance as lender of last resort and other cyclical measures (e.g. countercyclical capital buffer, Covid-19 refinancing facilities).

The PUK notes the SNB regularly commented on the implementation of TBTF regulation and the situation of the big banks in its financial stability reports during the period under review. The SNB the two big banks comparably until 2021. From the 2022 Financial Stability Report onwards, it made a distinction with regard to CS and discussed its delicate situation with FINMA. However, no concrete measures were taken at that time. In particular, no information was provided to the Financial Crises Committee or the Steering Committee (see section 11.3.1).

Particular attention was paid to the question of how the SNB its role as lender of last resort. The PUK welcomes the SNB's efforts to provide liquidity assistance to a bank. These include, for example, emergency liquidity assistance (ELA), a memorandum of understanding between a bank and the SNB or an annual review of the liquidity assistance and the collateral accepted. The SNB has a great deal of leeway when it to recognizing collateral from banks requesting liquidity. During the period under review, the SNB continuously reviewed and expanded the accepted collateral (see section 5.5.3). However, it would have up to the banks to take the necessary measures to be able to use the extended range of collateral if required.

In March 2023, the SNB provided CS with more than CHF 88 billion in liquidity assistance (as ELA or ELA+). However, this was not enough. CS could made the necessary preparations to obtain a larger amount of ELA, but to the best of the PUK's knowledge, it not do so. However, the SNB did not have the authority to prescribe preparatory measures to the systemically important banks prior to drawing on ELA. In addition, CS refrained from drawing ELA three times between October and December 2022, partly due to a possible stigmatizing effect, as the withdrawal of ELA would have had to be reported. For the PUK, the question remains open as to whether the SNB's practice is too restrictive with regard to the allocation and eligible collateral. The Commission recognizes a need for action with regard to both the SNB's lack of authority to impose preparatory measures and the stigmatizing effect of ELA and is submitting a motion on this issue (see section 11.3.2).

6. Audit oversight by the FAOA/FINMA between 2015 and 2023

The dual supervisory system in the Swiss banking sector is characterized by the fact that the banks select and remunerate their audit firms themselves. The current division of tasks in the area of oversight of audit firms dates back to 2015, i.e. the beginning of the PUK's investigation period. Since then, the Federal Audit Oversight Authority (FAOA) has been solely responsible for the approval of audit firms. It also the quality standards in this area. FINMA, in turn, is solely responsible for the content and principles of the regulatory audit.

Supervisory activities of the FAOA

Between 2015 and 2022, the FAOA carried out annual audits of the audit firms. It between regulatory audits (RA) and financial audits (FA). The frequency and type of audits were determined internally. The FAOA identified deficiencies in the audits of CS carried out by KPMG and PwC and took corrective measures, mainly training. KPMG's audits showed deficiencies in 2015, 2018 and 2019, while problems arose at PwC in 2022.

The PUK found that supervision was appropriate overall. The chosen alternating approach ensured appropriate risk management, but the decisions on the scope of the audits were incompletely documented.

This can impair the transparency and stringency of the audits performed. This proves to be particularly serious in cases where an important audit mandate, such as that of CS, was audited. In addition, a comprehensive inspection was not deemed necessary at CS at key moments - such as when the audit firm was changed in 2021.

Effective oversight of audit firms requires not only a reasonable frequency of inspections, but also the flexibility to intensify inspections if circumstances so require. The PUK cannot understand why the FAOA remained in normal mode in the last few years before the emergency merger between CS and UBS and only carried out the first ad hoc audit after the emergency merger in summer 2023. The fact that this audit was not completed until October 2024 is also difficult for the Commission to understand (see section 11.2.1).

In addition, the FAOA based its audit activities on the documentation of the audit firms without directly reviewing the documents of CS. Although this method complies with the applicable standards, it can weaken the informative value of the audit, which is why a re-evaluation of this process may be necessary. Furthermore, the FAOA only checked on a random basis whether the measures it had imposed had been implemented. This means that potential serious deficiencies cannot always be detected, which could reduce the effectiveness of the corrective measures and be detrimental to the quality of the audits carried out by the audit firms. It would be necessary strengthen the transparency and systematic documentation of the FAOA's decision-making processes regarding the scope of inspections, particularly in the case of high-risk institutions. In addition, a stricter and more systematic review of corrective measures in critical cases and a more flexible and better coordinated inspection approach in crisis situations would improve the effectiveness of supervision. The PUK has formulated corresponding recommendations (see section 11.2).

FINMA's role in audit oversight

FINMA develops its audit strategy for banking institutions, particularly for large banks such as CS, in collaboration with the audit firms. Between 2015 and 2022, high risks were identified for CS, particularly in relation to capital, liquidity and compliance with anti-money laundering regulations. FINMA intensified its controls and deployed external auditors for specific audits. Additional measures such as on-site inspections were also taken in response to these risks. As a result of these measures, the main risk areas were covered (see section 5.4.2).

Cooperation between the FAOA and FINMA

Cooperation between the FAOA and FINMA is governed by Article 22 of the Auditor Oversight Act (AOA) and Article 28 FINMASA. Both authorities must exchange the necessary information and coordinate their activities in order to avoid duplication.

During the period under review, the FAOA and FINMA exchanged information at a strategic level on various occasions, for example as part of official consultations. However, there was no separate exchange of information on CS at a strategic level, although both players must have been aware that the bank's crisis was intensifying. The interactions between the FAOA and FINMA at the operational level differed in individual areas and could not be fully understood from 2017 onwards. A close exchange would have been key to ensuring coordinated and effective supervision. The PUK investigation revealed that FINMA and the FAOA each considered the other authority to be responsible in certain areas. A clearer definition of responsibilities and more formalized cooperation could contribute to this,

avoid duplication or gaps in supervision and increase the efficiency of the supervisory system (see section 11.2.2).

In view of previous experience and the challenges in the area of audit supervision, the PUK also wonders whether it would not make more sense to place the supervision of systemically important banks with a single body, i.e. FINMA (see section 14.1.2).

7. Federal supervision of FINMA, FAOA and SNB

As independent entities, FINMA, the FAOA and the SNB enjoy a certain degree of independence from the federal government. Nevertheless, these three institutions are subject to varying degrees of supervision by the Federal Council and the Federal Administration. Supervision is exercised in particular by the FDF and the FDJP. In the course of contacts between the Federal Council and the three institutions mentioned above, the situation of CS was only discussed to a limited extent both before and during the crisis.

FINMA

FINMA is an institution under public law with its own legal personality, which is self-organized and carries out its supervisory activities autonomously and independently. The FDF exercises the owner's rights on behalf of the Federal Council. Various dialog forums exist between the FDF and FINMA the exchange of information and the performance of certain supervisory tasks by the FDF. These include owner meetings, which are standard for all independent units. Secondly, important exchange committees have developed in recent years, particularly in the context of the implementation of the Ordinance to the Financial Market Supervision Act. As a result, the division of responsibilities between the FDF and FINMA in the area of regulation was clarified, and various new processes for cooperation and exchange were established between SIF and FINMA from 2020.

Until the end of 2022, CS was not mentioned in the owner discussions between the Head of the FDF and the Chairman of the Board Directors of FINMA, nor in the new dialog forums between FINMA and SIF. Instead, CS's specific liquidity problems were dealt with in the trilateral AF and LG committees (see section 5.6.2), which the PCC considers to be appropriate.

During the period under investigation by the PUK, there was increased political pressure on FINMA and a deterioration in the relationship between the then Head of the FDF and the then Chairman of the FINMA Board of Directors. As a result, the Chairman of FINMA's Board of Directors resigned in the middle of his second term of office at the end of 2020. The current Chair of the Board of Directors was then elected by the Federal Council at the request of the then Head of the FDF (see section 5.6.2). The PUK notes that cooperation between the heads of FINMA and the FDF did not run smoothly in the past and that the change in the chairmanship of the FINMA Board of Directors did not follow clearly formalized procedures.

RAB

As an institution under public law with its own legal personality, the FAOA is administratively supervised by the FDJP. The FDJP one or two owner meetings per year and periodic management meetings with the FAOA. Risk and compliance management were discussed on various occasions in these meetings. However, as these topics were not discussed at the level of individual audit companies and audit firms, the information provided by the FAOA was limited to the announcement that the FAOA has reviewed the audit mandate of CS annually since 2012.

(see section 5.6.3). The PUK notes that the FDJP exercises only minimal administrative supervision over the FAOA and that a more intensive exercise of the supervisory function should be sought.

Exchange vessels with the SNB

The independence of the SNB in the area of monetary policy is enshrined in the Federal Constitution. The Federal Council primarily has powers of appointment and approval. The Chairman of the SNB meets with the full Federal Council at least once a year to the economic situation, monetary policy and current issues relating to Switzerland's economic policy. The CS crisis was discussed at the meeting in November 2022 (see below).

Apart from the AF and the LG, the bodies of the trilateral Memorandum of Understanding, there are no direct channels of exchange between the FDF and the SNB. The PUK sees a need to strengthen the exchange. Similar to the Memorandum of Understanding between FINMA and the SNB in the area of financial stability, the FDF and the SNB should inform each other more proactively about relevant developments at systemically important banks and their impact on financial stability (see section 12.3).

8. Risk management and early crisis detection by the federal authorities between 2015 and 2022

Risk management

The Federal Administration has been running its own risk management system for a good twenty years (see section 5.7.1). The risk of insolvency of systemically important financial institutions was included in risk management after the financial crisis in 2008 and has been a Federal Council risk ever since. The classification of the risk changed twice during the period under review: in the risk reporting for 2017, the risk was downgraded from "possible" (every 3 to 10 years) to "rare" (every 10 to 50 years). With the risk report for 2022, the SIF increased the probability of occurrence of the risk again in February 2023 to the level "possible". It should be noted that the aforementioned risk was hardly discussed outside of the responsible department: In the period between 2014 and 2023, the General Secretaries' Conference only explicitly addressed the risk once (see section 5.7.1).

In connection with the risk of insolvency of a systemically important financial institution, it is SIF's task to promote the stability of the Swiss financial sector and to report measures taken to prevent the risk from materializing in its risk reporting. The measures listed between 2015 and 2022 were all related to TBTF regulation. In the Commission's view, the management of the risk was appropriate overall. The PUK considers the management of the risk as a Federal Council risk to be correct and absolutely necessary. The downgrading of the risk from "possible" to "rare" in the 2017 risk report proved to be too optimistic in hindsight. However, the current risk reporting cannot adequately reflect a risk that materializes. The PUK is therefore calling for the transition from risk management to the start of crisis management to ensured. To this end, an institutionalized structure must be created. It is imperative that risk management better embedded the overall crisis management concept. The PUK has formulated a corresponding recommendation (see section 10.1).

Early crisis detection

Closely related to risk management is early crisis detection at Federal Council level, which part of the Federal Chancellery (FC). It has a

The time horizon one to one and a half years. The task of early crisis detection is to identify, analyze and monitor risks that could potentially lead to a crisis relevant to the Federal Council (see section 5.7.2.).

As the risk of "insolvency of systemically important financial institutions" had been recorded since the beginning of risk management, early crisis detection was not of any specific significance in this case. The PUK therefore concludes that there is no actual early crisis detection that would do justice to the term. In the view of the PUK, the instrument of early crisis detection can only be used appropriately and expediently if crises can be identified as early as possible and the right conclusions can be drawn from this - regardless of whether the risk reporting shows a corresponding risk or not. The PUK is submitting a postulate on this (see section 10.2).

9. Crisis management from summer 2022

The situation at CS came to a head from summer 2022 onwards. A distinction can be made between three phases: 1. the early phase between summer and September 2022 (first signs of a crisis), 2. the period from October to December 2022 (liquidity outflows in October, intensified crisis preparation) and 3. the period from January to the beginning of March 2023 (continued preparation for a possible acute crisis under new departmental management).

As part of its ongoing supervision, FINMA was always the first authority to be informed of CS's changing situation. It was also up to FINMA to take appropriate measures as part of its statutory duties. The description of its supervisory activities therefore provides a suitable starting point for the following description of the actual crisis management by the Federal Council, FDF and the LG and AF coordination bodies.

Crisis organization of the authorities in the early phase of the crisis between summer and September 2022

FINMA intensified its supervision from summer 2022. It launched a project to monitor CS's change of strategy and, from mid-July, increased the pressure CS to improve the contingency measures due to the structural loss situation. From August, it held weekly status updates with the CEO and the Chairman of the Board of Directors of the bank on packages of measures implemented in parallel. The FINMA Board of Directors also dealt with CS as a focus topic at every meeting during this phase (see section 6.2.1). From September onwards, weekly high-level meetings were held with CS management to discuss strategic and operational developments.

FINMA's cooperation with foreign authorities was also an important part of its activities: As part of the Core College and the Crisis Management Group, FINMA worked closely with the US and UK authorities to monitor CS's liquidity situation and prepare a resolution (see section 6.3.1).

SNB measures in the early phase of the crisis

As the guardian of financial market stability, the SNB also took specific measures in connection with CS and in the area of liquidity assistance from fall 2022. In particular, the SNB stepped up preparations for an ELA by requiring CS to identify additional assets that could serve as collateral for the SNB in the event of an ELA being utilized. However, the loans proposed by CS did not meet the criteria required by the SNB. The SNB then

also introduced daily liquidity monitoring with CS from June 2022 (see section 6.2.2).

Start of crisis management by the Financial Crises Committee and the Steering Committee from August 2022

As the crisis unfolded, the need for coordination between the various authorities increased (see section 3 on the AF and LG). An initial ad hoc meeting of the AF was on August 3, 2022, at which all AF members were informed about the worrying developments at CS for the first time in this context. The members of the LG were informed of the developments almost three weeks later, on August 23, 2022, and were informed that the AF's assessment was that the "green phase" still applied. From this point onwards, CS's economic difficulties became the main focus of the AF. In mid-September, the authorities considered for the first time the early introduction of a PLB as a possible crisis management measure (see section 6.2.3).

First orientation of the Federal Council

In August 2022, the full Federal Council was informed for the first time in summary form about the critical state of CS.

Cooperation between the specialist authorities in crisis management and involvement of the Federal Council from the massive liquidity withdrawals from October to the end of December 2022

Following the above-mentioned tweet, the CS share price fell by 11% on October 3, 2022. Shortly afterwards, customers withdrew deposits worth over 100 billion francs, marking the beginning of the massive liquidity outflows.

In mid-October, FINMA began preparing the restructuring order and the restructuring plan for CS. At the end of October, FINMA granted CS the use of certain liquidity buffers. In October 2022, there was also a discussion with the SNB about the liquidity-shortage financing facility (EFF), which would have allowed CS to generate up to CHF 10 billion in liquidity. However, CS withdrew its application of its own accord at the end of October (see section 6.3.2).

FINMA continued its preparatory work for a potential restructuring in November 2022. As CS was exposed to the risk of further liquidity outflows in November, FINMA decided to carry out CS's planned valuation-in-resolu- tion exercise with real-time data to test the worst-case scenario. This exercise was carried out at the beginning of November with the participation of CS as well as the US and UK authorities and was a success (see section 6.3.4).

The PUK rates the execution of the exercise as positive, as it was important for the preparation of the restructuring scenario and helped to ensure that restructuring was available as a realistic alternative option during the acute crisis in March 2023. However, the PUK cannot understand why the results of the exercise were subsequently only discussed in the AF and not in the LG.

Intensified crisis management by the authorities from October 2022

In view of the continuing deterioration in CS's situation, the AF switched to the October 5, 2022 into crisis mode, the "red phase". In order to monitor the situation more closely and develop solutions, the frequency of meetings was

significantly intensified. From then on, the AF met several times a month, sometimes even several times a week, and the LG also meetings at closer intervals (see sections 6.3.3, 6.3.4, 6.3.5, 6.4.2, 6.4.3).

The PUK welcomes the intensified sequence of meetings and the in-depth discussions in the LG and AF. It recognizes the key role of these bodies in the crisis and sees the broad representation from the various authorities as an advantage. Thanks to this frequency of meetings, the flow of information was good overall.

First in-depth discussions in the Federal Council on the CS crisis and possible measures

As a result of the liquidity outflows, the Head of the FDF informed the Federal Council on
October 26, 2022 for a second time on CS's liquidity problems. On November 2, the Federal Council was more comprehensively about the dramatic outflows at CS for the first time when the head of the FDF briefed the committee on the situation at CS during the annual exchange with the SNB Chairman. The reason for the briefing was the emerging renewed deterioration in CS's liquidity situation due to rating downgrades and the authorities' findings on the previous day that a PLB would have to be introduced by emergency law. The Federal Council also discussed the scenario of a sale of the bank, which the Chairman of the CS Board of Directors had also been asked to prepare for the previous day by the Head of the FDF and the Chairman of the SNB.

An extraordinary Federal Council meeting was then scheduled for November 4. In addition, work commissioned to introduce a PLB by Federal Council ordinance and the FDF was instructed to present CS's situation in a memo. The planned meeting was held on the evening of
The meeting on November 2 was canceled on the initiative of the then Head of the FDF (see section 6.3.4). The head of the FDF justified the cancellation by stating that the LG had ultimately refrained from submitting a PLB application, partly due to the CS's concern about a negative public reaction. The Federal Council was given the temporary calming of the situation as the reason for not holding a meeting. On November 7, the SC decided not to submit the introduction and simultaneous activation of the PLB to the Federal Council for the time being, as the circumstances did not justify this.

Subsequently, the head of the FDF informed the responsible Federal Council Committee on Financial Affairs twice in November about the further course of the crisis, the crisis organization and the authorities' options for action. On November 22, the Federal Council Committee met in the presence of the Director of the Federal Office of Justice (FOJ) and a representative of the FC on the question of whether the Federal Council could introduce a PLB by emergency law. This question was answered in the affirmative.

During this phase, the Federal Council was always informed without written documents, which was criticized by the entire Federal Council and also by the members of the Finance Committee. The head of the FDF justified the chosen procedure with the fear of an information leak, which would have had serious consequences in view of the sensitive market-relevant information (see section 6.3.4). In the opinion of the PUK, this type of information policy meant that the Federal Council, as a collegiate body, was only able to fulfill its role and responsibility to a limited extent. The cancellation of the meeting on November 4, 2022 also made it difficult to provide comprehensive information to the full Federal Council. The Commission is of the opinion that written documents are necessary when discussing important business and has issued a corresponding recommendation (see section 13.1.3).

As the members of the LG began to have increasing doubts about the implementation of the strategy announced by CS at the end of November 2022 and considered a turnaround unlikely, they agreed that all authorities should discuss

possible alternative solutions with CS (see section 6.3.4).

Parallel exchange with CS and UBS: non-meetings between the end of October and December 2022

Parallel to the regular structures provided for in the Memorandum of Understanding, the then Head of the FDF and the SNB Chairman initiated so-called non-meetings with the Chairman of the CS Board of Directors from the end of October 2022. It is not known in detail what discussed at the majority of these meetings. According to the Chairman of the SNB and the Head of the FDF, the purpose of these non-meetings was to find a solution with CS in a non-formalized setting. UBS's readiness for a takeover was clarified at a non-meeting with the Chairman of the UBS Board of Directors in October 2022. FINMA was critical of the format of these meetings due to the lack of commitment and the lack of demands on CS and therefore only attended three of them. CS was only confronted with binding demands at the last non-meeting organized by FINMA on 29 December 2022. FINMA and the AF were not informed about all meetings and their content (see section 6.3.3). The non-meetings ended with the change at the head of the FDF at the beginning of 2023.

The Commission concludes that the usefulness of the non-meetings in the context of the overall crisis organization was limited, as these meetings were not fully embedded in the work of the crisis bodies and the flow of information was not guaranteed. Nevertheless, the meetings, especially the one with the Chairman of the UBS Board of Directors, offered a certain added value, as they allowed the takeover solution be considered at a relatively early stage. The Commission has formulated a recommendation to improve the integration of such non-meetings into the regular work of the authorities (see section 13.1.1).

Preparation for the end of the year

On December 2, the full Federal Council again discussed the situation at CS, including the response time available in the event of an ELA application by CS to the SNB. It was agreed that the members of the Federal Council would have to ensure that they could be reached over the holidays (see section 6.3.5). Further information was provided at the Federal Council meetings on December 9 and 16. The head of the FDF informed the Federal Council that the situation at CS was stable at a low level.

On December 4, one of the above-mentioned non-meetings took place between the Head of the FDF, the Chairman of the SNB and the Chairman of the CS Board of Directors. The subject of the meeting was the sale of CS and the stabilizing effect of public communication by the authorities on the bank's situation. Subsequently, in December 2022, both the Chairman of the SNB and the Head of the FDF made positive public statements about CS's new strategy (see section 6.4.4). The question for the PUK is whether these statements were appropriate at the time - given the knowledge of CS's actual critical situation. Whether the public communication had the desired stabilizing effect for CS, with which it could possibly be justified, cannot be assessed.

As the liquidity outflows at CS continued in December and there were no signs of improvement, the AF also discussed various scenarios for stabilizing or rescuing CS at the beginning of December (including obtaining ELA, selling CS, various forms of a PLB, bankruptcy of the bank). There was agreement within the authorities that CS would have to push ahead with a sale scenario on its own, as FINMA could not discuss a takeover of CS with banking institutions given its institutional role. Meanwhile, the authorities out further clarifications on the default risks for the Confederation in the case of a state liquidity facility. However, FINMA and the SNB disagreed on the question of whether CS's confidence problem could be improved by additional liquidity. The SNB was of the opinion that instruments such as ELA and PLB

cannot remedy a chronic trust deficit and their use only makes sense in the event of a sudden loss of trust (see section 6.3.5).

From December 6, FINMA representatives escalated their criticism of CS to the Chairman of the FINMA Board of Directors. FINMA subsequently demanded even more vigorously that preparations be made for a merger another bank (section 6.3.1).

Shortly before the holidays, the AF met for the last time in calendar year 2022 on 22 December and noted that around CHF 130 billion in deposits had flowed out of CS since October 2022 and that a further outflow would drastically worsen the bank's situation. FINMA therefore ensured that CS met the requirements for drawing on the EFF and ELA. FINMA informed the AF that it had instructed CS to draw up a short- and medium-term sale scenario by the beginning of January in order to be prepared for an emergency sale of the bank. Based on the discussions in the AF the SC also decided to examine the sale of CS even more intensively and to for it as far as possible (see section 6.3.5).

On December 28, the Chair of the FINMA Board of Directors alerted the SNB Chairman, as CS was in an extremely critical condition and the liquidity situation had deteriorated massively once again. As a result, a meeting was held on
On December 29, a non-meeting was held with the Chairman of the CS Board of Directors, at which FINMA made clear demands to CS to make preparations for a sale by the beginning of January. The demands included a concrete shortlist of potential buyers, the establishment of a virtual data room and the development of a scenario for a takeover by UBS in the short term (see section 6.3.5).

Departmental handover FDF in the context of the CS crisis

With the resignation of the previous head of the FDF at the end of 2022, a departmental handover at the FDF became necessary in December. To this end, a meeting was held on December 19, 2022 between Federal Councillor Ueli Maurer and Federal Councillor Karin Keller-Sutter in the presence of his Secretary General and her Secretary General. The new Head of the FDF was provided with brief verbal information on CS's situation. The bank's situation was described as stable. During the rest of the month, the current head of the FDF and the future head of the department exchanged information by telephone twice, shortly before Christmas and between Christmas and New Year. On these occasions, the then head of the FDF also described the bank's situation as stable, although CS had reported difficulties over the holidays (see section 6.3.5).

Although were already two meetings between the Director of the FFA and Federal Councillor Karin Keller-Sutter in December 2022, CS was not the main topic of these meetings. Instead, the focus was on budget planning. The first meetings between the new Head of Department and the Chair of the FINMA Board of Directors and the State Secretary for International Financial Matters place in January 2023.

The PUK concludes that the handover of the department with regard to the CS dossier did not proceed optimally: There was no actual handover of the dossier. The PCC has decided on a recommendation regarding the handover of the department (see section 13.1.6).

Further work by the authorities and information for the Federal Council from January 2023 until the acute crisis

FINMA monitored and supervised CS's work in January and February 2023 as part of the scenarios pursued by the authorities (see below). In mid-January, CS confirmed that the preparation of the required virtual data room had been completed, after having already submitted a shortlist of four

had informed potential buyers. Meanwhile, FINMA urged CS to extend the contingency measures as part of the bank's stabilization, emergency and resolution plans (see section 6.4.1).

In the AF, the authorities pushed ahead with the formalization of the four scenarios from the beginning of January. As part of a mixed working group, they also prepared macroeconomic analyses in order to assess the consequences of the scenarios. Temporary Public Ownership (TPO) of the Swiss unit of CS in the event of bankruptcy was also prepared in depth by an AF working group (see section 6.4.2).

In 2023, the Federal Council was informed somewhat more frequently about the situation at CS by the new head of the FDF. This information continued to be provided verbally for the time being, before the Federal Council also provided with a table paper on the various scenarios for the first time on February 1, 2023. However, the information was still kept general. For example, the important macroeconomic analyses of the authorities involved were not discussed in the Federal Council until the acute crisis in March 2023 (see sections 6.4.3, 13.1.3, 13.2.3).

Development of the solution scenarios between October 2022 and March 2023

From October 2022, various solution scenarios were between the authorities. This generally took place in the AF and subsequently in the LG, and sometimes also in ad hoc working groups on certain topics. From fall 2022 to March 2023, the authorities mainly discussed and, if necessary, prepared the following scenarios (see section 6.3.3):

- *CS overcoming the crisis on its own;*
- *Takeover of CS by another (domestic or foreign) bank;*
- *Reorganization of the CS;*
- *Bankruptcy of CS and triggering of the emergency plan;*
- *Temporary nationalization of CS (TPO).*

Individual measures (e.g. ELA, ELA+, PLB, order to write down AT1 bonds) were included in several solution scenarios. A merger of CS with UBS or a takeover of CS by UBS was discussed in the LG for the first time on October 21, 2022, after the Chairman of the SNB informally approached the Chairman of the Board of Directors of UBS on the sidelines of the IMF meeting in Washington (see section 6.3.3). Despite this initial contact in October, all the solution scenarios mentioned were developed further and presented to the Federal Council (see sections 6.3.4, 6.3.5, 6.4.2, 6.4.3). The focus was not only on questions of feasibility, but the authorities were also interested in the economic consequences of the individual measures: For example, the SNB, FINMA, SIF and FFA carried out economic impact assessments on the bankruptcy of CS and the costs and benefits of the individual solution scenarios from January 2023 (see section 6.4.3). It became apparent that the objective pursued with these analyses was not clear. While some stakeholders aimed to the best solution scenario with the aforementioned analysis, others pursued the goal of obtaining information for the worst-case scenario in order to be able to quantify the consequences of a solution adopted at a later date. These analyses also raised legal issues, such as the implementation of a TPO. The work on the consequences was not completed, as the authorities were caught up in the events in mid-March when the acute crisis broke out.

PLB as a necessary measure in the various scenarios

Even at the beginning of the crisis, it became clear that a PLB would be necessary under certain circumstances in most of the scenarios discussed. For example, the AF first discussed the early introduction of a PLB in mid-September 2022, specifically in the context of CS's economic difficulties (see section 6.2.3). In the process

the authorities can rely on the FDF's ongoing work. This is because the Federal Council instructed the FDF in March 2022 to prepare a corresponding consultation draft by mid-2023 (see section 5.2.6).

On November 2, 2022, the Federal Council discussed the early introduction of a PLB, as the LG and the AF had come to the conclusion the previous day that the introduction of a PLB by emergency law had to be seriously considered at this time (see section 6.3.4). Following the canceled extraordinary Federal Council meeting on 4 November 2022, the Federal Council Committee on Financial Affairs in-depth investigations into the introduction of a PLB under emergency law. The FOJ was consulted in order to clarify certain legal issues (see section 6.3.4). Ultimately, the Federal Council refrained from introducing a PLB in autumn/winter 2022, as the authorities did not see any immediate need for this measure and CS in particular feared that the early introduction of a PLB could have a negative impact on the markets. The preparatory work for the emergency introduction of a PLB was continued in 2023 by the PLB working group, which presented its findings to the AF in February 2023 as part of the in-depth analysis of the scenarios (see section 6.4.3).

Assessment of the PUK

The PUK notes that the authorities have prepared both options provided for in the TBTF regulation (resolution, ELA) and new options (TPO, ELA+, takeover). The PUK welcomes the fact that the authorities have prepared several solution scenarios (see section 13.1.5). In particular, the PUK considers it essential to analyze the economic consequences of the solution scenarios. Although certain aspects could be improved, the PUK concludes that the assumptions and cost estimates made by the authorities are plausible. However, the purpose of the macroeconomic analyses was not clear. In addition, these analyses were not brought to the attention of the Federal Council (see section 13.1.5).

10. Overcoming the acute crisis through a state-supported merger of CS with UBS

From March 15, 2023, events came thick and fast. Time pressure was a decisive factor in the acute crisis phase: the authorities involved immediately realized that urgent measures were now required to prevent the systemically important CS from being wound up. They therefore up a crisis organization at the FDF headquarters (Bernerhof) as early as 15 March. The authorities were faced with several challenges. Firstly, they had to the optimal solution for this situation in order to prevent an imminent financial crisis. Secondly, a solution required not only the approval of CS and UBS, but also that of the foreign regulatory authorities and the approval of two extraordinary commitment credits by the Finance Delegation (FinDel). It was therefore a matter of finding a balance of interests between the various partners within a very short space of time.

The following a brief chronological outline of the most important events in March. The PUK then presents various key aspects of the acute crisis.

Brief outline of the most important developments between the 15th and March 19, 2023

*The authorities immediately recognized the significance of the statement by the Chairman of National Bank that further investments in CS were ruled out. On the morning of **March 15, 2023**, several working-level contacts were held between representatives of FINMA, the SNB and CS to discuss the implications of these statements. FINMA also required CS to finalize the restructuring plan by the next day (see section 7.2.2).*

The LG met for the first time at 12 . The members agreed that there was a need for action. They decided to pursue all scenarios. It was important for those involved that a viable measure was ready by Sunday evening at the latest in order to calm the markets before the international stock exchanges opened on Monday. The LG then decided to contact UBS and CS in order to prepare for a possible merger. It was also agreed that the SNB and FINMA would publish a media release later in the day to reassure the markets.

The Head of the FDF, the State Secretary for International Financial Matters, the Chairman of the Board of Directors, the Director and the Head of Banking Supervision at FINMA, the Chairman of the SNB and UBS representatives met in at 4 . At this meeting, the Chairman of the UBS Board of Directors presented the authorities with a one-pager containing UBS's demands. Later that evening, the head of the FDF spoke by telephone with heads of CS and conveyed her expectations of CS.

Parallel to the exchange with the two financial institutions, the authorities established initial contacts with the international partner bodies. In addition, the head of the FDF requested an extraordinary Federal Council meeting for the following day.

As the liquidity situation continued to deteriorate, the CS Group submitted an official request for extraordinary liquidity assistance (ELA) for CS (Switzerland) Ltd. to the SNB at around 9 pm. CS communicated this ELA reference in a media release in the night from March 15 to 16, 2023.

On the following day, ***March 16, 2023****, the Federal Council dealt with the acute crisis for the first time. The first telephone contact between CS and UBS took place early in the morning, but was unsuccessful. The AF and then the LG discussed UBS's demands over the course of the morning.*

UBS's demands related to restructuring issues, future capital requirements, mediation with relevant domestic and foreign authorities for approval of the merger, public communication and guarantee issues. The AT1 write-down was also mentioned. Three demands were particularly problematic: the granting of liquidity to UBS without the provision of corresponding collateral, the granting of a guarantee by the federal government in favor of UBS and the granting of long-term relief from capital and liquidity requirements by FINMA. Subsequently, the authorities informed UBS that they would not be able to meet some of the demands at all and others only partially. The representatives of the authorities agreed to clarify any outstanding issues with UBS by the end of the day and to ask them when they could expect to receive a commitment in principle to the merger with CS. Also in the morning, the SNB approved CS's ELA application. In addition, the Head of the FDF and the Director of the FFA briefed the President of the FinDel.

At the first extraordinary Federal Council meeting, which began in the early afternoon, an initial course was set: based on Article 184 para. 3 and Article 185 para. 3 of the Federal Constitution, the FDF requested the extension of the existing ELA and the immediate entry into force of an instrument of state liquidity protection (PLB). This instrument of state liquidity protection (i.e. the PLB) was to be "activated" immediately by the Federal Council in order to enable liquidity assistance loans with a default guarantee from the Confederation to CS. The proposal also provided for the Federal Council to apply to the FinDel for the CHF 100 billion commitment credit required to secure the default guarantee in an emergency procedure so that the Confederation could provide the SNB with the guarantee required for the liquidity assistance loans to CS. The emergency ordinance came into force at 7 pm. However, it was not published until March 19, 2023.

On March 16, the authorities also continued the exchange with their foreign partners. In addition, CS and UBS continued to prepare their internal negotiations. UBS also submitted its extended list of demands.

***the third day of the crisis, March 17, 2023**, CS's situation came to a head. Early in the morning, CS submitted a revised draft of the restructuring plan to FINMA as instructed, corrected with the latest figures and ready for approval. As on the previous day, the Head of the FDF, the State Secretary for International Financial Matters, the Director of the FFA, the Chairman of the Board of Directors and the Director of FINMA as well as the Chairman and Vice Chairman of the SNB also spoke to the Chairman of the Board of Directors and the CEO of UBS early in the morning. An agreement between CS and UBS was still not in sight. Immediately afterwards, a video conference was held between the same representatives of the authorities and the Chairman of the Board of Directors and the CEO of CS. The authorities emphasized that in view of the acute crisis situation, FINMA believes the only option is a resolution or a merger with UBS. In view of the faltering negotiations, the State Secretary for International Financial Matters invited the heads of the two banks to a clarification meeting and drew their attention to the seriousness of the situation.*

Due to the dramatically deteriorating liquidity situation, CS applied for ELA+ in the course of the morning, which was immediately granted by the SNB.

At the Federal Council meeting held on the same day, the Federal Council received the latest situation report. It discussed a possible TPO and rejected this option for the time being. Due to the protracted negotiations, it demanded that an alternative option be pursued in addition to the merger scenario.

*On **the fourth day of the crisis, March 18**, the parallel negotiations continued. The LG met twice and held one meeting each with UBS and CS, with CS BlackRock into play as a new takeover partner. However, this possibility had to be discarded shortly afterwards after the BlackRock executives turned it down. Meanwhile, FINMA's Chairman of the Board of Directors asked Sergio Ermotti whether he would be prepared to take on the role of CEO in the event of a restructuring. FINMA also adopted its negotiating mandate. At the extraordinary meeting of the Federal Council, it again discussed possible alternative scenarios, as an agreement was still up in the air. Meanwhile, talks between the authorities and the banks continued.*

In the early afternoon, the UBS Board of Directors agreed in principle to the merger with CS, but demanded greater security from the authorities with regard to the Non Core Unit (NCU), as UBS expected high operating costs over a long period of time (see section 7.2.4). UBS and the authorities only agreed on the loss guarantee communicated later towards the evening, whereupon the head of the FDF informed the Federal Council that a deal had been reached with UBS.

On the same dayCS received the first version of the merger agreement UBS. The Chairman of the Board of Directors of CS was not of the full content of the negotiations until Saturday. He first learned of the price offer of CHF 1 billion on Saturday evening (see section 7.2.4).

While the banks' negotiations on the takeover progressed, FINMA continued the preparatory work for the restructuring of CS as a fall-back option. This solution was ready to be signed on the evening of March 18, 2023, was internationally coordinated and could have been implemented as an alternative to the merger (see section 7.2.4).

*On Sunday, **March 19, 2023, the fifth day of the crisis,** the authorities focused in particular on convincing CS of the agreement reached with UBS the previous day. In the night from Saturday to Sunday, CS sent a highly critical letter to SIF in which it stated that the conditions were unacceptable. The main focus of the criticism was the purchase price and the extensive withdrawal clause that UBS had included. In response, a meeting was held on Sunday morning between the Chairman of the Board of Directors of CS*

and various representatives of the authorities took place. They explained that the point of non-viability (PONV) had now been reached and that CS would have to be wound up if no solution could be found with UBS. They also held out the prospect of a higher price. They then attempted to reach an agreement with UBS on the points still in dispute.

At the subsequent Federal Council meeting, the Federal Council expressed its willingness to increase the federal guarantees if UBS agreed to a higher price in return. However, as the conclusion of the deal was still open at this point, the possibility of a forced merger with UBS was also explored in the Federal Council. In addition, a short-term state takeover (TPO) was prepared, as was the restructuring. The preferred option remained the sale of CS to UBS or a merger between the two banks. The two meetings of the Federal Council, first with the management of CS and then with that of UBS, served this purpose.

At the same time as this solution was being found, the FinDel met with a view to granting the extraordinary commitment credit of CHF 100 billion for the liquidity assistance needed to implement the Federal Council's package of measures.

In the afternoon, an agreement was finally reached between CS and UBS. The Federal Council subsequently issued its package of measures, which in particular a loss assumption guarantee from the Confederation to UBS in the amount of CHF 9 billion and a guarantee to the SNB to secure liquidity assistance loans to CS in the amount of CHF 100 billion. The FinDel approved the two loans and submitted its approval to the FDF and the FC at 5.47 pm. The Federal Council's emergency ordinance also contained a competence standard for FINMA to order CS to write off the AT1 bonds.

Following the merger decision, CS applied to the SNB for a further CHF 30 billion in ELA+. At the subsequent joint media conference of the heads of the banks, the head of the FDF, the President of the Swiss Confederation and those responsible at FINMA and the SNB, the merger of CS with UBS was announced. The solution reached achieved its goal: it reassured market participants and prevented a potential international financial and economic crisis.

Selected aspects of crisis management in the acute crisis

Key aspects of crisis management in an acute crisis are briefly described below.

Coordination between FDF, SIF, SNB and FINMA

As explained above, various representatives of the authorities were involved in the negotiations with the banks at the forefront (see section 7.2.4), above all the heads of the FDF, SIF, FINMA and the SNB. On the day the crisis began, the head of the FDF led the talks with the banks (see section 7.2.1). Subsequently, the Chairman of the SNB contacted the Chairman of the Board of Directors of UBS to discuss the list of demands. He was also the contact person for the feedback from the Chairman of the UBS Board of Directors that the exchange with CS was proving difficult (see section 7.2.2). In view of the slow progress of the negotiations between UBS and CS, the State Secretary for International Financial Matters organized a meeting between the representatives of CS and UBS (see section 7.2.3). On Saturday,
On March 18, FINMA and the SNB held talks with UBS about the problematic aspects of the NCU. On the same day, the head of the FDF approached the Chairman of the CS Board of Directors and him to accept UBS's offer (see section 7.2.4).

The PUK appreciates the flexibility and commitment of the parties involved. The establishment of the crisis cell in the Bernerhof enabled close coordination between the authorities and laid the foundation for efficient counseling.

and decision-making (see sections 7.2.1 to 7.2.5). In view of the great urgency, certain usual processes were not adhered to. For example, the LG meetings between March 17 and 19, 2023 could no longer minuted, which is understandable, but in some cases makes traceability more difficult.

Role of the Federal Council - involvement of the Federal Council

During the acute crisis at CS in March 2023, the frequency of Federal Council meetings increased. With one exception, they took every day. Threema was used as an information channel to facilitate the organization of the extraordinary meetings during these days.

The meetings were regularly attended by representatives FINMA, SIF, the SNB and the two banks. This enabled the Federal Council to obtain first-hand information and its own opinion. This was all the more important as the high time pressure made it difficult for the members of the Federal Council to prepare for the meetings anyway.

The FDF submitted the documents required for the implementation of the measures to the Federal Council. However, detailed descriptions of the scenarios and estimates of the economic costs carried out by an AF working group were missing. On March 18, an oral explanation of the consequences and costs of all variants was given. In the Commission's view, the Federal Council received this information extremely late (see section 7.2.4). If the merger had failed, it would have had to decide on an alternative scenario on Sunday, March 19, 2023.

In the Commission's opinion, the Federal Council's briefing on the scenarios was therefore not optimal during the acute phase either. For the Commission, the question arises as to whether the Federal Council as a whole had a sufficient basis of information during this crisis phase to be able to effectively understand the status of the various solution scenarios. In the Commission's view, it is unfortunate that the FDF not immediately inform the other members of the Federal Council of the results of the work on the scenarios in February and early March 2023. This would have given the Federal Council several weeks to weigh up its decision.

Role of the authorities in the agreement between CS and UBS and in the purchase price

The authorities - namely the FDF and the SNB - played a very active mediating role in the negotiations with the banks, as can be seen from the above. To a certain extent, they replaced direct contact between CS and UBS. For example, UBS discussed its list of demands with the authorities and not with CS (see sections 7.2.1 and 7.2.2). Saturday,
March 18, the authorities reached an agreement with UBS in the evening (see section 7.2.4) - without CS being directly involved.

The authorities ensured a certain balance of interests between CS and UBS as well as the financial impact on the Confederation. As CS was still refusing to accept the original price of CHF 1 billion on Sunday morning, the authorities increased the guarantees. The SNB President and the State Secretary for International Financial Matters were involved in the price negotiations. The latter also moderated the negotiations on the material adverse change clause.

In the opinion of the PUK, thanks to this very active role of the authorities, a negotiation result was achieved within a short period of time that took appropriate account of the most important concerns of the stakeholders involved (see section 13.2.6). The role of the authorities was significantly more active than could have been expected in view of the public communication following the merger decision. From the PUK's point of view, the joint intervention of the authorities was appropriate as it strengthened their position. However, such an approach can also it is not clear who

ultimately bears the responsibility. The PUK has identified potential for improvement in this respect and has formulated a recommendation (see section 13.2.1).

Selection of the scenario

The PUK notes that on Sunday, 19 March, three fully developed options were available, which can be assessed as positive overall: a takeover of CS by UBS (including a possible forced takeover), a restructuring of CS and a temporary nationalization (TPO) of the Group (see section 13.2.4).

- *Takeover of CS by UBS: This scenario was discussed from fall 2022. In theory, a takeover by both domestic and foreign banks was considered. However, there was no realistic alternative to a takeover by UBS on the table. This scenario was the authorities' preferred solution (see section 13.1.5).*
- *Restructuring: This scenario was prepared by FINMA from fall 2022. However, its implementation was considered risky. The PUK notes that a draft FINMA restructuring order and its English translation were available on March 17 and that a potential CEO of CS had been identified (see section 13.1.5).*
- *Nationalization (TPO): This scenario regained importance in the days of the acute crisis. The FOJ was only involved at a late stage, which the PUK regrets (see section 13.1.5).*

The PUK notes that despite its extensive investigations, it was not entirely clear whether the authorities would have proceeded with a restructuring, a temporary public takeover (TPO) or even a forced merger with UBS if no agreement had been reached between CS and UBS (see section 7.2). It appears that the players had not yet reached an agreement on Plan B.

Assessment of the solution adopted

The situation in March 2023 was characterized by great uncertainty with regard to the potential consequences of intervention by the authorities. The PUK considers the solution chosen to be appropriate given the circumstances. The merger between CS and UBS calmed the markets and prevented a potential international financial and economic crisis. However, questions of antitrust law arise in the medium and long term. The PUK is also of the opinion that the chosen solution has clearly exposed individual weaknesses in the existing TBTF regulation (see section 13.2.6).

Coordination with foreign authorities

Close coordination with the foreign authorities was also key to successfully managing the crisis. The Swiss authorities intensified their contacts abroad immediately after the outbreak of the acute crisis on March 15, 2023 (see section 7.2.1 ff.). The exchange and coordination with foreign partners took place in line with institutional responsibilities. Contacts included regular updates on the developing situation on the one hand and on the measures already taken on the other, such as the granting of ELA by the SNB and the increase in liquidity requirements by the Fed. Coordination was particularly important with regard to the measures that were being prepared, in particular with regard to a restructuring order and a possible merger between CS and UBS.

Most of the contacts mentioned were arranged at short notice. They were not all documented in writing, which is why their specific content is not always fully comprehensible. However, based on the PUK's investigations, it appears that

It was clear that the Swiss authorities were under the impression that their partner authorities were expecting a serious financial crisis in the event of a liquidation and were therefore pushing for a merger to take place.

Communication on March 19, 2023

In the final phase of the negotiations, the communications officers of the parties involved worked in parallel. The President of the Swiss Confederation, the responsible head of department, the Chair of the Board of Directors of FINMA, the Chairman of the Governing Board of the SNB and the Chairmen of the Boards of Directors of UBS and CS communicated the agreement at a press conference (see section 13.2.7). The solution was communicated credibly in the view of the PUK, and the communication had the desired effect, namely calming the markets.

11. Overview of the grants made available

The funds used or guaranteed by the public sector (Confederation and SNB) for the CS emergency merger were enormous. They are briefly summarized below. More funds were approved than were drawn.

Part of the overall solution of March 19, 2023 was a guarantee agreement between the Confederation and UBS in the amount of CHF 9 billion for the assumption of any losses incurred by UBS from the sale of certain CS assets that did not fit in with UBS's core business (approx. 3% of the merged bank's total assets). UBS had to absorb the first CHF 5 billion in losses itself, while the next CHF 9 billion would have been borne by the federal government. The legal basis was found in Article 14a of the Emergency Ordinance.

After March 19, 2023, the FFA and UBS negotiated exactly which CS assets were covered by the guarantee. The agreement was signed on June 9, 2023. UBS terminated the guarantee agreement on August 11, 2023 because it no longer it necessary after reviewing the portfolio. UBS paid the Confederation a total of CHF 40 million for providing the guarantee agreement.

Another part of the overall package was a federal guarantee to the SNB to secure liquidity assistance loans to Credit Suisse in the amount CHF 100 billion (PLB). CHF 70 billion was actually drawn on
UBS also voluntarily terminated this loan on August 11, 2023. This also eliminated these financial risks for the Confederation. Until
As at July 31, 2023, CS recorded a commitment and risk premium of CHF 214 million, of which CHF 61 million went to the SNB and CHF 153 million to the Confederation.

Substantial funds came from the Swiss National Bank through its extraordinary liquidity assistance. On March 16, 2023, the SNB granted extraordinary liquidity assistance (ELA) in the amount of CHF 38 billion and a liquidity-shortage financing facility (EFF) of around CHF 10 billion.

The SNB's extraordinary liquidity assistance (ELA+), which is based on Article 3 of the Emergency Ordinance and secured by a bankruptcy privilege, was also an important means of support. On March 17 and 19, 2023, the SNB granted a total of CHF 100 billion; CHF 50 billion was actually drawn.

The public sector thus provided a total of CHF 257 billion. According to the SNB, it provided effective liquidity assistance in the amount of CHF 168 billion. The federal budget was not burdened by the termination of the guarantee agreement and the PLB.

12. Other overarching aspects

Involvement of other federal agencies

Federal Office of Justice

The FOJ is the federal government's specialist authority and service center for legal issues. It examines all draft legislative enactments, Federal Council emergency ordinances, their constitutionality and legality as well as their conformity and compatibility with applicable national and international law (preventive legal review).

The FOJ was consulted four times as part of the CS dossier: firstly at a technical level between October and November 2022 on the drafts of a PLB emergency ordinance, secondly in the person of the Director of the FOJ during the in-depth discussion of the Federal Council's Financial Affairs Committee on the topic of the PLB at the end of November 2022 (see chap. 6.3.4), thirdly in the acute crisis on the evening of March 15, 2023 and fourthly, also in the acute crisis, on the weekend of March 18/19, 2023 (see sections 7.2.3 and 7.2.4). The AF decided on March 7, 2023, i.e. before the outbreak of the acute crisis, to involve the FOJ again on certain issues in the near future. Overall, however, the involvement of the FOJ took place intermittently and with little lead time. Involvement on certain topics was therefore only very superficial.

Involving the FOJ enabled the Federal Council to be informed in more detail in the fall/winter of 2022 about the advantages and disadvantages of the various options for action and about alternatives to the introduction of a PLB under emergency law. In the Commission's view, the FOJ should have been consulted on certain aspects on an ongoing basis or earlier (see section 14.2.1). At the same time, the CS crisis has shown that the FOJ assess key technical points itself, but is dependent on the expertise of the specialist authorities and their transparent assessments. Due to the constitutional importance of the involvement of the FOJ, the Commission calls the Federal Council to ensure the early and ongoing involvement of the FOJ when enacting emergency legislation and to ensure that its positions are brought to the attention of the College in an appropriate form (see section 14.2.1).

Competition Commission

In principle, the Competition Commission (COMCO) is responsible for examining and approving notifiable mergers of companies. FINMA can assume this role for reasons of creditor protection, but must then COMCO to comment. This was the case with the merger between CS UBS (see section 7.2.3). COMCO was first about a possible merger on March 17, 2023. COMCO was unable to examine the dossier sufficiently within this short period of time, so it agreed to a transfer of competence to FINMA.

In its statement on the merger published in September 2023, COMCO identified the need to examine in six markets whether UBS had obtained or expanded a dominant market position as a result of the merger with CS. In its final ruling, FINMA found that further investigations were not necessary, as the work carried out was equivalent to the scope of an in-depth examination by COMCO (see section 8.2.1).

The Commission regrets that COMCO's expertise could not be incorporated into the preparation of the merger and the negotiations. However, in retrospect it is difficult to assess when it would ideally have been included, as the situation was constantly changing (see section 14.2.3). Nevertheless, according to the committee, it should be clarified exactly how "creditor protection" is defined and when COMCO should be involved (see section 14.2.3).

Partial revision of the Parliament Act

In the course of the PUK's investigation, it became apparent that various provisions of current parliamentary law relating to the PUK need to be specified or even amended (see section 14.4). For this reason, the PUK has decided to submit a parliamentary initiative. A clarification or amendment of the existing law is primarily necessary in the following areas:

- *a. the position of the Federal Council within the meaning of Article 167 of the Parliament Act (in particular the right of the Federal Council to make statements and the special position of the representative of the Federal Council);*
- *b. the rights of data subjects within the meaning of Article 168 of the Parliament Act;*
- *c. the use of the work of other committees (in particular the audit committees);*
- *d. the duty of confidentiality pursuant to Article 169 of the Parliament Act;*
- *e. the information rights of the PUK vis-à-vis the independent or autonomous units;*
- *f. the minutes of the PUK meetings;*
- *g. the consultation of the persons consulted on the draft report.*

This parliamentary initiative is to be assigned to one of the two business audit committees for further consideration, as it concerns the area of ultimate supervision.

13. Need for action from the Commission's perspective

The PUK has identified a need for optimization and action at both enforcement and legislative level. To this end, it adopted a total of 20 recommendations for the Federal Council and submitted six postulates, four motions and one parliamentary initiative (see list of recommendations, motions, postulates and parliamentary initiative).

With its recommendations and parliamentary motions, it addresses the following topics in full: It sees a need for improvement in the implementation of financial market supervision and audit supervision law and recognizes a need for action in the cooperation between the various authorities responsible for financial market stability as well as other specialist authorities. In its view, the flow of information within the Federal Council, the handover of sensitive dossiers as part of the departmental handover and the traceability of the deliberations of various committees also need to be optimized. Risk management and early crisis detection are also the subject of recommendations.

At the legislative level, the Commission sees a need for adjustment or review with regard to the future structure of TBTF legislation, the limitation of reductions in capital and liquidity requirements, the risk of bank runs in the digital age, remuneration systems, the structure of shareholder rights and audit competencies. The full list of recommendations and proposals can be found below. The PUK also refers to its concluding remarks in chapter 15.

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Report

1 Introduction

1.1 Initial situation

In response to the global financial crisis of 2007/08 and the need for the federal government to rescue UBS, Switzerland the so-called too-big-to-fail regulation (TBTF regulation) in 2010. The aim was to prevent the state from having to rescue another systemically important financial institution in the event of future crises. In 2009, the Swiss Financial Market Supervisory Authority (FINMA) was created as a new supervisory authority with the task of overseeing compliance with legal regulations by banks, financial intermediaries and insurance companies operating in Switzerland. In cooperation with the SNB and the federal government, FINMA should thus contribute to the stability of the Swiss financial markets in future. Parallel to these developments, between 2009 and 2010 the Control Committees of both Councils analyzed how the authorities had conducted the UBS rescue and what lessons could be learned from it. The recommendations of the CPC were incorporated into legislation as well as into the cooperation between the various players responsible for the stability of the Swiss financial center.

Since its introduction, the TBTF legislation has been evaluated every two years in application of the corresponding provisions of the Banking Act (BankA)[1] and has been amended on various occasions at both legislative and ordinance level. In its 2021 TBTF report, the Federal Council concluded that Switzerland's TBTF regulation was appropriate and that there was no need for a fundamental reorganization.

At a political level, the financial crisis also led the Federal Council to present the main features of its financial market policy, including the challenges, in a report for the first time in 2009.[2] Since then, it has published an updated report every four years. One principle of financial market policy since 2009 has been to create and maintain internationally accepted framework conditions for a competitive financial market, as "a strong financial center is crucial for the Swiss economy and its international quality as a business location".[3] In subsequent reports, stability and resilience as well as the preservation of a financial center with integrity in which abuse is combated were also named as the most important objectives.[4]

CS's development between 2008 and 2023: from flagship bank to restructuring case

In contrast to UBS, CS had weathered the 2007/08 financial crisis comparatively well. While UBS was under close public scrutiny following its rescue by the Swiss government, CS was regarded as an extremely solid and competitive banking institution both at home and abroad until a few years ago. In the wake of various scandals (e.g. Mozambique, Archegos, Greensill), this image began to crack. CS's share price fell continuously compared to the European banking index, which initially went largely unnoticed by the general public. By 2021 at the latest, however, there were increasing signs that CS was in need of a strategic change of direction. As a result, the bank a far-reaching restructuring at the end of July 2022. However, this announcement was not able to prevent CS from being in

1 Federal Act of 8.11.1934 on Banks and Savings Banks (BankA; SR **952.0**)
2 Report on the Confederation's financial market policy, Federal Council report of 19.12.2012, S. 7
3 A global leader, anchored in Switzerland: Policy for a sustainable Swiss financial center, Federal Council report of 4.12.2020, p. 3
4 Reports on the Confederation's financial market policy in 2012 and 2016

was confronted with massive capital outflows in October 2022 following a tweet by an Australian journalist that the bankruptcy of a global financial institution imminent.

When a regional banking crisis broke out in the US the following March, it became clear that CS still suffering from a massive lack of confidence among its customers and investors: In the wake of the announcement by the chairman of Saudi Na- tional Bank that it would not increase its stake in CS any further, a renewed bank run set in. The statement by the Swiss National Bank (SNB) and FINMA on March 15, 2023, stating that CS met capital and liquidity requirements and that the SNB would provide CS with liquidity if required, only calmed the markets for a short time.

On March 19, 2023, UBS announced at a media conference convened by the Federal Council that it would take over CS. The Federal Council welcomed the planned takeover of CS by UBS and took the following measures to ensure the continuation of CS's business activities until the takeover was implemented and to reduce the costs for the Swiss economy:[5] Firstly, it created the necessary legal basis for the SNB to grant CS additional liquidity assistance. Secondly, to ensure that CS could be supplied with sufficient liquidity at all times, the Federal Council decided to grant the SNB a default guarantee for liquidity loans in the amount of CHF 100 billion.

The Confederation also granted UBS a guarantee of CHF 9 billion to cover potential losses from certain assets should the potential losses exceed CHF 5 billion. These measures were taken in the form of a so-called emergency ordinance based on the Federal Constitution (FC)[6] . This regulation was therefore not subject to a referendum, unlike if it had been enacted by Parliament as part of the ordinary legislative procedure.

The merger decision calmed the situation on the financial markets relatively quickly. In contrast, there was widespread consternation among the Swiss public, as the state had to prevent the liquidation of a systemically important banking institution in extremis for a second time since 2008 and there was now only one major bank left in Switzerland. One expression of this consternation was that shortly after the announcement of the CS takeover, demands were made for an investigation by a parliamentary commission of inquiry (PUK). This was to clarify why CS had to be taken over by another bank with the support of the state despite the TBTF regulation and whether the authorities responsible had performed their role lawfully and appropriately.

1.2 Establishment of the PUK - legal mandate and Subject of investigation

1.2.1 Legal powers and mandate of parliamentary commissions of inquiry

In Switzerland, parliamentary oversight is exercised by the permanent supervisory committees, the CPC and the Finance Committees (FC), as well as their respective delegations, the Business Audit Delegation (BPDel) and the Finance Delegation (FinDel). Parliamentary oversight is a political control of the executive and judiciary by Parliament. The legal mandate of the superintendence is enshrined in Article 169 of the Federal Constitution and in Articles 26 and 52 of the Parliament Act (ParlA)[7] . Its main task is to ensure that the executive and the judiciary conduct their business in accordance with the criteria of legality,

5 "Safeguarding financial market stability: The Federal Council welcomes and supports the of Credit Suisse by UBS", Federal Council press release of 19.3.2023
6 Federal Constitution of the Swiss Confederation of 18.4. 1999 (FC; SR **101**)
7 Federal Act of 13.12.2002 on the Federal Assembly (ParlA; SR **171.10**)

expediency and effectiveness. On the other hand, the bodies of parliamentary oversight may neither amend nor revoke decisions of an administrative or judicial authority due to the separation of powers (Art. 26 para. 4 ParlA).

If incidents of major significance need to be clarified, the Councils may appoint a PUK. The powers of a PUK also include investigating the management of federal authorities and bodies in accordance with Articles 26 and 52 of the ParlA. Compared to the Control and Finance Committees, parliamentary commissions of inquiry have additional powers and information rights that are comparable to those of the GPDel and the FinDel. In particular, no confidentiality obligations can imposed on a PUK. Specifically, this means that a PUK also has access documents classified as secret and to the minutes of the Federal Council (Art. 166 para. 1 ParlA). It also has the power to summon witnesses (including private individuals). These witnesses are obliged to appear before the PUK and provide truthful information, subject to the right to refuse to testify; Art. 155 para. 4 ParlA. In addition, a PUK may appoint investigators in individual cases (Art. 166 para. 2 ParlA). It also has its own secretariat (Art. 164 para. 3 ParlG).

1.2.2 Preparatory work for the establishment of the PUK "Management of the authorities - CS emergency merger"

Shortly after the takeover of CS by UBS, the permanent supervisory committees, the CPCs of the National Council and the Council of States, launched preliminary investigations into the management of the authorities in the context of the CS crisis and its takeover by UBS (CPC-S on March 24, 2023, CPC-N on March 31, 2023). In their preliminary investigation, they examined the following topics in greater depth: crisis preparation by the FDF and the Federal Council from fall 2022, the examination of alternatives to the takeover of CS by UBS, the application of emergency law, the Confederation's risk management, the supervision of CS by FINMA to date and the role of the SNB.

At the same time, on March 27, 2023, the National Council unanimously decided to request the establishment of a PUK to clarify the responsibilities of the authorities and bodies involved in the emergency merger of CS with UBS.

At their joint meeting on 15 May 2023, the two CPCs took stock of the results of their preliminary investigations and determined that the following topics in particular should be examined in greater depth: early crisis detection by the responsible FDF and the involvement of the Federal Council, FINMA's supervisory activities vis-à-vis CS, the role of the SNB, the application of emergency law, the evaluation and monitoring of the impact of TBTF regulation and the circumstances surrounding the resolution in March 2023. Due to the wide scope of the events, the complexity of the issues, the numerous actors involved and their different roles, as well as the additional instruments to a PUK compared to the GPK, both GPKs supported the request of the National Council's Bureau to set up a PUK on May 15, 2023. Subsequently, on May 17, 2023, the Office of the Council of States also approved the establishment of a PUK.

On May 30, 2023, the National Council defined the key parameters of the PUK and adopted the federal decree8 for the attention of the National Council and the Council of States. The size of the PUK was set at 14 members (seven members each from the National Council and the Council of States). By resolution of June 7, 2023, the National Council unanimously approved the establishment of a PUK. On June 8, 2023, the Council of States also passed the corresponding federal decree.

On June 14, 2023, the National Council elected the following National as members of the PUK: Roland Fischer (GLP/LU), Alfred Heer

8 Federal Decree of 8 June 2023 on the establishment of a Parliamentary Commission of Inquiry to investigate the management of the authorities in with the emergency merger of Credit Suisse with UBS (BBl **2023** 1369)

(SVP/ZH), Thomas Matter (SVP/ZH), Leo Müller (Center/LU), Roger Nordmann (SP/VD), Franziska Ryser (Greens/SG) and Daniela Schneeberger (FDP/BL). The Office of the Council of States appointed the following members of the Council of States as members of the PUK: Philippe Bauer (FDP/NE), Andrea Caroni (FDP/AR), Isabelle Chas- sot (Center/FR), Maya Graf (Greens/BL), Daniel Jositsch (SP/ZH), Werner Salzmann (SVP/BE) and Heidi Z'graggen (Center/UR). On the same day, the Coordination Conference, consisting of the offices of both Councils, elected Councillor of States Isabelle Chassot (Center/FR) as President and National Councillor Franziska Ryser (Greens/SG) as Vice-President.

After the elections on October 22, 2023, Councillor of States Philippe Bauer (FDP/NE) and National Councillor Roland Fischer (GLP/LU) . They were replaced at the start of the new legislature by Councillor of States Matthias Michel (FDP/ZG) and National Councillor Beat Flach (GLP/AG).

1.2.3 Mandate of the PUK "Management of the authorities - CS emergency merger"

The Federal Decree of June 8, 2023 on the appointment of a Parliamentary Commission of Inquiry to investigate the management of the authorities in connection with the emergency merger of CS with UBS reads (excerpt):

> Art. 2
>
> [1] The subject of the parliamentary investigation is the management of the Federal Council, the Federal Administration and other bodies responsible for federal tasks in connection with the emergency merger CS with UBS in recent years, insofar as they are subject to parliamentary oversight.
>
> [2] The legality, expediency and effectiveness of the activities of the authorities and bodies referred to in paragraph 1 - as well as their interaction with each other and with third parties - shall be examined.
>
> Art. 3
>
> [1] The Commission shall report to both Councils on its investigation and on any responsibilities and institutional deficiencies.
>
> [2] It shall submit the necessary proposals for measures to remedy the deficiencies.

The subject of the investigation, the group of authorities to be analyzed and the investigation period were deliberately left open in the federal decree so that the PUK could determine the group of relevant actors and also define the investigation period. During the preparatory work, both offices and both CPCs expressed the view that both the number of actors and the period to be investigated should be broadly defined. The investigation should begin at the latest when CS announces its comprehensive strategy review in July 2022

1.3 Barriers to the investigation

The present investigation is based on Parliament's responsibility for the ultimate supervision of the Federal Council and the Federal Administration, the federal courts and other federal bodies (Art. 169 Federal Constitution and Art. 26 Parliament Act). The group of supervised bodies is also binding for a PUK. Natural and legal persons may only be requested to participate in the investigation if their contribution is necessary to assess the activities of the federal authorities (Art. 153 para. 2 ParlA in conjunction with Art. 166 para. 1 ParlA). The management of CS and UBS could therefore not in itself be the subject of the investigation and were only included to the extent necessary.

was necessary to assess the crisis management of the Swiss authorities.

Furthermore, compliance with the principle of separation of powers also set limits to the PUK's investigation. For example, it is not up to the PUK to assess legal issues that are the subject of pending court proceedings. This applies in particular to the lawsuits against the write-down of the AT1 bonds, the shareholder lawsuits in connection with the merger and arbitration lawsuits (for details of the pending proceedings, see section 8.6).

1.4 Organization and procedure of the PUK

1.4.1 Staging of the investigation work

The PUK to investigate the management of the federal authorities in the context of the CS emergency merger began its work on June 16, 2023. The Commission had its own secretariat, whose task was to provide the Commission with technical, organizational and administrative support, to analyse the management of the various federal agencies for the attention of the Commission and to prepare the basis for decisions and draft reports and recommendations for the Commission.[9]

The commission carried out its investigative work in four steps (phases). The *first phase of the investigation* (July/August 2023) to the organizational and substantive foundations for the PUK's investigation. At the beginning, the Commission was informed about the applicable legal basis and took note of the preliminary work of the GPK, in particular its brief report to the PUK. It also defined its principles of action, its communication guidelines its information protection concept. In addition, it up an initial overview of the key topics and issues with a view to developing the investigation concept. It also dealt with the procedural issues to be clarified and defined the parameters for commissioning an external procedural expert. Finally, it requested the documents required for its work from various bodies concerned, such as the Federal Council, the FDF, FINMA and the SNB, to the extent that its information requirements were already known[(10).]

In the second phase of the investigation (August/September 2023), the main focus was on defining the investigation concept. In it, the Commission specified the general mandate given by Parliament. In particular, it defined the investigation period and the authorities to be investigated. Following the adoption of its concept, the Commission addressed the question of whether it would be conducive to its work to carry out the investigation within the framework of subcommittees in accordance with Article 45 paragraph 2 and Article 165 paragraph 1 ParlA. The last three parliamentary commissions of inquiry had made use of this option. After weighing up the advantages and disadvantages, the committee decided against setting up subcommittees. In addition, for reasons of procedural economy, it decided in principle to hold both oral and written hearings.

In phases 1 and 2, the PUK also issued initial commissions to external investigators (for external commissions, see section 1.4.3.2). It also commissioned

9 The project was led by the Secretary of the GPK and GPDel, Ursina Jud Huwiler, and her deputy Stefan Koller, Secretary of the FK and FinDel. The core scientific team consisted of Amando Ammann, Melissa Auderset, Marion Baud-Lavigne, Stefan Diezig, Dominic Etienne, Mirdin Gnägi, Katherine Haller and Tanja Schindler. The administrative was managed by Yolanda Ritter and Inthuyan Nagamuththu. Over the entire duration of the project, this resulted in an average of around 8 FTEs.

10 This applies in particular to the documents relating to the Federal Council decisions, the FDF documents on crisis management in connection with CS and the relevant documents of the GPK.

A total of ten external experts presented various topics central to the study (see table).

Table 1: Expert presentations before the PUK

Subject areas	*Experts11*
Financial stability / macroprudential supervision / TBTF	Cédric Tille, Professor at the Geneva Graduate Institute for International and Development Studies, former member of the SNB Bank Council
	Peter Zöllner, Head of Banking Department, Bank for International Settlements (BIS)
Banking law / financial market regulation	Rolf Sethe, Professor at the University of Zurich
	Franca Contratto12, Professor at the University of Lucerne, member of the Takeover Committee
Audits / Auditing	Alex Geissbühler, Attorney at Law
	Thomas Wirth, Partner and Head of Audit Financial Services at Grant Thornton in Zurich
Takeover law / competition law	Isabelle Chabloz, Professor at the University of Fribourg, member of the Takeover Committee
Antitrust law	Philipp Zurkinden, lawyer and adjunct professor at the University of Basel
Compliance / Governance	Christian Bovet, Professor at the University of Geneva
Crisis communication and investor behavior / behavioral economics	Thorsten Hens, Professor at the University of Zurich

The *third phase of the investigation* (October 2023 to May 2024) comprised the collection of information, in particular the conduct of the various hearings, the request for further documents and the analysis of the information received. The PUK Secretariat analyzed the hearings held and the documents received on behalf of the PUK and prepared working papers and draft questionnaires for the further hearings.

In the *fourth* and final *phase of the investigation* (from May 2024), the present final report, which sets out the results of the investigations, the conclusions and the recommendations for the attention of the Federal Council, was drafted. Between July 11 and August 5, 2024 and October 11 and 25, 2024, the two parts of the draft report (the statement of facts and the findings) were submitted to the bodies concerned and the persons consulted for consultation. The aim of this consultation was to correct any errors and to discuss whether public or private confidentiality interests prevent the publication of individual pieces of information. In this context, it was important to the committee to grant the persons consulted the right to be heard. It adapted the draft report where it considered this appropriate.

11 The function indicated corresponds to the function held by the experts consulted at the time of their hearing by the PUK.

12 Franca Contratto has been Vice-Chairwoman of the Board of Directors of the Federal Audit Oversight Authority since 1.1.2024.

The committee completed its investigation on December 17, 2024, unanimously approved its report and released it for publication. As a temporary committee, it will be dissolved after reporting to the Councils.

1.4.2 Questions and period of the study

When determining the period of investigation, it was crucial for the PUK to cover a sufficiently long period before the CS crisis in order to be able to classify the events appropriately and identify any relevant aspects of management. As a starting point for its investigation, the PUK determined the year of publication of the Federal Council's first evaluation report on systemically important banks, which dealt in particular with the implementation of the TBTF regulation that came into force in 2012. This report was published on February 18, 2015. However, the PUK reserved the right to integrate relevant events and milestones that occurred longer ago than 2015 and are important for understanding subsequent developments into the report in an appropriate manner (see also the chronology in Appendix 4).

In its investigation concept, the PUK distinguished four main phases in the management of the authorities in connection with the CS crisis. The first phase the conduct of business before the crisis, specifically the events from 2015 up to and including summer 2022. The PUK set the following key topics for the investigation of the first phase: a) the monitoring and further development of TBTF regulation during the investigation period; b) the conduct of business by the three different supervisory authorities FINMA, the Federal Audit Oversight Authority (FAOA) and the SNB; c) the supervision of FINMA, the FAOA and the SNB by the federal authorities; d) risk management; e) the early detection of crises.

The second phase is marked by the beginning and accentuation of the crisis. It lasts from autumn 2022 to mid-March 2023. During this period, the focus was on the analysis of early crisis detection by the authorities involved and their crisis management in the wake of the emerging CS crisis. This phase also includes the change in departmental management at the FDF, which is also part of the analysis.

The third phase, the acute crisis phase, comprises the events of Wednesday,
March 15, 2023, to Sunday, March 19, 2023, the day on which the Federal Council its support for the takeover of CS by UBS. During this phase, the interaction between the various federal authorities and their coordination with CS and UBS were examined in detail.

Finally, the fourth phase involves the implementation of the emergency merger following the
March 19, 2023 until the *closing of* the transaction between UBS and CS on
June 12, 2023. The PUK's report also provides a cursory account of the subsequent events, where appropriate, in order to provide the relevant context. The fourth and final phase was not the focus of the PUK's investigation, which concentrated on phases 1 to 3.

1.4.3 Procedure and methodology

1.4.3.1 Hearings held and files consulted

The PUK pursued the goal of basing its investigation on the broadest possible information and data. A central source of information was the hearings of various . Due to the large number of hearings to be held, the PUK decided to conduct both oral and written hearings.[13] It interviewed a total of 62 representatives of the authorities concerned as well as CS and UBS in 79 hearings. All Federal Councillors were heard, as were the directors of the central players and bodies, namely

13 The list of all persons consulted can be found in Appendix 3.

of the State Secretariat for International Financial Matters (SIF), the Federal Finance Administration (FFA), FINMA, the SNB and the FAOA. The PUK did not limit itself to the current , but covered the entire investigation period with its hearings. In addition to the managers of the various federal agencies, it also heard other representatives from different hierarchical levels where it considered this appropriate. In addition, the PUK also involved authorities that were not at the center of crisis management but were nevertheless involved due to their area of responsibility, namely the Federal Office of Justice (FOJ) and the State Secretariat for Economic Affairs (SECO). Due to the large number of authorities investigated, the Commission had to limit the number of hearings to a certain extent.

Furthermore, the PUK requested a large number of non-public documents from the authorities involved (Federal Chancellery, FDF, SIF, FFA, FINMA, SNB, FAOA, SECO, FDJP). In addition, the PUK on publicly available reports from these and other bodies. Pro- tocols from the GPK, the FK, the FinDel, the State Policy Committees (SPK) and the Economic Affairs and Taxation Committees (WAK) were also included. In addition, the PUK's analysis was based on various documents from private and legal persons. For example, it was given access to excerpts from the minutes of the boards of directors of UBS and CS that were relevant to the investigation.

1.4.3.2 External orders

As the investigation required specific expertise in some very technical areas, the PUK awarded various contracts to external . As the mandate holders were required to relevant specialist expertise and previous experience, the question of possible vested interests and conflicts of interest inevitably arose. For this reason, the PUK examined the potential appointees in depth determine whether there were any conflicts of interest that could preclude the award of a contract. In various subject areas, the challenge was that a large number of the potential bidders were already carrying out commissions from other agencies or organizations involved, which is why they were ruled out as contractors. This was particularly the case for topics for which the PUK appointed investigators (Art. 166 para. 2 ParlA). The PUK awarded its commissions by invitation procedure.[14]

In total, the PUK had two topics investigated by external investigators in accordance with Article 166 paragraph 2 ParlA: The two lawyers Albrecht Langhart and Matthias Hirschle examined the extent to which FINMA's enforcement proceedings against CS were lawful, appropriate and effective.

[14] As a first step, the PUK Secretariat drew up a list of several potential contractors. The PUK Secretariat then out an initial review with regard to existing vested interests and any conflicts of interest. The list of potential contractors was submitted to the PUK for approval. The , law firms and experts invited to submit an offer were then given the opportunity to submit an offer and were required to disclose their vested interests.

gw&p AG was commissioned by the PUK to analyze the FAOA's oversight activities with regard to the audit firms engaged by CS.[15]

The PUK also commissioned two expert reports with a comparative legal focus. The subject of the expert report by lawyer Lea Hungerbühler was the question of how Swiss financial market legislation should be assessed in an international comparison. gw&p AG prepared a comparable expert report for the auditing sector.

Another focus of the external commissions was the plausibility check of the authorities' scenarios. As this a key issue and the results depended, as expected, on the method used, the PUK decided to award mandate each to KOF and the BSS research office.

Two expert opinions also dealt with various issues relating to the so-called regulatory filter FINMA imposed on CS in 2017. This concerned simplifications with regard to the fulfillment of capital requirements. Corinne Zellweger-Gutknecht, Professor of Financial Law at the University of Basel, analyzed the legality of the regulatory filter, and Urs Birchler, Professor Emeritus of Banking Economics at the University of Zurich, looked at its economic impact.

The assessment of the management of CS is not the subject of parliamentary oversight and was therefore not the task of the PUK. Nevertheless, the development of the situation at CS provided important contextual information that the PUK needed to assess the management of the authorities. It therefore obtained an analysis of CS's financial situation from Professors Jean-Charles Rochet and Harald Hau at the Universities of Zurich and Geneva, based on public sources relating to CS.

Table 2: List of external reports

Order	*Contractor*
Investigation mandate for FINMA's enforcement proceedings	Dr. iur. Albrecht Langhart, RA Matthias Hirschle
Investigation mandate for the audit review by the FAOA	gw&p AG Financial Services Advisory (RA Alex Geissbühler, Dr. iur. Milan Jovanovic, Reto Weber)

15 The question of vested interests arose in particular when awarding the aforementioned investigation mandates. For reasons of transparency, the PUK states that the investigation mandate in the area of enforcement proceedings was awarded to the lawyers A. Langhart and M. Hirschle ad personam, without reference to the law firm in which the two named lawyers work. Other employees of this law firm represent plaintiffs in the context of the proceedings to write off AT1. Extensive information protection measures were taken to ensure that no information from the area under investigation could reach the law firm. In particular, a completely closed system was set up on the Parliamentary Services servers to carry out the work, which made data transfer impossible. It should also be noted that there is no substantive connection between the enforcement proceedings and the AT1 write-off proceedings and that the entire AT1 issue was excluded from the mandate. Consequently, Langhart/Hirschle's offer, which was clearly the best in terms of technical and organizational/personal criteria, was accepted. Since May 2023, gw&p AG, which conducted the investigation into the FAOA, has performed a purely administrative mandate for the law firm Quinn Emanuel, which also represents claimants in the context of the AT1 write-down. Here, too, there no obstacles to awarding the mandate, firstly because it a purely administrative mandate based on a long-standing collaboration, secondly because the investigators A. Geissbühler, M. Jovanovic and R. Weber were not involved in the aforementioned mandate and thirdly because there was also no substantive connection between the AT1 write-down and the MC mandate. Consequently, the offer that was clearly the best in terms of professional and organizational/personal criteria was accepted.

Order	*Contractor*
International legal comparison of TBTF and financial market supervision	Lawyer Lea Hungerbühler, LL.M.
International legal comparison Revision law	gw&p AG Financial Services Advisory (Attorney Alex Geissbühler, Dr. iur. Milan Jovanovic)
Plausibility check scenarios	BSS (Dr. rer. pol. Wolfram Kägi)
Plausibility check scenarios	KOF (Prof. Jan-Egbert Sturm)
Financial position CS and international	Prof. Harald Hau, Prof. Jean-Charles Rochet
Expert opinion on the effects of the regulatory filter	Prof. Urs Birchler
Brief opinion on the legality of the regulatory filter	Prof. Corinne Zellweger-Gutknecht

The reports produced as part of the commissions awarded are published at the same time as the PUK report. The PUK defined the content of the mandate and ensured that the methodological approach is transparent and that the content of the reports corresponds to the specifications. Responsibility for the content lies with the authors. Where the PUK relies on the results of external commissions in this report, this is indicated.

1.4.4 Ensuring information security, procedural rights and the exercise of information rights

1.4.4.1 Information security and public communication of the PUK during the investigation

In addition to the principle of Article 47 ParlA that committee deliberations are confidential, the PUK is subject to the duty of confidentiality under Article 169 ParlA. This applies to all persons participating in the meetings and interviews. In its concept of July 13, 2023 on information security and data protection, the PUK regulated its measures to protect its sources of information and committee secrecy and to comply with the duty of confidentiality.

The extensive information protection measures included, in particular, the fact that secret and particularly sensitive documents classified as confidential could only be viewed by the PUK members on site in a reading room accessible exclusively to the members of the committee and secretariat staff. In addition, no electronic devices were permitted at the hearings, and the location and dates of the meetings were not communicated publicly. The PUK also met at various locations to ensure the confidentiality of the hearings. In addition, the PUK classified all documents relating to the investigation as confidential in accordance with the criteria of the Information Security Act (ISG)[16] . All e-mail contact relating to the content of the was also encrypted. A platform that met the high security requirements was provided for committee members who worked digitally wherever possible.[17] In addition, all PUK secretariat staff underwent a personal security check.

16 Federal Act of 18.12.2020 on Information Security in the Confederation (ISG; SR **128**)
17 SwissTrustRoom, approved for documents up to and including "confidential" classification.

Communication guidelines and public communication

Due to the great public interest in its investigation and the legal restrictions on public communication, the Commission issued its own communication guidelines. The Commission communicated at regular intervals as permitted by law, usually at the end of each phase of the investigation. Information was also provided on the criminal charges filed.[18]

1.4.4.2 Procedural rights

Due to the wide-ranging information and procedural rights of the PCC, the applicable legal provisions provide for specific procedural rights and obligations that the PCC had to observe. This concerns, on the one hand, the rights and obligations of a person during their own hearing or questioning and, on the other hand, further rights to which certain groups of persons are entitled (attendance at hearings of other persons, access to files, etc.; see also section 14.4.2).

To clarify these and other complex procedural issues, the PUK called in Yvan Jeanneret, full professor at the Department of Criminal Law at the Faculty of Law of the University of Geneva, as a procedural expert. In order to ensure a legally compliant and coherent practice, the commission, with the assistance of the procedural expert, down the procedure in the various constellations in a set of guidelines. The parties heard were informed of their rights and obligations by the Commission when they were invited and immediately before their hearing. The hearings were recorded in accordance with the applicable rules of the Parliament Act. After the hearing, the persons heard were given the opportunity to review the minutes and correct them if necessary.

Determining the status of the procedure

Parliamentary commissions of inquiry have a statutory duty to determine the procedural status of a person heard on an ongoing basis (see Art. 155 and 168 ParlA). Persons heard have the status of a respondent by default (Art. 155 para. 1 and 2 ParlA). In the course of the investigation, however, it may be appropriate to a person heard the status of a person whose interests are directly affected by the investigation within the meaning of Article 168 paragraph 1 ParlA or a person against whom the investigation is wholly or mainly directed within the meaning of Article 155 paragraph 3 ParlA. The PUK has therefore continuously determined the status of the persons heard. To this end, the Commission developed various criteria that were applied to the question of a possible change in the procedural status of a person heard (see section 14.4.2). Until the conclusion of its investigation, it came to the conclusion that no person's interests were directly affected by the work of the PUK. For this reason, it did not make any adjustments to the procedural status of any person.

18 "PUK on CS criminal charges against persons unknown", PUK press release dated 5.9.2024; "Information gathering by the Parliamentary Investigation Commission (PUK) "Management of the authorities - CS emergency merger" largely completed", PUK press release dated 23.5.2024; "The Parliamentary Investigation Commission (PUK) "Management of the authorities on the CS emergency merger" provides information on the status of its work", PUK press release dated 23.2.2024; "The Parliamentary Investigation Committee (PIC) "Management of the authorities - CS emergency merger" is on schedule", PIC press release dated 8.9.2023; "Work of the Investigation Committee (PIC) on the CS emergency merger started", PIC press release dated 13.7.2023

Legal status of the Federal Council in PUK proceedings

The special legal status of the Federal Council deserves special mention. According to Article 167 paragraph 1 ParlA, it has the right to attend the hearings and to ask supplementary questions. It may also inspect the documents issued, the expert opinions and the minutes of the hearings of the investigating committee. The Federal Council appoints a member to represent it before the Commission (Art. 167 para. 3 ParlA). On 16 June 2023, the Federal Council decided to appoint Federal Councillor Karin Keller-Sutter to this role. She in turn appointed former federal judge Dr. Niklaus Oberholzer as liaison officer to exercise the rights of the Federal Council under Article 167 para. 1 ParlA. With one exception, Dr. Oberholzer took part in all hearings of the PUK. In addition, Federal Councillor Karin Keller-Sutter received all the answers from the written hearings and would have had the opportunity to ask additional questions in writing. In addition, the Head of the FDF requested access to the PUK's documents on July 30, 2024. Her representative subsequently inspected various documents on the PUK's premises. In application of Article 167 paragraph 2 ParlA, the Federal Council was able to comment on the outcome of the investigation before the PUK at the meeting on December 16, 2024. On the basis of the topics submitted by the Federal Council delegation, the committee saw no need for any adjustments, especially as the Federal Council can comment in a report to the Federal Assembly.

Differentiation of the investigation from other public reports

Since the establishment of the PUK, various reports have been published that are directly related to the PUK's investigative mandate. These were, in particular, the SNB's report on financial stability of September 2023, FINMA's lessons learned report of December 19, 2023 and the Federal Council's report on banking stability (5th evaluation report on systemically important banks) of
The PUK has taken note of these publications. Where there are thematic overlaps with the subject of its investigation, the PUK refers to the aforementioned reports in this report. However, it was not the task of the PUK to assess the various reports in their entirety.

1.4.5 Main challenges of the investigation

The PUK had to overcome various challenges as part of its investigation.

Complex transfer of information from the GPK to the PUK

Shortly after the merger between UBS and CS, the two CPCs conducted various preliminary investigations, which included several hearings and the analysis of various documents (see section 1.2.2). The information and procedural rights of a PUK and the GPK differ in key respects. As the PUK more extensive information rights than the GPK, the legal basis of the PUK explicitly provides for specific rights for persons whose interests are affected. As a result of these differences between the permanent bodies of the supervisory authority and the PUK, the GPK prepared a brief report for the PUK, in which the hearings held and the documents obtained were listed without reproducing the content, as well as the issues that the GPK felt needed to be addressed in greater depth. On this basis, the PCC was then able to define which minutes it wished to inspect. Before releasing the minutes to the PCC, the PCC had to obtain permission from the persons and bodies consulted. This procedure proved to be time-consuming for both the CPC and the PCC and was not very expedient for the efficient exercise of oversight (see section 14.4.3).

First PUK under new law

The provisions of the Business Proceedings Act were to the previously established PUKs.[19] Since the establishment of the last PUK, the legal basis has been significantly revised. The PUK on the management of the authorities in the context of the CS emergency merger is therefore the first PUK to be set up in accordance with the new law. Accordingly, the Commission could only partially rely on previous procedural practice and had to undertake a considerable amount of legal interpretation. This tied up extensive resources, as the legislator had deliberately "not regulated the procedure of the PUK in too much detail" so that future PUKs would have sufficient room for maneuver in fulfilling their mandate[20].

Investigation of the management in the context of the failure of a private company

The PUK on the management of the authorities in the context of the CS crisis differed from its predecessor commissions not only in terms of the applicable law. Each of the previous PUKs had the task of analyzing the background and causes of serious problems that were directly attributable to the management of the office concerned or the department responsible. In each case, there was therefore a direct and clearly identifiable causality between many years of seriously inadequate management and the resulting grievances. To date, one or two offices and the responsible department have been affected by the investigation.

The current PUK, on the other hand, was concerned with investigating the management of several bodies and authorities in the context of the near-bankruptcy of a private-sector, systemically important player which, due to its long-standing mismanagement, had got into an increasingly precarious situation from summer 2022 at the latest and was on the verge of liquidation (.e. restructuring or bankruptcy) in mid-March 2023. In addition to the Federal Council and the Federal Department of Finance, FINMA, the SNB, the FAOA, SIF, the FFA and other indirectly affected authorities were therefore included in the investigation. On the one hand, this meant that the focus was on significantly more players than in previous PUK investigations. Furthermore, the SNB, FINMA and the FAOA are independent units, and the scope of parliamentary oversight is limited in comparison to the government and the central federal administration (see below). On the other hand, there is no direct causality per se between the market failure of a private company and the management of the authorities concerned. In other words, the responsibilities are less clearly identifiable in this context.

The large number of players also resulted in extremely comprehensive documentation, comprising around 30,000 pages. Their evaluation proved to be extremely time-consuming. The triage was very demanding in terms of both content and time, not least because the PUK received not only the relevant documents from the federal agencies, but also, for example, documents with marginal data and preliminary versions of translations that could not be filtered out automatically. To ensure an overview, the PUK Secretariat relied on software for evaluating and analyzing the documents that not only allowed efficient handling, but also fully met the requirements of information protection.

[19] Federal Act of 23.3.1962 on the Conduct of Business of the Federal Assembly and on the Form, Publication and Entry into Force of its Decrees (GVG; AS **1962** 773). Cf. commentary on the Parliament Act, p. 1076

[20] See the report of the National Council's Political Institutions Committee of March 1, 2001 (BBl **2001** 3467 ff., 3609-3610). See also BGE **141** I 172 E. 4.3.4 on the role of the supervisory authority (the decision is written in French).

Ensuring information protection

As explained above, special information protection provisions apply to the PUK due to the duty of secrecy and confidentiality, compliance with which made the PUK's processes more difficult in some cases and, in particular, generated a significant amount of additional time. These include the production of personally marked copies of documents, the provision of extensive paper documentation for inspection in the reading room, general restrictions on electronic work and the time-consuming organization of confidential hearings (see section 1.4.4.1).

Despite the aforementioned information protection measures, there were presumably several selective leaks during the investigation. The PUK therefore filed two criminal charges against persons unknown.[21]

The breadth and scope of the investigation as a particular challenge in the militia system

In order for the PUK to conduct the hearings it considered necessary and to process the documents that were constantly arriving, a high meeting frequency was essential. Meetings were usually held every week during the session-free months, which meant that the PUK members were extremely busy. In some cases, several meetings had to be held in the margins of the sessions due to time constraints. Taking note of and processing the documents received also a great deal of work.

Information rights of the PUK vis-à-vis the independent or autonomous units

According to Article 166 paragraph 1 ParlA, the information rights of the PUK are based on those of the delegations of the supervisory committees (Art. 150 and 153 et seq. ParlA). On the one hand, this means that no information may be withheld from the PUK. On the other hand, questions arise with regard to the specific application, as the subject matter of a PUK investigation can be much broader than is the case with GPDel or FinDel investigations. In this case, it was primarily the information rights of the PCC vis-à-vis the FAOA, FINMA and the SNB that were of interest. The PUK had to address the following practical questions:

- May the PUK invite SNB employees who are not members of the Governing Board to a hearing? What modalities are applied?
- What questions may the PUK ask the representatives of the SNB, FAOA and FINMA? What documents may it request?
- What information may the PUK obtain from FINMA on ongoing and completed enforcement proceedings? May it report on them?
- Is it necessary to inform the Federal Council before hearing representatives of the FAOA, FINMA and the SNB?

21 "The Parliamentary Investigation Committee (PIC) 'Management of the Authorities on the CS Emergency Merger' provides information on the status of its work", PIC press release dated 23.2.2024; "PIC on CS files criminal charges against persons unknown", PIC press release dated 5.9.2024; according to the information available to the PIC, the proceedings had not yet been at the time of publication of this report.

To answer these questions, the PUK consulted a legal opinion by Prof. Uhlmann[22] commissioned by the GPK on the one hand and had clarifications carried out by an external expert on the other. The PUK drew the following conclusions from this:

In the case of the FAOA and FINMA, the object of ultimate supervision is limited to the supervisory powers of the Federal Council. Information rights vis-à-vis the FAOA and FINMA and their staff are governed by Articles 150, 153-156 and 166-170 ParlA, which, however, only apply to the supervisory area of the Federal Council. In the supervisory area of the Federal Council, it can also be the addressee of recommendations from the superintendence. The FAOA and FINMA, on the other hand, are not direct addressees of PUK recommendations.

Even greater restraint is required with regard to the SNB. In the area of monetary policy, the subject matter of supreme supervision and thus also the scope of information rights is limited to the powers under Article 7 paragraph 2 of the National Bank Act (NBA)[23] . In this area, the organs of superintendence are also prohibited from recommendations to the Federal Council. In this respect, the SNB differs from other autonomous or independent administrative units. Outside the area of monetary policy, the information rights under Articles 150, 153-156 and 166-170 ParlA apply.

Handling information that may be relevant for court and arbitration proceedings

As part of the administrative consultation, the draft report was sent to all bodies and persons consulted for their comments. Among other things, they were asked to indicate whether confidentiality interests prevented the publication of certain information by the PUK. Various bodies and individuals subsequently asserted confidentiality interests. The majority of these requests for deletion or redaction were justified by the fact that the publication of the bodies concerned could be used in any arbitration or court proceedings against the Swiss Confederation. At the same time, it was argued that the PUK could also be obliged to hand over documents to an arbitration tribunal.

The PUK then decided to seek advice from two experts. Professor Giovanni Biaggini was primarily tasked with answering questions relating to constitutional law, while Daniel Hochstrasser was tasked with answering questions relating to any international arbitration proceedings. The Commission's aim was to determine which aspects may be published and how. To put it simply, it is up to the PUK to weigh up the interests of secrecy on the one hand and the fulfillment of its investigative mandate on the other. The purpose of the investigation must not be thwarted. In carrying out its mandate, the PUK must report transparently to the Federal Assembly. This is also intended to ensure trust in the supervised authorities and in parliamentary oversight.

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22 Prof. Uhlmann, Supervision of the Swiss Financial Market Supervisory Authority (FINMA), expert opinion for the GPK, 28.8.2013 and presentation by Prof. 1.4.5 to the PUK on 7.9.2023. Both Prof. Uhlmann and Prof. Stöckli referred on the one hand to the dispatch on the ParlA, which states that recommendations from the supervisory authority are addressed to the Federal Council. On the other hand, both note that the dispatch on the FINMA clarifies that only the Federal Council may be the addressee of recommendations from the superintendence. Overall, it should be noted the respective special legislation plays an important role in the question of the specific application of the superintendence. In this sense, the area of autonomy guaranteed by law is excluded from the of the Federal Council and thus from the superintendence of Parliament.

23 Federal Act of 3.10.2003 on the Swiss National Bank (NBA; SR **951.11**)

As a preventive measure, the PUK has examined this report in detail to determine whether source information can be omitted or only summarized in order to protect confidentiality interests as far as possible without violating its investigative mandate. Two points should be noted in this regard: *Firstly*, the statements made in the PUK report are always based on sources, even if these sources are not named in individual cases due to overriding confidentiality interests. *Secondly*, a large number of the documents considered and cited by the PUK are confidential for various legal reasons. Mentioning these documents in the footnotes does not automatically make them part of the report. As far as the release of documents to the courts directly by the PUK is concerned, this is ruled out in accordance with the established practice of the bodies of parliamentary oversight. In this context, reference should be made to a ruling by the Second Public Law Division of the Federal Supreme Court[24] . In a case brought by two plaintiffs against the Swiss Confederation concerning the takeover of CS UBS, a request was made to suspend the proceedings until the report of the PUK was available. The request was rejected.

The PUK does not comment on this interim decision, but states that the PUK's investigation is a political investigation and therefore a court cannot bound by it per se. This is all the more true as the proceedings of the PUK on the one hand and those before the Federal Supreme Court or the Federal Administrative Court on the other are fundamentally different. The PUK is not a judicial authority.

1.5 Structure of the report

The report is divided into three parts. This introduction is followed in Part I by the substantive basis: Chapter 2 contains a brief outline of the special legislation relevant to the investigation, while Chapter 3 describes the authorities and bodies in focus and outlines the cooperation mechanisms between the Federal Council and FDF, FINMA and the SNB. The appendix contains a tabular chronology of the relevant developments since 2008 as well as a glossary of the most important terms used.

The following Part II presents the facts from 2015 to 2023: Chapter 4 begins by describing the relevant initial situation for the investigation period from 2015 to 2023, in particular the consequences of the international financial crisis of 2007/08 on international financial market regulation and on financial market regulation in Switzerland. Chapter 4 also contains the lessons from the federal government's rescue of UBS, which the CPC reviewed in 2010. Chapter 5 marks the beginning of the PUK's actual investigation. Specifically, it deals with the management of the authorities in the first phase, from 2015 until the CS crisis came to light in the summer of 2022. The chapter is structured thematically, as it covers a comparatively long period seven years. The following key topics are covered: a) the monitoring and further development of the TBTF regulation and banking and financial market supervisory law during the period under review; b) the management of the three different supervisory bodies FINMA, the FAOA and the SNB; c) the supervision of FINMA, the SNB and the FAOA by the federal authorities; d) risk management and early crisis detection by the Federal Council and the Federal Chancellery. Chapter 6 then deals with the management of the authorities in the first crisis phase until mid-March 2023. This phase is divided into several sub-phases. Where appropriate, key topics that were investigated over a longer period of time are presented in their entirety. For example, the PUK chose this method of presentation for the clarifications on the application of emergency law, the development of the various scenarios and public communication. Chapter 7 covers the acute crisis from March 15 to 19, 2023. This chapter is also structured chronologically and overarching aspects are also covered in greater depth in thematic sub-chapters. Chapter 8 concerns the implementation of the emergency merger after the March 19, 2023.

24 Unpublished interim decision of the FSC of 15.8.2024

In Part III, the Commission assesses the management of the authorities and makes recommendations. This part is structured as follows: Chapter 9 deals with the question of how the authorities have further developed the legal basis during the period under review and, in particular, ensured that Swiss regulation with international standards. The Commission then assesses the risk management and early detection activities of the federal authorities in Chapter 10. Chapter 11 deals with the supervisory activities of FINMA, the FAOA and the SNB. This is followed in Chapter 12 the Commission's findings on the federal authorities' supervision of FINMA, the FAOA and the SNB. The Commission then sets its assessment of the federal authorities' crisis management from summer 2022 up to and including March 2023 in chapter 13. Finally, in Chapter 14, the PUK examines various overarching topics that emerged from its investigation in more detail.

Finally, Chapter 15 contains the Commission's concluding remarks on what it considers to be the key aspects.

Box 1: **Merger or takeover? Note on terminology**

In public, but also in internal administrative documents, the two terms "merger" and "merger" are used in connection with the merger of CS and UBS.
The terms "merger" and "takeover" are used synonymously. In legal terms, a merger and a takeover must be distinguished from one another due to the different requirements and responsibilities:

In an *(absorption) merger*, one company takes over the assets and liabilities of another. Once the merger has been completed, only one entity remains in existence and the other is deleted from the commercial register.[25] Among other things, the Merger Act (FusG) and, where applicable, the Cartel Act (KG)[26] apply. If the merger is subject to notification under Article 9 KG, the Competition Commission (WEKO) is generally responsible for examining and approving mergers. In the case of mergers between banks that FINMA deems necessary for reasons of creditor protection, FINMA takes the place of COMCO.[27]

In a *takeover*, the shares of a company or a group are purchased. The two companies continue to exist after the takeover: the acquired company becomes a subsidiary of the acquiring company. According to the Financial Market Infrastructure Act (FMIA), the Takeover Board is responsible in the event of a takeover.[28]

CS and UBS concluded a merger agreement on March 19, 2023 (see section 7.2.5). This merger was legally completed on June 12, 2023 (see section 8.2).[29] Consequently, the term "merger" is generally in this report. As the authorities and their members spoke of a takeover as a possible solution scenario, particularly in the run-up to the merger (see section 6.4.3), the term "takeover" is used below when quoting from the documents of the authorities or their members.

25 Art. 3 para. 2 of the Federal Act of 3.10.2003 on Mergers, Demergers, Transformations and Asset Transfers (FusG; SR **221.301**)

26 Federal Act of 6.10.1995 on Cartels and other Restraints of Competition (Cartel Act; SR **251**)

27 In this case, FINMA COMCO to comment (Art. 10 para. 3 CartA). FINMA may at any time during the proceedings and, if necessary, before receipt of the
The merger control authority must approve the implementation of the merger after notification of the proposed merger. In this case, the COMCO must also be invited to comment prior to its decision (Art. 17 of the Ordinance of 17.6.1996 on the Control of Mergers; SR **251.4**).

28 Art. 126 para. 3 of the Federal Act of 19.6.2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA; SR **958.1**)

29 Swiss Official Gazette of Commerce (SOGC), daily register no. 23793 of 12.6.2023

Part I: Basics

2 Constitutional principles and relevant special legislation

In principle, economic freedom also applies to the financial sector in accordance with Article 27 of the Federal Constitution. However, Article 98 of the Federal Constitution gives the Confederation the power to issue "regulations on banking and stock exchange activities" and "financial services in other areas" as well as on private insurance. Monetary affairs fall within the competence of the Confederation, whereby the Swiss National Bank, which is "administered with the cooperation and under the supervision of the Confederation", conducts a monetary policy that serves "the interests of the country as a whole".[30] According to Article 100 paragraph 3 of the Federal Constitution, the principle of economic freedom may be deviated from in the area of money and credit if necessary.[31]

The following section 2.1 begins with a description of the financial market supervision law relevant to systemically important banks. Reference is made to the objectives of financial market supervision, the hierarchy between the Financial Market Supervision Act (FINMASA)[32] as the umbrella law and the special laws[33] as well as the Banking Act in particular. The development of TBTF regulation during the period under review is discussed in detail in section 5.2 below.

The NBA is described in section 2.2. Finally, section 2.3 introduces the regulation of the supervision of audits of systemically important banks.

In addition to the special legislation described below, the Federal Council used emergency legislation to create special legal bases for measures by the authorities made the emergency merger of CS with UBS possible. These measures and the ordinance introduced by the Federal Council under emergency law are described in Chapter 7.

2.1 Legislation on the supervision of systemically important banks

Supervision of the financial market is governed by FINMASA, and FINMA is responsible.[34] The aim of financial market supervision is to protect creditors, investors and insured persons, and to safeguard the proper functioning of the financial markets. Financial market supervision thus contributes to strengthening the reputation, competitiveness and future viability of Switzerland as a financial center.[35]

The constitutional basis for FINMA's supervisory activities can be found in Articles 95[36] and 98[37] of the Federal Constitution. FINMASA specifies the objectives of financial market supervision, regulates the organization and financing of FINMA, its supervisory instruments, cooperation with domestic and foreign authorities, the procedure

30 Art. 99 para. 2 BV

31 Nobel, Peter (2019): Swiss financial market law. 4th, completely revised ed. Bern: Stämpfli Verlag AG, margin no. 60

32 Federal Act of 22.6.2007 on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act, FINMASA; SR **956.1**)

33 Kunz, Peter V. (2014): Cruise through Swiss financial market law. Bern: Stämpfli Verlag AG, p. 13 f.

34 Art. 6 para. 1 FINMASA

35 Art. 4 FINMASA

36 Art. 95 para. 1 BV provides that the Confederation may issue regulations on the exercise of private economic activity.

37 Art. 98 para. 1 of the Federal Constitution provides that the Confederation shall issue regulations on the banking and stock exchange . Paragraphs 2 and 3 concern provisions on financial services in areas and on the private insurance sector.

and legal protection against FINMA rulings and provides for special penal provisions in the area of financial market law.

In addition to FINMASA as the umbrella law[38] , the activities of FINMA and the supervised institutions are subject to specific financial market laws.[39] These include the Pledge Act (PfG), the Insurance Contracts Act (VVG), the Collective Investment Schemes Act (KAG), the Banking Act (BankG), the Financial Institutions Act (FINIG), the Money Laundering Act (GwG), the Insurance Supervision Act (VAG), the Financial Market Infrastructure Act (FinfraG) and the Financial Services Act (FIDLEG). In addition, various ordinances of the Federal Council and FINMA regulate the supervision of banks and other supervised institutions. FINMA is also responsible for specifying its supervisory practice in circulars.[40]

Banking Act - too-big-to-fail regulation

The BankA regulates the supervision of banks that operate in or from Switzerland. The BankA was supplemented by the TBTF regulation on March 1, 2012.[41] This to systemically important banks. Systemically important banks are banks whose failure would significantly damage the Swiss economy and the Swiss financial system.[42] The TBTF regime was introduced after the 2007/08 financial crisis. The aim is to strengthen systemically important financial institutions[43] so that they do not have to be rescued by the state. The core elements of the TBTF regime are the strengthening of the capital base, stricter liquidity requirements, better risk diversification and organizational measures that ensure the continuation of systemically important functions in the event of imminent insolvency.[44]

Prior to the emergency merger of CS with UBS in March 2023, CS, UBS, the Raiffeisen Group, Postfinance and Zürcher Kantonalbank were considered systemically important banks.[45] The decisive factors for qualification as systemically important are the size of a bank, its interconnectedness with the financial system and the economy, and the short-term substitutability of its services.[46] Systemically important functions include the domestic deposit and lending business as well as payment transactions.[47]

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38 Message of 1.2.2006 on the Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act; FINMASA; BBl **2006** 2829)

39 Art. 2 para. 1 FINMASA

40 For the sake of completeness, it should also be mentioned that the private players on the financial market regulate themselves via guidelines and recommendations (self-regulation).

41 FDF: Fact sheet - "Too big to fail" regulation, 1.3.2024, > Financial center> Takeover of CS by UBS> Too-Big-To-Fail regulation (TBTF) (as at 13.11.2024)

42 Art. 7 para. 1 BankA

43 Message of 20.4.2011 on the amendment of the Banking Act (strengthening stability in the financial sector; too big to fail; BBl **2011** 4718)

44 Message of 20.4.2011 on the amendment of the Banking Act (strengthening stability in the financial sector; too big to fail; BBl **2011** 4719)

45 According to the assessment of the Financial Stability Board (FSB), CS and UBS were in a good position before of the merger are global systemically important banks ("G-SIBs"). In contrast, the Raiffeisen Group, PostFinance and Zürcher Kantonalbank are usually referred to as domestic systemically important banks ("D-SIBs"). The distinction between G-SIBs and D-SIBs is in line with FINMA' supervisory categorization of banks and securities firms: CS and UBS belonged to supervisory category 1 until the emergency merger, while the Raiffeisen Group, PostFinance and Zürcher Kantonalbank belong to supervisory category 2.

46 Art. 8 para. 2 BankA

47 FINMA: Systemically important banks, www.finma.ch> Enforcement> Recovery and reso- lution > "Too big to fail" and system stability > Systemically important banks (as at 13.11.2024)

2.2 Federal Act on the Swiss National Bank

In particular, the NBA governs the SNB's tasks, its independence (see section 3.3), its accountability, the scope of its transactions with financial market participants, other central banks, international organizations and the Confederation, its monetary policy powers, its organization and the procedure applicable to it. The constitutional basis for the NBA can be found in Articles 99, 100 and 123 of the Federal Constitution. Based on the NBA, the SNB has issued implementing provisions on its monetary policy powers in the National Bank Ordinance (NBO). The implementing provisions concern the collection of statistics, minimum reserve requirements and the monitoring of systemically important financial market infrastructures.

The NBA contains general provisions on the transactions that the SNB may carry out in order to fulfill its monetary policy tasks. According to the NBA, the SNB's main task is to contribute to the stability of the financial system.[48] The corresponding provision forms the basis for a number of SNB activities and areas of responsibility.[49] One of the SNB's duties in a financial crisis is to act as lender of last resort to maintain the supply of liquidity (see section 3.3).[50] The SNB has set out the conditions for granting extraordinary liquidity assistance to individual institutions in its Guidelines Monetary Policy Instruments.[51] These guidelines are on the SNB's monetary policy concept. They describe the instruments and procedures for implementing monetary policy. They also specify which collateral can be used for monetary policy operations with the SNB. The guidelines are by instruction sheets, which are legally binding.[52]

In its role as lender of last resort, the SNB merely sets the conditions under which business partners can obtain liquidity.[53] However, the SNB does not have the authority to force a bank to obtain a loan from it. Nor can it oblige banks to increase their collateral for Emergency Liquidity Assistance (ELA).[54]

Another task of the SNB in the area of financial stability is the designation of systemically important banks and functions (Art. 8 para. 3 Banking Act). The SNB has broad discretionary powers in assessing whether the legal criteria for designating a bank as systemically important are met in a specific case.[55] In addition, the SNB submits an application to the Federal Council to activate, adjust or deactivate the *countercyclical capital buffer* based on Article 44 of the Capital Adequacy Ordinance (CAO). It consults FINMA on the application in advance and informs the FDF at the same time. The purpose of the countercyclical capital buffer is to minimize

48 Art. 5 para. 2 let. e NBA

49 Grünewald, Seraina (2021): Commentary on Art. 5 para. 2 let. e NBA. In: Plenio, Martin / Senn, Myriam (eds.): Commentary on the National Bank Act and the Federal Act on Currency and Payment Instruments. Zurich/St.Gallen: Dike Verlag AG, para. 23.

50 Art. 9 para. 1 let. e NBA

51 Grünewald, Seraina (2021): Commentary on Art. 5 para. 2 let. e NBA. In: Plenio, Martin / Senn, Myriam (eds.): Commentary on the National Bank Act and the Federal Act on Currency and Payment Instruments. Zurich/St. Gallen: Dike Verlag AG, para. 24.

52 SNB (2004): Guidelines of the Swiss National Bank on Monetary Policy Instruments of 25.3.2004 (as at 17.6.2024), p. 1.

53 SNB (2004): Guidelines of the Swiss National Bank on Monetary Policy in Switzerland. instruments of 25.3.2004 (status 17.6.2024), p. 1.

54 SNB statement of 31.7.2024 as part of the administrative consultation

55 Grünewald, Seraina (2021): Commentary on Art. 5 para. 2 let. e NBA. In: Plenio, Martin / Senn, Myriam (eds.): Commentary on the National Bank Act and the Federal Act on Currency and Payment Instruments. Zurich/St.Gallen: Dike Verlag AG, para. 27.

The aim is to strengthen the banks' resilience to the risks of excessive credit growth and to counteract excessive credit growth.[56] It has an impact on the equity capital to be held by the systemically important banks.

Finally, the task of contributing to financial stability also justifies the SNB's duty to help shape the framework conditions of the Swiss financial center. At national level, the SNB participates in FDF reform projects together with FINMA. At international level, it is permanently represented on the Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI) and the Financial Stability Board (FSB), and is a member of numerous committees and working groups tasked with drawing up relevant international standards. In particular, the SNB has contributed to the development of international standards for the supervision of systemically important banks and their resolution.[57]

In order for the SNB to monitor the stability of the financial system, it must have timely access to meaningful data and information. Based on Articles 14-16 NBA, it can collect statistical data directly from financial market participants. With Article 16a NBA, the legislator has also created independent, legally enforceable access for the SNB to data of a non-statistical nature for the area financial stability.[58]

2.3 Legal regulation of the supervision of audits of systemically important banks

The audit and supervisory audit of banks is governed by the provisions of the Swiss Code of Obligations, the Auditor Oversight Act (AOA)[59] , the Auditor Oversight Ordinance (AOO)[60] , the FINMASA, the Financial Market Audit Ordinance (FINMA-AO)[61] , the Banking Act, the Banking Ordinance (BankingO)[62] and FINMA Circular 2013/3 (FINMA-Circ. 2013/13). Both the FAOA and FINMA have responsibilities in this area.

Under current law, banks are audited by audit firms licensed by the FAOA as part of the *supervisory audit*.[63] These audit firms act as a so-called "extended arm" of FINMA: They monitor compliance with regulatory requirements in accordance with FINMA's specifications. It is therefore dual supervisory system. The audit firms FINMA of their findings in an annual report on the regulatory audit of banks and securities firms.[64] Since 2007, the FAOA and FINMA have been required by law to each other with all the information and documents they need to enforce the respective legislation. They are legally obliged to

56 "Countercyclical capital buffer: proposal of the Swiss National Bank and decision of the Federal Council", SNB press release of 13.2.2013, p. 3

57 Grünewald, Seraina (2021): Commentary on Art. 5 para. 2 let. e NBA. In: Plenio, Martin / Senn, Myriam (ed.): Kommentar zum Nationalbankgesetz und Bundesgesetz über die Währung und die Zahlungsmittel. Zurich/St.Gallen: Dike Verlag AG, para. 39

58 Grünewald, Seraina (2021): Commentary on Art. 5 para. 2 let. e NBA. In: Plenio, Martin / Senn, Myriam (ed.): Kommentar zum Nationalbankgesetz und Bundesgesetz über die Währung und die Zahlungsmittel. Zurich/St.Gallen: Dike Verlag AG, para. 5

59 Federal Act on the Licensing and Oversight of Auditors (AOA; SR **221.302**)

60 Ordinance of 22.8.2007 on the Licensing and Supervision of Auditors and Auditors (RAV; SR **221.302.3**)

61 Financial Market Audit Ordinance of 5.11.2014 (FINMA-PV; SR **956.161**)

62 Ordinance of 30.4.2014 on Banks and Savings Banks (Banking Ordinance, BankO; SR **952.02**)

63 Art. 24 para. 1 let. a FINMASA in conjunction with Art. 18 para. 1 Banking Act; FINMA Circular 2013/3 "Audit tion", No. 1

64 FINMA: The extended arm of FINMA, www.finma.ch> Supervision> Cross-sector topics > Auditing (as at 13.11.2024)

The FAOA and FINMA are obliged to coordinate their supervisory activities in order to avoid duplication.[65] The FAOA and FINMA regulated their cooperation in a letter dated 30 January 2015, which specifies the cooperation in various areas.[66]

Finally, banks must have their annual and consolidated financial statements audited by a state-supervised auditing company as part of the *financial audit*.[67] They choose the auditing companies for the supervisory and financial audit themselves in accordance with the law.[68] In practice, they regularly appoint their statutory auditors (financial audit) to carry out the supervisory audit as well. The audit firms are remunerated by the banks for their services. According to the AOA, these audit firms require a special license and are subject state supervision by the FAOA.[69] The FAOA is responsible for the enforcement of audit oversight law.

The licensing requirements for audit firms can be found in the AOA and its implementing ordinance, the AOA. The lead auditors (financial audit) and the lead auditors (supervisory audit) who are responsible for the audit or audit mandate and sign the audit or audit report must be licensed by the FAOA as audit experts. Lead auditors (supervisory audit) also require a special license from the FAOA as bank auditors.[70]

3 Role and competencies of the main authorities and bodies involved

As can be seen from Chapter 2, various authorities and bodies play a role in ensuring the stability of the Swiss financial market and supervising it. Accordingly, various bodies were in the management of the CS crisis. The following chapter outlines the roles and competencies of the main authorities and bodies involved.

3.1 Federal Council and central federal administration

It should be noted at the outset that the Confederation has extensive legislative powers in the financial market area (Art. 98 Cst.). As the responsible department, the FDF aims to contribute to maintaining the reputation and competitiveness of the Swiss financial center within the framework of financial market policy.[71]

The Federal Council's *Financial Affairs Committee* is an organ of the Federal Council within the meaning of Article 23 of the Government and Administration Organization Act (RVOG).[72] The Committee discusses the current economic and financial situation, including the SNB's monetary policy. The Committee also deals with international financial, tax and currency issues as well as questions of financial market regulation and stability. It is composed of the heads of the FDF, DETEC and EAER departments. It is chaired by the Head of Department of the FDF.[73]

The risk of "insolvency of a systemically important financial institution" has long been recognized as part of federal risk management and is part of risk reporting to the

65 Art. 22 AOA; Art. 28 FINMASA
66 Geissbühler, Alex / Jovanovic, Milan (2024): International legal comparison on the regulation of audit oversight. Report of 24.5.2024 on behalf of the PUK, p. 46
67 Art. 18 para. 2 BankA
68 Art. 24 para. 1 let. a FINMASA in conjunction with Art. 18 para. 1 BankA and Art. 18 para. 2 BankA
69 Art. 7 para. 1 as well as Art. 9 and Art. 9a para. 1 RAG
70 Art. 9a para. 2 RAG
71 Art. 1 para. 3 let. c Organization Ordinance for the Federal Department of Finance of 17.2.2010 (OV-FDF; SR **172.215.1**)
72 Government and Administration Organization Act of 21.3.1997 (RVOG; SR **172.010**)
73 Mandate and organization of the Federal Council Committee on Financial Matters of 23.3.2016

Federal Council (Federal Council risk). The FDF is responsible for this risk and is obliged to inform the Federal Council immediately in the event of an extraordinary risk situation (see section 5.7).

Among other things, *SIF* draws up the principles financial market policy and financial market regulation as well as the legal enactments in the area of financial market regulation. It promotes the international competitiveness and integrity of Switzerland as a financial center, access to foreign financial markets and the stability of the Swiss financial sector. SIF's tasks also include safeguarding Switzerland's interests in international financial, tax and currency matters vis-à-vis other countries. Among other things, SIF represents Switzerland - together with the SNB - in the FSB. It oversees Switzerland's membership of the International Monetary Fund (IMF) on behalf of the FDF and in cooperation with the SNB. SIF maintains the Confederation's relations with the SNB in the area of international monetary cooperation and financial market stability, as well as relations with FINMA.[74] Within the FDF, SIF is the owner of the risk "insolvency of a systemically important financial institution".

The *FFA* deals with national financial and economic issues, prepares proposals that affect the National Bank and draws up scientific foundations on economic and, in particular, financial policy issues. It is also responsible for legislation in the areas of financial budget, monetary and National Bank law, insofar as financial market stability is not affected. It maintains the Confederation's relations with the SNB, unless the SIF is responsible.[75]

The cooperation and coordination between the FDF, FINMA and the SNB in the area of financial stability and financial market regulation, in particular with to the prevention and management of crises that could threaten the stability of the financial system, is described in more detail in section 3.6.

As a staff unit of the Federal Council, the *Federal Chancellery (FC)* is responsible for planning and conducting Federal Council meetings and taking the minutes Federal Council meetings. The FC is also responsible for the Federal Council's early detection of crises.[76]

The *FOJ* carries out preventive legal control, and *SECO* is the federal government's center of competence for economic policy issues (for these two offices, see section 3.7).

3.2 Swiss Financial Market Supervisory Authority (FINMA)

FINMA is an institution under public law with its own legal personality and headquarters in Bern.[77] As an independent unit of the decentralized federal administration, it is administratively assigned to the FDF.[78] With the entry into force of FINMASA on January 1, 2009, the previously separate supervisory authorities of the Swiss Federal Banking Commission (SFBC), the Federal Office of Private Insurance (FOPI) and the Anti-Money Laundering Control Authority (AMLA) were merged into a single authority, FINMA (so-called integrated financial market supervisory authority). The creation of FINMA was linked to the goal of improving institutional

74 Art. 7 OV-EFD
75 Art. 8 OV-EFD
76 Organization Ordinance for the Federal Chancellery of 29.10.2008 (OV-BK; SR **172.210.10**)
77 Art. 5 para. 1 FINMASA. The introduction of FINMASA on 1.1.2019 allowed the supervisory authorities of the Swiss Federal Banking Commission (SFBC), the Federal Office of Private Insurance (FOPI) and the Anti-Money Control Authority (AMLA) to merged into a single authority, FINMA.
78 Annex 3 Government and Administration Organization Ordinance of 25.11.1998 (RVOV; SR **172.010.1**)

The aim is to improve the structure of supervision in order to be able to perform the constantly changing and highly complex tasks of supervision more quickly, efficiently and in a coordinated manner.[79]

FINMA exercises supervision in accordance with FINMASA and the financial market laws (see section 2.1). It is responsible for microprudential supervision, i.e. it supervises individual institutions.[80] Under certain conditions, it can issue ordinances and publishes circulars on the application of financial market legislation.[81]

FINMA's supervision includes the licensing of financial institutions operating in Switzerland, the ongoing monitoring of financial institutions' activities, the enforcement of financial market supervisory law in enforcement proceedings and the resolution of systemically important banks. In accordance with the individual financial market laws, FINMA can carry out audits of the supervised institutions itself or have them carried out by audit firms commissioned by the supervised institutions (so-called dual supervisory system; see section 5.4). The FAOA is responsible for licensing and supervising these audit firms.

FINMA's supervisory instruments for the ongoing monitoring of banks include on-site inspections, annual assessments of banks' vulnerabilities and risk ratings (assessment letters), periodic reviews of the impact of a potential crisis on a bank's capital, liquidity and solvency (stress tests), periodic data and information collection and letters of reprimand. On the other hand, banks are obliged to provide FINMA with all information and documents it requires to fulfill its duties.[82]

If FINMA has indications of breaches of supervisory law, it clarifies these in enforcement proceedings and takes measures to restore compliance and impose preventive sanctions for breaches of the law.[83] In order to enforce supervisory law, FINMA can, for example, take precautionary measures, announce the initiation of proceedings, determine a serious breach of supervisory law, deny the guarantee of unrestricted business activity (see section 5.3.2), impose a ban on professional activities or activities, publish supervisory rulings, confiscate unlawfully generated profits or withdraw licenses.[84] FINMA issues its decisions in the form of rulings that can be the subject of an appeal to the Federal Administrative Court.[85]

FINMA is also responsible for measures to stabilize banks in the event of a crisis. If an institution gets into difficulties, FINMA supports it in stabilizing itself as part of a *recovery*. If there is a risk of insolvency, FINMA can order protective measures or a restructuring. If the restructuring fails, FINMA is responsible for handling the bankruptcy. It is guided by the recommendations of international bodies such as the FSB and the Bank for International Settlements (BIS).

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79 Roth, Monika (2013): The FINMA Board of Directors and the strategy - and didn't say word? In: ZBJV 2013/149, p. 986

80 Art. 6 para. 1 FINMASA

81 Art. 7 para. 1 FINMASA

82 Art. 29 para. 1 FINMASA

83 FINMA: Guidelines on enforcement, 25.9.2014, p. 2, www.finma.ch> Enforcement> All about enforcement (as at 13.11.2024)

84 Art. 24 et seq. FINMASA

85 Art. 53 and 54 para. 1 FINMASA in conjunction with Art. 33 let. e Federal Act on the Federal Administrative Court of 17.6.2005 (ACA; SR **173.32**)

FINMA is also responsible for international financial policy.[86] To this end, it represents the Swiss Confederation on various committees and organizations that set international standards for financial market supervision, including the BCBS, the International Association Insurance Supervisors (Iais), the International Organization of Securities Commissions (Iosco) and the Financial Action Task Force (FATF). FINMA also exchanges information on the financial groups it supervises with foreign supervisory authorities within the framework of colleges. The aim of this international cooperation is to contribute to international standards and promote the exchange of information.

FINMA's governing bodies are the Board of Directors, the Executive Board and the Audit Board. The Board of Directors is responsible for strategic direction: it sets FINMA's strategic objectives and decides on transactions of major importance.[87] The Executive Board is responsible for operational activities.[88]

FINMA carries out its supervisory activities autonomously and independently in functional, institutional and financial terms. It must account for its activities to the Federal Council, Parliament and the public. FINMA's Board of Directors fulfills this duty by submitting its annual report. FINMA's point of contact for matters that concern the Federal Council is the FDF.[89] The federal authorities' supervisory activities with regard to FINMA are explained in section 3.5.2.

FINMA is financed exclusively through fees and charges levied on the institutions it supervises.[90]

3.3 National Bank (SNB)

The SNB is Switzerland's central bank. It has a monopoly on banknotes and is tasked with managing the country's monetary policy. The SNB fulfills this mandate independently,[91] but regularly consults with the Federal Council, reports to the Federal Assembly and periodically informs the public about its activities.[92] The responsibilities of the Confederation supervising the SNB are described in section 3.5.1.

86 Message of 1.2.2006 on the Federal Act on the Swiss Financial Market Supervisory Authority (BBl **2006** 2860)

87 Art. 9 para. 1 let. a and b FINMASA

88 The duties of the Executive Board are out in FINMA's organizational regulations (Art. 10 para. 3 FINMASA).

89 Rayroux, François / Conti, Christelle (2019): Commentary on Art. 21 FINMASA. In: Watter, Rolf / Bahar, Rashid (eds.): Basler Kommentar zum Finanzmarktaufsichtsgesetz / Finanzmarktinfrastrukturgesetz. Basel: Helbing Lichtenhahn Verlag, margin no. 21

90 It charges fees for supervisory procedures in individual cases and for services. Admission In addition, it levies an annual supervisory fee per supervisory area from the supervised institutions to cover FINMA's costs that are not covered by the fees (Art. 15 para. 1 FINMASA). The fees and levies are determined on a cost-by-cause basis so that FINMA can adjust the cost level if necessary.
Cf. www.finma.ch> FINMA> Organization> Financing (as at 4.7.2024). The levying of fees and supervisory charges by FINMA is governed by the Ordinance on the Levying of Fees and Charges by the Swiss Financial Market Supervisory Authority of 15.10.2008 (FINMA-GebV; SR **956.122**).

91 Art. 6 NBA

92 Art. 7 NBA

The NBA assigns the SNB the task of contributing to the stability of the financial system (see section 5.5).[93] The SNB performs this task by analyzing the sources of risk to the financial system[94], monitoring the systemically important financial market infrastructures[95] and helping to shape the framework conditions for the Swiss financial centre. Special attention is paid to the resilience of the systemically relevant banks.[96] The National Bank publishes an annual report on financial stability in which it assesses the stability of the Swiss banking sector and comments developments and risks in the macroeconomic environment and in the banking sector.[97] In the event of a crisis, the National Bank fulfills its mandate by as *lender of last resort*. It can provide liquidity to a bank that can no longer refinance itself on the market.[98] The SNB's monetary policy instruments also include the liquidity-shortage financing facility (ESF). this instrument, the SNB can provide its business partners with liquidity so that they can bridge an unexpected liquidity bottleneck at short notice. The SNB determines the conditions under which its business partners can receive liquidity, but any provision of liquidity must be requested in writing by the party concerned, e.g. a bank.[99]

As part of its mandate to contribute to the stability of the financial system, the SNB works together with FINMA and the FDF at national level (see section 3.6). It takes a systemic view and therefore concentrates on the macroprudential aspects of regulation. Microprudential supervision, on the other hand, is one of FINMA's tasks (see section 3.2). At international level, the SNB is represented on various committees that deal with issues relating to financial stability, financial market regulation and financial market infrastructures. For example, the Chairman of the Governing Board of the SNB[100] is represented on the highest decision-making body of the International Monetary Fund (IMF). The SNB also participates in the standing committees of the BIS. It is also represented in the Plenary Assembly, the Steering Committee and the Risk Assessment Committee of the FSB. The SNB is also a member of various committees of the Organization for Economic Cooperation and Development (OECD) and participates in the Finance Track by invitation, i.e. at the meetings of finance ministers and central bank governors of the G-20.[101]

The governing and executive body of the SNB is the Governing Board.[102] It consists of three members and is responsible in particular for monetary policy, the strategy for the investment of assets, the contribution to the stability of the financial system and international monetary cooperation.[103] The members and deputy members of the Governing Board are elected by the Federal Council for a term of office of six years on the recommendation of the Bank Council. The members of the Governing Board each head one of the SNB's three departments: the first department comprises the General Secretariat and is responsible, among other things, for economics and the

93 Art. 5 para. 2 let. e NBA
94 Art. 16a NBA
95 Art. 19 ff. NBA
96 SNB (2023): Swiss National Bank - A brief portrait, 18th edition, p. 31.
97 SNB (2023): Swiss National Bank - A brief portrait, p. 31. These reports are available at www.snb.ch > News and publications > Economic publications > Financial stability report
98 Art. 9 para. 1 let. e NBA
99 Art. 2 and Art. 2.2 General Guidelines of the Swiss National Bank on its monetary policy instruments of 25.3.2004; SNB note of 27.9.2023 on the narrow funding facility (repo transactions at the special rate)
100 In the remainder of the report, this function is referred to as "President of the SNB". The same applies to the Vice-Chairman or Vice-President.
101 SNB (2023): Swiss National Bank - A brief portrait, 18th edition, pp. 39-40.
102 Art. 46 para. 1 NBA
103 Art. 46 para. 2 NBA

international monetary cooperation. The second department is responsible in particular for financial stability, banknotes and currencies as well as risk management. The third department deals with the money market and foreign exchange trading, asset management and the operational banking business, among other things.[104]

3.4 Audit Oversight Authority (FAOA)

The FAOA is an institution under public law with its own legal personality.[105] As an independent unit of the decentralized federal administration, it is administratively assigned to the Federal Department of Justice and Police (FDJP).[106] The FAOA submits an annual report on its activities to the Federal Council and the Federal Assembly.[107] The supervisory activities of the federal authorities over the FAOA are explained in section 3.5.3.

The purpose and basic mandate of the FAOA are derived from the AOA. The FAOA is responsible for licensing natural persons and audit firms that provide statutory audit services,[108] for the oversight of auditors and audit firms of public interest entities[109] and for (inter)national administrative assistance in the area of audit oversight.[110] The FAOA thus contributes to the protection of investors and all other addressees of audit reports and to the reliability of financial reporting.[111] The FAOA is responsible for the oversight of the auditing industry, not that of the audited companies. It has a role downstream of the activities of the audited and auditing companies; it is not a prudential regulator.

The FAOA has been auditing the audit firms of global systemically important banks since 2012 (financial audit) and 2015 (supervisory audit). In doing so, the FAOA assesses the quality assurance system for compliance with regulatory requirements ("firm review"). In particular, the FAOA examines whether an audit firm has complied with the specific requirements regarding incompatibility with an audit mandate, the licensing requirements and the specific elements of the quality assurance system.[112]

In addition, the FAOA carries out a random sample audit ("file review") in selected areas of a specific audit mandate. This review relates to both the financial audit (audit of the bank's annual and consolidated financial statements by the audit firm) and the regulatory audit (audit of compliance with the bank's regulatory requirements by the audit firm). By reviewing working papers on the regulatory audit, the FAOA determines whether the quality assurance regulations and FINMA's requirements for conducting the regulatory audit have been complied with.[113] Specifically, the file review relates, for example, to the review of capital requirements, business risks, the internal control system and compliance with the bank's money laundering regulations.

104 SNB (2023): Swiss National Bank - A brief portrait, 18th edition, pp. 48-51.
105 Art. 28 para. 2 RAG
106 Annex 3 RVOV
107 Art. 30a lit. b RAG
108 Art. 3 ff. RAG
109 Art. 2 let. c in conjunction with Art. 7 et seq. RAG
110 Art. 22 ff. RAG
111 RAB (2024): Principles of Enforcement (Enforcement Policy), 2nd edition, p. 2
112 RAB (2024): Supervisory concept for the Regulatory Audit division, Berne, Point 4.1
113 RAB (2024): Supervisory concept for the Regulatory Audit division, Berne, Point 4.1

3.5 Legal regulation of the federal authorities' supervision of the SNB, FINMA and the FAOA

The SNB, FINMA and the FAOA enjoy a certain degree of independence from the federal government due to their statutory autonomy as independent entities. Nevertheless, these three institutions are subject to varying degrees of supervision by the Federal Council and the Federal Administration. The role of the Confederation vis-à-vis the SNB (section 3.5.1), FINMA (section 3.5.2) and the FAOA (section 3.5.3) is described below.

3.5.1 Supervision of the SNB

The independence of the SNB in the area of monetary policy is enshrined in the Federal Constitution[114] and is specified in the NBA[115] . The SNB's tasks in connection with the stability of the financial system are also part of its monetary policy tasks according to the NBA[116].[117] According to the dispatch on the revision of the NBA, the independence of the SNB is fundamentally of a functional, financial, institutional and personnel nature.[118] The Constitution nevertheless states that the SNB is "administered with the cooperation and under the supervision of the Confederation". As the SNB is an organization under public law outside the federal administration that is entrusted with administrative tasks, the Federal Council commissions it in accordance with the special provisions.[119]

The Federal Council exercises its participation and supervision in the form of various powers of appointment and approval. For example, the Federal Council is responsible for approving both the annual report and the annual financial statements of the SNB before they can be submitted to the General Meeting for approval.[120] The Federal Council also elects six of the eleven members of the Bank Council and appoints the President and Deputy President. The Federal Council can only remove members of the Bank Council from office if they no longer fulfil the requirements for holding office or have committed serious misconduct.[121] The Bank Council is responsible for supervising and monitoring the management of the SNB.[122] The details of these tasks are set out in the SNB's organizational regulations[123] , which must be submitted to the Federal Council for approval.[124]

The Federal Council has further powers of appointment with regard to the Board of Directors. It appoints its members and deputies on the proposal of the Bank Council and can dismiss them during their term of office under the same conditions as the members of the Bank Council. Similar to its powers in the election of the Bank Council, the Federal Council also appoints the President and Vice-President of the SNB.[125]

114 Art. 99 para. 2 BV
115 Art. 6 NBA
116 Art. 5 para. 2 let. e NBA
117 Presentation by Prof. Andreas Stöckli to the PUK on 7.9.2023; Uhlmann, Felix (2019): Expert opinion for the attention of the FDF regarding FINMA's and SNB's duty to inform FDF, para. 59 f.
118 Message of 26.6.2002 on the revision of the National Bank Act, (BBl **2002** 6097, here 6108 f.)
119 Art. 8 para. 4 RVOG
120 Art. 7 para. 1 NBA
121 Art. 39 and 41 NBS
122 Art. 42 NBA
123 Art. 10 Organizational Regulations of the Swiss National Bank of 14.5.2004 (Organizational Regulations of the SNB; RS **951.153**)
124 Art. 42 para. 2 let. a NBA
125 Art. 43-45 NBA

For its part, the SNB is accountable to the Federal Council, which it fulfills by holding regular oral discussions on the economic situation, policy and current issues of economic policy in Switzerland.[126] The Federal Council and the SNB must also inform each other of their intentions before decisions of major economic policy and monetary importance are taken.[127]

The SNB must also submit an annual report to Parliament on the fulfillment of its tasks (see section 5.6.1). In addition, it regularly discusses the economic situation and its monetary policy with the relevant committees of the Federal Assembly.[128]

3.5.2 Supervision of FINMA

As explained at the beginning (see section 3.2), FINMA is an institution under public law created by the merger of the SFBC, FOPI and Kst GwG with its own legal personality. It organizes itself and carries out its supervisory activities autonomously and independently.[129] Its functional, institutional and financial independence was justified by the Federal Council in its dispatch on the FINMA Act the grounds that a financial market supervisory authority needs this to fulfil its statutory duties appropriately.[130]

As the department with the closest functional connection, the FDF exercises the owner's rights on behalf of the Federal Council.[131] However, FINMA is only administratively assigned to the FDF.[132] As part of the decentralized federal administration, it is considered an organizationally independent administrative unit. According to prevailing doctrine, supervision of FINMA is governed by Article 8 paragraph 4 RVOG.[133]

Accordingly, the Federal Council only has limited powers of influence, which are set out in detail in the special legislation, FINMASA. Due to FINMA's tasks in economic supervision, the Board of Directors is responsible for setting strategic objectives. However, the objectives can only be adopted subject to approval by the Federal Council. It should be noted that the objectives set may be rejected by the Federal Council, but cannot be amended.[134] The Federal Council is also responsible for approving FINMA's annual report135 .

The Federal Council submits an annual report to Parliament on the achievement of the strategic objectives of the independent units, which allows FINMA's objectives to be reviewed further. This report is also discussed by the Audit and Finance Committees (see section 5.6.2).[136] The traceability of target achievement has been improved in recent years. In the FINMASA Ordinance that came into force on 1 February 2020, clarifications were to the procedure for strategic objectives, primarily in the

126 Art. 7 para. 1 NBA
127 Art. 7 para. 1 NBA
128 Art. 7 para. 2 NBA
129 Art. 21 and Art. 5 para. 1-3 FINMASA
130 Message of 1.2.2006 on the Federal Act on the Swiss Financial Market Supervisory Authority (BBl **2006** 2829, here 2836 f.)
131 Art. 24a para. 2 RVOV
132 Art. 21 para. 3 FINMASA
133 Uhlmann, Felix (2019): Opinion for the attention of the FDF on the duty of FINMA and the SNB to provide information to the FDF, para. 15 et seq.
134 Ownership strategy of the Federal Council for the independent units of the Confederation, Report of the Federal Council in fulfillment of Postulate 18.4274 of 26.5.2021, p. 46
135 Art. 9 para. 1 let. f FINMASA
136 Art. 148 para. 3bis ParlA

The Federal Council is responsible for transparency and the assessment of target achievement.[137] In addition, FINMA must submit the targets to the FDF three months before they are approved by the Federal Council.[138] This gives the Federal Council a certain amount of influence with regard to FINMA's management.

By contrast, the Federal Council *has no* legal *powers* to influence FINMA's operational business. This functional independence of FINMA is expressed, among other things, in its independence from directives as set out in FINMASA[139].[140]

With regard to FINMA's *governing bodies*, the Federal Council is responsible for approving the election of the Director and the members and Chair of the Board of Directors, which it may also dismiss.[141] The Federal Council also takes note of the audit report[142] submitted to it and the FINMA Board of Directors by the SFAO, approves FINMA's staff regulations[143] and issues an ordinance on fees and supervisory duties.[144]

One of the key instruments used by the Federal Council as part of its owner strategy is the institutionalized discussions with FINMA that take place at least once a year.[145] These provide the Federal Council with opportunity to discuss strategic objectives and activities, problems that have arisen in the course of its supervisory activities or general issues relating to financial centre policy with FINMA's governing bodies[146] . As a rule, the Chair of FINMA's Board of Directors takes part in these discussions. However, the specific composition of the FINMA delegation is adapted to the current topic situation. The Federal Council can also appoint a committee for these discussions. It also has the right to request further discussions at any time if special events give rise to this.[147]

In addition to the discussions between the full Federal Council and FINMA, the Head of the FDF has held one-to-twice-yearly meetings with the Chairman of FINMA's Board of since 2019.[148]

Supervisory powers of other bodies

In addition to the Federal Council, other bodies also have certain supervisory tasks. For example, the enforcement of criminal provisions[149] is carried out by the FDF or the Office of the Attorney General of Switzerland. The FDF also has a say FINMA's participation in international organizations and bodies. Representation

[137] They must be based on the guidelines for the adoption of the strategic objectives of federal units and, where appropriate, contain indicators and target values for measuring the achievement of objectives.
[138] Ownership strategy of the Federal Council for the independent units of the Confederation, Report of the Federal Council in fulfillment of Postulate 18.4274 of 26.5.2021, p. 46 ff; Art. 14
Para. 3 Ordinance to the Financial Market Supervision Act of 13.12.2019 (SR **956.11**)
[139] Art. 21 para. 1 FINMASA
[140] In concrete terms, this means that the Federal Council is not in a position to revoke or amend FINMA's decisions on individual cases or administrative proceedings or to over individual transactions. FDF (2019): Explanatory notes on the Ordinance to the Financial Market Supervision Act of 13.12.2019, p. 9
[141] Art. 9 para. 1 let. g, para. 3 and 5 FINMASA
[142] Art. 12 FINMASA
[143] Art. 13 para. 5 FINMASA
[144] Art. 15 FINMASA; FINMA-GebV
[145] Art. 21 para. 2 FINMASA
[146] FINMA is represented by the Chairman the Board of Directors and the Director.
[147] Message of 1.2.2006 on the Federal Act on the Swiss Financial Market Supervisory Authority (BBl **2006** 2829, here 2873)
[148] Letter from the GS-EFD to the PUK dated 8.1.2024, p. 2
[149] Art. 50 FINMASA

According to the Federal Council, FINMA's participation in these institutions should in agreement with the FDF, which is responsible for international financial market policy. FINMA must also consult with the FDF with regard to material participation in these bodies. This applies in particular to the formulation of international standards that are of fundamental importance to the Swiss financial sector.[150] If information is to be exchanged as part of multilateral initiatives of major importance, FINMA must participate in the exchange of information in agreement with the FDF.[151]

3.5.3 Supervision of the FAOA

As mentioned in chapter 3.4, the FAOA is an institution under public law with its own legal personality, which exercises oversight of audit firms and audit companies in a professionally and institutionally independent manner.[152] It is independent in its organization and management and keeps its own accounts.[153]

The FAOA is subject to the administrative supervision of the Federal Council, which is carried out by the FDJP. The FAOA and the FDJP regularly exchange information on various aspects relevant to the implementation of administrative supervision.[154] Legal supervision, on the other hand, is not the responsibility of the FDJP. This is carried out via the ordinary legal process, in that appeals against decisions of the FAOA can be lodged with the Federal Administrative Court and the Federal Supreme Court.[155]

The Board of Directors is responsible for setting the authority's strategic objectives for the next four years. However, the objectives must submitted to the Federal Council for approval.[156] In addition, the Board of Directors must report annually to the Federal Council on the achievement of the objectives and the fulfillment of the tasks. This takes the form of an annual owner's meeting between the FAOA and the FDJP.[157] The meeting serves to implement the strategic objectives, to identify and discuss matters of strategic importance to the owner and to address current issues and challenges. As a rule, the Secretary General of the FDJP, the Director and the Chairman of the Board of Directors of the FAOA take part in the meeting, in certain cases also the Head of the FDJP.[158]

The Federal Council performs its supervisory activities vis-à-vis the FAOA by, among other things, electing and dismissing the members of the Board of Directors and its Chairman, approving the establishment and termination of the employment relationship with the , approving the annual report, approving the strategic objectives, annually reviewing the achievement of the strategic objectives and discharging the Board of Directors.[159]

In addition, the FDJP also carries its administrative supervision through periodic management meetings between the FAOA and the GS-FDJP. Although

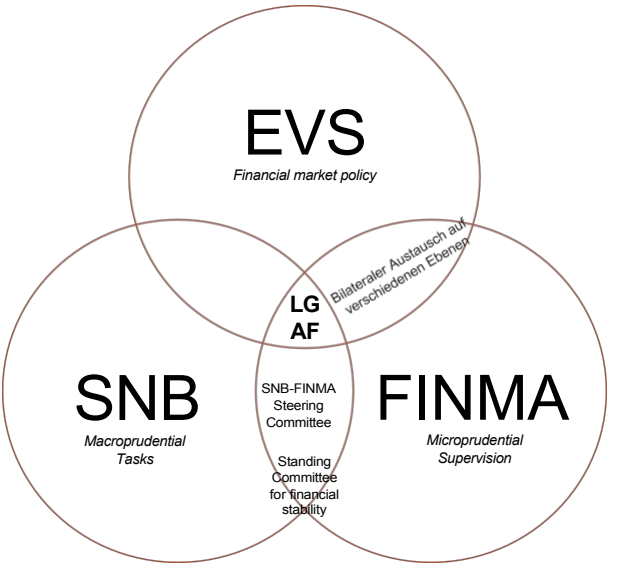
[150] Message of 1.2.2006 on the Federal Act on the Swiss Financial Market Supervisory Authority (BBl 2006 2829), p. 2860; Art. 3 Ordinance to the Financial Market Supervision Act; Explanatory Notes to the Ordinance to the Financial Market Supervision Act of 13.12.2019, p. 8
[151] Art. 42b para. 2 FINMASA
[152] Art. 28 para. 2 and Art. 38 para. 1 RAG
[153] Art. 28 para. 3 RAG
[154] Art. 38 para. 2 AOA; letter from the FAOA to the PUK dated 6.12.2023, p. 18
[155] Art. 44 AOA; letter from the GS-FDJP to the PUK dated 22.2.2024
[156] Art. 30a let. b RAG
[157] Art. 30a let. b and Art. 38 para. 3 AOA
[158] Minutes of the owner meetings FDJP-RAB of 16.2.2017, 30.1.2018, 28.10.2019, 30.8.2021, 16.12.2022, 10.5.2023, 1.12.2023
[159] Art. 38 para. 2 let. a, b, d, e, f AOA

the FDJP does not supervise the FAOA's risk management and compliance management. Howeverthese topics, as well as IT security and data protection issues, are discussed during the talks. The FAOA also communicates its greatest risks to the risk manager of the FDJP. However, these are not related to individual audit firms or audit companies or the audit mandates audited by them. The FAOA proactively informs the FDJP of cases with political implications. Major company collapses and their impact on the audit have also been explicitly addressed since 2021.[160]

3.6 Coordination between the SNB, FINMA and the FDF

Various players are involved in maintaining financial stability, in particular the FDF, the SNB and FINMA (see Fig. 1). Cooperation between these actors is governed by agreements between the various parties. These agreements are presented below.

Figure 1: Overview of coordination between the FDF, the SNB and FINMA in matters of financial stability



Legend: LG= Steering Committee; AF = Financial Crisis Committee.

3.6.1 Memorandum of Understanding on tripartite cooperation in the area of financial stability and financial market regulation (FDF, FINMA, SNB)

Following the financial crisis of 2007/08 and on the recommendation of the CPC[161] , cooperation between the FDF (on behalf of the Federal Council), FINMA and the SNB in the area of financial stability and financial market regulation was institutionalized and has since been set out in a tripartite memorandum of understanding.

[160] Letter from the GS-FDJP to the PUK dated 22.2.2024, p. 2 f.; letter from the FAOA to the PUK dated 25.4.2024, p. 5

[161] The authorities under pressure from the financial crisis and the handover of UBS client to the USA, Report of the GPK-N/S of 30.5.2010 (BBl **2011** 3099, here 3455)

(MoU). An initial version of the memorandum was signed in January 2011 to improve the exchange of information on issues of financial stability and financial market regulation as well as cooperation in the event of a crisis that could threaten the stability of the financial system.[162] The content of the memorandum was expanded in 2019. Specifically, the MoU was intended increase "transparency on financial regulatory projects". The new memorandum also placed an additional focus on cooperation with regard to the prevention and management of crises that financial stability. Coordination with regard to the BCBS's standard-setting activities was also defined. This should ensure that Switzerland's interests are safeguarded effectively and coherently.[163]

In accordance with the current Memorandum of Understanding, the authorities meet at management level at least twice a year to exchange information and opinions on financial stability and current financial market regulation issues. FINMA is in charge of these meetings. For the aforementioned prevention and management of crises that threaten the stability of the financial system, the authorities establish a joint crisis organization and work closely together to prepare instruments for managing such crises. The strategic coordination of the crisis organization and any interventions is carried out by the *Steering Committee (SC)*. The Steering Committee is composed of the Head of the FDF, who chairs the committee, the President of the SNB and the Chairman of the FINMA Board of Directors. It meets as required, usually in the presence of the members of the *Financial Crisis Committee (FC)*.[164]

For his part, the *AF* is responsible for coordinating preparatory measures and crisis management. It initiates the preparation of the basis for decisions and carries out assessments of the situation, which it informs the LG about as required. The AF brings together the Director of FINMA, the Vice-President of the SNB, the State Secretary for International Financial Matters and the Director of the FFA at operational level. The committee is chaired by FINMA, with the exception of situations in which the focus is on measures taken by the Confederation or the SNB. In such cases, the LG may delegate the chairmanship to the FDF or the SNB.[165]

The MoU also states whether and how the Federal Council as a whole must be informed about the work of these coordination bodies. Accordingly, it is at the discretion of the Head of the FDF to decide when the Federal Council should be informed about the assessment of the situation and the need for measures. However, if the risk assessment of the LG or AF indicates that extraordinary measures by the authorities are likely, the Head of the FDF is obliged to inform the full Federal Council immediately.[166]

[162] "FDF, FINMA and SNB sign tripartite agreement on cooperation", FDF press release dated 17.1.2011

[163] Memorandum of Understanding on tripartite cooperation in the area of financial and financial market regulation dated 2.12.2019, Art. 2 para. 4, www.finma.ch > FINMA > National cooperation (status: 3.4.2024). *Hereafter*: MoU FDF, FINMA, SNB.

[164] Art. 2 para. 3 and Art. 3 para. 1-3 MoU FDF, FINMA, SNB

[165] Art. 3 para. 5 MoU FDF, FINMA, SNB

[166] Art. 3 para. 6 MoU FDF, FINMA, SNB

3.6.2 Memorandum of Understanding in the area of financial stability between FINMA and the SNB

In 2017, the SNB and FINMA signed a Memorandum of Understanding in the area of financial stability,[167] which the previous bilateral Memorandum of Understanding from 2010. It sets out the respective responsibilities: The SNB monitors developments in the banking sector from the perspective of the system as a whole, while FINMA monitors the development of the supervised institutions from the perspective of the individual institutions. The MoU governs cooperation between the two players in their common areas of interest, namely in assessing the soundness of systemically important banks and the banking system, in regulations that have a significant impact on the soundness of banks, and in crisis prevention and crisis management.[168] Cooperation in the common areas of interest is managed at a strategic level by the *SNB-FINMA Steering* Committee[169] and at an operational level by the *Standing Committee on Financial Stability*.

The *SNB-FINMA Steering Committee* meets at least twice a year. Its tasks consist of examining the macroeconomic environment, setting strategic priorities and discussing the results of joint projects. It consists of the members of the SNB Governing Board and the Chairman of the Board of Directors, the Vice-Chairman of the Board of Directors and the Director of FINMA.[170]

The *Standing Committee* is chaired by the Head of Financial Stability (SNB) and the Head of the Banks division (FINMA). The Standing Committee meets at least four times a year, in particular to specify the objectives of joint projects, to determine the contact with the banks for such projects, to coordinate and monitor the joint work and to prepare the basis for decisions.[171] The members of the SNB Governing Board and the members of the FINMA Board of Directors also meet once a year.[172]

The MoU also regulates the exchange of information between the SNB and FINMA on the soundness of the banking sector and the systemically important banks. This information relates in particular to the assessment of risks in the macroeconomic and financial environment, the assessment of the capital and liquidity resources of the banking sector, in particular the systemically important banks, or the assessment of any need for action.[173]

3.7 Other federal agencies involved

In addition to the bodies listed, other federal agencies are also affected by the PUK's investigation, but only secondarily. The most important of these are listed below.

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167 Memorandum of Understanding in the area of financial stability between the Swiss Financial Market Supervisory Authority FINMA and the Swiss National Bank SNB dated 15.5.2017, www.finma.ch > FINMA > National cooperation (as at 3.4.2024). *Hereinafter*: MoU FINMA-SNB.

168 Art. 3 para. 1 MoU FINMA-SNB

169 This body is referred to as the "Steering Committee" in the MoU. To avoid confusion with the *Steering Committee*, in which the FDF, the SNB and FINMA are represented (see section 3.6.1), the term "SNB-FINMA Steering Committee" is used here.

170 Art. 4 para. 2-4 MoU FINMA-SNB

171 Art. 4 para. 5-7 MoU FINMA-SNB

172 Art. 5 MoU FINMA-SNB

173 Art. 6 para. 2 MoU FINMA-SNB

The *FOJ* is the federal government's specialist authority and service center for legal issues.[174] It performs preventive legal control in implementation Article 7a paragraph 1 of the Organizational Ordinance for the Federal Department of Justice and Police (OO-FDJP). It examines all drafts for legislative enactments, including Federal Council emergency ordinances, for their constitutionality and legality as well as their conformity and compatibility with applicable national and international law. Preventive legal review is a central task because Switzerland has no constitutional jurisdiction and the authorities applying the law must apply federal laws in accordance with Article 190 of the Federal Constitution, even if they contradict the constitution.[175] The FOJ therefore endeavors to ensure the constitutionality of all draft legislative enactments as part of preventive legal review. In particular, the aim is to safeguard fundamental rights and protect democratic principles and the rule of law.

The FOJ's preventive legal review normally takes place at the level of office consultation. After the CPC called on the Federal Council in 2010 to "systematically obtain a well-founded analysis and assessment from the FOJ on important legal issues" (recommendation 14),[176] the Federal Council's proposals systematically state if differences with the FOJ remain in the office consultation.[177]

With preventive legal review, the FOJ a cross-cutting task of a legal nature. The OV-FDJP stipulates that the FOJ also reviews all drafts of legislative enactments for their substantive accuracy.[178] For these aspects, the FOJ, at least in its current form, is dependent on the expertise of the specialized authorities and their willingness to follow up on critical queries from the FOJ and resolve differences in dialogue with the FOJ.

At the EAER, *SECO* was primarily affected by the PUK's investigation as the federal government's center of competence for all core economic policy issues.[179] The Economic Policy Directorate is responsible in particular for analyzing and documenting economic developments in Switzerland and providing the basis for political decision-making.[180] Furthermore, SECO, together with the office responsible for the subject matter in question (e.. the FDF in connection with the AT1 complaints, see section 8.3), is responsible for coordination and for representing Switzerland in any arbitration proceedings between foreign investors and Switzerland. In particular, SECO is in charge of internal coordination, handling procedural aspects, contacts with the arbitration secretariats, for example the Secretariat of the International Center for Settlement of Investment Disputes (ICSID), and the law firm responsible for the proceedings.[181]

174 Art. 6 para. 1 Organization Ordinance for the Federal Department Justice and Police of 17.11.1999 (OV-EJPD; SR **172.213.1**)

175 Application of emergency law, Federal Council postulate report of 19.6.2024 in fulfillment of the postulates 23.3438 Committee for Legal Affairs of the National Council of March 24, 2023 and 20.3440 Schwander of May 6, 2020 (BBl **2024** 1784)

176 GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3407)

177 However, the alternative wording proposals of the FOJ are not explicitly . Such formulated alternative wording proposals can be submitted as part of the co-reporting procedure. Minutes of the PUK meeting of 24.1.2024, p. 78

178 Art. 7a para. 3 OV-EJPD

179 Art. 5 para. 1Organization Ordinance of 14.6.1999 for the Federal Department Economic Affairs, Education and Research (OV-WBF; SR **172.216.1**)

180 SECO (2023): SECO - A portrait of the State Secretariat for Economic Affairs, p. 13

181 Response letter from SECO to the PUK dated 28.3.2024, p. 3

Part II: Statement of facts

4 Initial situation: Consequences of the financial crisis for international standards, the Swiss legal framework and the organization of authorities (2008 to 2014)

In the wake of the global financial crisis of 2007/08, both international standards in the area of financial market regulation and Swiss legislation were further developed. At the same time, the authorities endeavored to learn the lessons from the regulatory activities surrounding the rescue of UBS. These developments are briefly described below.

4.1 Consequences of the financial market crisis for international standards on financial market regulation

In response to the global financial market crisis, a regulatory trend began worldwide that led to the further development and drafting of international standards. The most important bodies are briefly described below. These are the *FSB* and the *BCBS*, which were instrumental in (further) developing the standards for strengthening the resilience of the banking system and addressing the too-big-to-fail problem after the 2007/08 financial crisis.[182] In addition, the IMF is tasked with maintaining and strengthening global financial stability.[183] Although the standards set by the FSB, BCBS and IMF do not have a direct legislative character, their compliance and implementation is important for the reputation of the financial centre and access to foreign markets.

4.1.1 Bodies and standards in the area of financial market regulation

Basel Committee on Banking Supervision (BCBS)

The BCBS was founded by the G10 countries at the end of 1974 in the wake of various international currency and banking crises. Its mandate[184] is to strengthen regulation and banking supervision with the aim of improving financial stability. Its main tasks include the exchange of information on developments in the banking sector to identify risks to the global financial system and cross-border cooperation on banking supervision and regulations to ensure financial stability.

The BCBS is the most important international institution that develops standards for the regulation of banks. It consists of representatives from 45 central banks and supervisory authorities from 28 jurisdictions. Switzerland is represented on the Basel Committee by the SNB and FINMA (see sections 3.2, 3.3 and 5.2.1).

As the BCBS has no supranational authority, its decisions are not legally binding. Instead, the Committee relies on the voluntary commitment of its members in accordance with its charter. Specifically, all members undertake to promote financial stability, improve their banking supervision and regulation, transpose the BCBS standards into national law and undergo procedures to review the implementation of the BCBS standards(185).

182 FINMA: Note to the PUK regarding the international regulatory bodies dated 8.8.2023, p. 1

183 SIF: Switzerland's international monetary cooperation, 8.3.2024, www.sif.admin.ch > Multilateral relations> International Monetary Fund IMF> International Monetary Fund (IMF) Switzerland's cooperation in the field of education (as of: 14.5.2024)

184 Basel Committee on Banking Supervision (2018): Basel Committee Charter, www.bis.org> Committees & associations > Basel Committee on Banking supervision > About the BCBS > Charter (as at: 14.5.2024)

185 FINMA: The Basel Committee on Banking Supervision, www.finma.ch> FINMA > Cooperation > Policy and Regulatory Cooperation > BCBS (as at: 14.5.2024)

The most important current publication of the BCBS is the *Basel III final* ("Basel III: Finalizing post-crisis Reforms") from 2017 on capital and liquidity requirements in the banking sector (see below). This set of rules builds on the following predecessors: *Basel I* (1988) required adequate capital adequacy (minimum 8% capital ratio). The revised *Basel II* Capital Requirements Regulation (2004) included the further development of minimum capital requirements, the review by the banking supervisory authority and the effective use of disclosure as a lever to strengthen market discipline and promote sound banking practices.

Basel III was developed in response to the financial crisis of 2007/08. The measures aim to strengthen the regulation, supervision and risk management of banks.[186] They have replaced the previous regulations since 2013. The financial Basel III standards were adopted in December 2017 and completed in February 2019 with the revised minimum standard for market risks. According to the Basel Committee, the regulations had to be transposed into national law by the beginning of 2023 (with transitional periods).

In Switzerland, the Basel III standards are implemented with the CAO[187] , the Liquidity Ordinance (LiqO)[188] and the relevant FINMA ordinances and circulars. The Basel III regulations came into force gradually from 2013. The implementation of the final Basel III standards at federal level is managed by the FDF.[189] For Switzerland, the implementation of the final Basel III standards will enter into force in 2025.[190]

Box 2: Overview of the Basel I to III agreements

Basel I: Capital accord

Basel I was introduced in 1988 and was the first international set of rules drawn up by the BCBS. It laid down minimum capital requirements for banks in order to ensure a certain level of financial stability and reduce systemic risks, i.e. risks that could jeopardize the stability of the entire financial system.[191]

Basel II: New Basel Capital Accord

In 2004, the BCBS adopted the new Basel II Capital Accord with the aim of strengthening the stability of the international financial system and improving the capital adequacy of the financial system through the international harmonization of capital requirements.

186 Basel Committee on Banking Supervision: Basel III: international regulatory framework for banks, www.bis.org> Committees & associations> Basel Committee on Banking Supervision > Basel III (as at: 13.5.2024)

187 Ordinance of 1.6.2012 on the Capital Adequacy and Risk Diversification of Banks and Securities Firms (Capital Adequacy Ordinance, CAO; SR **952.03**)

188 Ordinance of 30.11.2012 on the Liquidity of Banks and Securities Firms (Liquidity Ordinance, LiqO; SR **952.06**)

189 FINMA: The Basel Committee on Banking Supervision, www.finma.ch> FINMA> Everything you need to know about
FINMA > International cooperation > Policy and regulatory cooperation > BCBS (as at 3.6.2024)

190 "Amendment to the Capital Adequacy Ordinance to implement the final Basel III standards comes into force in 2025", Federal Council press release dated 29.11.2023

191 Bank for International Settlements (BIS): History of the Basel Committee, www.bis.org > Committees & associations > Basel Committee on Banking Supervision > About the BCBS > History (as at 31.5.2024)

to improve the equal treatment of banks in international competition.[192] These objectives were to be achieved with the three-pillar principle:[193]

- Pillar 1: Minimum capital requirements - expansion of the calculation criteria to take better account of banks' risks.
- Pillar 2: Supervisory review process - obligation for banks (compliance is monitored by the supervisory authorities) to have a process in place to assess whether their capital adequacy is appropriate in relation to their risk profile.
- Pillar 3: Market discipline - standards for the disclosure of financial information, including capital adequacy, risk profile and capital adequacy.
- Although the Basel II agreement strengthened financial stability, it reached its limits in the global financial crisis of 2007/08, as weaknesses in risk management and capital requirements came to light.[194]

Basel III: Strengthening banking standards after the crisis

In response to the shortcomings came to light in the global financial crisis of 2007/08, the BCBS developed the Basel III regulatory framework. The aim was to eliminate the weaknesses of the existing regulatory framework and make the banking system more resilient.[195] The Basel III reforms pursued several objectives:[196]

- Improving the quality of banks' regulatory capital by attaching greater importance to loss-bearing capacity;
- Raising capital requirements to ensure the resilience of banks in times of stress; improving the recording of risks by revising the framework for risk-weighted capital;
- Inclusion of macroprudential elements, including a capital buffer to limit procyclicality and the introduction of a rule for major risks;
- Setting a minimum requirement for the debt ratio in order to limit excessive debt;
- - Creation of an international framework to cushion excessive liquidity risks through the *liquidity coverage ratio* (LCR) and the *net stable funding* ratio (NSFR).

[192] Swiss Federal Banking Commission (2006): Basel II, Implementation in Switzerland, Commentary, Explanatory notes on the implementation of the new Basel Capital Accord (Basel II) in Switzerland

[193] Bank for International Settlements (BIS): History of the Basel Committee, www.bis.org > Committees & associations > Basel Committee on Banking Supervision > About the BCBS> History (as at 31.5.2024); Swiss Federal Banking Commission (2006): Basel II, Implementation in Switzerland, Commentary, Explanatory Notes on the Implementation of the New Basel Capital Accord (Basel II) in Switzerland; Basel Committee on Banking Supervision (2004): International Convergence of Capital Measurement and Capital Requirements, Revised Framework Agreement

[194] Bank for International Settlements (BIS): History of the Basel Committee, www.bis.org > Committees & associations > Basel Committee on Banking Supervision > About the BCBS> History (as at: 31.5.2024)

[195] Bank for International Settlements (BIS): History of the Basel Committee, www.bis.org > Committees & associations > Basel Committee on Banking Supervision > About the BCBS > History (as at 31.5.2024)

[196] Basel Committee on Banking Supervision (2017): High-level summary of Basel III reforms

Financial Stability Board (FSB)

The FSB was founded after the financial crisis, in April 2009, on behalf of the G20 countries as the successor organization to the *Financial Stability Forum*. Since then, it has been the central body in the area of financial market regulation and steers the reform agenda.[197] The FSB is based at the BIS in Basel.

One of the FSB's main focuses after the 2007/08 financial crisis was on addressing the too-big-to-fail problem. Together with the sector-specific standard-setting body BCBS, the FSB has developed a framework for systemically relevant banks. The FSB identifies and monitors risks to the global financial system and makes recommendations to safeguard financial stability.[198]

The FSB proposes - usually on the basis of a G20 mandate - international financial market reforms for systemically important financial institutions, derivatives markets, financial market infrastructures, digitalization and technological development in the financial sector or financial intermediation in the non-banking sector. However, specific international regulatory standards are usually developed in standard-setting bodies such as the BCBS[199]. Among other things, the FSB has published principles for the effective resolution of banks (the *Key Attributes of Effective Resolution Regimes for Financial Institutions*).

In 2016, the FSB published the first Guiding Principles on liquidity requirements in resolution based on these principles. According to these principles, the liquidity required in resolution should primarily be covered by private sources of liquidity. Liquidity should only be provided by the authorities once certain conditions have been met and should be kept as low as in order to minimize the risk of moral hazard.

The FSB brings together the national authorities responsible for financial stability (central banks, supervisory authorities and finance ministries), international organizations[200] and institutions with responsibility for financial system supervision and stability.[201]

As a member of the FSB, Switzerland has committed itself to striving for lasting financial stability, ensuring open and transparent financial markets, implementing international financial market standards and participating in *peer reviews of* the implementation of international standards. Switzerland has two seats on the FSB and is represented by the FDF and the SNB (see sections 3.3 and 5.2.1). Together with the SNB and FINMA, SIF coordinates the Swiss position in the FSB and participates in the FSB's plenary meeting, various committees and working groups.[202]

The FSB's decisions are not legally binding. Instead, the organization relies on moral appeals and peer pressure to ensure that the member states transpose the decisions and minimum standards into national law.[203]

International Monetary Fund (IMF)

The IMF was founded in 1945 to implement the new international monetary order within the framework of the Bretton Woods system. Its main mandate is to monitor the economic policy of its member countries.

[197] FINMA: Note to the PUK regarding the international regulatory bodies dated 8.8.2023, p. 1

[198] FINMA: Note to the PUK regarding the international regulatory bodies dated 8.8.2023, p. 1

[199] See SIF (2022): Financial Stability Board, www.sif.admin.ch > Multilateral > Financial Stability Board (as at 25.9.2023)

[200] World Bank, IMF, OECD, BIS, European Central Bank, European Commission.

[201] Including the standing committees of the BIS.

[202] State Secretariat for International Financial Matters: Financial Stability Board, www.sif.admin.ch > Multilateral relations > Committees > Financial Stability Board (as at 3.7.2024)

[203] Financial Stability Board: About the FSB, www.fsb.org> about-the-fsb (Stand: 15.11.2024)

In response to the financial and economic crisis of 2007/08, the IMF strengthened its economic policy advisory and supervisory instruments. Among other things, the G20 countries agreed to subject their financial sectors to mandatory controls. Since then, the IMF has also increasingly worked with regulatory authorities to improve the supervision and regulation of financial companies. The IMF also reviews the stability of member countries' financial systems. Among other things, it deals with the question of whether national financial market regulation meets internationally recognized standards. The review includes stress tests of financial institutions, a quality assessment of the supervision and regulation of the sector and an assessment of the crisis management principles.

For Switzerland, the IMF is the central institution for international monetary cooperation. Switzerland has been a member since 1992. Its membership is managed jointly by the FDF and the SNB (see sections 3.3. and 5.2.1).[204]

The IMF also regularly monitors and reviews Switzerland's economic development. The last assessment of the Swiss economy (*Country Report*) was published in 2024.[205] Switzerland's last *Financial Sector Assessment Program* (FSAP) took place in 2019.[206] The findings of the Financial Sector Assessment are into the IMF's broader policy advice, in particular the annual Article IV consultations. The associated in-depth dialogue between the IMF analysts and the authorities, private sector and civil society is compiled in a report containing recommendations for a policy that promotes growth and stability. After consultation by the Executive Board, the country report is adopted and published with Switzerland's consent (most recently in 2024).[207]

Table 3: IMF reports

Report	*Period*	*Switzerland*
Financial Sector Assessment Program	Around every five years	Last time [2019][208]
Country examinations (Article IV consultations)	Usually annually	Last time [2024][209]

[204] Swiss National Bank: International, www.snb.ch > The SNB > Tasks & objectives> International monetary cooperation> Multilateral cooperation> IMF (as at 13.6.2024)

[205] "IMF Executive Board Concludes 2024 Article IV Consultation with Switzerland", IMF press release dated 24.6.2024, www.imf.org > News > Press release (as at: 20.8.2024)

[206] IMF (2019): "Switzerland: Financial System Stability Assessment", https://www.imf.org/en/Publications/CR/Issues/2019/06/26/Switzerland-Financial-Sector-Assessment-Program-47045 (as at: 25.09.2023)

[207] "IMF Executive Board Concludes 2023 Article IV Consultation with Switzerland", IMF press release dated 6.6.2023, https://www.imf.org/en/News/Articles/2023/06/06/pr23200-switzerland-imf-executive-board-concludes-2023-article-iv-consultation-with-switzerland (as at: 25.09.2023)

[208] FSAP reports on Switzerland since 2001: 2019, 2014, 2007, 2002.

[209] Article IV reports on Switzerland since 2001: 2023, 2022, 2021, 2019, 2018, 2016, 2015, 2014, 2012, 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2001.

4.1.2 International standards in the field of auditing

Several international organizations issue international standards in the area of auditor oversight,[210] which aim to harmonize practices and ensure the quality of audits worldwide. Pursuant to Article 16a AOA, Article 2 et seq. of the FAOA Supervision Ordinance (ASV-FOA)[211] and Circular 1/2008 of the FAOA[212] , the standards of the International Auditing and Assurance Standards Board (IAASB) generally apply in Switzerland. The FAOA a central role, as it designates the recognized standards and can issue its own standards or supplement or amend existing standards if it deems them to be inadequate (Art. 16a para. 2 AOA). The IAASB standards therefore represent the most important reference framework for auditing in Switzerland.

International Auditing and Assurance Standards Board (IAASB)

The *IAASB* is an independent standard-setting body that serves the public interest by setting high-quality international standards in the areas of audit, quality control, review and other assurance services and related services. It also promotes the convergence of international and national standards.[213]

The *Public Interest Oversight Board (PIOB)* performs a supervisory function to ensure that the standards issued by the IAASB meet the expectations of the public and stakeholders. The PIOB oversees the IAASB's activities and ensures that the standardization process is transparent, orderly and the public interest. This oversight is intended to strengthen public confidence in the auditing profession worldwide.[214]

The IAASB issues several types of international standards, including *International Standards on Auditing* (ISA). The ISAs establish a framework for the conduct of audits of financial statements. This ensures a uniform approach to the performance of such audits.[215]

4.2 Findings and consequences of the 2007/08 financial market crisis in Switzerland - start of TBTF regulation in Switzerland

The main features of the developments relevant to the PUK's investigation are below. Specifically, these are the review events by parliamentary oversight and the drafting of the TBTF regulation .

4.2.1 Lessons learned from the management of the authorities in the context of the 2007/08 financial crisis in Switzerland (GPK report)

Following the rescue of UBS in 2008, between March 2009 and May 2010 the Audit Committee of both chambers investigated the appropriateness and effectiveness of the authorities' management. Their investigation covered the period from spring 2007, when the financial market crisis became apparent internationally, to the end of October 2008, when the federal government decided on a package of measures to rescue UBS. The Audit Committee

210 International legal comparison on the regulation of audit oversight, report by gw&p financial services AG dated 24.5.2024, p. 36 ff.
211 Ordinance of the Federal Audit Oversight Authority of 17.3.2008 on the Oversight of Audit Firms (Oversight Ordinance FAOA, ASV-RAB; SR **221.302.33**)
212 RAB Circular 1/2008 dated 17.3.2008 on the recognition of standards for the audit of financial statements.
and quality assurance (as at: 15.12.2023)
213 IAASB: About the IAASB, www.iaasb.org> About the IAASB (as at: 4.6.2024)
214 IAASB: About the IAASB, www.iaasb.org> About the IAASB (as at: 4.6.2024)
215 IAASB: About the IAASB, www.iaasb.org> About the IAASB (as at: 4.6.2024)

In particular, the audit committee examined how the conduct of the Swiss authorities (Federal Council, FDF, SFBC/FINMA, SNB) was to be assessed, especially with regard to the following aspects: early recognition of the impact of the international financial crisis Switzerland; decision and implementation of measures within the remit of the various authorities; handling of the UBS dossier, taking into account the systemic importance of the bank. The Audit Committee also analyzed the lessons to be learned for the future. The focus was on the organization and responsibility of the authorities, the management of the authorities concerned and the coordination and cooperation between them.

In their comprehensive report of May 30, 2010[216] , the CPC was critical of the authorities. On the one hand, their criticism concerned the Confederation's crisis organization. They criticized the fact that the SNB, the SFBC (FINMA's predecessor) and the head of the FDF had not involved the rest of the Federal Council in their crisis preparations. However, their criticism also concerned the Federal Council as a whole, which had allowed the head of the FDF to manage the crisis dossier alone until the fall of 2007. Secondly, the CPC criticized the fact that the Federal Council had deliberately not kept minutes of the discussions on UBS for several months.

The CPC formulated 18 recommendations and submitted two postulates and five motions. These addressed, among other things, the crisis organization and the involvement of the Federal Council in it. Criticism was also levelled at FINMA's supervisory instruments, organization and work processes, as well as the cooperation between FINMA and the SNB. The exchange between the SNB and the Federal Council and the SNB's access to the Federal Council were also criticized. The CPC also recommended optimizing the early warning system for crises. In addition, they considered it essential to improve the involvement of the General Secretariats in important business, to ensure sufficient resources for recording the minutes of Federal Council meetings and to adapt the system of deputies.

4.2.2 Start of TBTF regulation in Switzerland

TBTF legislation in Switzerland dates back to the global financial and economic crisis and the related state rescue of UBS in 2008. As a disorderly failure of a systemically important financial institution could have considerable disruptions in the financial system and negative macroeconomic consequences, in the past affected countries supported the endangered financial institutions in the event of a crisis. This meant that the respective financial institutions had an implicit state guarantee, which led to distortions in the market.

TBTF legislation should minimize the risk of insolvency of a systemically important banking institution and at the same time clearly define the state's scope of action in the event that a systemically important bank gets into financial difficulties. The TBTF problem poses a particular challenge for Switzerland due to its small size and the relatively high economic importance of financial institutions.

In 2010, a commission of experts made up of representatives from the authorities, the private sector and academia therefore formulated various recommendations for the introduction of TBTF legislation.[217] This was intended to limit the economic risks of large companies in particular.[218] The recommendations primarily concerned large financial institutions and were implemented at the legislative and ordinance level by the end of 2013.

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216 GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3237)

217 Final report of the group of experts on the further development of the financial market strategy dated 1.12.2014 and Annex 4 on the review of the Swiss TBTF regime in international comparison - basis for the evaluation in accordance with Article 52 of the Banking Act.

218 The Swiss too-big-to-fail regime, FINMA fact sheet dated 1.12.2014

4.2.2.1 Revision of the Banking Act (BankA)

The revision of the Banking Act in 2012 marked the beginning of the development of TBTF regulation. According to the dispatch at the time, the focus was on four core measures:[219] 1. strengthening the capital base; 2. stricter liquidity requirements; 3. better risk diversification to reduce interconnectedness within the banking sector; 4. organizational measures to ensure the continuation of systemically important functions in the event of imminent insolvency.

At the time of the dispatch, the appointed commission of experts assumed that there were two systemically important banks - CS and UBS. The requirements for systemically important banks proposed with the revision of the Banking Act significantly exceeded the international standards applicable at the time (Basel III of the BCBS and the standards of the FSB).[220]

The terms "systemically important functions" and "systemically important banks" were in the revised BankA. Since the 2012 revision of the Banking Act, the corresponding classifications have been the responsibility of the SNB (Art. 8 para. 3 Banking Act). The special requirements for systemically important banks in terms of capital, liquidity, risk distribution and organization were also defined. For example, systemically important banks must now have an emergency plan in place so that systemically important functions can be continued in the event of imminent insolvency (Art. 9 para. 2 lit. d Banking Act). A new reporting obligation on the part of the Federal Council was also introduced (Art. 52 BankA).[221]

The special requirements for systemically important banks were set out in various ordinances. These were either newly created (LiqV), completely revised (ERV and BankV) or partially revised (Ordinance on Stamp Duties, StV[222]). The transitional provisions of the revised Banking Act stipulated that the first-time adoption of the ordinance provisions pursuant to Article 10 paragraph 4 Banking Act (capital, liquidity, risks and emergency planning of systemically important banks) had to be submitted to the Federal Assembly for approval. This concerned both the revision of the BankO and the CAO as well as the specific chapter on systemically important banks in the LiqO.[223]

The aim of the revisions to the various ordinances was, among other things, to increase the loss-bearing capacity of systemically important banks and define the additional capital requirements to be complied with - in addition to the requirements of the Basel III standards - which should contribute to the continuation of systemically important functions in the event of imminent insolvency. The most important aspects of these revisions are briefly outlined below.

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219 Message of 20.4.2011 on the amendment of the Banking Act (strengthening stability in the financial sector; too big to fail; BBl **2011** 4717 ff.)

220 Message of 20.4.2011 on the amendment of the Banking Act (BBl **2011** 4728, here 4751). This primarily concerned the capital requirements for systemically important banks. A three-tier structure was envisaged, consisting of basic requirements, a capital buffer and a progressive component.

221 The provision that the Federal Council shall, no later than three years after the entry into force of the
The Federal Council must examine the provisions of Sections 5 and 6 of the Banking Act and then, within two years, the provisions with regard to comparability and the degree of implementation of the corresponding international standards abroad, to the Federal Assembly on this and indicate any need for adjustment at the legislative and regulatory level.

222 Ordinance of 3.12.1973 on Stamp Duties (StV; SR **641.101**)

223 Federal Council dispatch of 1.6.2012 on the decision to approve the amendments to the Banking Ordinance and the Capital Adequacy Ordinance (too big to fail; BBl **2012** 6669); Federal Council dispatch of 30.11.2012 on the decision to Chapter 4 of the Ordinance on the Liquidity of Banks (too big to fail; BBl **2012** 9455)

4.2.2.2 Liquidity Ordinance (LiqV)

The LiqV came into on January 1, 2013 and replaced the former provisions on liquidity in the Banking Ordinance (Art. 16 ff.). The object of the new LiqV was to regulate the qualitative and quantitative liquidity requirements for banks, among others (Art. 1 para. 1 LiqV). The fourth chapter of the ordinance contains special provisions for systemically important banks (Art. 19 ff. LiqV). In the version valid until mid-2022, these provisions stipulated that systemically important banks must have liquidity that ensures that they can absorb liquidity shocks better than non-systemically important banks and thus meet their payment obligations even in an exceptionally stressful situation (special liquidity requirements). With this in mind, the requirement was introduced that systemically important banks must be able to cover all liquidity outflows that are to be expected in the event of a corresponding, specific stress scenario for at least 30 days (Art. 21 LiqV 2013). The stress scenario - an extraordinary stress situation - was defined in the other provisions. The various requirements for the stress scenario were further specified in subsequent years. In addition, a reporting obligation to FINMA and the SNB was introduced for systemically important banks (Art. 28 LiqV 2013). The LiqV was revised for the first time in 2014. The changes came into force on January 1, 2015 and particularly affected the ratio for short-term liquidity.

4.2.2.3 Capital Adequacy Ordinance (CAO)

The completely revised CAO came into force on January 1, 2013. As in the previous version, this ordinance stipulates that, among other things, banks must have adequate capital and limit their risks appropriately (Art. 1 para. 1 CAO). The ordinance regulates the eligible capital, the risks to be covered, the distribution of risk and provides for special requirements for systemically important banks (Art. 2 CAO). In addition to general provisions, this ordinance also has a section specifically applicable to systemically important banks (Art. 124 et seq. CAO).

Introduction of the AT1 instruments

Among other things, the CAO specifies Article 11 of the Banking Act. This provision came into in 2012 as part of the too-big-to-fail legislation. The so-called additional core capital, also known as Additional Tier 1 or AT1, represents debt capital on the balance sheet, but is intended to absorb losses in a crisis situation. AT1 instruments should be able to fulfill this function even before an insolvency occurs (as going-concern capital). The AT1 creditors receive a correspondingly high interest rate for the possible occurrence of this risk, which can result a total loss. This is an internationally recognized and common capital instrument for systemically important banks.

Article 27 paragraph 1 CAO contains a list of the conditions under which a bank may qualify a capital instrument as additional tier 1 capital (AT1 instrument) for regulatory purposes. In particular, it must be perpetual in accordance with letter b, and the bank must not raise any expectations repayment or the corresponding approval of the supervisory authority when issuing it. In accordance with letters b to d, the AT1 instrument may repaid by the issuing bank no earlier than five years after issue and only with the approval of FINMA. In accordance with letter f, distributions to investors by the bank may only be made voluntarily and only if distributable reserves are available. In accordance with letter g, interest rate increases during the term are also excluded due to the issuer-specific credit risk. A further feature of this capital instrument is that it ceases to apply completely if a contractually defined event occurs (the so-called trigger event), in particular at the time of imminent insolvency (the so-called point of non-viability).

lity, PONV). In accordance with the Basel minimum standards, Article 29 paragraph 2 letters a and b of the CAO stipulate that the reduction of exposures or the write-down of AT1 instruments must take place at the latest before the public sector assistance is called upon or if FINMA issues a corresponding order to avoid insolvency.

AT1 instruments can essentially be structured in two different ways: as capital instruments that either provide for a conditional conversion into shares (contingent convertible bonds or CoCos for short) or a conditional waiver of claims (write-off bonds). The AT1 instruments issued by CS were bonds with a debt waiver.

4.2.2.4 Banking Ordinance (BankV)

The Banking Ordinance, which has existed since 1972, amended as part of the introduction of the TBTF regulation in 2012 by including emergency planning and the improvement of the recoverability and liquidability of systemically important banks in the ordinance. Accordingly, systemically important banks should use emergency planning to ensure that systemically important functions can be continued without interruption in the event of imminent insolvency, independently of the other parts of the bank (Art. 21 para. 1 Banking Ordinance 2012). The systemically important banks and FINMA were also obliged to draw up a stabilization and resolution plan (Art. 22 para. 1 and 2 BankV 2012). The ordinance was revised in 2015, whereby the aspects relating to systemically important banks mentioned here were adopted.

4.2.2.5 Work of the Federal Council in the context of its first evaluation report

In 2013 the Federal Council once again set up a group of experts to analyze the international structure of TBTF policy and assess the need for action from a Swiss perspective.[224] The Federal Council's first evaluation report on the TBTF issue from 2015 (see section 5.2.3.1)[225] was primarily based on the final report of this group of experts and the nine recommendations contained therein. The recommendations of the expert group were integrated into the report. The Federal Council briefly commented on each of the individual recommendations.

In its first report, the Federal Council assessed the Swiss approach as positive overall in an international comparison. Like the IMF a year earlier, it emphasized that at the time the report was published, Switzerland played a pioneering role internationally in terms of the level of requirements and the timing of implementation.[226] In particular, there was no need for a complete realignment of the regulatory model. However, he identified a need for action in certain areas.

In collaboration with FINMA and the SNB, the Federal Council considered examining possible adjustments to the capital requirements for systemically important banks. The Federal Council also noted with regard to the recommendation on the emergency plan that no clear date had been defined for the implementation of the emergency plan and thus the continuation of systemically important functions. The Federal Council came to the conclusion that FINMA should monitor the implementation of the emergency plans and

[224] Final report of the expert group on the further development of the financial market strategy dated 1.12.2014

[225] The date of publication of the report actually falls within phase 2. The report will therefore be in sections 5.2.2 and 5.2.3. However, as it an account of the period from the entry into force of the revision of the Banking Act on December 1, 2012 until the beginning of 2015, its content is already listed here.

[226] Hungerbühler, Lea (2024): Comparative legal analysis of the regulation and supervision of financial markets and TBTF regulation. Report of 7.6.2024 on behalf of of the PUK, p. 7 f.

should inform the authorities of this on regular basis. With regard the requirements relating to total loss-absorbing capacity (TLAC), which the Federal Council wanted to incorporate into Swiss law on the basis of the FSB's proposal in 2014, two accompanying measures were also adopted. On the one hand, existing weaknesses in the legal basis in area of crisis measures were to be eliminated (e.g. Art. 31 para. 3 Banking Act). On the other hand, the tax conditions were to be improved (withholding tax) in order to make the Swiss capital market more attractive (see section 5.2).

In conclusion, the Federal Council stated that the full implementation of the TBTF legislation in force at the time would not be able to fully resolve the problem in Switzerland and that it therefore supported the implementation of all the recommendations of the group of experts. At the same time, however, he emphasized that no measures should be taken that would interfere excessively with the banks' business model. He concluded that it would only be possible to analyze whether the TBTF problem could be eliminated in the long term once the various recommendations had been implemented.

The report concludes with a description of further work and a timetable for the implementation of measures. A working group set up and chaired by the FDF, which also included representatives of FINMA and the SNB, was tasked with designing these measures (for further developments in the area of TBTF regulation, see section 5.2).

5 Phase 1: From the first experiences with TBTF regulation to the first signs of the crisis, 2015 to summer 2022

This chapter examines the key developments at CS and the management of the federal authorities from 2015 to summer 2022. Section 5.1 contains a description of the macroeconomic environment, with a focus on developments in the financial sector and the most important developments at CS during this period. This is followed by an analysis of four key topics: First, the monitoring and further development of TBTF regulation is described (5.2), while the management of the three bodies FINMA, FAOA and SNB is then discussed (5.3, 5.4 and 5.5). The supervision of these three bodies by the federal authorities is then summarized (5.6), and finally risk management and early crisis detection are presented (5.7).

5.1 Relevant context

The following three sub-chapters describe the international and Swiss context in which CS operated between 2015 and 2022. To this end, section 5.1.1 first describes how the economy in general and the financial sector in particular developed. This is followed by a summary of developments at CS over the same period in section 5.1.2. Finally, section 5.1.3 provides a summary of the most important changes to international standards in financial market regulation between 2015 and 2022.

5.1.1 Development of the financial sector in Switzerland and internationally from 2015 to 2022

Relevance of the financial sector in Switzerland

The banking sector makes a significant contribution to Switzerland's gross domestic product. Between 2015 and 2022, its share was always over 9 %.[227] The financial sector also played an important role for employees in Switzerland during the period under review.

[227] SECO: Quarterly gross domestic product data, 28.2.2024, https://www.seco.admin.ch > Economic situation & economic policy> Economic situation> Gross domestic product> Data (as at: 12.4.2024)

important significance. Between 2015 and 2022, more than 2% of employees worked in the financial services sector. This corresponds to over 100,000 full-time equivalents. If insurance services are also taken into account, more than 5% of the working population worked in this sector between 2015 and 2022, which corresponds to more than 200,000 full-time jobs.[228] Economic interdependence, e.g. through service contracts and investments, is estimated have generated another 200,000 jobs. This means that between 2015 and 2022, more than 400,000 jobs in Switzerland were attributable to the financial sector and its activities.[229]

Box 3: Players in the Swiss financial sector

In addition to banks, the Swiss financial sector consists of insurance companies, asset managers, financial market infrastructures such as SIX and other financial services companies.[230] Depending on the statistics, the focus is on different areas. The distinction between the areas is not always clear, as the offerings of banks and insurance companies are sometimes very similar, for example. Estimates for the entire sector, the financial sector, are therefore necessary and useful.

Finally, the financial sector is also important for public finances. For 2022, total tax revenue from the financial sector was estimated at CHF 17.9 billion, which corresponds to 12% of federal, cantonal and municipal fiscal revenue.[231]

Developments in the global financial sector

Compared to the period before the global financial crisis of 2007/08, the banking sector in Europe was characterized by lower profitability during the period under review. This was partly due to the fact that, on average, the capital costs of the book equity of European banks were higher than their return. According to the Hau/Rochet expert report, there were several reasons for this low profitability. On the one hand, technological innovations enabled the creation of new banks (e.g. online banks), which significantly increased competition between banks. In addition, more demanding banking regulation increased banks' fixed costs.[232] On the other hand, developments at a macroeconomic level made conditions in the financial sector more difficult. In particular, the low interest rate environment should be mentioned here, which only allowed for low interest income between 2009 and 2022. At the same time, there was greater uncertainty regarding economic growth forecasts. This led to falling share prices and declining credit quality, which particularly affected banks.[233] In addition, there were political uncertainties, in particular due to the referendum decision on the UK's exit from the EU, the 2016 US elections,[234] the tense trade relations between China and

[228] Federal Statistical Office: Employees by full-time equivalents and economic sectors, 23.02.2024, www.bfs.admin.ch> Statistics> Industry, services> Companies and employees > Employment statistics > Employees (as at: 12.4.2024)

[229] BAK Economics AG (2022): Economic significance of the Swiss financial - Results 2022. Basel, p. 5

[230] Report of the Federal Council of 10.4.2024 on banking stability including evaluation in accordance with Article 52 of the Banking Act (BBl **2024** 1023, here 24)

[231] CHF 7.6 billion is allocated to banking services and CHF 2.9 billion to insurance services. attributed to this. The remaining CHF 7.4 billion is attributable to the financial market-related value-added tax, withholding tax and stamp duty. BAK Economics AG (2023): Economic importance of the Swiss financial sector - Results 2023. Basel, p. 12

[232] Hau, Harald / Rochet, Jean-Charles (2024): An analysis of the financial situation of Credit Suisse in the context of the financial markets. Report of 28.5.2024 on behalf of the PUK, p.9 f.

[233] SNB (2016): Financial Stability Report 2016. Zurich, p. 8

[234] SNB (2017): Financial Stability Report 2017. Zurich, p. 7

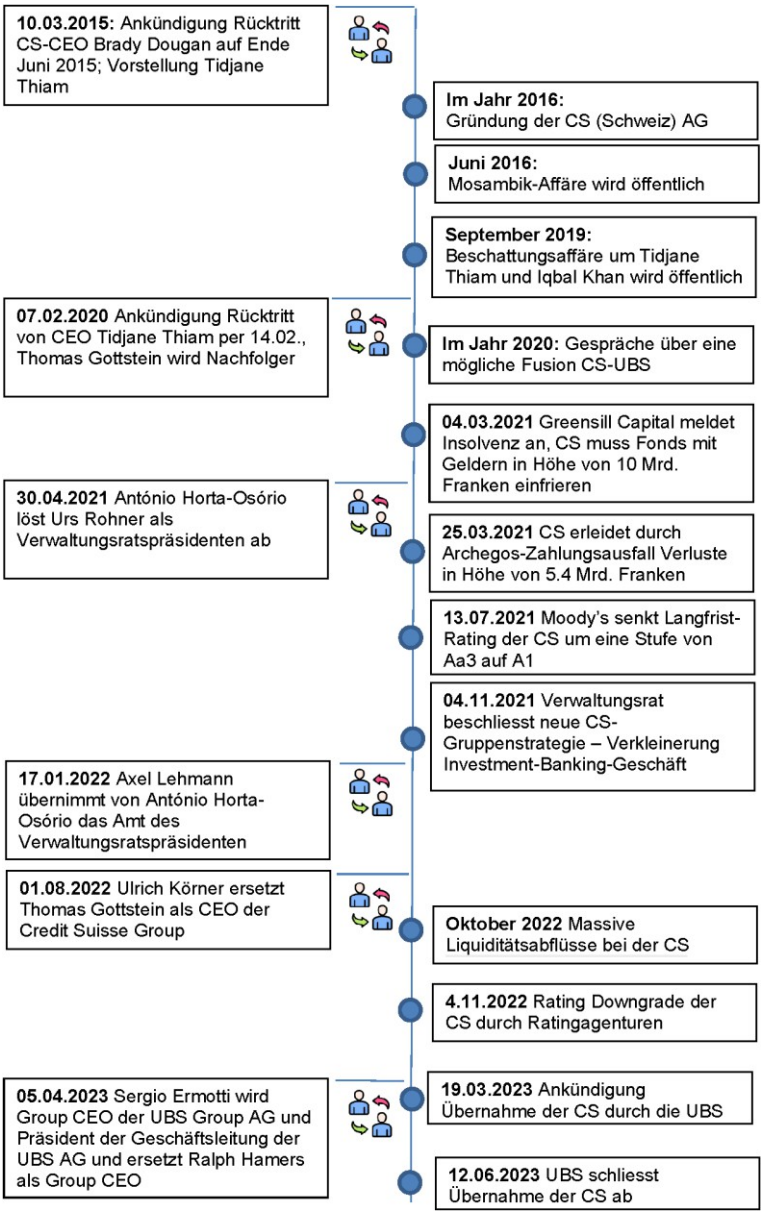
the USA since 2018,[235] the coronavirus pandemic from 2020 to 2022 and the war in Ukraine since 2022[236] (for the latter, see also section 6.1.1).

5.1.2 Development of CS, 2015 to summer 2022

CS operated in the environment described above. The most important developments at CS between 2015 and summer 2022 are outlined below, in particular CS's performance, i.e. the annual results, share price and credit ratings, as well as the various scandals and personnel changes. The following chart provides an overview of the most important key points: The changes at the top management level are shown on the left-hand side and the key developments at the bank are shown on the right-hand side.

[235] Swiss Bankers Association (2019): Banking Barometer 2019, Basel, p. 17
[236] SNB (2022): Financial Stability Report 2022. Zurich, p. 8

Figure 2: Overview of the most important developments in CS between 2015 and 2023



2015-2019: CS under Tidjane Thiam changes strategy, records losses and gets caught up in scandals

At the beginning of the comments on the developments at CS during the period under review, it should be mentioned that the bank already the focus of public interest on various occasions before 2015. In 2014, for example, it confessed to the

The decision was followed by the departure of then CEO Brady Dougan after eight years in office.[238] In mid-2015, Tidjane Thiam was appointed as the new CEO of the CS Group. In addition to Tidjane Thiam, six other members of the Executive Board took their new positions.[239] Together with the Executive Board and the Board of Directors, Tidjane Thiam proposed a new strategy aimed at significantly reducing the capital employed in investment banking.[240] Instead, the focus was to be on wealth management and the Asian business. In addition, the transformation of CS into a more decentralized organization promoted by reducing the business structure to three regional and two investment banking divisions. This gave the individual divisions more responsibility and control.[241] To finance the strategy, two capital increases totalling over CHF 6 billion were carried out and a comprehensive cost-cutting program was launched.[242]

CS reported a loss of 2.9 billion francs for the 2015 financial year. The loss was caused in particular by a goodwill write-down resulting from a company takeover in 2000 and restructuring costs due to the new strategy.[243]

In 2016, CS recorded a further significant loss of CHF 2.7 billion. This was mainly due to CS's obligation to pay penalties to the US authorities in connection with earlier transactions involving mortgage securities. Provisions amounting to CHF 2.792 billion had to be created for this.[244] In the same year, it became known that the British subsidiary of CS had granted loans amounting to more than USD 1 billion to two Mozambican state-owned companies in 2013 and 2014. These loans were primarily intended to finance coast guard vessels and a tuna fishing fleet (see section 5.3.2).[245]

CS (Schweiz) AG was also founded in 2016 in order to comply with Switzerland's too-big-to-fail regulations.[246] However, its IPO was indefinitely in April 2017. Instead, a share capital increase of CHF 4 billion[247] was announced to strengthen the capital base.[248]

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237 CS boss Brady Dougan is replaced. In: Tagesanzeiger,10.3.2015

238 Other points of criticism concerned the lack of or too slow adaptation changing conditions and regulations in the industry (the high proportion of the investment bank, the low equity ratio and the high salaries and bonuses). See also: Dougan leaves behind construction sites at CS. In: NZZ, 10.3.2015; Brady Dougan: With hard work to the model student.in: Handelszeitung, 10.3.2015

239 These included Lara Warner as Chief Compliance & Regulatory Affairs Officer, Thomas Gottstein as CEO of Swiss Universal Bank and Iqbal Khan as CEO of Wealth Management. FINMA (2023): Lessons learned from the CS crisis, p. 26 f.

240 CS (2015): Presentation "Credit Suisse Strategy and Objectives" at the Investor Day on 21.10.2015, https://www.ubs.com/global> About us> Investor Relations> Complementary financial information> Holding company and significant regulated subsidiaries and sub-groups > Archive (Credit Suisse Group) > 2015 > 2015 Investor Day (as at: 3.12.2024)

241 CS (2016): Annual Report 2015. Zurich, p. 16

242 FINMA (2023): Lessons learned from the CS crisis, p. 26

243 CS (2016): Annual Report 2015. Zurich, p. 9 and 101

244 FINMA (2023): Lessons learned from the CS crisis, p. 27

245 "Mozambique loans: FINMA proceedings against CS", FINMA media release dated 19.10.2021

246 CS (2017): Annual Report 2016. Zurich, p. 9

247 This capital increase, together with the capital increases of CHF 6 billion in 2015, led to a dilution of the capital structure and thus contributed to CS's falling share price.

248 CS: Invitation to the Extraordinary General Meeting, 26.4.2017, https://www.cre- dit-suisse.com/about-us/en.html> Events> General Meeting> 2017> Extraordinary General Meeting 2017, p. 4 (as at: 1.5.2024)

Following the conclusion of two FINMA enforcement proceedings against CS in 2018 (see section 5.3.2), CS introduced the Conduct and Financial Crime Control Committee of the Board of Directors in 2019 to monitor and assess "the effectiveness of compliance programs and initiatives related to financial crime".[249] Shortly before the end of 2018, the US Department of Justice brought charges against eight individuals, including three employees of CS International, for corruption and money laundering in connection with the Mozambique loans, among other things. The year 2018 closed with a net profit of CHF 2 billion, which was also due to the implemented cost-cutting program.[250]

CS closed 2019 with a positive result of CHF 3.4 billion.[251] The capital position thus stabilized during this phase. However, a shadowing affair in which high-ranking CS managers were shadowed by detectives made headlines. In an initial CS media conference, the case was presented as an isolated incident. When further cases of employees being shadowed became known, the CS Board of Directors lost credibility and FINMA opened its own investigation (see section 5.3.2).[252]

2020: CS under new CEO Thomas Gottstein experiences economic difficulties as a result of the coronavirus pandemic

At the beginning of February 2020, Tidjane Thiam stepped down as CEO of the CS Group. He was succeeded by Thomas Gottstein. At the same time, the Global Markets and Capital Markets units in particular were integrated into the global investment bank as part of a strategic development.[253]

The coronavirus pandemic broke out at the beginning of 2020. In March 2020, the US Federal Reserve became the first major central bank to cut interest rates by half a percentage point. Share prices fell by over 13 % as a result. CS shares trading at only half their mid-February 2020 value.[254] One reason for the sharp fall in share prices following the Fed's decision was the bank's structure (see Box 4). As CS had two large subsidiaries in the UK, liquidity management at CS was more difficult than at UBS. The liquidity bottlenecks were apparently to the situation of the parent company and the US company.[255] At the end of March 2020, the bank's liquidity situation stabilized without the need for government assistance (e.g. through Covid-19 refinancing facilities or ELA,[256] see section 5.5.4).[257]

249 CS (2019): Annual Report 2019. Zurich, p. 231

250 CS (2018): Annual Report 2018. Zurich, p. 69; FINMA (2023): Lessons learned from the CS crisis, p. 27

251 CS (2019): Annual Report 2019. Zurich, p. 69

252 FINMA (2023): Lessons learned from the CS crisis, p. 28

253 "CS builds on its strong second quarter 2020 results and launches key initiatives to strengthen strategy", CS media release dated 30.7.2020, https://www.credit-suisse.com> Media and news> Media releases> 2020 (as at 1.5.2024)

254 Coronavirus: Swiss stock market in nosedive, monetary policy on steroids. In: swissinfo.ch, 17.3.2020 (as at: 3.5.2024)

255 Transcription of the AF meeting on 23.3.2020

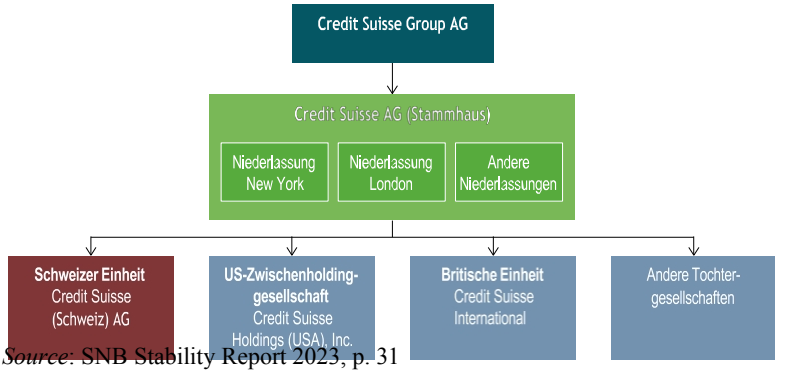
256 In March 2020, the SNB offered all systemically important banks liquidity as part of Covid-19 refinancing facilities (CRF), which would have also included the established instruments WeFa (securities facility) and ELA in view of the great uncertainty caused by the pandemic. In the end, these CRFs were not used. Written answers to the PUK dated 12.5.2024

257 Transcription of the AF meeting on 23.3.2020 and 30.3.2020

Box 4: Structure of the CS

At the top of CS banking group structure until the takeover by UBS in 2023 was the group company Credit Suisse Group AG, a holding company listed on the New York and Swiss stock exchanges. This Credit Suisse Group AG held one hundred percent of Credit Suisse AG, which was the parent bank. As the parent bank, CS AG held stakes in subsidiaries in Switzerland and abroad (over 1,100 subsidiaries worldwide at the end of 2022). For example, CS AG also held a 100% stake in the Swiss subsidiary bank Credit Suisse (Schweiz) AG, which was founded in 2015 and to which banking group transferred its systemically important functions in Switzerland. On the other hand, the parent bank also carried operational activities (banking business) itself. It was therefore not a pure holding company. Organizationally, CS Group AG was divided into four divisions: Wealth Management, Investment Bank, Swiss Bank and Asset Management.[258]

Figure 3: Simplified legal structure of CS before the takeover



Source: SNB Stability Report 2023, p. 31

2021: More and more scandals at CS

In March 2021, Greensill Capital filed for insolvency, which meant that CS had to close funds worth USD 10 billion in the short term. By July 2023, USD 7.4 billion had been repaid. At the same time, Archegos Capital Management's hedge fund collapsed, resulting in a loss of USD 5.5 billion for CS.[259] FINMA opened enforcement proceedings in both cases (see section 5.3.2) and ordered immediate measures.

CS took further independent measures, including the separation of Asset Management activities from Wealth Management and the replacement of the CEO of the Investment Bank division, the Chief Risk Officer (CRO) and the Chief Compliance and Regulatory Affairs Officer. The Greensill and Archegos cases also had an impact on the share price. When they became public, CS's share price fell by 29 %.[260] The share price then remained at around this level throughout the year, before the valuation fell steadily from the end of February 2022 (see Figure 4 below).

There was also a change in the chairmanship of the Board of Directors in 2021, as Urs Rohner had reached the ten-year term limit.[261] His successor António

258 FINMA (2023): Lessons learned from the CS crisis, p. 22 f.
259 Statement of 26.7.2024 as part of the administrative consultation
260 Expert report Hau/Rochet (2024), p. 17
261 FINMA (2023): Lessons learned from the CS crisis, p. 30

Horta-Osório began on May 1, 2021 and initiated the review of the strategy, which was published in November 2021. This announced that the Wealth Management and Investment Bank divisions would be merged globally over the next three years and that only a third of the capital would be allocated to the Investment Bank division. This was intended to strengthen and focus on risk management.[262]

Despite the loss at Archegos in the first quarter of 2021, CS recorded an increase in net new assets in Wealth Management of CHF 29 billion over the remainder of the year. However, as it also wrote down goodwill in the amount of CHF 1.6 billion, CS closed 2021 with a net loss of CHF 1.7 billion.[263]

2022: Further unrest in the CS boardroom and financial difficulties

In 2022, there were several personnel changes at Board of Directors level. Among other things, Chairman António Horta-Osório resigned in January 2022 following an internal bank investigation and Axel Lehmann was to his position. In the first two quarters of 2022, CS recorded high losses.[264] These were to lower revenues in the Investment Bank, Wealth Management and Swiss Universal Bank divisions on the one hand and the difficult macroeconomic situation (see section 5.1.1) on the other,[265] which fueled uncertainty about general market developments. The general uncertainty, the high quarterly losses and the uncertainty as to whether the announced restructuring can be successfully implemented prompted several rating agencies to downgrade CS's rating in May 2022 (e.g. Fitch)[266]. The downgrade made it more expensive for CS to obtain liquidity.

In response to these developments and due to CEO Thomas Gottstein's health problems, CS decided in July 2022 to replace him with Ulrich Körner as of August 2022. At the same time, a further strategy review was announced.[267] The latter was intended create a significantly lower absolute cost base and, in particular, to transform the Investment Bank into a "capital-efficient, advice-oriented" business.[268] The specific objectives were to be communicated in October 2022 (for details of the strategy review, see section 6.1.2). Due to the ongoing uncertainties regarding the investment outlook

262 "CS announces its Group strategy with a clear focus on strengthening, simplification and growth investments", CS media release dated 4.11.2021, https://www.ubs.com/global/de/ > Global Issues > Media > Credit Suisse, part of UBS Group (as at 22.11.2024)

263 Statement of 5.8.2024 as part of the administrative consultation

264 CS: Quarterly Results Reports, https://www.ubs.com/global> About us> Investor Relations> Complementary financial information> Holding company and significant regulated subsidiaries and sub-groups > Archive (Credit Suisse Group) > 2022 (as at 3.12.2024)

265 FINMA (2023): Lessons learned from the CS crisis, p. 31

266 FitchRatings: Fitch Downgrades CS Group to 'BBB+'; Stable Outlook, 18.5.2022, https://www.fitchratings.com/research/banks/fitch-downgrades-credit-suisse-group-to-bbb-stable-outlook-18-05-2022 (as at: 7.5.2024)

267 FINMA (2023): Lessons learned from the CS crisis, p. 34

268 "CS appoints Ulrich Körner as new Group Chief Executive Officer and announces comprehensive strategy review", CS media release dated 27.7.2022, https://www.ubs.com/global/de/ > Global Topics > Media > Credit Suisse, part of UBS Group > CS appoints Ulrich Körner as new Group Chief Executive Officer and announces comprehensive strategy review (as at 22.11.2024)

and the continuing negative results, two rating agencies downgraded CS by another notch in August 2022 (Fitch[269] and Moody's[270]).

CS's market valuation remained high for many years, despite lack of performance

Despite the aforementioned scandals and the losses between 2016 and 2022, the credit ratings of the three most important agencies Fitch, Moody's and S&P remained stable and at a high level between 2016 and 2022, which enabled CS to achieve low refinancing costs, among other things.[271] CS's credit ratings were only downgraded significantly in May 2022. This contrasts with the steadily falling share price (see Figure 4). CS's share price behind the index of European bank shares as early as 2012. After CS's share price plummeted in March 2021, when the scandals surrounding Greensill and Archegos became public, it did not recover sustainably. On the contrary, CS's share price continued to lag behind the European index.[272]

Between 2010 and 2022, CS's total assets halved from CHF 1032 billion to CHF 531 billion. In this phase, CS's performance figures raise questions about its remuneration policy: The Hau/Rochet expert report calculates that CS had always achieved a negative economic result since 2011, with the exception of 2018 (Table 1 on p. 13 in the expert report). Despite these unfavorable performance figures, the variable remuneration for bank managers remained in the billion franc range, even if it tended to fall: in 2010, these so-called discretionary performance bonuses amounted to CHF 5 billion, in 2022 to CHF 1 billion. In total, the performance bonuses paid to the management level at CS amounted CHF 39.8 billion between 2010 and 2022. The total loss in the same period amounted to CHF 33.7 billion.[273] One factor in this was the high fines, settlements and compensation payments, which amounted to around CHF 15 billion at CS between 2010 and 2022.[274]

[269] FitchRatings: Fitch Downgrades CS Group to 'BBB'; Outlook Negative, 4.8.2022, https://www.fitchratings.com/research/banks/fitch-downgrades-credit-suisse-group-to-bbb-outlook-negative-04-08-2022 (as at: 7.5.2024)

[270] Moody's Investors service: Moody's downgrades CS Group AG's senior unsecured debt ratings to Baa2; outlook negative, 1.8.2022, https://www.credit-suisse.com/media/assets/about-us/docs/investor-relations/debt-investors/ratings-credit-reports/csg-moodys-rating-action-010822.pdf (as at 7.5.2024)

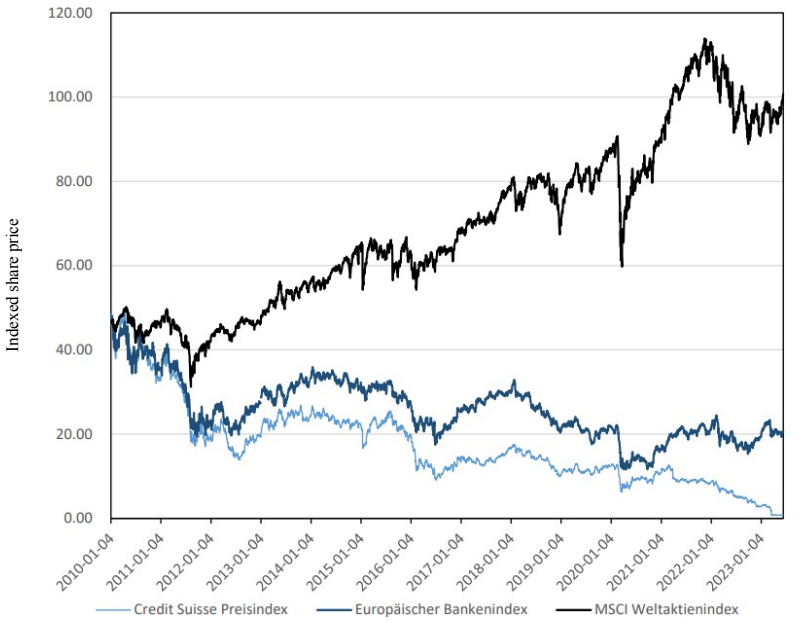
[271] Hau/Rochet expert report, p. 19

[272] For an overview chart of the development of the CS share price and important at CS, see FINMA (2023): Lessons learned from the CS crisis, p. 23

[273] Hau/Rochet expert report, p. 14 and 20

[274] FINMA (2023): Lessons learned from the CS crisis, p. 54

Figure 4: Development of CS share prices, European banks and development of the world equity index



Graphic from Hau/Rochet expert report (2024), p. 17
Legend: Explanation of the calculation (by the authors of the expert report): The share price of Credit Suisse Group is compared with a portfolio of European bank shares (STOXX 600 Banks) and the MSCI World Stock Index. Total return indices with reinvested dividends were used as a basis. Sources: Compustat database and Refi- nitiv Datastream.

5.1.3 Development of international standards between 2015 and 2022

As already mentioned in section 4.1.1, the two most important international bodies that issue international standards in the area of financial markets are the BCBS and the FSB. The most important developments since 2015 are summarized below. A detailed overview can be found in the report "Comparative legal analysis of the regulation and supervision of financial markets and TBTF regulation" by Lea Hungerbühler, which was commissioned by the PUK.

Since 2015, developments in international standards have focused primarily on two areas that are crucial to global financial stability: capital requirements, which are intended to strengthen banks' resilience to economic shocks, and liquidity requirements, which are intended to ensure that financial institutions have sufficient liquidity.[275]

275 Basel Committee on Banking Supervision (2017): Finalizing Basel III - In brief, www.bis.org > Committees & associations> Basel Committee on Banking Supervision> Basel III (as at: 10.12.2024)

Development of capital requirements

The BCBS introduced the Basel III framework as a key part of its response to the global financial crisis (see section 4.1.1). The first version of Basel III was adopted in 2010. Revisions and adjustments followed between 2013 and 2017.[276] In 2017, the BCBS adopted new measures to restore the credibility of the calculation of risk-weighted assets (RWA) and improve the comparability of banks' capital ratios.[277]

At the same time, the FSB published the *Principles on Loss-absorbing and Recapitalization Capacity of G-SIBs in Resolution / Total Loss-absorbing Capacity (TLAC)* in 2017.[278] The TLAC standard should ensure that a global systemically important bank (G-SIB) sufficient loss-absorbing and recapitalization capacity for an orderly resolution in the event of a failure, which minimizes the impact on financial stability, ensures the continuity of critical functions and does not require losses to be offset with public funds.[279]

Development of liquidity requirements

To strengthen the resilience of banks to liquidity crises and to ensure short-term financial stability, the BCBS issued the following two regulatory standards: the *liquidity coverage ratio (LCR*), which gradually came into force from 2015,[280] and the *net stable funding ratio (NSFR),* which came into force in January 2018.[281] These two standards are part of Basel III.

The LCR basically specifies how many *high-quality liquid* assets (HQLA) must be available in a stress scenario (liquidity inflows and outflows over 30 calendar days). Specifically, a bank must enough HQLA to cover at least 100% of net outflows over a period of 30 days.[282] According to the NSFR, the *available stable funding* (ASF) must always be higher than the *required stable funding* (RSF), with the figures to be reported to the supervisory authority on a quarterly basis. The Basel III standard provides specific calculation specifications for determining the available and required stable funding.[283]

5.2 Monitoring and further development of TBTF regulation and audit oversight systems in Switzerland

5.2.1 Swiss authorities' approach to monitoring and further developing TBTF regulation

Instruments for monitoring and further development of TBTF regulation in Switzerland

The Swiss and international TBTF regime was monitored by the federal authorities using various instruments.

[276] Bank for International Settlements (BIS): History of the Basel Committee, www.bis.org > Committees & associations > Basel Committee on Banking Supervision > About the BCBS > History (as at 6.6.2024)

[277] Basel Committee on Banking Supervision (2017): Finalizing Basel III - In brief, www.bis.org> Committees & associations > Basel Committee on Banking Supervision > Basel III (as at: 10.12.2024)

[278] Hungerbühler expert report (2024), p. 7

[279] "FSB issues final Total Loss-Absorbing Capacity standard for global systemically important banks", press release of the Financial Stability Board (FSB) of 9.11.2015, www.fsb.org > Press > Press Releases (as at 10.12.2024)

[280] Basel Committee on Banking Supervision (2013), Basel III: Minimum liquidity ratio and for monitoring liquidity risk

[281] Basel Committee on Banking Supervision (2014), Basel III: Structural Liquidity Ratio

[282] Hungerbühler expert report (2024), p. 11

[283] Hungerbühler expert report (2024), p. 13

Firstly, in its biennial evaluation reports on systemically important banks from 2015 onwards, the Federal Council examined whether the Swiss regulations were equivalent to those in other countries and what the degree of implementation of the international TBTF standards was (see section 4.2.2). In the run-up to the first report, the Federal Council also obtained the external view of an independent group of experts, almost all of whose recommendations it adopted in its first evaluation report on systemically important banks.

Secondly, the SNB publishes its annual Financial Stability Report, which since 2012 has also included a chapter on the big banks and one on TBTF issues (see section 3.3).

Thirdly, the federal authorities sit on various international committees that discuss and further develop the international TBTF regime on an ongoing basis. In particular, the following bodies should mentioned (see sections 4.1.1, 3.2 and 3.3):

- the *BCBS* (for Switzerland: FINMA and SNB), which is responsible for issuing the Basel standards;
- the *FSB* (SNB and SIF represent Switzerland in the decision-making bodies);
- the *IMF* (the Head of the FDF represents Switzerland in the ministerial body, Switzerland's membership is jointly administered by the FDF and the SNB).

Involvement in these international bodies allows the Swiss authorities to monitor international developments on an ongoing basis and to compare Swiss regulations with international standards (for information on the bodies and standards, see sections 4.1.1 and 4.1.2).

Fourthly, some of these bodies carry out independent reviews of their members, including with regard to their TBTF regimes. Specifically, the *IMF* audited Switzerland annually from 2012 to 2024 as part of its *country examinations* (with the exception of 2013, 2017 and 2020). It also conducted financial sector examinations in Switzerland in 2014 and 2019. In addition, the *FSB* has conducted mandatory peer reviews of its members since 2010 (last publications on Switzerland: 2012 and 2024) as well as thematic peer reviews (e.g. a peer review on the implementation of resolution planning in the member states in 2019).

Table 4: Overview of audits of Switzerland by international bodies since 2012

Board	*Type of test*	*Year*
IMF	Country examinations (Article IV consultations)	2012
		2014
		2015
		2016
		2018
		2019
		2021
		2022
		2023
		2024
	Financial Sector Examination (FSAP)	2014
		2019
FSB	Mandatory peer reviews of members	2012
		2024
	Thematic peer review Settlement planning	2019

Further developments mainly at ordinance level

The further development of the Swiss TBTF regime by the federal authorities from 2015 (for the period prior to 2015, see section 4.2.2) took place in particular through amendments to the CAO, the LiqV, the Banking Ordinance, the Ordinance to the Financial Market Supervision Act, the Financial Market Infrastructure Ordinance (FMIO) and the Banking Insolvency Ordinance-FINMA (BIO-FINMA) by the Federal Council. The relevant players were involved in this process. In addition to FINMA and the SNB, these were in particular the banks concerned.

In some cases, amendments were also made at the legislative level, such as in the Banking Act, the FinSA, the FinIA, the FMIA, the Withholding Tax Act (VStG), the Federal Direct Federal Tax Act (DBG) and the Tax Harmonization Act (StHG). However, most of the changes were implemented by the Federal Council in its capacity as the issuer of ordinances or, in some cases, directly by FINMA by means of TBTF rulings. In the years 2016 to 2018, there were also an increasing number of parliamentary initiatives on TBTF regulation, some of which also resulted in amendments to the legal framework (see section 5.2.5.2).

5.2.2 Overview of the most important areas of TBTF regulation in Switzerland

Possible areas of TBTF regulation include, in particular: *Capital requirements*, *liquidity requirements*, *the public liquidity backstop (PLB), temporary public ownership (TPO), the resolvability of banks, banking supervision* and *regulation* and *deposit protection*. These areas are structured differently in Swiss and international TBTF regulation. Chapter 5.2.2.1 first briefly introduces these areas before Chapter 5.2.2.2 provides a chronological overview of the most important stages in the further development of Swiss TBTF regulation from 2015 to 2022 in the various areas.

Detailed explanations of the individual stages can be found in the following chapters 5.2.3-5.2.6, whereby the focus is on the TBTF regulation of internationally active systemically important banks, the G-SIBs. Domestic systemically banks (D-SIBs) are only considered in passing, as the rules relating to them are of little relevance to the PUK's mandate.

5.2.2.1 Subject areas of TBTF regulation

The terminology for the topics presented in this subsection is explained in the glossary at the end of the report (see Appendix 2).

Capital requirements

Equity or capital requirements determine how much equity a bank must hold. Equity corresponds to the difference between assets and liabilities, i.e. between what a bank owns and what it owes to third parties (equity= assets minus liabilities). In the event of a crisis, debt capital can be reduced, which mathematically leads to an increase in equity. The two main instruments for reducing debt capital are

- The write-off of certain types of debt capital, such as certain forms of AT1, whose value thereby set at zero. The creditors lose everything.
- The conversion of certain categories of debt capital, such as bail-in bonds, into equity. The creditors become shareholders of the bank to an extent to be defined.

The amount of *equity* that a bank must hold in order to continue its business activities in an orderly manner is defined in *going concern requirements*. The amount of *equity* that a bank must hold in order to ensure the implementation of its restructuring or liquidation is defined *in gone concern requirements*.

While higher going-concern requirements can reduce the probability of resolution, gone-concern requirements create the conditions for the orderly restructuring or resolution of a bank. The total loss-absorbing capacity (TLAC) of a bank is made up of the going-concern and gone-concern funds.

Capital requirements for banks are calculated in two ways. In the case of the risk-weighted *assets (RWA)* ratio, the capital to be held by the bank is set in relation to the bank's risk positions, whereby the risk of loss weighted. While the default risk of the individual positions is taken into account in this type of calculation, this is not the case with the *leverage ratio (LR)*. The LR is the ratio resulting from the comparison of the core capital (T1) and the total exposure. The LR equity ratio therefore relates to the bank's unweighted positions, whereby the total exposure is defined for regulatory purposes.

The amount of the various capital requirements is not only influenced by the threshold defined as a percentage (e.g.: equity in the amount of 14.3% of RWA, see section 5.2.3.1). The following aspects also have an impact on the level of capital requirements:

- The categories of assets that are permitted for the calculation of equity. As equity is calculated from assets liabilities, a restriction of the assets permitted for calculation reduces the reported equity and therefore also the RWA and LR.
- The valuation of assets, which can be carried out using different methods (valuation according to purchase price, nominal value, market value, etc.). Since equity is calculated as assets minus liabilities, the higher the value of the assets, the higher the equity. Consequently, a revaluation of the assets leads to a purely thematic increase in the equity ratio.
- The risk weighting of the assets. High-risk assets should weighted higher. A higher risk weighting of certain assets mathematically forces the bank to hold more capital.

Consequently, it is not only the RWA or LR ratio resulting at the end of the calculations that plays a role in determining the capital requirements for banks. Rather, the aforementioned, seemingly technical aspects of the calculation method also have a significant economic impact. Accordingly, many of these aspects were controversially discussed during the further development of the TBTF regulation from 2015 to 2022.

Finally, it should be mentioned that Swiss TBTF legislation provides for various simplifications to the capital requirements for banks for various reasons, which have been further developed over the years (see section 5.2.3.1).

Liquidity requirements

For a bank to be stable, it is not enough for it to have sufficient equity. It must also have sufficient liquidity to be able to carry out its banking business and withstand shocks that lead to rapid outflows of liquidity. Accordingly, the TBTF regulation also specifies liquidity requirements for banks.

The *liquidity coverage ratio (LCR)* is the minimum ratio for short-term liquidity. It aims to strengthen the resilience of banks in the event of short-term liquidity crises by ensuring that banks have sufficient high-quality, liquid assets available to withstand the outflow of funds in a predefined stress scenario.

The *net stable funding ratio (NSFR)* is a financing ratio that is intended to ensure a stable financing structure on a permanent basis for a time horizon of one year.

One of the TBTF instruments designed to ensure the liquidity of banks in the event of a crisis is the PLB, which is discussed separately below. This instrument was only discussed at international level (FSB) from 2016 and was not yet an issue when the Swiss TBTF regulation was first introduced in 2012.

Stabilization and settlement

In the case of systemically important banks, a distinction must be made between stabilization and resolution in the event of a crisis. The term "stabilization" (*recovery*) refers to stabilizing measures taken by a company without government intervention at an early stage of the crisis. *Resolution*, on the other hand, refers to the reorganization or bankruptcy liquidation of a bank through intervention by the authorities if there is a risk of insolvency.[284] The international coordination of the authorities' preparations for G-SIB crises takes place in the Crisis Management Group (CMG) (see section 5.3.1.5).

Since 2012, Swiss TBTF regulation has stipulated that SIBs must have a stabilization plan to be approved by FINMA and that FINMA must set out in a resolution plan for each SIB how a restructuring or bankruptcy liquidation ordered by FINMA would be carried out (see section 5.3.1.4). In addition, SIBs must draw up an emergency plan for FINMA.[285] In the event of restructuring, the authorities have various restructuring measures at their , such as a bail-in, the transfer of the assets of the bank concerned to another legal entity or to a *bridge bank*, the continuation of individual banking services, restructuring measures, adjustments to the business model or governance measures. With the emergency plan, systemically important banks must prove that their systemically important functions can be continued without interruption in a crisis.

In the years 2015 to 2022, which are covered in this chapter, there were no fundamental developments in terms of stabilization and liquidation.[286]

Public Liquidity Backstop (PLB)

The various liquidity requirements may not be sufficient for a bank to continue its systemically important business activities in the event of a crisis. A so-called Public Liquidity Backstop (PLB) or Liquidity Public Backstop (LPB; henceforth PLB) can absorb this residual risk. This is a government measure to quickly provide a systemically important bank with liquidity.

284 See the eleventh and twelfth sections of the BankA.

285 Hungerbühler expert report (2024), p. 19

Bail-in had been rudimentarily enshrined in the Banking Act since 2011 and was implemented in the Banking Insolvency Ordinance-FINMA (BIO-FINMA; SR **952.05**) in 2012. With the partial revision the BankA, which came into force on 1.1.2023 (see section 5.2.6.5), the bail-in was regulated in detail in Article 30b BankA under the heading "Capital measures". The regulations on the transfer of assets and on mergers were supplemented with the partial revision of the Banking Act in 2021 (AS **2022** 732).

[287] if the bank cannot help itself on the market (first line of defense) or through extraordinary liquidity assistance from the SNB (second line of defense).[288] A represents the third line of defense in terms of liquidity, so to speak. The funds made available under the PLB must be repaid at a later date so that the public sector does not incur any losses.[289]

In 2019, the USA and the UK, which are relevant reference countries for Switzerland, had an explicit PLB mechanism.[290]

Temporary Public Ownership (TPO)

"TPO" is not a clearly defined term. A TPO covers various forms of a temporary state takeover of a bank or a temporary state holding in a bank. Examples include Northern Rock (nationalized by the UK in 2008 and sold on in 2011), the German Commerzbank (state participation since 2008), the Irish Anglo Irish Bank (nationalization in 2009, liquidation in 2011) and the Icelandic banks (nationalization in 2008). After a TPO, various states have not succeeded in relinquishing state ownership of the acquired bank.

A TPO is not a classic TBTF instrument. The purpose of Swiss TBTF regulation is precisely to avoid state aid for systemically important banks (see the purpose in Art. 7 para. 2 Banking Act). However, the TPO instrument has been discussed internationally since 2011 at the suggestion of the FSB.[291] In 2016, 14 jurisdictions, such as the UK, had already explicitly enshrined a TPO in law.[292] Some of the solutions differ significantly from one another. The Swiss authorities have been considering the possibility of a TPO since 2020 (see section 5.2.5.6).

Banking supervision and regulation

An important area of TBTF regulation is, of course, banking supervision, which was placed on a new footing following the financial crisis of 2007/08 with the creation of FINMA (see section 3.2). Banking supervision has evolved over the years, particularly in the period under review between 2016 and 2018 as a result of several initiatives (see section 5.2.5.2).

Deposit protection

The deposit guarantee system is intended to strengthen depositors' confidence in the security of their bank deposits. The aim is to prevent a bank run in the event of a crisis. In the event of a bank failure, a depositor protection system also serves to protect depositors from losing their deposits and to ensure the availability of their deposits.

In Switzerland, there is a three-tier system of depositor protection: deposits at domestic and foreign branches of Swiss banks are protected up to a maximum of

[287] Possible variants of a Liquidity Public Backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021, p. 4: It is made clear that the PLB is neither a state rescue nor a nationalization of the company.

[288] Possible variants of a liquidity public backstop, interim report of the working group FFA-SIF-SNB-FINMA for the attention of the AF of 3.3.2021, p. 4: Further requirements for the activation of a PLB would therefore be that the bank is solvent, meets the requirements of FINMA and that the Federal Council gives its approval.

[289] Possible variants of a liquidity public backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021, p. 5

[290] Federal Council report of 3.7.2019 on systemically important banks.evaluation pursuant to Article 52 of the Banking Act (BBl **2019** 5385, here 5390)

[291] FSB (2011): Key Attributes of Effective Resolution Regimes for Financial Institutions ; FSB (2014): Key Attributes of Effective Resolution Regimes for Financial Institutions, Key Attribute 6.5, p. 12

[292] FSB (2016): Second Thematic Review on Resolution Regimes, FSB Peer Review Report of 18.3.2016, p. 30

The maximum amount of CHF 100,000 per privileged (Art. 42c BankO) is treated as so-called privileged deposits (Art. 37a BankA). If a bank goes bankrupt, the privileged deposits are first paid out in full or in part from the bank's liquid assets. If the bank's liquid assets are not for this, the deposit guarantee comes into play in a second step. Since 2005, deposit protection in Switzerland has been provided by Esisuisse, a self-regulatory organization organized in the form of an association to which all banks with a branch in Switzerland must be affiliated (Art. 37h ff. BankG). The third level of existing depositor protection is a bankruptcy privilege.

5.2.2.2 Brief overview of the most important developments

In the following sections 5.2.3 to 5.2.6, the most important developments in Swiss TBTF regulation from 2015 to 2022 are presented in chronological order, divided into four phases: from 2015 to 2017 (5.2.3), 2017 to 2019 (5.2.4), 2019 to 2021 (5.2.5) and from 2021 to the end of 2022 (5.2.6). In addition to the four evaluation reports of the Federal Council and the legal developments that have taken place, the work of the authorities on the introduction of a PLB and a TPO is also presented. The focus here is particularly on the question of the extent to which the authorities have implemented the international standards and how the FDF and the Federal Council have positioned themselves in the area of tension between the aforementioned international standards and the concerns of domestic stakeholders, particularly the domestic financial sector. The findings of the Hungerbühler expert report (see section 1.4.3.2), which carried out a comparative legal analysis of the regulation and supervision of the financial markets and TBTF regulation on behalf of the PUK, are also taken into account.

The following table provides an overview of the most important developments in TBTF regulation in Switzerland from 2015 to 2022, insofar as they are set out in this report (see also Annex 4).

Table 5: Overview of the most important developments in TBTF regulation in Switzerland 2015-2022

Date	*Stage*	*Topic*	*Chapter*
18.2.2015	First evaluation report of the Federal Council on SIB	B	4.2.2.5
11.5.2016	Partial revision of the CAO: Introduction of going-concern and gone-concern requirements for G-SIBs	K	5.2.3.1
15.2.2017	Federal Council instructs FDF to draw up a consultation draft on deposit protection	E	5.2.3.2
28.6.2017	Second evaluation report of the Federal Council on SIB	B	5.2.3.3
21.11.2018	Partial revision of the CAO: abolition of simplifications for financial groups and individual institutions, change to risk weighting of participations	K	5.2.4.1
14.12.2018	Enactment of the Federal Act on the Calculation of the Participation Deduction for Systemically Important Banks	K	5.2.4.2
3.7.2019	Third evaluation report of the Federal Council on SIB	B	5.2.4.3
27.11.2019	Partial revision of the CAO: Clarification of capital requirements for parent companies	K	5.2.5.1
13.12.2019	Issuance of the Ordinance to the Financial Market Supervision Act	R	5.2.5.2

Date	Stage	Topic	Chapter
16.3.2020	Establishment of a working group on the PLB	PLB	5.2.5.3
19.6.2020	Federal Council dispatch on a revision of the Banking Act: adjustments to the deposit protection system	E	5.2.5.4
11.9.2020	Partial revision of the LiqV: introduction of an NSFR	L	5.2.5.5
16.9.2020	Establishment of a working group on the TPO	TPO	5.2.5.6
4.6.2021	Fourth evaluation report of the Federal Council on SIB	B	5.2.5.7
17.12.2021	Revision of the Banking Act: adjustments to the deposit insurance system	E	5.2.6.1
11.3.2022	Federal Council decision on the parameters of a PLB	PLB	5.2.6.2
3.6.2022	Amendment to LiqV: new liquidity concept for SIB	L	5.2.6.3
23.11.2022	Amendment to BankV: Replacement of the discount system	K	5.2.6.4
1.1.2023	Entry into force of the revised BankA and the revised BankO (adjustments to the deposit guarantee scheme)	E	5.2.6.5

Legend for the "Topic" column:
R= Banking supervision and regulation; B= Report of the Federal Council, E = Deposit insurance, K = Equity, L = Liquidity, PLB= Public Liquidity Backstop, TPO = Temporary Public Ownership

5.2.3 2015-2017: Further development of capital requirements and mandate to adjust the deposit guarantee scheme

5.2.3.1 First significant further development of capital requirements with the introduction of going-concern and gone-concern requirements for G-SIBs following the first evaluation report

Initial situation

Since 2012, SIBs have been subject to higher capital requirements than the other banks, which are set out in the Banking Act and the CAO. In its first evaluation report on "Too big to fail" and the systemically important banks of February 18, 2015, the Federal Council identified a need for further action in this regard (see section 4.2.2.5).

The amendment to the ordinance against the background of international standards

The Federal Council responded to the need for action identified in the evaluation report with the partial revision of the CAO on May 11, 2016.[293] When this partial revision into force on July 1, 2016, a new conceptual distinction was made in Switzerland between *going-concern* and *gone-concern requirements*. While going-concern requirements already existed to a certain extent, the introduction of gone-concern requirements represented an innovation in Swiss TBTF regulation.

293 AS **2016** 1725

By taking this step, the Federal Council *implemented the total capital requirements (TLAC)*, which had also become an international standard: On
On November 9, 2015, the FSB published its final *TLAC Principles and Term Sheet*.[294] In addition to the international recommendations for banks' TLAC requirements, the 2016 partial revision of the CAO also met the requirements of Basel III and the FSB's G-SIB mandate.

There were still deviations from the international standard on individual issues. For example, there was no automatic mechanism for dividend restrictions if the capital buffer was exceeded.[295]

General thrust of the quantitative adjustments to the capital adequacy requirements

Since the partial revision of the CAO 2016, the *going concern requirements* for the orderly continuation of the bank have included an increased LR requirement for G-SIBs of at least 5% in total (previously: at least 3.36%). The capital requirements measured in terms of RWA were barely increased with the change to the regulation compared to before: before 2016, they were at least 14%; from July 1, 2016 they were at least 14.3%. *G-SIBs* were also subject to new *gone-concern requirements* for additional loss-absorbing capital, which in principle mirrored the going-concern requirements (i.e. another 14.3% RWA and 5% LR).

Banking law continued to provide options for easing capital requirements. FINMA was responsible for granting them. The box below shows the three types of relief and also provides a brief overview of the main further developments.

Box 5: Easements for capital requirements

Firstly, Article 10 paragraph 3 of the Banking Act stipulates that FINMA must grant the banks *reductions in equity capital* (so-called rebates) if the banks realize certain improvements in their ability to restructure and liquidate.

These rebates were initially set out at ordinance level in Article 65 BankO and Article 133 CAO until the Federal Council replaced this rebate system with a new incentive system at the end of 2022 (see section 5.2.6.4).

Secondly, from 2013 to 2019, the CAO provided for relief for banking groups if, due to the individual group structure, the aggregation of the individual requirements de facto led to the regulatory requirements being exceeded at group level (so-called relief for financial groups and individual institutions). These exemptions were defined in more detail in Article 125 CAO (section 5.3.3). Article 32 CAO required deduction from common equity tier 1 capital (CET1) of holdings in the financial sector to be consolidated at group level for all banks on an individual institution basis. FINMA had to grant the *exemptions in accordance with Article 125 CAO*, meaning that the full deduction of equity investments was never applied.

Even though the Federal Council introduced these simplifications at ordinance level, the Federal Assembly played a decisive role in their introduction: the corresponding amendment to the CAO was subject to the transitional provision in

[294] FSB (2015): Principles on Loss-absorbing and Recapitalization Capacity of G-SIBs in Resolution. Total Loss-absorbing Capacity (TLAC) Term Sheet, 9.11.2015, https://www.fsb.org/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf (as at 19.11.2024)
[295] Hungerbühler expert report (2024), p. 9

Article 151 of the CAO is subject to approval by the Federal Assembly. The Federal Assembly approved the amendment on September 18, 2012 (BBl **2012** 8395).

After the CS crisis of 2023, the Federal Council and FINMA stated that the relief under Article 125 CAO politically desirable. In doing so, they referred to the lobbying of the two G-SIBs in parliament in 2011.[296]

The simplifications under Article 125 CAO were abolished for G-SIBs by FINMA ruling in 2017 and for the other banks by an amendment to the ordinance by the Federal Council in 2019 (see sections 5.2.4.1 and 5.3.3).

The third easing of capital requirements is the so-called regulatory filter, which is based on Article 4 paragraph 3 of the Banking Act.[297] A regulatory filter is used to correct accounting standard requirements that are assessed differently from a regulatory perspective than in financial accounting for the purpose of calculating regulatory capital. FINMA granted CS such an additional regulatory filter in the context of the change in Swiss accounting standards from the 2019 financial year for an indefinite period (see sections 5.3.1.3 and 5.3.3).[298]

With regard to the level of the revised capital requirements, it should also be noted that the FDF stated in a discussion paper from October 2015 that higher capital requirements could also be justified due to the above-average size of the Swiss big banks compared to domestic GDP.[299] The quantitative requirements for G-SIBs in the international standards amounted to 21.5-23% RWA and 6.75% LR in the comparative period (end of 2015).[300]

The Federal Council provided for a transitional period until 2019 for compliance with the new going concern and gone concern requirements.[301]

As part of the revision of the CAO of November 22, 2017,[302] which into force on January 1, 2018, the Federal Council also extended certain existing transitional periods following bilateral consultation between the GS-FDF and CS. This should make it possible to continue using the existing approaches for derivatives and managed collective assets the time being, as the EU and the US did not adhere to the Basel timetable on this point either.[303]

This shows the authorities' efforts not to anticipate the development of international regulation in the interests of the big banks under the keyword "competitiveness". In addition, when revising the CAO in 2016, the Federal Council refrained from setting a deadline for the improvements to be made with regard to the *global resolvability* of Swiss G-SIBs.[304]

296 FINMA (2023): Lessons learned from the CS crisis, pp. 61-63 and 88; Report of the Federal Council of 10.4.2024 on bank stability, including evaluation pursuant to Article 52 of the Banking Act (BBl **2024** 1023, p. 75 f.)

297 Letter from FINMA to the PUK dated 14.6.2024, p. 1

298 Banking Stability Expert Group (2023): Need for reform after the demise of Credit Suisse, p. 71

299 Capital requirements for banks - recalibration TBTF and categorization Determination of benchmarks for ordinance amendments, FDF discussion paper of 20.10.2015, p. 7

300 Report on international financial and tax matters 2016, FDF report from February 2016, S. 32

301 This corresponded to the deadline set by the FSB in its *TLAC term sheet* of 9.11.2015 for banks that were defined as G-SIBs before 2015.

302 AS **2017** 7625

303 Accompanying sheet on transactions of the State Secretary SIF dated 18.10.2017, p. 1

304 FDF explanatory report of 13.5.2016 on amendments to the Capital Adequacy Ordinance and the Banking Ordinance (capital adequacy requirements for banks - recalibration TBTF and categorization) (revised version), p. 6

Quantitative adjustments to the rebate system and relief for financial groups and individual institutions

The partial revision of the CAO on May 11, 2016 also in adjustments to the *rebate system* and the *relief for financial groups and individual institutions* (see Box 5). The maximum rebates were quantified in the rebate system, and the Federal Council recommendation no. 4[305] of its first evaluation report on systemically important banks from 2015 with regard to relief: Individual institutions that systemically important functions of a financial group could no longer receive the aforementioned relief. Exceptions were possible if the importance of the individual institutions for the continuation of the domestic systemically important functions of the financial group was low. The purpose of this adjustment was to provide the financial group with an incentive to organize itself in such a way that, if possible, all systemically important functions were combined into a single unit or separated ex ante.[306]

The Federal Council was therefore aware of the potentially detrimental effects of the first two types of relief in 2015/2016 on financial stability. It therefore restricted them considerably in the following years (see sections 5.2.4.1 and 5.2.6.4). However, the third type of relief, the *additional regulatory filters* (see box 5 on this and in particular section 5.3.3.3), was not included in the Federal Council's analysis amending the CAO in 2016. This was despite the fact that the Federal Council had already come to the conclusion in its first evaluation report in 2015 "that the parent companies, which are particularly important from a Swiss perspective, are only just capitalized. "[307]

Qualitative adjustments to own funds requirements

Furthermore, the requirements for the quality of capital were slightly increased (spread of Tier 2 instruments). These changes were made because the Federal Council had recognized that the international standards for calculating banks' equity capital were stricter than the Swiss calculation benchmarks: Internationally, the LR was calculated exclusively on the basis of Tier 1,[308] and particularly in times of crisis, the markets were only able to assess solvency on the basis of Tier 2.
"Common Equity Tier 1 Capital (CET1) ratio relevant.[309]

Differences within the authorities

On two points in particular, several stakeholders, namely FINMA and the SNB, demanded stricter regulation than the Federal Council ultimately enacted:

1. Progression in own funds requirements:

During the official consultation, FINMA and the SNB clearly a "kink" in the progression of capital adequacy requirements. They demanded,

305 The recommendation was entitled "Adjustment of the facilitations for systemically important individual institutions in accordance with Article 125 of the Capital Requirements Regulation".
306 Explanatory report of the FDF dated 13.5.2016 on amendments to the Capital Adequacy Ordinance and the Banking Ordinance (Capital Requirements for Banks - Recalibration TBTF and Categorization) (revised version), p. 11
307 Report of the Federal Council of 18.2.2015 on TBTF (BBl **2015** 1927, here 1934)
308 Report of the Federal Council of 18.2.2015 on TBTF (BBl **2015** 1927, here 1938 f.)
309 Capital requirements for banks - recalibration TBTF and categorization Determination of benchmarks for ordinance amendments, FDF discussion paper of 20.10.2015, p. 5 f.

that the larger the bank in question, the greater the progression should be, and that it should not be linear.[310]

However, the two big banks and a majority of the participants in the hearing at that time against such a "kink" and thus in favor of a linear progression.[311] The Federal Council included the lower surcharges advocated by the banks in the partially revised CAO.

2. Quantitative disclosure obligation:

The question of the quantitative disclosure requirement for relief was controversial among the participants in the hearing at the time, which is why the FDF retained the wording in force at the time in its proposal to the Federal Council.[312] The FDJP submitted a co-report in which it proposed that the relief for systemically important individual institutions pursuant to Article 125 CAO must be fully disclosed in quantitative terms.[313] The Federal Council refrained from imposing a more extensive quantitative disclosure requirement and left the existing regulation in place, which provided for the periodic disclosure of certain parameters.

5.2.3.2 Initial efforts to adjust the deposit guarantee scheme

Initial situation

When the Banking Act was amended in 2010, a proposal to establish a public-law deposit guarantee fund financed ex ante failed the consultation process.[314] In its 2014 financial sector review, the IMF recommended that Switzerland make improvements to deposit protection.[315] The group of experts on the further development of the financial market strategy came to the same conclusion in its final report of December 1, 2014.[316] The Federal Council itself did not mention deposit protection in its 2015 evaluation report, although it based itself in principle on the aforementioned final report.

Mandate for the FDF to prepare a consultation draft

Based on the aforementioned expert report, the Federal Council commissioned an initial review of possible improvements to the depositor protection system. As a result of this review, it instructed the FDF on February 15, 2017 to prepare a consultation draft on deposit protection with an amendment to the Banking Act and the Intermediated Securities Act (BESA) by the end of November. As the project required further clarification, the revision was delayed until 2021, also due to other time-consuming work (see section 5.2.6.1).[317]

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310 FINMA statement of 24.3.2016 as part of the official consultation of 16.3.2016 on amendments to the Capital Adequacy Ordinance and the Banking Ordinance (Capital Adequacy Requirements for Banks - Recalibration TBTF and Categorization), p. 2; SNB statement of 24.3.2016 as part of the official consultation of 16.3.2016 on amendments to the Capital Adequacy Ordinance and the Banking Ordinance (Capital Adequacy Requirements for Banks - Recalibration TBTF and Categorization), p. 2

311 FDF report of 11.5.2016 on the consultation on amendments to the Capital Adequacy Ordinance and the Banking Ordinance (Capital Adequacy Requirements for Banks - Recalibration TBTF and categorization), p. 6

312 Federal Council proposal of the FDF dated 9.5.2016, p. 5

313 Co-report of the FDJP of 10.5.2016 on the Federal Council proposal of 9.5.2016 of the FDF, p. 1 f.

314 Dispatch of 19.6.2020 on the amendment of the Banking Act (BankA) (insolvency, deposit protection, segregation) (BBl **2020** 6359, here 6373)

315 IMF: FSAP No. 14/143 on Switzerland from May 2014

316 Further development of the financial market strategy, final report of the expert group of December 1, 2014

317 Amendment to the Banking Act (deposit protection); delay in opening the consultation, information note from the FDF to the Federal Council dated 1.10.2018;

5.2.3.3 Second evaluation report of the Federal Council on systemically important banks from 2017

In its evaluation report of June 28, 2017[318] , the Federal Council came to the conclusion that the Swiss regulatory approach was suitable reducing systemic risk in an international comparison. The Federal Council therefore continued to describe the Swiss TBTF approach as positive and, apart from selective aspects, saw no fundamental need for adjustment.

The recommendations from the Federal Council's first report from 2015 were not explicitly to in the second report. The 2017 report does not explicitly monitor the implementation status of the various measures and developments in the individual fields of action. The FOJ explicitly criticized this circumstance in the official consultation on the report.[319]

Capital requirements

With regard to the capital requirements for G-SIBs, the Federal Council primarily summarized the partial revision of the CAO in the second evaluation report on systemically important banks. It stated that the Swiss going-concern capital requirements for the two G-SIBs were rather high in an international comparison, but not dangerously equivalent to the rules in the US and the UK.[320] It then noted that Switzerland was one of the first countries to implement the TLAC standard.[321] To justify the applicable requirements, the Federal Council referred to the above-average size of Swiss G-SIBs in relation to GDP in an international comparison.[322]

In 2017, the Federal Council recognized the need for additional action in two areas that affect capital requirements:

- Firstly, it noted that, due to the applicable rules on profit tax, the issue of capital raising instruments to meet the TLAC requirements could result in an adverse tax effect that would reduce the SIB's equity capital, contrary to the objectives of the TBTF regulation.[323] The Federal Council addressed this problem by introducing the Federal Act of December 14, 2018 on the calculation of the participation deduction for systemically important banks[324] (see section 5.2.4.2).
- Secondly, the Federal Council an adjustment to the participation deduction, as it considered the current mixed system with participation deduction and risk weighting to be complex and not transparent. It therefore instructed the FDF to review the regulations on the participation deduction (Art. 32 CAO) and the granting of relief (Art. 125 CAO) and to propose any necessary adjustments. These were made with the revision of the CAO dated November 21, 2018 (see section 5.2.4.1).

318 Federal Council report of 28.6.2017 on systemically important banks (evaluation pursuant to Article 52 of the Banking Act (BBl **2017** 4847))
319 Opinion of the FOJ of 1.6.2017 in the official consultation of 12.5.2017 on the Federal Council's report on systemically important banks
320 Report of the Federal Council of 28.06.2017 on systemically important banks (BBl **2017** 4847, here 4851 f.)
321 Report of the Federal Council of 28.06.2017 on systemically important banks (BBl **2017** 4847, here 4853)
322 Report of the Federal Council of 28.06.2017 on systemically important banks (BBl **2017** 4847, here 4852 f.)
323 Report of the Federal Council of 28.06.2017 on systemically important banks (BBl **2017** 4847, here 4860 f.)
324 AS **2019** 1207

Liquidity requirements

the new LiqV, which came into force on January 1, 2013, underwent an initial partial revision[325] with regard to the LCR (minimum ratio for short-term liquidity) on January 1, 2015, the Federal Council determined in 2017 that no further action was required with regard to the applicable liquidity requirements.

Other TBTF instruments

Finally, it should be noted that the Federal Council instructed the FDF to draw up a consultation draft in the area of deposit protection at the beginning of 2017, also in view of international criticism (see section 5.2.3.2). The TPO has also been discussed internationally since 2011. As of 2016, 14 jurisdictions had already introduced a TPO (see section 5.2.2.1). However, in its 2017 evaluation report, the Federal Council did not mention the instrument of a PLB (see also 5.2.2.1) or the aspect of deposit protection or the instrument of a TPO.

5.2.4 2017-2019: Removal of relief for financial groups and individual institutions and measures to improve capital accumulation

5.2.4.1 Abolition of the simplifications for financial groups and individual institutions and change to the risk weighting of participations (amendment to the CAO of November 21, 2018)

After the Federal Council announced in its second evaluation report in 2017 that it would review the appropriateness of the simplifications under Article 125 CAO (see box 5 in section 5.2.3.1), it repealed these simplifications with the amendment to the CAO of 21 November 2018 and reorganized the handling of participations.[326]

Content of the 2018 revision of the ERV

Previously, participations had to be deducted in full from the capital of the bank that held the participation. In the case of the parent companies of the major Swiss banks, the highly capitalized subsidiaries in the USA, the UK and Switzerland were particularly significant. As a result of the deduction of these investments, the capital ratio of the Swiss parent companies deteriorated compared to the consolidated view of the Group.

Following the revision of the CAO in 2018, shareholdings of holding companies in subsidiaries no longer had to be deducted from the holding company's own funds, but were instead subject to a *risk weighting* in future. A higher risk weighting (400%) was selected for participations abroad than in Germany (250%) in order to take into account the different circumstances of foreign and domestic subsidiaries.[327]

As this new system was less strict than the previous approach to shareholdings, the exemptions under Article 125 CAO were abolished.

When considering the change from participation deduction to risk weighting, the authorities a comparison with the foreign legal systems relevant to Switzerland, namely those of the EU, the UK and the USA.

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325 AS **2014** 2321

326 AS **2018** 5241, entered into force on January 1, 2019

327 Capital repatriations of foreign subsidiaries may be subject to the approval of foreign supervisory authorities. Explanatory notes of the FDF dated 21.11.2018 on the amendment to the Capital Adequacy Ordinance (gone concern capital, participation deduction and other adjustments), p. 10

the USA.[328] FINMA examined the various systems in detail before deciding in favor of the system change. The Federal Council followed FINMA's considerations.[329]

Applicability of the new regime to the G-SIB since 2017

FINMA had already decreed the regime change for the two big banks at an early stage and it into force on July 1, 2017.[330] To implement the change, FINMA granted the two G-SIBs a ten-year transition period until January 1, 2028. In combination with the specific requirements for SIBs that continue to apply, the system change meant that the two parent companies of the CS and UBS Groups had to back around 60% of their holdings with equity[331] or build up corresponding equity capital within the transition period.[332]

As a result of this amendment to the CAO, the consolidated capital ratios of financial groups remained unchanged, but the capital ratios reported for individual institutions improved. In the case of RWA requirements, this effect was practically offset by the new risk weighting of equity investments. In contrast, the LR compliance ratio increased substantially for the two parent companies of the CS Group and the UBS Group at individual institution level, but not in the consolidated view of the groups. This is because the elimination of the previous capital deductions increased the eligible capital.[333] This effect therefore already occurred to a certain extent without the having to hold additional capital.

5.2.4.2 Improved capital accumulation through neutralization tax effects when issuing TBTF instruments

Initial situation

Originally, Swiss G-SIBs were also allowed to use TBTF instruments abroad to meet their capital requirements under Swiss TBTF legislation. From 2017, FINMA no longer accepted this approach in implementation of the international TLAC standard for G-SIBs after the end of the transitional period,[334] which the Crisis Management College (CMC) also endorsed.[335] FINMA stipulated that from 1 January 2020 at the latest, only the issuance of TBTF instruments in Switzerland would be permitted.

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328 Some jurisdictions operated with a risk weighting, others with participation deductions. Explanatory notes of the FDF dated 21.11.2018 on the amendment to the Capital Adequacy Ordinance (gone concern capital, participation deduction and other adjustments), p. 5

329 Explanatory notes of the FDF dated 21.11.2018 on the amendment to the Capital Adequacy Ordinance (gone concern capital, participation deduction and other adjustments), p. 9 f.

330 TBTF rulings issued by FINMA on the basis of Article 9 of the Banking Act, see explanatory notes.
of the FDF of 21.11.2018 on the amendment of the Capital Adequacy Ordinance (gone concern capital, participation deduction and other adjustments), p. 3; FINMA (2023): Lessons learned from the CS crisis, pp. 61-63 and 88

331 Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023 p. 83)

332 As FINMA noted in its lessons learned report, the parent company (Credit Suisse AG) of the CS Group was no longer able to generate the income required for the capital build-up envisaged under the adjusted regime from 2021, see FINMA (2023): Lessons learned from the CS crisis, p. 61.

333 Explanatory notes dated 21.11.2018 on the amendment to the Capital Adequacy Ordinance (Gone-concern-
Capital, participation deduction and other adjustments), p. 13

334 FSB: Principles on Loss-absorbing and Recapitalization Capacity of G-SIBs in Resolution. Total Loss-absorbing Capacity (TLAC) Term Sheet, 9.11.2015; FDF discussion paper of 19.9.2016 on the adjustment of the participation deduction in connection with the expansion of the TBTF regime, p. 4

335 FINMA's comments of 15.8.2016 on the official consultation of 27.7.2016 on the Adjustment of the participation deduction in connection with the extension of the TBTF regime, p. 2

from the Swiss parent company, i.e. the parent banks Credit Suisse AG and UBS AG, is permitted.

In the view of the Federal Council, however, this adjustment could have had adverse tax effects for the G-SIBs. Specifically, the tax burden on G-SIBs could have increased (potentially by up to several hundred million francs per year in the long term according to estimates by the Federal Administration at the time), which would have reduced equity. This would have been contrary to the objectives of the TBTF legislation.[336]

Content of the Federal Act on the Calculation of the Participation Deduction for Systemically Important Banks

As a result, the Federal Council initiated the drafting of the Federal Act on the Calculation of the Participation Deduction for Systemically Important Banks. This law[337] corrected the calculation of the participation deduction so that the income tax burden of the group parent company of a systemically important bank remains unchanged if it issues TBTF instruments (e.g. bail-in bonds, write-off bonds or contingent convertibles).[338] This made it easier for systemically important banks to build up capital by issuing TBTF instruments.

Positions of the stakeholders in the run-up to the adoption of the law

During the drafting of this law, the various interests involved in the further development of Swiss TBTF legislation once again became apparent. The big banks had already raised the issue of profit tax on the issue of TBTF instruments in 2015 as part of the parliamentary consultations on the revision of the Withholding Tax Act, but initially without success. At the time, Parliament was not prepared to extend the reform of the withholding tax to the issue of profit tax.[339] Despite the legislator's negative stance, the FDF took up the issue again and submitted a discussion paper to the Federal Council on September 30, 2016. The Federal Council decided to instruct the FDF to prepare a consultation draft.

During the consultation process in 2017 however, certain business circles argued that granting tax relief to all banks would lead to preferential treatment of the banking sector and thus to unequal treatment of the banking sector compared to other sectors. In order to take this criticism into account, the Federal Council ultimately limited its proposal to the systemically relevant banks.[340]

Despite this restriction, the FOJ questioned the constitutionality of the innovation during the official consultation. It could not rule out the possibility of unjustified unequal legal treatment and therefore declared that it could not confirm the constitutionality of the bill.[341]

336 Federal Council dispatch of 14.2.2018 on the Federal Act on the Calculation of the Participation Deduction for Too-Big-to-Fail Instruments (BBl **2018** 1263)
337 AS **2019** 1207
338 Federal Council dispatch of 14.2.2018 on the Federal Act on the Calculation of the Participation Deduction for Too-Big-to-Fail Instruments (BBl **2018** 1263)
339 FDF discussion paper of 19.9.2016 on the adjustment of the participation deduction in connection with the extension of the TBTF regime, p. 4
340 Federal Council Dispatch of 14.2.2018 on the Federal Act on the Calculation of the Participation Deduction for Too-Big-to-Fail Instruments (BBl **2018** 1263, here 1275 f.)
341 Opinion of the FOJ dated 8.12.2017 on the official consultation of 21.11.2017 on the bot- on the BG on the calculation of the participation deduction for too-big-to-fail instruments

FINMA, whose regulatory requirement for G-SIBs to issue TBTF instruments triggered the bill, supported the bill.[342] In FINMA's view, the bill was not a privilege for the banks, but rather a consideration of the special circumstances in connection with the implementation of the TBTF legislation.[343]

In the co-reporting procedure on the FDF's Federal Council proposal of 25 January 2018, the FDJP requested an amendment to the bill in line with the criticism that the FOJ already expressed in the official consultation.[344] In its statement on the FDJP's co-report, the FDF still considered the different treatment of TBTF instruments compared to other bonds and of systemically important banks compared to other companies to be legally justifiable in view of the regulatory requirements in the banking sector.[345]

The Federal Assembly unanimously passed the Federal Act on December 14, 2018 without any amendments and the Federal Council brought it into force on January 1, 2019.

5.2.4.3 Third evaluation report of the Federal Council on systemically important banks from 2019

In its third evaluation report on the systemically important banks of July 3, 2019[346], the Federal Council stated that the various adjustments to the legal requirements had led to CS and UBS having to increase both the amount and the quality of their equity capital. The various international requirements regarding loss-absorbing capital were all met by Switzerland.[347] In its third report, the Federal Council also carried out an international comparison and again came to the conclusion that the Swiss system was fundamentally positive and that there was no need for a reorientation. However, it identified the need for selective adjustments, which are explained below.

In its 2019 report, the Federal Council made no reference to the recommendations or measures proposed in the previous reports. As with the 2017 report, the 2019 report did not contain any explicit monitoring of the implementation status of the various measures and developments in the individual fields of action. As in 2017, the FOJ again criticized this situation in the office consultation.[348]

Capital requirements

With regard to the capital requirements, the Federal Council stated that the adjusted requirements for the two G-SIBs had led to a significant increase in the amount and quality of equity. In particular, it emphasized

[342] FINMA statement of 7.12.2017 on the official consultation of 21.11.2017 on the dispatch on the Federal Act on the calculation of the participation deduction for too-big-to-fail instruments

[343] FINMA comments of 15.8.2016 on the official consultation of 27.7.2016 on the adjustment of the participation deduction in connection with the expansion of the TBTF regimes, p. 1

[344] FDJP co-report of 13.2.2018 on the FDF's proposal of 25.1.2018 on the dispatch on the Federal Act on the Calculation of the Participation Deduction for Too Big to Fail Instruments; result of the consultation procedure and draft bill, p. 1

[345] Statement of the FDF of 13.2.2018 on the FDJP's co-report of 13.2.2018 on the FDF's proposal of 25.1.2018 on the dispatch on the Federal Act on the Calculation of the participation deduction for too-big-to-fail instruments; result of the consultation procedure and draft bill, p. 1

[346] Report of the Federal Council of 3.7.2019 on systemically important banks (BBl **2019** 5385)

[347] Basel III, additional requirements of the Financial Stability Board and minimum standard for loss-absorbing capital (TLAC)

[348] Opinion of the FOJ of 14.5.2019 in the official consultation of 16.4.2019 on the Federal Council's report on systemically important banks

the additional loss-absorbing capital (gone-concern capital) that G-SIBs have had to hold since the partial revision of the CAO in 2016. At the same time, he noted that the gone concern requirements in the US were higher than the Swiss requirements and that the UK also intended to introduce higher requirements compared to Switzerland.

With regard to the going concern requirements, the Federal Council the Swiss TBTF legislation a positive assessment, as it had already done in its 2017 evaluation report. For the first time in these evaluation reports, it transparently highlighted the above-average size of Swiss G-SIBs compared to foreign G-SIBs: The total assets of the two Swiss G-SIBs each amounted to between 134% and 139% of Switzerland's GDP, while the total assets of the largest US big bank, for example, amounted to just 17% of US GDP.[349]

With regard to own funds, the Federal Council identified a need for action in several areas:

- Firstly, as already announced on 21 November 2018,[350] it wanted to clarify the question of which entities within the G-SIB financial groups must meet the requirements for systemically important banks.[351] The reason for this need for clarification was that CS and UBS had transferred their systemically important functions for Switzerland to newly created Swiss subsidiaries by 2017 in order to improve their ability to restructure and liquidate. The Federal Council's clarifications ultimately led to the amendment of the CAO on November 27, 2019 (see section 5.2.5.1).
- Secondly, in its third evaluation report, the Federal Council reiterated its view that the so-called rebates (Art. 65 Banking Ordinance, Art. 133 CAO) should be abolished in the medium term in the event of improved recoverability and liquidability. The reason for this position was that, from the banks' perspective, there was too little planning certainty in the system at the time, as the amount of the rebates granted could - at least theoretically - be adjusted by FINMA every year,[352] and that the big banks had criticized the complexity of the TBTF regime.[353]

Liquidity requirements and PLB

With regard to the liquidity requirements for banks, the Federal Council stated in its 2019 report that all Swiss banks must comply 100% with the LCR in accordance with the Basel III requirements from January 1 and that SIBs are subject to additional liquidity requirements. This is because the Banking Act (Art. 9 para. 2 let. b) and the LiqV (Art. 19) require systemically important banks to ensure a higher resilience to liquidity shocks compared to all other banks. However, analyses by FINMA and the SNB would have that these special requirements SIBs did not actually lead to higher requirements than the LCR for all SIBs, which is actually required by law.

349 Report of the Federal Council of 3.7.2019 on systemically important banks (BBl **2019** 5385, here 5386 ff.)

350 "Federal Council increases capital requirements for domestically focused systemically important ", Federal Council press release dated 21.11.2018

351 Report of the Federal Council of 3.7.2019 on systemically important banks (BBl **2019** 5385, here 5393 f.)

352 Report of the Federal Council of 3.7.2019 on systemically important banks (BBl **2019** 5385, here 5386 ff.)

353 Proposal of the FDF to the Federal Council of 19.11.2019 regarding the amendment of the Capital Adequacy Ordinance (particularly liquid and well-capitalized institutions, mortgages for residential real estate, TBTF - parent banks), p. 6

is required (Art. 9 para. 2 let. b Banking Act). Accordingly, the Federal Council saw a need for action.[354] It finally addressed this problem in 2022 with the introduction of a new liquidity concept for SIBs (see section 5.2.6.3).

In the report, the Federal Council also made a comparison with the liquidity requirements in the US and the UK. It came to the conclusion that the liquidity requirements for G-SIBs in both jurisdictions tend to be higher than Switzerland. He also pointed out that, in contrast to Switzerland, both the US and UK legislations provide for further government support mechanisms such as the "liquidity buffer" in addition to the extraordinary liquidity support provided by the central banks.
z. For example, a PLB to guarantee the liquidity required for the restructuring or liquidation of an SIB.[355]

This is the first mention of the PLB in the Federal Council's evaluation reports. However, the 2019 report did not address the extent to which the introduction of a PLB was also examined for Switzerland. It also did not explain why Switzerland had not yet complied with a recommendation by the [FSB356] to introduce a PLB from 2016. The Federal Council therefore signaled no immediate need for action. The authorities only prepared a PLB in the following years and finally introduced it by emergency law during the CS crisis (see section 5.2.5.3).

Other TBTF instruments

The Federal Council did not mention the aspect of deposit protection in its third evaluation report either. The criticism of the Swiss system of depositor protection expressed by the IMF in the meantime (see section 5.2.3.2) was also not addressed. The Federal Council also did not address the instrument of a TPO in its 2019 report .

5.2.5 2019-2021: Introduction of a net stable funding ratio, clarification of FINMA's role and establishment of working groups on the public liquidity backstop and temporary public ownership

5.2.5.1 Clarification of capital requirements for parent companies (amendment to the CAO of November 27, 2019)

Initial situation

In 2016, the partial revision of the CAO introduced gone concern requirements for the two Swiss G-SIBs at group level (see section 5.2.3.1). However, it was unclear to which individual institutions of the two banking groups the gone concern requirements should apply. The Federal Council clarified this issue with the amendment to the CAO of November 27, [2019357] , which came into force on January 1, 2020.

Content of the revision of the ERV

This partial revision of the CAO regulated, among other things, the structure of the gone concern requirements for the new Swiss entities (Credit Suisse (Schweiz) AG and UBS Switzerland AG) created in 2015 and entrusted with systemically important functions and for the parent banks (the so-called parent banks Credit Suisse AG and UBS AG) of the two G-SIBs (for the group structure of CS, see box 4 in section 5.1.2).

354 Report of the Federal Council of 3.7.2019 on the systemically important (BBl **2019** 5385, here 5389 and 5395)
355 Report of the Federal Council of 3.7.2019 on systemically important banks (BBl **2019** 5385, here 5390)
356 Financial Stability Board (2016): Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank ("G-SIB"), 18.8.2016, p. 7: The introduction of a PLB is recommended here.
357 AS **2019** 4623

The special capital requirements for G-SIBs applied both at the level of the financial group and at the level of the individual institutions if the individual institutions performed systemically relevant functions for the financial group (Art. 124 CAO). The amendment to the CAO of November 27, 2019 was intended to clarify that the parent institutions continue to be subject to the special requirements, as a failure of the parent institutions could cause considerable damage to the Swiss economy due to their size and position within the financial group and their interconnectedness with the financial system.

In addition, the amount of the gone concern requirements for the various units within a banking group was specified in Article 132 CAO. Furthermore, the maximum rebates were newly specified in Article 133 CAO. At the request of the two G-SIBs, the Federal Council adjusted the timing of the specification of the maximum rebate to the TLAC standard, meaning that it will not apply until 2022.[358]

Positions of the stakeholders in the run-up to the revision of the ordinance

The adjustment of the gone concern requirements was already included in the Federal Council's consultation draft for the amendment of the CAO dated November 21, 2018. At that time, the picture was similar to that of other proposals for the further development of Swiss TBTF regulation: the two big banks and their related stakeholders rejected this amendment in the consultation,[359] and the Federal Council followed this rejection in its decision, although the SNB and FINMA were of the opinion that the parent companies of the CS and UBS Groups should also be subject to the capital requirements for systemically important banks as quickly as possible due to the importance of the parent banks for the entire banking group.[360]

The Federal Council's initial consideration of the opposition of the big banks and the interest groups aligned with them thus led to a delay of one year in the introduction of the gone concern requirements for the parent companies of the big banking groups (entry into force January 1, 2020 instead of January 1, 2019).

5.2.5.2 Drafting and issuing the Ordinance to the Financial Market Supervision Act in response to criticism FINMA (2017-2019)

Initial situation

The role of FINMA was the subject of a number of motions submitted to the Federal Assembly, particularly between 2016 and 2018 (for criticism of FINMA, see also section 5.6.2):

[358] Article 148m CAO; FDF proposal of 19.11.2019 to the Federal Council regarding the amendment of the Capital Adequacy Ordinance (particularly liquid and well-capitalized institutions, residential investment property , TBTF - parent banks), p. 6

[359] FDF results report of 21.11.2018 on the consultation on the amendment to the Income Appropriations Ordinance (gone-concern capital, participation deduction and other adjustments), p. 3

[360] Statement by the SNB of 28.9.2018 in the official consultation of 12.9.2018 on the amendment of the Amendment to the Capital Adequacy Ordinance (gone concern capital, participation deduction and further adjustments), p. 1-3; FINMA statement of 28.9.2018 in the official consultation of 12.9.2018 on the amendment to the Capital Adequacy Ordinance (gone concern , participation deduction and further adjustments), p. 2

Box 6: Proposals 2016-2018 on the role of FINMA

- Heer parliamentary initiative of September 29, 2016 (16.466 "FINMA must be put back under political control")
- Interpellation Aeschi Thomas dated March 2, 2017 (17.3052 "Consultation of Parliament on the positioning and recommendations of the SNB and Finma as part of the BCBS reform")
- Motion Landolt of May 4, 2017 (17.3317 "Clear responsibilities between financial market policy and financial market supervision")
- Parliamentary initiative Pantani of June 15, 2017 (17.454 "Amendment of the Financial Market Supervision Act")
- Vogler postulate of June 16, 2017 (17.3566 "Transparency on the cost consequences of Finma circulars")
- Germann postulate of June 16, 2017 (17.3620 "Transparency on regulatory costs through Finma circulars")
- Interpellation Rutz Gregor of June 16, 2017 (17.3579 "Does the fulfillment of Finma's tasks still correspond to the will of the legislator?")
- Interpellation by Aeschi Thomas dated September 28, 2017 (17.3799 "Excessive implementation by FINMA of the recommendation of the Financial Action Task Force")
- Motion WAK-N of November 13, 2017 (17.3976 "Separation of powers in financial market regulation")
- Motion Bendahan of December 4, 2017 (17.4007 "Strengthening Finma's duty to provide information")
- Interpellation Zanetti Claudio of 6 December 2017 (17.4022 "Unconstitutionality of the internal organization of FINMA according to the ruling of the Federal Administrative Court")
- Interpellation Keller Peter of 13 December 2017 (17.4082 "Unconstitutionality of Finma's internal organization according to the ruling of the Federal Administrative Court")
- Marchand-Balet interpellation of December 13, 2017 (17.4120 "Low interest rates and granting of loans")
- Interpellation Zanetti Claudio dated March 15, 2018 (18.3213 "Follow-up due to insufficient response to interpellations 17.4022 and 17.4082")
- Motion Ettlin Erich of June 15, 2018 (18.3612 "Financial market supervision should focus on its core mandate")

While various motions were written off without result, the Federal Assembly adopted motion 17.3317 "Clear responsibilities between financial market policy and financial market supervision" on the recommendation of the Federal Council (NR: 13.12.2017; SR: 13.12.2018). By recommending the adoption of this motion, the FDF also intended to reduce the political pressure on FINMA.[361] In implementation of motion 17.3317, the Federal Council issued the Ordinance to the Financial Market Supervision Act of December 13, [2019362] , which came into force on February 1, 2020 (see below).

Positions of the various players in the run-up to the enactment of the Ordinance to the Financial Market Supervision Act - question of legality

In the consultation process, the ordinance on the Financial Market Supervision Act met with approval, particularly in the financial sector and among conservative parties, with some calling for even stricter requirements to clarify FINMA's powers.

361 FDF discussion paper of 17.10.2018 to the Federal Council, p. 2
362 SR **956.11**

were in favor. By contrast, a smaller proportion of the consultation participants belonging to the politically left-wing interest groups rejected the bill. These consultation participants were concerned that the bill would jeopardize FINMA's independence and increase the administrative burden.[363]

While the Federal Council did not take into account the proposals for stricter or more specific requirements, it did partially take into account the concerns of the opposing comments. For example, it removed the link between FINMA regulation and financial market policy and simplified FINMA's reporting obligations in the regulatory process.[364]

During the official consultation, FINMA expressed concerns that the proposal would lead to a bureaucratization of its processes. It was also sceptical as to whether there was any need for regulation at all. In view of the potential reputational risks for the supervisory authority and the Swiss financial centre, it wanted the process of drafting the ordinance to be brought to a swift conclusion and the motion 17.3317.[365] to be written off.

In the office consultation, the FOJ took the view that a new ordinance should not be issued. According to the FOJ, the Federal Council did not have a sufficient legal basis for the planned requirements, as it did not have comprehensive supervisory authority over FINMA.[366] The FOJ suggested to the head of the FDJP department that a corresponding co-report be submitted to the Federal Council, but refrained from preparing the co-report request after consulting with the GS-FDJP.[367] The Federal Council did not share the FOJ's view and adopted the ordinance as planned.[368]

Content of the Ordinance to the Financial Market Supervision Act

The Ordinance to the Financial Market Supervision Act specified the following aspects of FINMA's activities:

- FINMA's competencies in international tasks and regulation were clarified and it was determined how these relate to the competencies of the Federal Council and the FDF. The aim was to achieve a clearer separation between the responsibilities of the Federal Council for financial market policy and strategy as well as regulation on the one hand and FINMA's responsibility for operational supervisory activities on the other.
- The requirements for FINMA regulations (Art. 7 FINMASA) were clarified and it was specified how the aspects of proportionality and differentiation as well as international standards are to be taken into account in regulatory activities. It was also stipulated that FINMA will periodically review existing regulations with regard to their necessity, appropriateness and effectiveness. With regard to

363 FDF results report of 13.12.2019 on the consultation procedure on the to the Financial Market Supervision Act, p. 4

364 Request from the FDF dated 5.12.2019 to the Federal Council regarding: Ordinance on the Financial Market Market Supervision Act; result of the consultation procedure, adoption and entry into force, p. 2

365 FINMA statement of 24.10.2019 in the official consultation of 9.10.2019 Ordinance on the Financial Market Supervision Act; result of the consultation procedure, adoption and entry into force

366 Statements by the FOJ of 12.2.2019 and 26.2.2019 in the office consultation of 25.1.2019 re: New Ordinance to the Financial Market Supervision Act: opening of the VNL procedure; FOJ statement of 24.10.2019 in the official consultation of 9.10.2019 regarding: Ordinance to the Financial Market Supervision Act: result of the consultation procedure. Adoption and entry into force

367 Minutes of the PUK meeting of 24.1.2024, p. 65 and 69; statement of 4.8.2024 as part of the administrative consultation

368 FDF proposal of 5.12.2019 to the Federal Council regarding the Ordinance on the Financial Market Supervision Act; result of the consultation procedure, adoption and entry into force, p. 5

the regulatory process, the ordinance specifies how the affected parties, the public and the interested administrative units are to be involved.

- Based on the guidelines for federal corporate governance, the ordinance set out certain requirements for the formulation of FINMA's strategic objectives and the process for their approval by the Federal Council. The ordinance also set out the basic principles of cooperation between FINMA and the FDF and the mutual exchange of information. According to the ordinance, FINMA and the FDF were to agree the details bilaterally.

Further measures taken by the Federal Council between 2016 and 2018 based on proposals regarding the role of FINMA

In addition to issuing the Ordinance to the Financial Market Supervision Act, the Federal Council published a report on the cost consequences of FINMA circulars on March 20, 2020 in fulfilment of postulates 17.3566 and 17.3620, both of which it had requested be rejected.[369] In addition, the Federal Council will report annually on the status of implementation of the new ordinance from 2021. This was in line with the wishes of the WAK-N and WAK-S, which they had expressed when discussing parliamentary initiative 17.454 and motion 17.3976 respectively.

Supervisory submission to the GPK

During this period, the CPC also received a supervisory submission from the Trade Association and various domestic banks regarding FINMA's activities. Between June 2017 and July 2018, the CPC-S conducted investigations into FINMA's regulatory activities. The focus was on the accusation that FINMA was violating the principle of legality. The CPC-S found no evidence of deficiencies that would have called into question the proper functioning of FINMA. In particular, the accusation of a systematic violation of the principle of legality by FINMA was not substantiated. The GPK-S therefore decided not to any further measures, such as opening an inspection. It explicitly referred to the various pending initiatives and stated that the legislator would have to clarify how far FINMA's regulatory activities should extend in future.[370]

5.2.5.3 Establishment of a working group on the public liquidity backstop by the Financial Crises Committee

Reasons for the late introduction of a PLB in Switzerland

The FSB's recommendation in 2016 to introduce an explicit PLB initially failed to resonate in Switzerland, although all major financial centers - the USA (in 2010),[371] the EU (decision in principle in 2013)[372] and the UK (in 2017)[373] - had introduced the instrument of a PLB.[374]

The first discussions among Swiss stakeholders about introducing a PLB date back to 2018. The fact that Switzerland hesitated to introduce a PLB is

[369] Cost consequences of FINMA circulars, Federal Council report of 20.3.2020 in fulfillment of postulates Vogler 17.3566 and Germann 17.3620

[370] Annual Report 2018 of the GPK and GPDel of 28.1.2019(BBl **2019** 2729, here 2753 f.)

[371] The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (Jul. 21, 2010)

[372] European Central Bank, Occasional Paper Series: Liquidity in resolution: comparing frameworks for liquidity provision across jurisdictions No. 251 of December 2020, S. 16

[373] Memorandum of Understanding on resolution planning and financial crisis management, HM Treasury, April 2017

[374] Possible variants of a liquidity public backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021, p. 13

According to the information available to the PUK, this was due to the fact that the FDF initially took a cautious stance with regard to the public debate and political feasibility. SIF expressed this position at a meeting on 1 April 2019.[375] The Federal Finance Administration also identified a risk in a public discussion: if Parliament did not approve the introduction of a PLB, this would represent a very high risk for the Swiss financial center and the internationally active big banks.[376] The assessment that the political acceptance of a PLB low at the time was shared by the Chairman of the SNB, who had been calling for the introduction of a PLB since 2018.[377] FINMA also pointed out the need to introduce a PLB on several occasions - demonstrably for the first time on October 30, 2018 in the AF[378].[379] The then FINMA Director identified the problem primarily as a lack of political will and pointed out that he had intervened with the then Head of the FDF, among others.[380]

Discussions on the PLB in the AF and the EVS from 2018 to 2020

An initial in-depth discussion on the possible introduction of a PLB was held at the AF meeting on October 30, 2018, when the committee discussed the provision of liquidity in the event of restructuring and resolution (*funding in resolution*). FINMA and the SNB spoke out in favor of enshrining a PLB in law as a further step in the development of Switzerland's TBTF legislation. The FFA and SIF, on the other hand, were reticent.[381] Subsequently, various seminars were held in February 2019 at FINMA and the SNB explained the PLB instrument to representatives of the SIF and FFA.

At the end of 2019, the then Head of the FDF gave his approval to carry out an internal analysis of the PLB. However, this was to take place in an open-ended process and not made public. The members of the AF were informed of this decision on March 16, 2020.[382]

In this context, a working group was set up with representatives from SIF, FFA, FINMA and SNB under the leadership of the FFA (PLB working group). The task of the working group was to examine possible forms of a PLB and to show the advantages and disadvantages of an explicit PLB, which is anchored in an explicit legal basis and is therefore publicly known, compared to an ad hoc solution (implicit PLB) to be applied in the event of a crisis by means of emergency law.[383]

Results of the working group

In March 2021, the PLB working group prepared a report for the AF with possible variants of a PLB.[384] The report that, depending on the scenario, a PLB of up to over CHF 200 billion could be necessary for both CS and UBS. It should be noted at this point that these were internal administrative estimates based on figures and assumptions that are now outdated. The working group came to the following conclusion in its report,

375 Minutes of the policy dialog of 1.4.2019
376 Minutes of the PUK meeting of 24.1.2024, p. 10
377 Minutes of the PUK meeting of 27.3.2024, p. 15
378 Draft minutes of the meeting of the Financial Crises Committee of 30.10.2018 and FINMA to the Financial Crises Committee of 30.10.2018.
379 Minutes of the PUK meeting of 21.2.2024, p. 33
380 Minutes of the PUK meeting of 21.2.2024, p. 33
381 TBTF and public backstop: status of the situation, note from the FFA dated 28.2.2019, p. 1
382 Possible variants of a liquidity public backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021, p. 9
383 Possible variants of a liquidity public backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021, p. 9
384 Possible variants of a liquidity public backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021

that a PLB should ideally be explicitly designed. This could have a confidence-building effect and ideally lead to the PLB not being needed in the event of a crisis. On the other hand, there are false incentives with both an explicit and an implicit PLB, as the systemically important banks are aware in both variants that they will be supported in a crisis, which could lead to riskier behavior[385].

Specifically, the working group examined three different PLB variants: A) A) liquidity assistance by the SNB with a state guarantee, B) liquidity assistance by the SNB without a state guarantee, C) implicit PLB. At the same time, it carried out an assessment based on various criteria (effectiveness and credibility, international acceptance, financial risk, political acceptance, governance, rapid cash flows and legal feasibility) of the different variants.

- A) Liquidity assistance by the SNB with a state guarantee: This option would have the desired preventive effect (confidence-building), would be internationally accepted and would in a rapid flow of money. Negative aspects would be the high risk for the Confederation and the uncertain political acceptance. In the course of the work, the concept of this variant of the PLB was supplemented with a bankruptcy privilege in order to minimize the risks for the Confederation.
- B) Liquidity assistance by the SNB without a state guarantee: This type of PLB would be unique internationally and could cause considerable damage to the SNB's reputation. Such a PLB was considered to be less credible and effective than option A, but political acceptance appeared to be higher.
- C) Implicit PLB: The working group came to the conclusion that such a PLB would be suboptimal: the FSB's requirements would not be met and it would not build confidence. Political acceptance would not be important, as neither the public nor parliament would be informed.

In conclusion, the working group noted that this was only an interim result and that further clarification was necessary in order definitively clarify the remaining questions (for further work on the introduction of a PLB, see section 5.2.6.2).

5.2.5.4 Federal Council dispatch on adjustments to deposit protection

Initial situation

At the beginning of 2017, the Federal Council instructed the FDF to draw up a consultation draft with adjustments to deposit protection (see section 5.2.3.2). Even before the Federal Council presented its dispatch in mid-2020, the IMF conducted a financial sector assessment (FSAP) of Switzerland in June 2019. In this audit, the IMF identified various shortcomings in Swiss deposit insurance compared to the international standards of the *Core Principles* of the International Association of Deposit Insurers (IADI) and international *best practice* (see also section 5.2.6.5).[386]

385 Possible variants of a liquidity public backstop, interim report of the FFA-SIF-SNB-FINMA working group for the attention of the AF of 3.3.2021, p. 21

386 IMF FSAP No. 19/183 on Switzerland from June 2019, p. 41.

Positions of the various stakeholders prior to the adoption of the Federal Council Dispatch

In the consultation, which took place in the first half of 2019, some big banks welcomed the fact that no purely ex ante financed fund solution was chosen, as this would lead to disproportionate effort and disproportionate costs for the banks.[387] Many participants in the consultation pointed out the necessary balance between deposit protection and TBTF regulation and called for simplifications in the banks' capital adequacy and liquidity requirements in accordance with the principle of cost neutrality.[388] In addition, the consultation participants from the banking sector spoke out against a double burden on systemically important banks through deposit protection on the one hand and the obligation to continue systemically important functions on the other, and called for an exception for SIBs.[389]

In the official consultation on the consultation draft, FINMA argued genuine ex ante financing of deposit protection.[390] In addition, in the official consultation on the dispatch on the amendment to the Banking Act[391] as well as in the subsequent official consultations on the amendment to the Banking Ordinance, FINMA expressed that it did not the exemptions for preparatory actions for SIBs and small banks in Article 42h of the Banking Ordinance. This is because the exemptions for SIBs were justified by the obligation to draw up an emergency plan. However, FINMA was of the opinion that the existence of an obligation to draw up an emergency plan was not sufficient as a prerequisite for relief for preparatory actions. Rather, FINMA must have assessed a SIB's emergency plan as feasible at least once.[392] The Federal Council then slightly adapted the language of the explanatory notes to the ordinance amendment, but not the ordinance provision itself.[393]

Federal Council dispatch on the revision of the Banking Act

In its Federal Council proposal for the discussion of the dispatch, the FDF still considered an ex ante fund solution to be politically unacceptable and instead proposed strengthening the existing system by means of an ex ante component, the deposit of securities.[394]

When the Federal Council presented its dispatch on June 19, 2020, it identified a need for action, as deposit protection in Switzerland was or is financed ex post, while internationally there is a clear trend towards the creation of ex ante funds.

[387] FDF report of 19.6.2020 on the results of the consultation procedure on the amendment to the Banking Act (BankA) (insolvency, deposit protection, segregation), p. 12

[388] FDF report of 19.6.2020 on the results of the consultation procedure on the amendment to the Banking Act (BankA) (insolvency, deposit protection, segregation), p. 12

[389] FDF report of 19.6.2020 on the results of the consultation procedure on the amendment of the Banking Act (BankG) (insolvency, deposit protection, segregation), p. 14

[390] FINMA statement of 18.1.2019 on the official consultation of 5.3.2019 amendments to the Banking Act (deposit protection, insolvency) - opening of consultation procedure, p. 3

[391] FINMA statement of 10.3.2020 on the official consultation of 19.2.2020 the amendment of the Federal Act on Banks and Savings Banks, p. 4

[392] FINMA statement of 21.9.2022 on the official consultation of 31.8.2022 regarding the Amendment to the Banking Act (insolvency, deposit protection, segregation): into force; amendment to the Banking Ordinance (insolvency, deposit protection, segregation and resolvability): Approval and entry into force; FINMA statement of 28.2.2022 on the official consultation of 9.2.2022 regarding the amendment to the Banking Ordinance (, deposit protection, segregation and resolvability): opening of the consultation procedure

[393] See the text of Art. 42h para. 1 of the explanatory notes of 23.11.2022 on the amendment of the Banking Ordinance (insolvency, deposit protection, segregation and resolvability). bility), p. 17, with the text of Art. 42c para. 2 of the draft explanatory notes, which was sent to the first official consultation on 9.2.2022 prior to the consultation.

[394] Proposal of 9.6.2020 from the FDF to the Federal Council regarding the amendment of Federal Act on Banks and Savings Banks (Banking Act, BankA): Adoption of the and results of the consultation procedure), p. 2

The Hungerbühler expert report quantifies this trend with reference to the IADI Global Trends report of 2022: 84% of deposit guarantee schemes are based on ex ante funding.[396]

In order to address the identified need for action, the Federal Council adopted the FDF's proposal in its dispatch.[397] The treatment of this revision of the Banking Act by the Federal Assembly is described in section 5.2.6.1.

5.2.5.5 Introduction of a Net Stable Funding Ratio (NSFR, amendment to the LiqV of September 11, 2020)

Two postponements of the introduction of an NSFR

In addition to the LCR, which aims to strengthen the resilience of banks in the event of short-term liquidity crises, the international standards of the BCBS (Basel III) also provided for the introduction of the NSFR from October 2014, with which long-term stable financing was to be achieved. According to the BCBS's original timeline, the national provisions on the NSFR should have come into force on January 1, 2018. delays in the introduction of the NSFR in the EU and the USA, the Federal Council decided on 22 November 2017 to include the NSFR in the LiqV at a later date.

On November 30, 2018, the Federal Council once again postponed the introduction of an NSFR originally planned for January 1, 2018.[398] In a letter to the FDF dated August 16, 2018, the Swiss Bankers Association (SBA) welcomed a further delay in the introduction of the NSFR in Switzerland in view of the then pending implementation in the EU and the USA.[399] On the other hand, FINMA had stated in the official consultation before the Federal Council discussed the matter that it was in favor of introducing an NSFR as quickly as possible, even if there had been delays in the introduction of an NSFR in certain foreign jurisdictions (EU, USA).[400] In Australia, Singapore, Hong Kong, China and Argentina, the NSFR had already been fully introduced at that time.

Introduction of an NSFR by mid-2021

After postponing the introduction of an NSFR twice since 2017, the Federal Council implemented the BCBS's minimum requirements for stable funding of banks (funding ratio) by amending the LiqV on September 11, 2020[401]. The Federal Council the amendment to the ordinance in coordination with the introduction of the NSFR in the EU in mid-2021, although FINMA and the SNB had advocated an earlier entry into force on January 1, 2021.[402]

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395 Message of 19.6.2020 on the amendment to the Banking Act (BankA) (insolvency, deposit protection, segregation) (BBl **2020** 6359, here 6373)

396 Hungebühler expert report (2024), p. 17

397 Message of 19.6.2020 on the amendment of the Banking Act (BankA) (insolvency, deposit protection, segregation) (BBl **2020** 6359, here 6380 f.)

398 "Federal Council postpones introduction of a financing quota", Federal Council press release dated 30.11.2018

399 FDF proposal of 11.11.2019 to the Federal Council on how to proceed with the NSFR, S. 2

400 FINMA statement of 8.10.2018 on the official consultation of 21.9.2018 on the proposal for further action on the NSFR

401 AS **2020** 3921

402 FINMA statement of 22.10.2019 on the official consultation of 10.10.2019 regarding the proposal to the Federal Council on the further procedure for the NSFR; SNB statement of 24.10.2019 on the official consultation of 10.10.2019 regarding the proposal to the Federal Council on the further procedure for the NSFR

5.2.5.6 Establishment of a working group on temporary public ownership by the Financial Crises Committee

Trigger for the establishment of a TPO working group by the AF

Like the PLB, Switzerland had not introduced the TPO when the CS crisis broke out. The TPO had been discussed internationally since 2011, and several countries had already introduced a TPO in 2016.[403]

On 16 September 2020, the AF mandated a working group consisting of representatives of SIF, the FFA and FINMA to conduct an in-depth conceptual analysis of a TPO (TPO working group).[404] This was at the suggestion of FINMA, which saw the need to introduce a TPO as one of the lessons learned from spring 2020, when the Covid-19 pandemic led to a tense situation on the financial markets.[405] FINMA argued for the introduction of the TPO in the ordinary legislative procedure as the *ultima ratio* in the stabilization instruments, focusing on the scenario of a bankruptcy of the parent company and a TPO of the systemically important Swiss subsidiary as a transitional solution until the Swiss entity is separated (variant 2 in the box below).[406]

Box 7: Variants of a TPO

Over the years, the Swiss authorities have discussed a total of three variants of a TPO,[407] which are listed below in ascending order of the Confederation's potential involvement:

1. Capital participation of the Confederation with several billion francs in CS for the purpose of building confidence in the markets (discussed primarily in fall 2022, see section 6.3.3.1). In this case, the Confederation would only have been a minority shareholder and not the majority shareholder. In this respect, the question could arise as to whether "TPO" is the right term for such a measure.
2. A TPO of the Swiss entity in a liquidation after reaching the PONV, e.g. in the event of the bankruptcy of the parent companies or the groups (discussed in the TPO working group from 2020 and in January and February 2023, see section 6.4).
3. Takeover of the entire banking group before the bank has reached PONV, with the aim of avoiding the need for resolution (discussed in particular during the acute crisis in March 2023, see sections 7.2.4 and 7.2.5). Such a TPO would possibly have gone further than the international principles for a TPO.

403 However, as explained in section 5.2.2.1, the design of a TPO differs from country to country and there is no uniform understanding of the TPO.

404 Report on the TPO interpretative report of the working group appointed by the AF, version of the SIF with comments from the FFA for the dispatch of 20.4.2021 to FINMA and the FFA, p. 2; see also transcription of the AF meeting of 12.9.2022, p. 17. It was that the SNB would participate in the working group if required. However, as of March 2021, it was not represented in the working group for capacity reasons (*Speaking points* of the Director of the FFA for the discussion of the TBTF strategy with the State for International Financial Matters of 3.3.2021).

405 Minutes of the PUK meeting of 24.4.2024, p. 51

406 Temporary Public Ownership (TPO), FINMA presentation at the workshop on 19.8.2020, p. 6-9 and 13

407 Minutes of the PUK meeting of 24.1.2024, p. 43

Ordinary introduction of a TPO or preparing the introduction by means of emergency law?

The authorities agreed that, unlike the PLB, the TPO not central to external confidence building.[408] However, the authorities were divided the issue of introducing a TPO through the ordinary legislative process. FINMA and the SNB were in favor of a rapid introduction of a TPO through ordinary legislation; the FFA and SIF were skeptical on this issue.[409]

In her hearing before the PUK, the Secretary of State for International Financial Matters pointed out that a TPO, unlike a PLB, would not have created any additional public confidence in the ability to restructure and liquidate. According to her, the decision against an ordinary regulatory process was not only due to concerns about the instrument itself, but also to the prioritization of resources: The authorities had seen the introduction of a PLB as a priority and had therefore "deprioritized" the work on the TPO.[410] However, documents from March 2021 indicate that the development of variants in the TPO and PLB dossiers were running in parallel.[411] The working group on the TPO, which was chaired by SIF, did not officially discontinue its work, but it was no longer prioritized from the second half of 2021.

In her hearing before the PUK, the Director of the FFA focused on the fact that the introduction of a TPO as an ordinary crisis instrument of the authorities could have created false incentives. In addition, the authorities of the central federal administration had concerns about the extent to which a TPO was a proportionate and necessary solution in a resolution. Neither the SNB nor FINMA had yet been able to convince the FDF of the advantages of a TPO. The risk of misguided incentives and the danger of state liability and state assumption of a bank's entrepreneurial risks were very high.[412]

As a result, the AF decided not to seek the inclusion of a TPO in the authorities' crisis instruments via an ordinary legislative procedure. Instead, a TPO should - if at all - be based exclusively on the application of emergency law in individual cases.[413]

Content of the working group's clarifications

As mentioned, the variants of a TPO that have been clarified in the working group since September 2020 were a TPO for the Swiss entity in a wind-down after the PONV was reached (variant 2 in the box above). This is the same variant of a TPO that was at the forefront of the authorities' considerations in January and February 2023,[414] but not the variant of a TPO for the entire banking group before the PONV was reached, as discussed during the crisis weekend of March 18/19 (variant 3 in the box above).

As can be seen from the working group's draft reports, the working group addressed the following questions in the first phase (until mid-2021):

- Requirements for the implementation of a TPO by emergency law;
- Case constellations in which a TPO could be applied;
- potential risks for the public sector;
- Classification of TPO legislation in foreign legal systems;
- Procedure for a resolution and a TPO.

[408] Report on the TPO interpretative order of the working group appointed by the AF, SIF version with comments from the FFA dispatch to FINMA and the FFA on 20.4.2021, p. 14

[409] Temporary Public Ownership (TPO), FINMA presentation at the workshop on 19.8.2020, p. 6-9 and 13; minutes of the PUK meeting on 1.5.2024, p. 34 f.

[410] Minutes of the PUK meeting of 24.4.2024, p. 51

[411] *Speaking points* of the Director of the FFA for the discussion of the TBTF strategy with the State Secretary for International Financial Matters on 3.3.2021

[412] Minutes of the PUK meeting of 24.1.2024, p. 43 f.

[413] Report on the TPO interpretative order of the working group appointed by the AF, SIF version with comments from the FFA dispatch to FINMA and the FFA on 20.4.2021, p. 2

[414] Transcription of the AF meeting of 6.1.2023; minutes of the LG meeting of 11.1.2023

In a second phase of the project (until March 2022), the authorities intended to work out their various responsibilities and competencies in the preparation and implementation of a TPO in more detail within the framework of the working group and to discuss practical implementation issues (for more information on the further work of the TPO working group, see sections 6.4 and 7.2.5).

5.2.5.7 Fourth evaluation report of the Federal Council on systemically important banks from 2021

In its 2021 report, the Federal Council concluded that the calibration of the TBTF requirements ensures adequate resilience of the Swiss systemically important banks. At the same time, however, it also emphasized the importance of increasing the resilience of these banks. He emphasized that Switzerland's system was appropriate in principle - he had always described the system as positive in previous reports - and that no fundamental realignment was required.

Capital requirements

With regard to capital requirements, the Federal Council confirmed, in virtually the same wording as its previous evaluation reports on systemically important banks, that Switzerland international standards with regard to capital requirements.[415] The comparison with the jurisdictions relevant to Switzerland (EU, UK, US) with regard to capital requirements was similarly detailed to that in the 2019 report, which is an improvement on the previous reports. As in the 2017 and 2019 evaluation reports, the argument of the above-average size of the Swiss G-SIBs in relation to Switzerland's GDP was put forward in the 2021 report to justify why the Swiss G-SIBs have to meet such high requirements at all.[416]

The Federal Council's fourth evaluation report assessed the resilience of Swiss SIBs in light of the Covid-19 pandemic. The Federal Council assessed the adjustments and increases in capital requirements for G-SIBs in Switzerland since the financial crisis of 2007/08 as positive in light of the Covid-19 pandemic. It also referred to the SNB's Financial Stability Report 2020 and the FINMA Risk Monitor 2020, stating that the increased capital requirements had led to Swiss G-SIBs building up certain capital buffers that useful in coping with the turbulence on the financial markets in February and March 2020 due to the Covid-19 pandemic.[417]

Liquidity requirements and PLB

With regard to the liquidity requirements in Swiss TBTF legislation, the Federal Council mentioned three key aspects in its 2021 evaluation report:

1. The Federal Council drew lessons from the Covid-19 pandemic in this area. The Covid-19 pandemic had led to liquidity stress on the financial markets. Swiss banks were not spared from this either, although they have improved their resilience thanks to the further development of TBTF regulation in previous years.

415 Federal Council report of 4.6.2021 on systemically important banks (evaluation pursuant to Article 52 of the Banking Act, (BBl **2021** 1487, p. 2 f.)

416 Report of the Federal Council of 4.6.2021 on systemically important banks (BBl **2021** 1487, S. 7)

417 Report of the Federal Council of 4.6.2021 on systemically important banks (BBl **2021** 1487, p. 12 f.)

were in place. The Federal Council stated that the reforms in connection with TBTF regulation had proved successful.[418]

2. The Federal Council the results of the IMF's review of Switzerland's TBTF regime in 2019.[419] In particular, the IMF found that the banks' ability to be restructured and liquidated still needed to be improved. Liquidity resources in the event of restructuring or liquidation should be prioritized.
   In this context, the Federal Council stated that the special liquidity requirements for SIBs anchored in the LiqV since 2013 were insufficient to comply with the legally required gradation compared to non-SIBs (SIBs should meet higher liquidity requirements than non-systemically important banks). The higher resilience of SIBs to liquidity shocks required by the Banking Act was therefore not guaranteed, and the liquidity requirements of SIBs in the event of restructuring or liquidation were not adequately covered. The Federal Council therefore announced a revision of the LiqV (see section 5.2.6.3).[420]
3. As in the 2019 report, the Federal Council again mentioned the fact that other jurisdictions, now including the EU, had already implemented a PLB.[421] The Federal Council continued to refrain from publicly pointing out the need for action, even though the internal administrative clarifications on the introduction of a PLB had already been underway since 2018 (see section 5.2.5.3).

Other TBTF instruments

As in previous reports, the Federal Council did not mention the deposit guarantee or the instrument of a TPO in 2021.

5.2.6 2021 to the end of 2022: Replacement of the rebate system, adjustments to deposit protection, key figures for a public liquidity backstop and new liquidity concept for systemically important banks

5.2.6.1 Deposit protection: The Swiss parliament adopts the revision of the Banking Act

In 2017, the Federal Council instructed the FDF to prepare a consultation draft on the amendment of the deposit guarantee scheme (see section 5.2.3.2). This process culminated in the revision of the Banking Act of December 17, 2021[422] , which addressed various deficiencies in the deposit protection system identified by the IMF. For example, a securities deposit was introduced as an ex ante component of deposit protection (Art. 37h para. 3 let. c no. 1 Banking Act), and a new payout period of seven days was set for E- sisuisse. However, the maximum payout period is 14 days.[423] Other points of criticism in the IMF's 2019 FSAP were not implemented (see section 5.2.6.5).[424]

418 Report of the Federal Council of 4.6.2021 on systemically important banks (BBl **2021** 1487, p. 12 f.)
419 IMF: IMF FSAP No. 19/183 on Switzerland from June 2019
420 Report of the Federal Council of 4.6.2021 on systemically important banks (BBl **2021** 1487, p. 13 ff.)
421 Report of the Federal Council of 4.6.2021 on systemically important banks (BBl **2021** 1487, S. 10)
422 AS **2022** 732
423 Pursuant to Art. 37i para. 2 BankA, Esisuisse must the necessary funds within seven days to the investigating or restructuring agents or the bankruptcy liquidators, who have a further seven days pursuant to Art. 37j para. 3 BankA to pay out the funds received to the depositors
424 Hungerbühler expert report (2024), p. 16 f.

The legislator took up the consultation participants' wish for a balance between deposit protection and TBTF regulation by adopting Article 37h para. 7 of the Banking Act in 2021, which stipulated cost neutrality.

The amended provisions should enter into force at the beginning of 2023 (see section 5.2.6.5).

5.2.6.2 Federal Council sets out key parameters for a public liquidity backstop

FDF discussion paper on the parameters of a PLB

After the PLB working group had prepared its report with possible variants of a PLB for the attention of the AF in March 2021 (see section 5.2.5.3), FINMA pointed out at a meeting with the SIF on September 2, 2021 further progress on the introduction of a PLB was necessary and important. At the beginning of November 2021, the then Head of the FDF finally instructed FINMA to a discussion paper for the Federal Council.[425] Any submission to Parliament would have to be very well prepared and accompanied by arguments, also because no fixed amount could be specified in advance.[426] Both SIF and FINMA emphasized the importance of introducing a PLB at their meeting on 24 November 2021.[427]

The aforementioned discussion paper to the Federal Council is dated March 9, 2022 and shows that an implicit PLB was abandoned and that the PLB should instead be enshrined in law. The reasons for turning away from an implicit PLB were the lack of a clear legal basis, the lack of a preventative, confidence-building effect and significant competitive disadvantages for internationally active banks. The Swiss authorities (FDF, FINMA and SNB) and the internationally active big banks considered the availability of a PLB to be a key element in ensuring sufficient liquidity in the event of a restructuring.[428] In order to counteract the possible disincentives of a PLB, it was envisaged that a PLB would not be granted without compensation. The discussion paper also set out the conditions for a PLB (SIB in restructuring proceedings, recapitalization, solvency, subsidiarity, public interest, proportionality and support from the authorities).

Key parameters of a PLB in accordance with the Federal Council's policy decision of March 11, 2022

On the basis of the aforementioned discussion paper, the Federal Council decided on March 11, 2022, to instruct the FDF to prepare a consultation draft on the introduction of a PLB in Switzerland by mid-2023.[429] The following key points should be taken into account:

- The basic structures of the PLB are anchored in the law.
- The Confederation grants the SNB a guarantee in the amount of the liquidity provided.
- The PLB is granted a bankruptcy privilege.
- It is only introduced and granted in conjunction with a compensation and sanction mechanism.

The developments in the introduction of a PLB following this decision are described in section 6.3.4.2, as they fall under phase 2.

425 Minutes of the Policy Dialogue of 24.11.2021
426 Minutes of the Policy Dialogue of 24.11.2021
427 Minutes of the Policy Dialogue of 24.11.2021
428 Introduction of a public liquidity backstop in Switzerland, FDF discussion paper to the Federal Council dated 9.3.2022, p. 1
429 "Federal Council wants to new instrument to strengthen the stability of the financial sector", Federal Council press release dated 11.3.2022

5.2.6.3 New liquidity concept for systemically important banks (amendment to the LiqV of June 3, 2022)

Initial situation

In its fourth evaluation report of 2021, the Federal Council recognized that, contrary to the requirements of the Banking Act, SIBs were not more resilient to liquidity shocks than non-systemically important banks and announced an amendment to the LiqV (see section 5.2.5.7). With the amendment to the LiqV of June 3, 2022[430], which into force on July 1, 2022, the Federal Council addressed the need for action described above by introducing a new liquidity concept for SIBs.

Content of the new liquidity concept

While the previously applicable liquidity requirements stipulated that SIBs must be able to survive a 30-day liquidity crisis, this requirement has been extended to 90 days under the new liquidity regime. The part of the requirements that goes beyond the original 30-day stress scenario consists of basic requirements for all SIBs (Art. 21-24 LiqV) and institution-specific additional requirements that FINMA can specify (Art. 25-25a LiqV). The basic requirements should cover risks that are not by the LCR by means of specified minimum parameters. FINMA's institution-specific surcharges should be able to adequately counter further material risks not covered by the basic requirements.

A transitional period until the end of 2023 applied for the revised basic requirements, and a transitional period until the end of 2024 for the institution-specific additional requirements in the event of a liquidity build-up requirement. SIBs must report their liquidity situation on a monthly basis (Art. 28 LiqV). If a bank falls short of the requirements, FINMA can stipulate sub-monthly reports on the LCR with a timely submission deadline (Art. 17b para. 5 LiqV). The effectiveness of the new provisions for SIBs must be reviewed by the end of 2026 (Art. 31c para. 3 LiqV).

Effects of the consultation procedure on the draft revision

In the consultation procedure, the five SIBs concerned and the interest groups associated with them criticized the lack of competitive neutrality of the proposal in an international comparison and, in particular, the quantitative effects.[431] The SIBs expressed this criticism even though, according to the authorities' assessment, they had comparatively high liquidity at the time of the revision of the ordinance due to temporary FINMA requirements, pandemic-related special factors and the additional liquidity held voluntarily, so that the planned changes would hardly have required a new build-up of liquidity.[432]

In contrast, with regard to the introduction of the PLB, the FFA emphasized that in a crisis, SIBs should first cover their liquidity requirements with their own liquid assets (first pillar), only then receive extraordinary liquidity assistance from the SNB (second pillar) and only finally receive additional liquidity via a PLB (third pillar). It is therefore important to strengthen the first pillar with the partial revision of the LiqV, particularly with regard to the introduction of a PLB. To the extent that the eligible assets for the special liquidity requirements

430 AS **2022** 359

431 FDF results report of 3.6.2022 on the consultation procedure for the amendment of the Liquidity Ordinance (special provisions for systemically important banks - "too big to fail"), p. 4-5 and 7-8

432 FDF proposal of 25.5.2022 to the Federal Council regarding the amendment of the Liquidity Ordinance (special provisions for systemically important banks - "too big to fail"), p. 3

assets are already available at the SIBs, this is not an actual expansion of the first pillar.[433]

FINMA was somewhat more cautious than the FFA during the official consultation, but pursued the same approach. The banks had already been accommodated to a large extent in the version of the office consultation. FINMA saw no scope for further weakening.[434]

The Federal Council partially took into account the criticism of the banks concerned in the bill. In particular, it granted the SIBs extended transitional periods, waived disclosure of the institution-specific additional requirements and extended the assets eligible to meet the liquidity requirements.[435]

Classification of the audit in an international comparison

The authorities' comparison of the proposal with the international environment showed that SIBs in the EU, the UK and the US also have to hold additional liquidity for risks that are not covered by the LCR, but that the national requirements are different. The Federal Council judged the Swiss concept with basic requirements beyond the 30th day of a liquidity stress scenario to be strict by international standards.[436] However, it should be noted that at the time of the adoption of the amendment to the LiqV on June 3, 2022, a PLB was also available in the EU, the UK and the US, unlike in Switzerland, in the event that liquidity requirements in a crisis exceed the banks' available liquidity. The FDF also stated this fact in its application to the Federal Council dated May 22, 2022.[437]

The Hungerbühler report shows that the Swiss legal framework goes beyond the Basel III standard in the definition of HQLA, but at the same time deviates slightly from the international standard in other aspects.[438] In its review of the Swiss legal framework with regard to NSFR compliance, the BCBS classified Switzerland as *largely compliant* (second-highest compliance level) in 2023.[439]

5.2.6.4 Replacement of the rebate system with a new incentive system (amendment to the Banking Ordinance of November 23, 2022)

Initial situation

In 2019, the Federal Council announced its intention to abolish the rebate system for improving the recoverability and liquidability of G-SIBs (see section 5.2.4.3). From the outset FINMA repeatedly the abolition of the rebate system without replacement. It was of the opinion that its abolition without replacement

433 Statement of the FFA of 12.4.2022 in the official consultation of 24.3.2022 on the amendment of the Liquidity Ordinance (special provisions for systemically important banks) - "Too big to fail")

434 FINMA statement of 8.4.2022 in the official consultation of 24.3.2022 on the amendment of the Liquidity Ordinance (special provisions for systemically important - "too big to fail")

435 FDF proposal of 25.5.2022 to the Federal Council regarding the amendment of the Liquidity Ordinance (special provisions for systemically important banks - "Too big to fail"), p. 3 f.; Explanatory Notes of 3.6.2022 on the amendment to the Liquidity Ordinance (Special provisions for systemically important banks - "Too big to fail"), p. 6 f.

436 Request from the FDF dated 25.5.2022 to the Federal Council regarding the amendment of the Liquidi tätsverordnung (Special provisions for systemically important banks - "Too big to fail"), p. 2

437 Request from the FDF dated 25.5.2022 to the Federal Council regarding the amendment of the Liquidi tätsverordnung (Special provisions for systemically important banks - "Too big to fail"), p. 2

438 Hungerbühler expert report (2024), p. 13

439 BCBS (2023): Assessment RCAP Switzerland NSFR

The Commission was concerned that the abolition of the rebate system would not simplify the TBTF regime, but would make it more difficult to achieve resolvability, which is key to the successful restructuring of the big banks. It feared that after the abolition of the rebate system, any setbacks in resolvability and liquidability could no longer be sanctioned with a reduction in the rebate. It also criticized the fact that in future it would have to prove such setbacks, whereas under the current law the banks had to justify and prove their entitlement to retain the rebate.[440] SIF, on the other hand, is of the opinion that if the current system had been retained, it would have remained unclear what would have happened to the incentives after the big banks had exhausted the maximum rebate potential.[441] FINMA requested that the Federal Council not abolish the previous rebate system without replacement with the amendment to the Banking Ordinance (and the CAO) of 23 November 2022[442] , which came into on 1 January 2023. The Federal Council followed the request and replaced the rebate system with a new incentive system, as it was foreseeable that the big banks would have exhausted the maximum rebate potential in the near future.

Content of the revision: new incentive system

Prior to the revision, the gone concern requirements for G-SIBs were calculated as follows: 100% of the going-concern requirements minus the individual discount for improving resolvability and liquidability. This regulation incentivized G-SIBs to improve their global *resolvability*. However, as the two G-SIBs had reached the maximum possible rebate, the incentive effect of the rebate system had been exhausted. For this reason, the gone concern requirements for G-SIBs in the new system were fixed at 75% of the going concern requirements.[443] At the same time, FINMA can demand additional loss-absorbing funds (gone concern funds) at financial group and parent company level in the new system if it identifies obstacles to the banks' ability to be restructured and liquidated (Art. 65b BankO). A list of criteria (Art. 65a Banking Ordinance) intended to ensure that the global resolvability of G-SIBs does not deteriorate even after the abolition of the incentives of the old rebate system.

Whereas previously the banks had to justify their claim to the granting or retention of the rebate and thus to falling below the actual requirements, under the new system FINMA can demand surcharges on the basic requirements if it identifies obstacles to the banks' ability to restructure and liquidate.

The G-SIBs were given the opportunity to implement the new *resolvability* criteria by the end of June 2024 (Art. 69a BankO). The bill also introduced an explicit legal basis for FINMA to regularly inform the public about its assessment of stabilization planning and emergency planning as well as the status of resolution planning for all systemically important banks.

Effects of the consultation procedure

In the consultation, UBS and the SBA fundamentally criticized the replacement of the rebate system with a new incentive system. They questioned the necessity and proportionality of the proposed regulations as, in contrast to the old system, the surcharges are not limited in amount and are unnecessary for achieving the purpose. The expansion of the assessment basis for the additional

[440] FINMA statement of 14.5.2019 in the official consultation on the Federal Council's draft report on systemically important banks 2019, p. 1; FINMA statement of 11.10.2019 in the official consultation on the adjustment of the Capital Adequacy 2019, p. 1 f.

[441] Statement by the SIF dated 5.8.2024 as part of the administrative consultation

[442] AS **2022** 804

[443] Art. 132 para. 2 let. a no. 2 CAO

The proposal to increase the loss-absorbing capital by the requirements for additional own funds, which affects not only G-SIBs but all SIBs, was rejected by all industry members who took part in the consultation (CS, UBS, SBA, ZKB, PostFinance and Economiesuisse).[444]

Based on the comments received during the consultation process, the Federal Council refrained from publishing the amount of the gone-concern surcharges. In addition, it set the amount of the gone-concern surcharges at a maximum of 25% of the going-concern requirements (the amount of the surcharges was not limited in the consultation draft) and refrained from expanding the assessment basis for the additional loss-absorbing capital to include the additional own funds in accordance with Article 131b CAO.[445]

The replacement of the discount system against the background of international standards

As part of these amendments to the ordinance, the federal authorities carried out an in-depth comparative analysis of the most relevant legal systems (EU, UK, USA). They found that, in contrast to the Swiss authorities, foreign authorities are also allowed to intervene extensively in the legal and business structure of banks under certain circumstances if the institutions make too little progress in terms of *resolvability*. The Swiss approach, on the other hand, relies on incentives via impending increases in gone concern requirements and the publication of the banks' *resolvability* status.[446]

5.2.6.5 Deposit protection: Entry into force of the revised BankA and the revised BankO

Amendment to the ordinance due to the revision of the Banking Act of December 17, 2021

As described in section 5.2.6.1, on December 17, 2021, the Swiss Federal Assembly amended the Swiss system of deposit protection by revising the BankA. This amendment to the BankA also necessitated amendments to the BankO (amendment of November 23, 2022)[447]. The Federal Council brought both amendments into force on January 1, 2023.

In the revision of the Banking Ordinance, the Federal Council provided for an exemption for SIBs from the preparatory acts for deposit protection, as requested by the consultation participants but rejected by FINMA.[448]

Ongoing deviations of Swiss deposit protection from international standards

According to the Hungerbühler expert report, the Swiss legal framework was or continues to be *non-compliant* with international standards, in particular with regard to the following aspects:

- Lack of ex ante financing;
- Lack of a public-law structure for deposit protection;

444 FDF results report of 23.11.2022 on the consultation procedure for the amendment to the Banking Ordinance (insolvency, deposit protection, segregation and resolvability), points 3.1 and 3.2.4, pp. 4 and 7-10; FDF explanatory notes of 23.11.2022 on the amendment to the Banking Ordinance (insolvency, deposit protection, segregation and resolvability), point 2.1, p. 5

445 Explanatory notes of the FDF dated 23.11.2022 on the amendment to the Banking Ordinance (insolvency, deposit protection, segregation and resolvability), point 2.2, p. 5 f.

446 Explanatory notes of the FDF dated 23.11.2022 on the amendment to the Banking Ordinance (Insolvency, Deposit protection, segregation and resolvability), section 3.2, p. 7 f.

447 AS **2022** 804

448 FINMA statement of 28.2.2021 on the official consultation of 9.2.2022 regarding amendments to the Banking Ordinance (insolvency, deposit protection, segregation and resolvability): opening of the consultation procedure

- Lack of possibility to finance restructuring and liquidation measures;
- Insufficient total amount of contribution obligations;
- Excessive total duration of the payout period in the event of a crisis;
- lack of a strategy for funding deposit insurance in the event of insufficient funds.[449]

5.2.7 Summary Monitoring and further development of TBTF regulation in Switzerland 2015-2022

Capital requirements

The most important stages in the further development of the Swiss TBTF legislation with regard to capital requirements from 2015 to 2022 were the introduction of the concept of going concern and gone concern requirements (2016), the increase in the quality of capital (2016), the switch from the system with participation deductions and simplifications in accordance with Article 125 CAO to risk weighting (2017/2019) and the replacement of rebates in accordance with Article 133 CAO with a new incentive system (2023).

Over the period under review, FINMA and the SNB often advocated stricter capital requirements, but unable to convince the Federal Council and politicians of their views due to the conflicting interests of the big banks and interest groups aligned with them. In addition, FINMA and the legislators occasionally granted the big banks relief from regulatory and legislative changes (e.g. long transition periods, regulatory filters).

Liquidity requirements

The most important stages in the further development of the Swiss TBTF legislation with regard to liquidity requirements from 2015 to 2023 were the introduction of an NSFR (2021), the establishment of conformity with the legal requirement of increased resilience of SIBs compared to non-systemically important banks (2022) and the developments with regard to PLBs.

In the period under review, it is noticeable that after the LiqV was issued in 2014, six (introduction of an NSFR) and eight years (stricter liquidity concept for SIBs) passed before any substantial changes or improvements were made to the liquidity requirements in Swiss TBTF legislation.

PLB

In 2016, the FSB recommended introducing the mechanism of a PLB into national legislation. From 2018 at the latest, the SNB and FINMA also called for the introduction of this instrument in discussions with the authorities. It took time to clarify whether a PLB would also be expedient in Switzerland and to analyze how such a PLB could be incorporated into the Swiss TBTF regulations, partly because there was reluctance within the FDF (FFA and SIF) with regard to the public debate and political feasibility. It took until March 2022 for the Federal Council to decide on the key parameters of a PLB and instruct the FDF to draw up a consultation draft.

The Hungerbühler report notes a significant deviation of the Swiss legal framework from international standards with regard to PLB.[450]

TPO

In its reports on systemically important banks prior to the CS crisis (four reports from 2015-2021), the Federal Council never the possibility of a TPO, although the topic been discussed internationally since 2016. It should be noted that

[449] Hungerbühler expert report (2024), p. 16 f.
[450] Hungerbühler expert report (2024), p. 18-22

a TPO is not a classic TBTF instrument. Furthermore, nationalization, even if it is intended to be temporary, contradicts the TBTF objective of avoiding state aid, especially in the medium to long term.

The AF set up a working group on the TPO in September 2020. However, its work was pushed forward with less urgency due to the parallel work on the PLB. The AF decided early on not to explicitly introduce a TPO standard in Swiss legislation, but to first clarify critical fundamental issues and the necessity of the instrument within the working group. Should a TPO be required in an emergency, despite existing concerns, it would have to be created by emergency law. There were differences of opinion on this approach within the authorities: FINMA and the SNB were in favor of the ordinary introduction of a TPO legal basis, while the FFA and SIF preferred the approach ultimately chosen.

The authorities' clarifications largely focused on the variant of a TPO, in which only the systemically important Swiss unit is nationalized in the course of the resolution or restructuring of the banking group. The variants of a short-term state minority holding or even a TPO of the entire banking group before the PONV is reached were not to be addressed until autumn 2022 and then in the acute crisis in March 2023.

Ordinance to the Financial Market Supervision Act

In 2016-2018, there was some political dissatisfaction with the role of FINMA, whose activities in the area of banking supervision and regulation as well as international standard-setting were considered too expansive in some cases. This led to a number of political initiatives. In implementation of motion 17.3317 "Clear responsibilities between financial market policy and financial market supervision", the Federal Council finally issued the Ordinance to the Financial Market Supervision Act in 2019, in which it specified FINMA's tasks in the international area and in regulation, the regulatory principles and the cooperation and exchange of information between FINMA and the FDF. In doing so, it sought to reconcile the political demands for clearer structures for FINMA's activities with FINMA's independence, which is central to financial market supervision. In addition, the Federal Council will report annually on the status of implementation of the new ordinance from 2021.

Deposit protection

Since 2014, international criticism of the Swiss system of depositor protection has been voiced repeatedly. In addition, the group of experts on the further development of the financial market strategy clear recommendations for improving deposit protection in its final report of December 1, 2014. Nevertheless, the Federal Council did not address this topic in its evaluation reports on the systemically important banks from 2015 to 2021. It took until the beginning of 2023 for adjustments to be to the depositor protection system.

According to the Hungerbühler report, deposit protection in Switzerland also continues to deviate from international standards in key aspects.

Evaluation reports of the Federal Council

Prior to the CS crisis, the Federal Council published four evaluation reports on the systemically important banks, namely every two years from 2015 onwards. What is about these reports, apart from the practically identical, positive assessment of Swiss TBTF legislation in an international comparison, is that no reference is made to the recommendations or proposed measures made in the previous reports. There is no explicit monitoring of the implementation status of the various measures and developments in the individual fields of action. The FOJ explicitly criticized this at least twice in the official consultations on the 2017 and 2019 reports. However, the Federal Council did not adapt the structure (and content) of the reports.

Trends in TBTF regulation in Switzerland from 2015-2022

As described in sections 4.1.1 and 5.1.3, the further development of the international TBTF framework continued after the financial crisis from 2007/08 until around 2017. The final Basel III standards[451] adopted by the BCBS in 2017. In the first phase of this development, up to around 2015, Switzerland was one of the countries with the most advanced (or earliest implemented) and, in this sense, the strictest TBTF regulation (see section 4.2.2).[452]

The explanations in sections 5.2.3 to 5.2.6 have shown that the picture somewhat after 2015, following the implementation of the first TBTF proposal. The authorities continued to develop the TBTF regulation in line with international standards. At the same time, the authorities of the central federal administration, i.e. the FDF and SIF, also took into account the concern of a *level playing field* for Swiss banks, in line with the signals from politicians and legislators. This refers to the concern that, in order to ensure the competitiveness of Swiss banks, no significantly higher regulatory requirements should be imposed than in foreign markets.[453] In its dispatch on the 2019-2023 legislative plan, for example, the Federal Council stated that for the same reason (*"level playing field"*) it was not aiming to implement the final Basel III standards any faster than is the case in key competitor financial centres.[454]

A second trend also contributed to this thrust: From around 2015, a certain degree of regulatory fatigue set in both nationally and in Switzerland. Against the backdrop of lobbying by the banks and the economy, a noticeable *pushback* against stricter banking regulation and against a further tightening of the current TBTF regime became widespread in politics , as a result, in the administration.[455]

5.2.8 Monitoring and further development of audit oversight law

The PUK was also interested in the further development of audit law. The development of audit law during the period under review and the management of the FDJP in this context are described below.

According to the GS-FDJP[456] , the only significant further development in the past ten years was the so-called bundling bill, which came into force on January 1, 2015. Since then, the responsible FDJP and FINMA have apparently seen no need to adapt the law or the legal basis. In its feedback to the PUK, however, the FDJP also stated that the AOA was designed as a framework law and that there was therefore no need for legal action.

On behalf of the PUK, gw&p financial services advisory AG analyzed the extent to which the regulation in Switzerland with international standards and practices. In their report, the two experts, Alex Geissbühler and Milan Jova- novic, came to the conclusion that the regulatory framework, which defines the fundamental rights and duties as well as the field of activity of the FAOA, is closely aligned with the standards and practices in Switzerland.

451 BCBS standard from December 2017: Basel III: Finalizing post-crisis reforms
452 Minutes of the PUK meeting of 21.2.2024, p. 2)
453 Written answers to the PUK of 18.3.2024, p. 2of 9.4.2024, p. 2, of 15.4.2024, p. 2
454 Dispatch of 29.1.2020 on the 2019-2023 legislative planning (BBl **2020** 1777, here 1840)
455 Written answers to the PUK of 18.3.2024, p. 4 f.; minutes of the PUK meeting of 21.2.2024, p. 24 and 39; minutes of the PUK meeting of 24.4.2024, p. 50
456 Letter from the GS-FDJP to the PUK dated 22.2.2024

and recommendations or best practices of the key international institutions for Switzerland.[457] Principle 14 of the International Forum of Independent Audit Regulators (IFIAR), which states that the audit regulators should be authorized to communicate disciplinary measures or sanctions to the public, is only partially fulfilled, as communication in Switzerland is mainly via annual reports and the companies or persons concerned are not named.[458]

The implementation of an IMF recommendation on direct mandates, which was issued in June 2019, also remains open. Recommendation number 6 was: "Ensure that FINMA - rather than banks - contracts and pays directly for supervisory audits. "[459] This recommendation, according to which audit firms that carry out supervisory audits should be commissioned and remunerated directly by FINMA (and not by the banks), was classified by the IMF as a high-priority recommendation with a medium implementation horizon of three to five years.

This regulation was also an issue in domestic politics. On May 6, 2015, National Councillor Corrado Pardini (SP Bern) had already out in a motion the conflict of interest for auditing companies between the statutory mandate and the effective client. He therefore called for FINMA to commission the auditing companies directly and to specify the content of the audit.[460] The Federal Council responded at the time, among other things, that the conflict of interest had been mitigated by bundling supervision in the FAOA and that FINMA now had the authority to demand a change of auditing company in justified cases. However, the Federal Council did not address a key statement of the motion, according to which there is a possible conflict of interest between the statutory mandate (and not the supervision) and the actual awarding of the mandate. In addition, the Federal Council in its response that FINMA would propose options for action after the conclusion of the supervisory reporting period in 2016, which could also include direct mandating and the imposition of costs by FINMA.[461]

Proposal to reform audit oversight

In January 2016, FINMA launched a project to optimize the supervision of audit firms and identified a great need to improve the supervision of financial institutions. In its analysis, it identified various weaknesses in the system, such as the lack of independence of audit firms and the inadequate quality of audit reports. According to the analysis, the main problem was that the independence of audit firms impaired by the accumulation of supervisory, auditing and advisory mandates at the same mandated company. This accumulation leads to an economic dependency that could impair the objectivity of supervision. FINMA also identified a reputational risk and criticized the cost-effectiveness. The audit reports often lacked critical rigor and differentiation, which hindered comprehensive and proactive risk identification.[462]

To remedy this shortcoming, FINMA examined a package of measures to strengthen the independence of audit firms. The central element of the package was the direct awarding of mandates to audit firms by FINMA itself. It also included further measures to ensure the strict separation of supervisory and audit functions.

[457] Geissbühler/Jovanovic expert report (2024), p. 9
[458] Geissbühler/Jovanovic expert report (2024), p. 40
[459] FSAP Country Report 19/184 Switzerland, Technical Note - Selected Issues on Banking Supervision of June 2019
[460] Geissbühler/Jovanovic expert report (2024), p. 34
[461] Geissbühler/Jovanovic expert report (2024), p. 35
[462] FINMA (2016): Quality improvement in auditing - stocktaking and analysis, February 23, 2016, p. 4

advisory mandates or to open up the closed market for audit firms.[463]

However, FINMA was aware that the direct award of mandates would meet with resistance from other interest groups in the financial sector. It consulted several key groups and representatives, namely representatives of the largest audit firms, representatives of Expertsuisse and a delegation from the SBA. The majority of reactions to FINMA's proposals were critical. This was due in particular to concerns about the potential impact on market dynamics and the established relationships between financial institutions and audit firms.[464]

Although FINMA identified considerable potential for improving the supervisory system, it noted that there was a lack of political support for the proposed measures. The proposal for FINMA to issue mandates directly was therefore dropped. FINMA did, however, take a number of other measures to strengthen the control system, such as adapting the basic audit or involving the professional associations. In addition, the professional requirements for lead auditors set out in the law were relaxed in order to expand the choice of experts.[465]

FINMA last revised its circular in 2019 (consultation in 2017, entry into force in 2019).[466] The proposals examined in 2016 were not included in the revised circular. Neither the direct mandate nor the lack of rotation was addressed in the report on the ex-post evaluation of the revised circular.[467]

5.3 FINMA's microprudential supervision of CS

This chapter is dedicated to the supervisory measures taken by FINMA in relation to CS in the pre-crisis phase (specifically between 2015 and summer 2022).

Section 5.3.1 outlines FINMA's main areas of impact. As a systemically important bank, CS was subject to special regulatory requirements. These requirements related in particular to capital and liquidity, the development of emergency, stabilization and resolution plans and the bank's risk management and compliance. The main areas of FINMA's influence on the management, strategy and culture of CS (section 5.3.1.1), the influence on risk management, the internal control system, corporate governance and compliance (section 5.3.1.2), the influence on the capital and liquidity situation (section 5.3.1.3) and the development of the stabilization, emergency and resolution plans (section 5.3.1.4) are explained below. FINMA's cooperation with foreign authorities is also examined (section 5.3.1.5).

In a second part, FINMA's enforcement proceedings in the period from 2015 to summer 2022 are presented (section 5.3.2). Finally, the regulatory filter is presented in section 5.3.3.

[463] FINMA (2016): Quality improvement in auditing - stocktaking and analysis, February 23, 2016, p. 4
[464] FINMA (2016): Strategic direction for regulatory auditing, 2.11.2016, p. 3
[465] FINMA (2017): Project proposal: The future of auditing, January 20, 2017, p. 4
[466] See https://www.finma.ch/de/news/2017/11/20171130-mm-pruefwesen/ (as at: 28.3.2024)
[467] Geissbühler/Jovanovic expert report (2024), p. 35

5.3.1 General supervision - FINMA's main areas of impact on CS

5.3.1.1 Influence on CS bodies, strategy and culture

The measures taken by FINMA between 2015 and 2022 to indirectly influence the strategy, culture and members of the governing bodies of CS are explained in chronological order below. The explanations relate to the composition of the Board of Directors and the Executive Board of CS, their remuneration, the bank's earnings power and strategic direction, the corporate culture and CS's communication with FINMA.

To contextualize FINMA's respective assessments, the development of the bank's organization and developments on the market are also taken into account where indicated (see also section 5.1).[468]

Reference is then made to the enforcement proceedings against CS, as such proceedings can also have an impact on the management of a bank. A detailed description of the enforcement proceedings follows in section 5.3.2 below.

Preliminary remarks on FINMA's statutory powers

As part of its ongoing supervision, FINMA has no legal authority to directly influence or approve the strategy of a bank it supervises. It can ask questions in discussions with the supervised bank, make recommendations or, on a voluntary basis, suggest that deficiencies be rectified by setting a deadline. However, beyond this indirect influence on the strategic direction, it cannot intervene directly or directly in the decision-making powers of the board of directors.[469] The determination of strategy is the responsibility of the bank's board of directors.[470] Based on Article 25 in conjunction with Article 26 Banking Act, FINMA can only directly appoint or remove members of a bank's governing bodies if there is a risk of insolvency.[471] However, it can ensure that a person must resign from a bank's governing body by means of a guarantee review[472] , a prohibition on exercising their profession and a prohibition on performing their duties. It can also the addition of persons with specific powers to a governing body after the conclusion of enforcement proceedings in order to restore orderly conditions.[473]

The following comments are based primarily on FINMA's annual *assessment letters*. In the assessment letters, FINMA summarizes its assessment of a supervised institution, the areas for action it has identified, the extent to which its expectations have been met since the last assessment letter and other requirements, stating a deadline. The assessment letters are sent in the spring of each year and refer to the previous year. They are named after the year to which they refer, even if they are not sent until the spring of the following year.

468 For a more comprehensive presentation of the Bank's developments, please refer to the report FINMA's "Lessons Learned" of December 19, 2023 and the report of the Federal Council of April 10, 2024 on banking stability, including the evaluation pursuant to Art52 of the Banking Act (BBl **2024** 1023).

469 The above information is based on a source or sources available to the PUK but not specifically because of overriding public or private interest.
conflict with private interests.

470 FINMA (2016): Circular 2017/1 Corporate Governance - Banks, margin no. 9 et seq.

471 Art. 3 para. 2 BankA

472 In particular, the persons entrusted with the administration and management of a bank as well as the qualified persons involved must enjoy a good reputation and offer a permanent "guarantee of irreproachable business conduct".

473 It did this in particular at CS 2018 following the conclusion of the enforcement proceedings. "Petrobras/FIFA/PDVSA" (see section 5.3.2).

following year are written and delivered. The assessment letters 2014-2021 are discussed below.[474]

FINMA's influence on the governing bodies, strategy and culture of CS

In its assessment letter for *2014*, FINMA addressed, among other things, the distribution of risk-weighted assets between the Investment Banking and Private Banking & Wealth Management business divisions. FINMA asked CS to submit updated business plans for these business areas. The forthcoming establishment and approval of the new Swiss unit, Credit Suisse (Schweiz) AG, was also discussed. With regard to the remuneration of CS employees, FINMA pointed out to the bank that employee misconduct should not be tolerated and that the impact on performance evaluation and remuneration should be significant. Overall, FINMA rated the exchange with CS as professional and constructive. Nevertheless, it called on CS to share information on important developments with it more proactively and regularly.[475]

In March 2015, Tidjane Thiam replaced Brady Dougan as CEO of CS (see section 5.1.2). Tidjane Thiam pursued a new strategy which included reducing and realigning the investment bank. The new strategy made it necessary to restructure CS. This was announced on October 21, 2015.[476]

In its *2015* assessment letter, FINMA that it would intensify its contacts with the CS Board of Directors, as it a key role in implementing the new strategy and promoting the right corporate culture. FINMA was also about the numerous personnel changes in the Executive Board and at management level: it feared that the departure of a significant number of members of the Executive Board and senior managers could lead to a loss of expertise within the organization. For this reason, and in view of the high pressure from ongoing major projects and new growth targets, FINMA identified significant operational risks. FINMA therefore expected CS managers to proactively monitor their respective areas of responsibility and focus compliance with regulatory requirements and efficient control functions in order to strengthen the resilience of the bank and Group.[477]

In its *2016* assessment letter, FINMA welcomed the recently launched "Conduct & Ethics" program, which defined six standards of conduct and ethics for the CS Group. However, it noted that the initiatives at top management level had not yet been sufficiently transferred to middle management, particularly in the front office. FINMA also gave a positive assessment of the updated business plan published CS on December 7, 2016.[478]

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474 In addition to the assessment letters, FINMA has other supervisory instruments at its disposal (including on-site inspections, the use of audit representatives and the supervisory dialog; see section 3.2). FINMA carried out around 20 on-site at CS each year. It identified a high need for corrective action on the part of CS. FINMA classified almost half of the critical findings as "high" or "critical" risk. Furthermore, in accordance with its internal guidelines, FINMA generally annual supervisory meetings with the Board of Directors and the Chairmen of the Risk and Audit Committee, met with the Chairman of CS Board of Directors every six months and held quarterly supervisory meetings with the CEO. From 2021, monthly supervisory meetings were with the Chairman of the Board of Directors of CS, from mid-August 2022 weekly (FINMA, Explanatory notes on the extended chronology, p. 1 f.). The results from the application of these supervisory tools are included in the annual assessment in the assessment letters, which is why they are not listed separately below.

475 Assessment letter 2014 from FINMA to CS dated 3.2.2015, p. 1 f.

476 FINMA (2023): Lessons learned from the CS crisis, p. 26

477 Assessment letter 2015 from FINMA to CS dated 28.1.2016, p. 1

478 Assessment letter 2016 from FINMA to CS dated 2.2.2017, p. 11

In the *2017* assessment letter, FINMA stated that there were gaps in CS's organization due to weak compliance. This had contributed to employees and managers either being involved in inappropriate business practices or encouraging or failing to report such practices. The tone of the supervisors was not credible enough to promote *appropriate behavior* at CS. FINMA also took note of CS's decision not to proceed with the planned IPO of Credit Suisse (Switzerland) Ltd.[479]

In the *2018* assessment letter, FINMA acknowledged that CS had made progress compared to the previous year's assessment. Nevertheless, it demanded proof that CS's structures and governance arrangements are robust and efficient and facilitate the effective supervision and resolution of the Group. Overall, dealings with the supervisory authorities were constructive and professional. The commitment of the bank's senior management had also improved.[480] Nevertheless, in some cases CS had failed to inform FINMA of important developments in a timely and complete manner and with the necessary quality. FINMA demanded that CS improve its communication in this regard.

In 2019, FINMA concluded its enforcement proceedings in the US cross-border case (see section 5.3.2). It found a breach of the organizational and guarantee requirements in the cross-border US client business.[481] In the 2019 assessment letter, FINMA emphasized that interaction with the supervisory authorities must be improved. It noted that the Executive Board had largely decentralized the organization, which gave individual business units considerable decision-making powers. In this context, FINMA demanded that CS strengthen centralized monitoring and reporting.[482]

FINMA's criticism intensified in its *2020* assessment letter, which split its annual assessment into two letters.

In its *first* letter to the incoming Chairman of the Board of Directors, FINMA stated that no other major financial institution had experienced so many problems requiring enforcement proceedings and urgent supervisory measures since it was founded. Of all the major financial institutions in Switzerland, CS had by far the worst regulatory record. The common denominator in the deficiencies identified was CS's corporate culture(483).

In its *second* assessment letter, FINMA welcomed the measures taken as a result of the first letter, which its most urgent requests regarding CS's risk culture and change management. It that the bank focus on changes to the remuneration framework and on encouraging employees to address and escalate issues more proactively. She also wrote that CS had achieved respectable financial results overall in 2020 and ensured operational stability despite the Covid-19 pandemic. However, these positive developments had not only been overshadowed by several high-profile incidents with significant financial and reputational repercussions, but also by the lack of progress on many issues that FINMA had repeatedly addressed in recent years.[484]

479 FINMA (2023): Lessons learned from the CS crisis, p. 31; FINMA: FINMA (2023): Extended chronology of 26.09.2023, p. 9; 2017 assessment letter from FINMA to CS of 5.2.2018, p. 10
480 Assessment letter 2018 from FINMA to CS dated 24.4.2019, p. 2
481 FINMA (2023): Extended chronology from 26.09.2023, p. 13
482 Assessment letter 2019 from FINMA to CS dated 24.4.2020, p. 2 f.
483 Assessment letter 2020 from FINMA to CS dated 1.5.2021, p. 2 f.
484 Assessment letter 2020 from FINMA to CS dated 23.8.2020, p. 1 f.

Due to the numerous weaknesses in the control environment, the persistent problems in governance, the increase in incidents requiring clarification and the accumulation of enforcement cases, FINMA raised CS's FINMA rating in 2020 from the second-highest level - where it had always been - to the highest of four ("intensive and permanent supervision"). This resulted in a further intensification of supervision and the use of other supervisory instruments.[485]

In May 2022, FINMA issued the *2021* assessment letter, in which it addressed the in-depth risk analysis that CS had carried out since the last assessment letter. It also addressed the appointment of a new Chairman of the Board of Directors and the associated gap in CS's control functions. It highlighted the fact that half of the Executive Board had been replaced within a year. According to FINMA, these changes indicated that CS had developed in the right direction in terms of the bank's risk culture. However, the changes must be accompanied by a clear stance on the part of CS management.

FINMA also criticized the fact that the implementation of the strategy, developments in the macroeconomic environment, significant legal cases and CS's ailing reputation had significantly reduced its earning power. The business result in the first quarter of 2022 showed worryingly weak results in the core businesses. Finally, CS's control environment remains weak. FINMA still appreciated the constructive and professional exchange with CS's Board of Directors, senior management and supervisory department.[486]

From July 2022, FINMA accompanied CS's change of strategy (see section 6.2.1).[487]

5.3.1.2 Influence on risk management, corporate governance, the internal control system and compliance

FINMA's measures relating to risk management, corporate governance, the internal control system and compliance at CS between 2015 and summer 2022 are presented below.[488] Due to the fact that FINMA's enforcement proceedings against CS frequently raised questions about the bank's risk management and compliance, please also refer to section 5.3.2.

Preliminary remarks: Definitions and FINMA Circular 2017/1

In accordance with FINMA practice, the *Board of Directors of CS*, as the *governing body*, was responsible for the business strategy and risk policy, the appropriate organization of CS, the financial situation and development, the appropriate allocation of human and other resources (e.g. infrastructure, IT), the personnel and remuneration policy, monitoring and control as well as significant changes to the structure of CS.

In accordance with FINMA Circular 2017/1, CS was required to set up various committees at Board of Directors level: an *Audit and Risk Committee* and a *Remuneration and Nomination Committee*. The committees should be responsible for

485 FINMA (2023): Lessons learned from the CS crisis, p. 33. FINMA applies the following assessment scale: "Subject to supervisory procedures", "subject to increased procedures", "subject to intensive supervisory procedures", "subject to intensive and continuous supervisory procedures".
486 Assessment letter 2021 from FINMA to CS dated 23.5.2022, p. 2
487 FINMA (2023): Extended chronology from 26.09.2023, p. 20
488 As in section 5.3.1.1, this presentation is based primarily on FINMA's assessment letters.

The *Executive Board of CS was* responsible for operational business activities in accordance with FINMA's supervisory practice. This had to be in line with the business strategy as well as the guidelines and resolutions of the highest governing body.[490]

The *internal* control system had to of at least two control bodies: the profit-oriented business units and the control bodies independent of them. The independent control bodies had to monitor the risks and compliance with legal, regulatory and internal provisions.[491]

Influence on risk management, the internal control system, corporate governance and compliance

In the *2014* assessment letter, FINMA addressed the US tax settlement and the guilty plea in 2014 and expressed concerns, including with regard to conduct and compliance risks.[492]

In 2015, FINMA mandated KPMG to conduct audits in the area of risk management at CS and specifically on cyber risks and client data protection. Overall, FINMA found systemic deficiencies in CS's risk management.[493] In spring 2016, FINMA again complained that the compliance risks were simply too high and could damage CS's profitability and reputation. FINMA threatened to consider restricting certain business activities and/or imposing surcharges if the bank did not clear progress in combating money laundering in the course of 2016. It also emphasized that CS's risk management must be compatible with its strategic objectives. Key risks must be identified and legal and reputational risks relating to CS's international clientele must continue to be closely monitored. FINMA held out the prospect of taking further measures if there was no significant progress towards meeting the requirements of the Basel Committee on Banking Supervision's Standard 239 (hereinafter: BCBS 239 standard) on the management and reporting of risk data (see section 4.1.1).[494]

In its 2016 assessment, FINMA considered the risks in relation to combating money laundering to be high. It described this as unacceptable for a bank like CS. The measures to combat money laundering were too weak, particularly in view of CS's asset management activities in emerging markets. In the same assessment letter, FINMA also criticized the corporate governance and internal control system of Credit Suisse AG (the parent company), which was increasingly conducting business that was not part of its core activities. This was to the reorganization of the CS Group. Moreover, the member of the CS Executive Board responsible for risk management, the Chief Risk Officer, not in a position to adequately monitor the reorganization of the Group. This was evident, among other things, from KPMG's supervisory audits, which identified various weaknesses. Furthermore, CS needed to define the reporting lines more clearly.[495]

489 FINMA (2016): Circular 2017/1 Corporate Governance - Banks, margin no. 31 et seq.
490 FINMA (2016): Circular 2017/1 Corporate Governance - Banks, margin no. 47
491 FINMA (2016): Circular 2017/1 Corporate Governance - Banks, margin no. 60
492 Assessment letter 2014 from FINMA to CS dated 3.2.2015, p. 6 and 8
493 Assessment letter 2015 from FINMA to CS dated 28.1.2016, p. 9
494 The BCBS developed this standard on behalf of the FSB and it in January 2013. The standard is primarily aimed at global and national systemically important institutions. It is to be implemented directly by them. In terms of content, the requirements are divided into four main areas: Governance, infrastructure, data aggregation risk reporting. The standard sets out globally coordinated, specific supervisory requirements for the architecture of risk IT and the data management of institutions with the aim of the financial markets more stable and risk management more professional (Volk, Tobias / Lenhardt, Marco (2015): BCBS 239 - Status of implementation and outlook for smaller institutions. In: CB 2015, p. 416).
495 Assessment letter 2016 from FINMA to CS dated 2.2.2017, p. 3 f., 6 f.

The timely implementation of the BCBS 239 standard was also addressed in the 2016 assessment. FINMA stated that it would not tolerate any delays in the implementation of the standard and called the Chief Risk Officer of CS to prioritize them. In particular, reporting on credit risks (including the single client view, see also section 5.3.2) and liquidity risks should be ensured by the end of 2017.[496]

According to FINMA's assessment, CS improved the effectiveness of its risk and compliance functions in *2017*. FINMA encouraged CS to continue to focus on eliminating conduct or business practices that are illegal or contrary to the bank's stated values, policies and internal processes. In this context, CS still had to demonstrate the Group-wide effectiveness of the measures taken in practice.[497] Nevertheless, FINMA continued to classify the risk associated with CS's money laundering activities as high. FINMA also criticized the fact that CS had still not implemented the BCBS 239 standard. In FINMA's view, this was mainly due to CS's fragmented infrastructure, which often required manual corrections and complex coordination work. Both internal and external audits had shown that CS needed to improve its data management.[498] FINMA requested quarterly status updates on the implementation of the BCBS 239 standard. These updates had to be signed by the Group CEO and confirmed by the auditors, KPMG. Should the implementation experience further delays, CS would have to justify these and take measures to rectify them.[499]

FINMA also objected to the lack explicit and direct supervision of subsidiaries and representative offices to its own assessment and that of various foreign supervisory authorities.

In 2018, CS took measures to implement the BCBS 239 standard. FINMA promised to review the completeness of the implementation of the standard in the second half of 2019 on the basis of a report by an independent third party and to impose capital surcharges if the implementation proves to be inadequate. CS also a Group-wide control framework for operational risks. FINMA asked CS to demonstrate that this control framework enables robust control. In connection with the imminent introduction of the Libor, FINMA ordered CS to submit a risk assessment. FINMA also referred to the numerous enforcement proceedings it concluded in 2018. It criticized the fact that several incidents, audit results and feedback from supervisory authorities indicated that CS had not consistently remedied previous deficiencies. It therefore instructed the bank to develop a Group-wide system to analyze key audit and regulatory findings. From then on, the Chief Compliance Officer and the Chief Risk Officer had to report to FINMA twice a year on the implementation of this framework.[500]

For the most part, CS implemented FINMA's requirements to its satisfaction *in 2019*. In particular, according to FINMA's assessment, CS continuously improved the prevention of money laundering by applying adapted standards and compliance measures. CS also optimized its asset management activities south of the Sahara and in other markets with higher money laundering risks. In its 2019 assessment letter, FINMA also requested that CS intensify its controls over smaller Group companies. It also identified a need for improvement in the exchange with the supervisory authorities. It also commented on the

496 Assessment letter 2016 from FINMA to CS dated 2.2.2017, p. 8 f.
497 Assessment letter 2017 from FINMA to CS dated 5.2.2018, p. 1
498 Assessment letter 2017 from FINMA to CS dated 5.2.2018, p. 1 f.
499 Assessment letter 2017 from FINMA to CS dated 5.2.2018, p. 7
500 Assessment letter 2018 from FINMA to CS dated 24.4.2019, p. 9

FINMA noted that, according to an independent audit, CS had largely implemented the BCBS 239 standard. Finally, FINMA continued to insist on semi-annual reporting by the Chief Compliance Officer and the Chief Risk Officer of CS.[501]

In the two *2020* assessment letters (see section 5.3.1.1), FINMA also sharply criticized CS's risk management, among other things. FINMA instructed the bank to subject its risk appetite to a rigorous and fundamental review. It doubted whether CS even had the capital resources to conduct business on the scale and with the risk profile that it had to date. According to FINMA, it was essential that the bank improve its risk culture, that the company be made accountable for its decisions and that the control functions be made more effective. Various supervisory authorities had already pointed out FINMA that the increasing number of managers responsible for several areas was increasing operational risks and potentially causing conflicts of interest. FINMA therefore required CS analyze the different levels of seniority and experience in its risk and compliance departments over the previous three years.

In the *2021* assessment letter, FINMA welcomed the fact that CS had carried out an in-depth risk analysis and reviewed its risk appetite. In principle, these were steps in the right direction. Nevertheless, CS must continue the efforts it has begun in order to achieve the goals it has set.[502]

5.3.1.3 Impact on the equity and liquidity situation of CS

As described in section 5.2.2.1, the too-big-to-fail regulation stipulates that systemically important banks must qualitatively and quantitatively adequate capital and sufficient liquidity. The measures taken FINMA between 2015 and summer 2022 to ensure that CS's capital and liquidity situation meets the regulatory requirements are presented below.[503]

Preliminary remarks on the development of the regulatory environment

The regulatory requirements for CS's capital and liquidity tightened in Switzerland between 2015 and 2022 due to the introduction and implementation of the Basel III regulations, the change in accounting law and the revision of the Capital Adequacy Ordinance (see section 4.2.2 and section 5.2). The requirements for Credit Suisse Group subsidiaries in Switzerland also increased. At the same time, regulatory simplifications were applied to Credit Suisse AG (the parent company), some of which required by law and some of which were made at FINMA's discretion (see section 5.3.3).

The development of the markets in Switzerland and abroad has also influenced FINMA's supervisory measures vis-à-vis CS. In this context, the market turbulence in 2020 due to the outbreak of the Covid-19 pandemic is particularly important (see section 5.1).

FINMA's influence on the capital and liquidity situation

FINMA addressed CS's capital and liquidity situation in every assessment letter from 2014 to 2021.

501 Assessment letter 2019 from FINMA to CS dated 24.4.2020, p. 6
502 Assessment letter 2021 from FINMA to CS dated 23.5.2022, p. 2
503 This presentation is also based primarily on the FINMA assessment letters. For the financial development of Credit Suisse in the years prior to the emergency merger, see the expert opinion commissioned by the PUK from Professors Harald Hau and Jean-Charles Rochet dated May 28, 2024.

In 2015, FINMA assessed CS's capital situation in 2014 as tense. This was partly due to the agreement reached with the US authorities that year, which stipulated that CS would have to pay a fine of USD 2.5 billion. The capital adequacy requirements are nevertheless met. In view of the fact that the capital adequacy requirements would become even stricter under Basel III, FINMA announced various supervisory measures focusing on the capitalization of the Group and Credit Suisse AG (the parent bank). FINMA described liquidity as an "*area of* major concern". The audit firm KPMG once again raised several objections in its liquidity audit. In addition, various data had to be corrected due to errors in the reporting. Among other things, FINMA called on CS to improve the quality of its data and the reliability of its liquidity reporting.[504]

In 2016, FINMA noted that CS's parent company had struggled to meet its capital adequacy targets *in 2015* and had only done so thanks to a capital increase and contributions from the parent company. With regard to the liquidity situation, FINMA emphasized that, despite the concerns repeatedly expressed by it and other supervisory authorities and notwithstanding the specific measures already taken, it had to impose additional supervisory measures on CS during the year to compensate for disappointing sustained weaknesses in liquidity management. FINMA held out the prospect of continuing to work closely with CS's supervisory audit firm, KPMG. Specifically, FINMA demanded that CS continue to improve its capital and liquidity situation. It would review progress on a quarterly basis.[505]

According to FINMA's assessment, the CS Group's capital situation improved in *2016*. Further improvements are expected as a result of the planned IPO of Credit Suisse (Schweiz) AG. Beyond this, however, CS has not yet been able to improve its capital situation through retained earnings or the capital ratios by reducing certain business units. On the contrary, existing legal risks are to result in a loss of CS's equity situation. In this context, FINMA called on CS to develop various negative scenarios and possible reactions to them in its capital adequacy planning. In particular, it should also take into account the stricter capital adequacy requirements and the Basel III regulations. FINMA then noted that CS's liquidity situation had improved. In particular, CS had strengthened its liquidity monitoring and reporting so that it now had more reliable and up-to-date data on its liquidity.[506]

In connection with the capital situation, FINMA also addressed CS's *economic performance*. In 2017, it found that the costs of the residual restructuring of the CS Group and the costs of dissolving the Strategic Resolution Unit (a unit of the CS Group in which unwanted assets were grouped) continued to have a negative impact on earnings. In this context, FINMA criticized the fact that CS had programs in place to pay *dividends* to its shareholders. FINMA called on CS to make distributions to shareholders dependent on a steady stream of profits. It out that CS would have to make accurate assumptions about the environment and its impact profit generation for this . She therefore expected CS to be prudent in its dividend policy as well as in its variable remuneration, thereby to achieve the capital targets set.

504 Assessment letter 2014 from FINMA to CS dated 3.2.2015, p. 3
505 Assessment letter 2015 from FINMA to CS dated 28.1.2016, p. 5
506 Assessment letter 2016 from FINMA to CS dated 2.2.2017, p. 5

In the *2017* assessment letter, FINMA confirmed that CS had met its expectations with regard to improving its capital situation both at Group level and at the level of Credit Suisse AG (the parent bank). The implementation of FINMA's revised TBTF ruling also contributed to the improvement in CS's capital situation (see section 5.3.3).[507]

Nevertheless, FINMA called on CS to reduce its risk appetite. FINMA also stated that the participations of Credit Suisse AG (i.e. the parent company) in the subsidiaries would no longer be deducted from equity capital above a certain threshold, but would have to be taken into account in the risk weighting. For this reason, the risks are more concentrated at Credit Suisse AG. FINMA announced that it would regularly review the risk weighting and leverage ratio at CS and demanded corresponding reporting from the bank. FINMA also demanded that CS continue to expand its ability to generate accurate and regular data on its capital adequacy planning. This applies in particular to the stress tests. FINMA was then satisfied with the improvements in the management of liquidity risks. However, it still required further optimization in this area.[508]

In the subsequent *2018* assessment letter, FINMA stated that CS had met its expectations. It had integrated the results of the stress tests conducted by FINMA in 2017 into its capital planning. Nevertheless, FINMA demanded that CS optimize the allocation of capital between the various Group companies. Credit Suisse AG would have to strengthen its own funds situation by retaining profits and distributing dividends from subsidiaries, among other things. FINMA also criticized the fact that, according to its capital adequacy planning, the bank finances dividend distributions to shareholders by borrowing from Credit Suisse Group AG. On the other hand, it praised the significant progress that CS had made in planning, reporting and managing its liquidity.[509]

In the *2019* assessment letter, FINMA recognized CS's efforts to expand its internal processes to ensure adequate capital adequacy. In of liquidity, the market turmoil caused by the COVID-19 pandemic led to a significant decline in the minimum liquidity ratio (LCR) at Group and company level, resulting in temporary breaches of the regulatory limits at several Group companies. FINMA required the Executive Board of CS to review the financing structure of the Group, Credit Suisse AG and other key Group companies and to discuss with the Board of Directors its willingness assume certain financing risks. FINMA set CS a deadline of December 31, 2020 to learn lessons from the market turmoil in connection with the pandemic and to adjust its liquidity management accordingly.[510]

In the *2020* assessment letters, FINMA noted that the inadequate implementation of FINMA's instructions had led, among other things, to a massive liquidity crisis in April 2020. The facts that are the subject of the ongoing enforcement proceedings against CS would raise liquidity and solvency issues and point to serious problems in the areas of risk culture, corporate governance, combating money laundering and fraud and the management of cross-border risks.[511]

507 Assessment letter 2017 from FINMA to CS dated 5.2.2018, p. 5
508 Assessment letter 2017 from FINMA to CS dated 5.2.2018, p. 5 f.
509 Assessment letter 2018 from FINMA to CS dated 24.4.2019, p. 5 f.
510 Assessment letter 2019 from FINMA to CS dated 24.4.2020, p. 5 f.
511 Assessment letter 2020 from FINMA to CS dated 1.5.2021, p. 1 f.

In the second assessment letter in 2020, FINMA noted that CS's capital position had now improved because various authorities had demanded a cautious approach to capital distribution from CS due to the uncertainty associated with the Covid-19 pandemic. The stress test carried out by FINMA had nevertheless pointed to increased vulnerabilities in various portfolios, which is why it imposed higher capital requirements on CS. A capital target of 18.2 % was set instead of 14.3 %. This capital target was to 20 % in 2022. According to FINMA, the first assessment letter in 2020 also had an impact on the liquidity situation.[512] In addition, FINMA imposed high additional liquidity buffers on CS in connection with the coronavirus crisis. According to FINMA, these buffers were crucial for the course of the crisis in 2022 and 2023. Without these buffers, CS would not have been able to survive the first bank run in October 2022.[513]

In the *2021* assessment letter, FINMA found that CS had successfully increased its own funds by reducing the dividend payout to its reducing risk-weighted assets and issuing new capital instruments. Nevertheless, CS had not reached the capital adequacy threshold that it had communicated to its shareholders. Based on the forecast of the CS Board of Directors, FINMA assumed that CS would probably not be able to reach this threshold in 2022. As in the previous year, FINMA carried out a stress test, which again revealed various weaknesses. It recommended that CS aim for higher equity. It also called on the bank to develop contingency plans to be able to react to further unforeseen events and to ensure that the Group and all its Group companies are adequately capitalized. CS had learned the lessons from the market turbulence in 2020 with regard to liquidity and had implemented appropriate measures. However, FINMA criticized the fact that CS had provided it with late or incorrect information on its liquidity in some cases. It called on them to investigate the reasons for this and act accordingly.[514]

In a letter dated April 2022 as well as in the *2021 assessment letter*, FINMA specifically addressed the weak capitalization and profitability of CS's parent bank and demanded that the Board of Directors and Executive Board take measures to strengthen the bank's financial resilience. *In the 2021 assessment letter*, it also extended its concerns to the Group and called on the bank to take measures to prepare for unforeseeable events and ensure that the Group and all its legal entities are adequately capitalized.[515]

5.3.1.4 Development of CS's stabilization, contingency and resolution plans

Preliminary remarks

In accordance with internationally established FSB standards for the resolution of financial institutions, Switzerland also has requirements in relation to stabilization, contingency and resolution planning (see section 5.2)[516].

In the *recovery plan*, the banks set out the measures they can take to stabilize themselves in the event of a crisis. This planning is the responsibility of

512 Assessment letter 2020 from FINMA to CS dated 23.8.2021
513 FINMA statement of 7.8.2024 as part of the administrative consultation, p. 3
514 Assessment letter 2021 from FINMA to CS dated 23.5.2022
515 Letter from FINMA to CS dated 11.4.2022
516 Report of the Federal Council of 4.6.2012 on systemically important banks (BBl **2021** 1487, Section 2.1.2)

the banks. Systemically important banks must submit an annual stabilization plan to FINMA.[517] FINMA examines whether the plan meets the legal requirements. It must approve it if this is the case.

As mentioned in section 2.1, systemically important banks must provide annual proof[518] that they can continue to perform their systemically important functions (domestic deposit and lending business as well as payment transactions) in Switzerland without delay in the event of imminent insolvency (emergency plan).[519] FINMA assesses the feasibility of the plan on the basis of the criteria listed in the Banking Ordinance.[520]

The *resolution plan* to be drawn up by FINMA shows how the restructuring or liquidation of a systemically important bank in Switzerland or abroad can be carried out. FINMA draws up the resolution plan on the basis of the information submitted to it by the bank concerned.[521] The banks must the conditions for their resolvability.[522] A systemically important bank is deemed resolvable if the conditions have been created to ensure that it can be restructured or liquidated in a crisis without jeopardizing financial stability. In return for improving their resolvability and , systemically important banks were granted relief on their own funds until the end of 2022 (so-called rebates), which were replaced by a new incentive system at the beginning of 2023 (see sections 5.2.3.1 and 5.2.6.4).[523]

The following comments mainly relate to the development of these plans from 2015 to summer 2022. Fundamental developments immediately before or after this period have also been included.

Stabilization plan ("recovery plan")

An initial version of CS's stabilization plan was available in 2014.[524] CS's stabilization plan was deemed approved at the end of 2019.[525]

In 2021, the revised versions were reviewed for approval. FINMA approved CS's revised stabilization plan in 2022.[526] Due to the structural loss situation at CS, FINMA the bank at the beginning of the second quarter of 2022 to draw up specific measures based on the stabilization plan in order to be able to react to unforeseeable events. Further verbal and written interactions followed over the summer of 2022, as well as a request to the bank to prepare for an adverse scenario if the strategic realignment was not considered credible by the market, the capital increase failed or another significant event occurred. Only after repeated requests from FINMA did CS finally initiate the preparation and implementation of individual measures from its stabilization plan (see section 6.2.1).[527]

517 FINMA (2020): Resolution Report 2020, p. 13
518 Art. 60 para. 4 BankO
519 Report of the Federal Council of 4.6.2012 on systemically important banks (BBl **2021** 1487, Section 2.1.2.)
520 Art. 61 para. 1 let. a and b BankO
521 FINMA (2020): Resolution Report 2020, p. 13
522 Federal Council report of 28.6.2017 on systemically important banks (BBl **2017** 4848); Federal Council report of 4.6.2021 on systemically important banks (BBl **2021** 1487, para. 2.1.2.)
523 FINMA (2014): The Swiss too-big-to-fail regime, p. 2
524 FINMA (2014): The Swiss too-big-to-fail regime, p. 2
525 FINMA (2020): Resolution Report 2020, p. 2
526 FINMA (2022): Resolution Report 2022, p. 1 ff.
527 FINMA (2023): Lessons learned from the CS crisis, p. 83 ff.

Emergency plan

FINMA examines whether the measures described in the emergency plan are effective based on general experience and current knowledge and whether the bank has implemented the measures necessary to ensure the uninterrupted continuation of systemically important functions. The emergency plan does not have to cover every potential risk, but must ensure that the bank is adequately prepared for a "severe but realistic crisis scenario".[528] The standardized test criteria for FINMA's assessment of emergency planning set out in the Banking Ordinance include financial, operational, legal and personnel aspects.[529]

According to the Banking Ordinance, the emergency plans had to be implementable by the end of 2019.[530] The preparations for the continuation of systemically important functions in Switzerland had to be completed and plausible.

In connection with the establishment of Credit Suisse (Schweiz) AG, which was intended to safeguard systemically important functions in Switzerland, CS submitted a revised emergency plan to FINMA in 2016. In FINMA's opinion, however, this plan did not meet the legal requirements. In particular, this plan did not ensure that services in the area of CS's systemically important functions could provided in the event of a resolution. FINMA demanded that CS intensify its efforts in this regard[531].

The following year, FINMA acknowledged that CS had made progress; however, in 2017 and again in 2018, it demanded that CS further improve its contingency planning in view of the deadline of the end of December 2019[(532).]

In 2019, CS met further expectations of FINMA with regard to its emergency planning. These related in particular to the strengthening of the service company and the modeling of possible negative scenarios. In 2019, CS also reached milestones in the planning of financing in the event of a resolution.[533] On 25 February 2020, FINMA announced that it considered CS's emergency plan to be feasible as at the end of 2019. Nevertheless, FINMA pointed out to CS that fundamental further steps were necessary, including in the area of collateral management, the guarantee of operational business in the event of resolution and the so-called *valuation-in-resolution* (see Box 12 in section 6.3.4.2).[534]

In 2020 and 2021, CS made further progress in its contingency planning, with the result that FINMA continued to classify CS's contingency plan as implementable[(535)] FINMA CS to take due account of negative signaling effects that could lead to systemic market reactions.[536]

Winding-up plan

Following the financial crisis of 2007/08, key attributes for an effective recovery and resolution regime for financial institutions were drawn up under the auspices of the FSB and published in October 2011 ("*FSB Key Attributes of Effec- tive Resolution Regimes for Financial Institutions*"). Based on this, FINMA developed a resolution strategy for globally systemically important Swiss banks. The aim was to favorable conditions for the successful restructuring or resolution of these banks in a crisis. The systemically important

528 FINMA (2020): Resolution Report 2020, p. 30
529 FINMA (2020): Resolution Report 2020, p. 30
530 Art. 69 para. 3 BankO
531 Assessment letter 2016 from FINMA to CS dated 2.2.2017, p. 10
532 Assessment letter 2017 from FINMA to CS dated 5.2.2018, p. 1; Assessment letter 2018 from FINMA to CS dated 24.4.2019, p. 2.
533 Assessment letter 2019 from FINMA to CS dated 24.4.2020, p. 10
534 Assessment letter 2019 from FINMA to CS dated 24.4.2020, p. 10
535 Assessment letter 2020 from FINMA to CS dated 23.8.2021, p. 11
536 Assessment letter 2020 from FINMA to CS dated 23.8.2021, p. 11

functions are to be maintained and the rest of the bank is to be wound up in an orderly manner. Negative effects for the global and national financial system and the relevant national economies should be prevented.[537]

In 2013, FINMA declared that it would restructure systemically important banks in accordance with the *single point of entry* with a *bail-in approach* (see below). Specifically, as the supervisory and insolvency authority for Credit Suisse and the UBS Group, it would manage their restructuring centrally. It would start at the level of the top group company. The aim is to ensure that the losses are borne by the creditors of the ultimate holding company, while the operating companies of the group can continue their business activities(538).

An initial version of CS's restructuring and resolution plans was presented in 2014. Part of these plans was the establishment of a separate legal entity that would have taken over the system-relevant functions (i.e. the deposit business, the granting of loans and the safeguarding of payment transactions in Switzerland). This separate entity was founded and approved in 2016 as Credit Suisse (Schweiz) AG. This marked an important milestone in the implementation of the requirements for systemically relevant banks from the too-big-to-fail regulation and in the precautions for the resolvability of CS.[539]

In the year Credit Suisse (Schweiz) AG was founded, an intensive dialogue took place between FINMA and CS.[540] The primary strategy of CS's resolution plan was recapitalize the CS Group by converting debt into equity ("*bail-in*") at the level of the parent company Credit Suisse Group AG ("*single point of entry*") with subsequent restructuring of the operating Group units. It also provided for a secondary strategy in the event that a bail-in was not successful or could not be implemented. This secondary strategy consisted of the division of CS and the orderly liquidation of the individual Group companies, while at the same time activating the emergency plan to protect the functions of systemic importance for Switzerland(541).

FINMA developed these plans on an ongoing basis. From 2015, FINMA assessed the resolvability of CS in a national and international context on an annual basis(542).

In order to ensure that the global resolution strategy can be successfully implemented, CS had to implement certain measures in preparation. FINMA defined four areas relevant to the successful implementation of the resolution plan: The first three subject areas concerned the unbundling of the Group's internal dependencies and the reduction of external dependencies, e.g. vis-à-vis financial market infrastructures. The Group as a whole and the individual Group units should not jeopardized by the failure of an individual Group company or a third party. The fourth topic area focused on the question of what operational capabilities the banks must have in order to adequately support FINMA's resolution plan(543).

In 2019, FINMA noted that CS had improved its resolvability due to the further expansion of its external loss-absorbing capacity and was already meeting international requirements in this area ahead of schedule. The service company founded by CS provides essential services for the operational Group units. This ensures that they are partly responsible for

537 FINMA (2013): Restructuring and resolution of global systemically important banks, No. 1
538 Fischer, Roland / Rötheli, Rebecca (2019): Bail-in today and tomorrow. In: Jusletter 24.6.2019, para. 14
539 FINMA (2023): Lessons learned from the CS crisis, p. 31
540 Assessment letter 2016 from FINMA to CS dated 2.2.2017, p. 4
541 FINMA (2020): Resolution Report 2020, p. 30
542 FINMA (2023): Extended chronology of 26.09.2023 2012-2023, p. 5
543 FINMA (2020): Resolution Report 2020, p. 28

services required by the entire Group continue to available even in the event of the failure of an operational Group unit. Finally, significant progress had been made in the cross-border relationship in that CS had implemented the national and international requirements regarding the contractual recognition of a deferral of early termination rights in financial contracts(544).

In February 2020, FINMA stated that CS had taken significant preparatory measures in 2019 and had thus made great progress in its global resolvability. In particular, it had been sufficiently structurally unbundled. However, FINMA assessed the liquidity measures as not yet implemented. For example, CS's preparatory measures were still too little advanced to be able to credibly assess the possibility of global resolution. FINMA still saw a need for action in terms of operational and financial unbundling as well as implementation and resources(545).

According to FINMA, CS made further progress in the area of global resolvability in 2020. With regard to its operational unbundling, it has improved its ability to secure access to financial market infrastructures during the crisis. It has expanded its capabilities carry out a Group-wide recapitalization, perform the necessary valuations and continuously calculate and report to FINMA the liquidity and capital requirements in a crisis. Nevertheless, FINMA judged CS's preparatory work to be insufficient. In particular, it saw a need for improvement in the areas of financial unbundling and post-bail-in restructuring(546).

CS also improved its resolution planning in 2021 and optimized its efforts to secure access to financial market infrastructures during the crisis in the area of operational unbundling. It also took further measures to enable it to keep FINMA informed of its liquidity and capital requirements during a crisis. It also further developed its capabilities for restructuring after a bail-in. According to FINMA's assessment, CS could at best complete the remaining work, particularly in the areas of valuations and restructuring, by the end of 2022. It held out the prospect of specifically testing and reviewing the practical and effective applicability of the resolution measures in greater depth in the future.[547]

FINMA first deemed CS's preparatory work to be sufficient at the end of 2022.[548]

5.3.1.5 FINMA's cooperation with foreign regulators

CS had numerous Group companies abroad. In addition to being supervised by FINMA, these were also monitored by the respective foreign supervisory authorities. In this context, FINMA worked closely with numerous foreign supervisory authorities. This cooperation took place in particular within the Core College of Supervisors, which also included the US Federal Reserve Board, the Federal Reserve Bank of New York and the UK Prudential Regulation Authority (PRA). The exchange took place from 2015 to summer 2022

544 FINMA (2020): Resolution Report 2020, p. 26
545 FINMA (2020): Resolution Report 2020, p. 29
546 FINMA (2021): Resolution Report 2021
547 FINMA Resolution Report 2021, https://www.finma.ch/ > Enforcement> Recovery and resolution > Resolution reporting > Resolution reporting 2021
548 FINMA Resolution reporting 2023, https://www.finma.ch/> Recovery and reso- lution > Resolution reporting > Resolution reporting 2023

generally took place monthly. The Core College met twice a year. The purpose of these meetings was to coordinate joint supervisory activities and to formulate expectations of the Bank(549).

In addition, the *Crisis Management Group* (CMG) met twice a year.[550] Within FINMA, the persons responsible for recovery and resolution were also represented. The relevant US and British authorities (US Federal Reserve Board, US Federal Deposit Insurance Corporation, PRA and Bank of England), which would play a central role in the international resolution of a major Swiss bank, were also represented in the CMG. The CMG is responsible for crisis prevention and management in the cross-border area(551).

The CMG's focus was on the increasingly accentuated weakness in earnings and capital as well as CS's risk management. Not least due to the
According to the then head of FINMA's International Affairs and Policy department, CS's "sometimes nonchalant demeanor" eroded its reputation within the CMG over time[552].

In the summer of 2022, the exchange within the CMG intensified, not least because the US and UK authorities were concerned about CS's situation. Not only CS's liquidity situation was discussed, but also the capital situation - and the associated question of possible ring fencing (see Box 16 in section 7.2.2.2).[553] Finally, the introduction of the PLB in Switzerland was also a recurring discussion in the CMG.[554]

Between 2015 and the summer of 2022, the CMG participants met annually with the US and UK authorities for *Crisis Management Colleges* (CMCs) led by the Director of FINMA. Some of CS's senior management also took in the meetings, which lasted two or three days and, with a few exceptions, were always held in Switzerland or as video conferences. The program consisted of informing the foreign authorities about the status of crisis preparation and crisis management at CS, including practical exercises ("*table top exercises*").

Cooperation between the authorities was described as intensive, challenging and constructive. The resources made available, in particular for the preparation of the CMC, were considerable for all the authorities and banks involved. The personal relationships, which are very important in a crisis, were characterized by trust and recognition of FINMA's performance as an authority, according to the then head of FINMA's International Affairs and Policy division.[555]

Finally, FINMA chaired the annual *Asia-Pacific College (APAC)* with the supervisory authorities of Hong Kong, Singapore, Japan and China. One of the main purposes of the Asia-Pacific College was to inform the Asian supervisory and resolution authorities about significant developments in Switzerland and the other CMCs. In view of the importance of the Asian markets for CS, it was necessary to involve the Asian authorities in the area of crisis preparation and crisis management(556).

549 FINMA (2023): Lessons learned from the CS crisis, p. 11
550 The Crisis Management Group was introduced before 2012 in accordance with FSB guidelines. FINMA (2023): Extended chronology of 26.09.2023, p. 1
551 FINMA (2023): Lessons learned from the CS crisis, pp. 14, 28; FINMA (2023): Extended Chronology from 26.09.2023, p. 23
552 Written answers to the PUK dated 14.4.2024, p. 10
553 Minutes of the Financial Crises Committee of 3.8.2022, p. 9
554 Written answers to the PUK dated 14.4.2024, p. 2; internal note from the FDF dated 2.7.2012
555 Written answers to the PUK dated 14.4.2024, p. 10
556 Written answers to the PUK dated 14.4.2024, p. 10

In its assessment letters to CS, FINMA took into account the requirements and concerns of foreign supervisory authorities and emphasized them.[557] The Fed and the PRA each received a copy of the assessment letters sent to CS. In addition, the Core College issued a feed- back letter twice a year[558].

5.3.2 Enforcement proceedings

With the aim of investigating the legality, appropriateness and effectiveness of the enforcement proceedings against CS between 2012 and the end of 2022, PCC commissioned an investigation in accordance with Article 166 paragraph 3 ParlA (see section 1.4.3.2). This chapter is based on the findings of the PUK's investigators, Albrecht Langhart and Matthias Hirschle, and the key aspects from the PUK's point of view in brief. For a complete overview of the enforcement proceedings, refer to the investigation report, which will be published at the same time as the PUK report.[559]

This section begins by listing the enforcement proceedings and the informal preliminary investigations that did not result in proceedings against CS in tabular and chronological order (after completion of the preliminary investigation or the enforcement proceedings) (section 5.3.2.1). The description of the opening enforcement proceedings, including the operational responsibility at FINMA and the applicable criteria, follows in section 5.3.2.2. Section 5.3.2.3 then describes the results of the enforcement proceedings, including any enforcement measures. FINMA's public communication on the enforcement proceedings against CS is then presented (section 5.3.2.4)as is a comparison with the enforcement proceedings against other systemically important banks (section 5.3.2.5). Finally, section 5.3.2.6 presents two enforcement proceedings against CS, which are of particular importance to the findings of the PUK (see section 11.1.1).

5.3.2.1 Overview of FINMA's enforcement proceedings against CS between 2012 and 2022

The table below provides a brief overview of the enforcement proceedings conducted by FINMA against CS between 2012 and 2022. A detailed table can be found in Appendix 6, which also contains the facts of the enforcement proceedings, the supervisory instruments ordered by FINMA and, where applicable, the enforcement measures taken. This table naturally presents the enforcement proceedings in a highly simplified form. The PUK refers to the report by the investigators Langhart and Hirschle for a more detailed explanation of the applicable legal bases, the considerations in the preliminary proceedings, FINMA's internal escalation procedures and the measures ordered.

The lines highlighted in gray correspond to the enforcement proceedings against CS. The lines not highlighted are preliminary clarification proceedings. Due to overriding private interests (banking secrecy) or public interests (official secrecy), some enforcement proceedings are anonymized. They are listed in the report and also in the table in Annex 6 as "anonymized proceedings".

557 Assessment letter 2015 from FINMA to CS dated 28.1.2016, p. 6
558 FINMA, Explanatory notes on the chronology 2012 - 2023, p. 2
559 Langhart, Albrecht / Hirschle, Matthias (2024): FINMA's enforcement proceedings against Credit Suisse in the period between January 1, 2012 and December 31, 2022. Investigation report dated May 24, 2024 on behalf of the PUK

Table 6: List of FINMA's preliminary clarification and enforcement proceedings against CS between 2012 and 2022

Short title[560]	*Opening*	*Conclusion*[561]	*Reference to the Langhart/Hirschle investigation report*
Anonymized procedure	28.7.2010	23.1.2012	No. 81
"FutureGeneration"	7.9.2011	27.2.2012	No. 80
"US financial services law business"	26.10.2011	21.9.2012	Point 129 ff.
Anonymized procedure	4.10.2012	7.3.2013	No. 82
"Arab Spring / anonymized Procedure"	30.9.2011	24.5.2013	Point 148 ff.
"GPF"	27.5.2013	14.8.2013	No. 84
Anonymized procedure	7.5.2013	22.8.2013	No. 85
"Uzbekistan"	10.3.2013	23.10.2013	No. 83
Anonymized procedure	27.2.2012	12.5.2014	No. 86
Anonymized procedure	6.5.2013	3.11.2014	No. 87
"Foreign exchange trading"	6.6.2014	11.11.2014	Point 88 ff.
Anonymized procedure	8.5.2015	28.8.2015	No. 91
Anonymized procedure	22.1.2015	21.12.2015	No. 92
"Cross-border financial services business in Italy"	21.7.2015	29.4.2016	Point 93 ff.
"1MDB"	5.6.2016	17.2.2017	Point 97 ff.
"Data incidents Italy"	19.5.2016	12.12.2017	No. 99
"Insider suspicion, anonymized tes procedure"	unknown	13.8.2018	Item 101
"Petrobras/FIFA/PDVSA"	25.9.2018	3.9.2018	Point 168 ff.
Anonymized procedure	6.4.2018	6.9.2018	No. 100
"Dino"	5.2.2016	3.9.2018	Point 219 ff.
"Distressed Debt"	unknown	2.11.2018	Item 102
Anonymized procedure	5.2.2016	23.11.2018	Point 243 ff.
Anonymized procedure	unknown	23.11.2018	Point 103 ff.
Anonymized procedure	unknown	8.4.2019	No. 109
"SSA Bonds"	unknown	25.4.2019	No. 110
Anonymized procedure	17.3.2017	27.9.2019	Point 260 ff.
Anonymized procedure	unknown	11.11.2019	No. 111
"Libor redemption"	unknown	25.6.2021	No. 112
"Vatican"	unknown	3.9.2021	Point 113 f.
"Mozambique"	25.9.2020	17.9.2021	Point 278 ff.
"Observation cases"	21.8.2020	1.10.2021	Point 300 ff.

560 The short titles chosen serve to provide a clear overview of the enforcement proceedings under consideration against CS. They refer to the facts under investigation and, as far as can be seen, do not originate from any official FINMA designation.

561 "Completion" here and below to the date of the final decree.
The opening and closing dates are not always clearly defined for preliminary investigation proceedings. In such cases, the final procedural acts in the relevant preliminary clarification proceedings are listed in accordance with the Langhart/Hirschle investigation report (2024).

Short title[560]	*Opening*	*Conclusion*[561]	*Reference to the Langhart/Hirschle investigation report*
"António Horta-Osório"	unknown	28.1.2022	No. 115
"Transaction reporting obligation"	23.3.2021	17.3.2022	No. 116
"Execution single client view"	4.6.2021	1.4.2022	Point 326 ff.
"Greensill"	5.3.2021	9.12.2022	Point 381 ff.
"Archegos"	16.4.2021	14.7.2023	Point 397 ff.

Total preliminary clarifications carried out between January 1, 2012 and December 31, 2022: [42562]

Total number of enforcement proceedings conducted against CS: [11563]

5.3.2.2 Criteria for initiating and conducting enforcement proceedings

Between 1 January 2012 and 31 December 2022, FINMA preliminary investigations into 42 cases concerning CS. In 13 cases, the preliminary investigations resulted in the opening of enforcement proceedings, with eleven final rulings ultimately issued as a result of the coordination of three proceedings (see Table 6 above).[564]

Preliminary clarification of the facts as part of the preliminary clarification procedure

Before opening enforcement proceedings, FINMA clarified indications of possible breaches of supervisory law by CS in the course of informal preliminary clarification proceedings. Such indications arose partly on the basis of knowledge gained by FINMA during its ongoing supervision of CS, partly on the basis of information from other authorities and partly from media reports.[565]

Competence to initiate enforcement proceedings

Enforcement proceedings were the responsibility of the Executive Board and therefore at the operational level of FINMA.[566] The Enforcement Committee (ENA) decided on the initiation and termination enforcement proceedings against CS and its governing bodies and employees.[567] The permanent members of the ENA were/are the

[562] Langhart/Hirschle investigation report (2024). Of the 42 pre-clearance proceedings, the investigators investigated 38, as the decision to open or not open enforcement proceedings in the last four cases outside the investigation period. Of the 38 preliminary investigation proceedings examined, 11 resulted in enforcement proceedings (marked in gray in the table), while no enforcement proceedings were opened in the 25 other preliminary investigation proceedings (not marked in the table).

[563] Langhart/Hirschle investigation report (2024), para. 78. In the period covered by the investigation mandate (1.1.2012 to 31.12.2022), the Enforcement Committee decided (ENA) decided not to initiate enforcement proceedings against CS in eight cases. In the remaining 25 cases, FINMA's Enforcement division decided this without to the ENA.

[564] Langhart/Hirschle investigation report (2024), points 78 and128

[565] Langhart/Hirschle investigation report (2024), no. 47

[566] Langhart/Hirschle investigation report (2024), para. 46. In some cases, the Enforcement division decided in consultation with the supervisory authority to discontinue preliminary investigation proceedings without a decision by the ENA (see Langhart/Hirschle investigation report [2024], paras. 80, 82 ff., 91 f., 99).

[567] Art. 10 para. 4 FINMA Rules of Procedure of 6.12.2023; Long-term investigation report hart/Hirschle (2024), No. 45

The Director of FINMA, chairs the ENA, as well as the heads of the Supervisory Policy, Legal Expertise and Enforcement divisions. The heads of the business areas affected by the relevant transaction were/are ENA members with voting rights on a case-by-case basis.

The Executive Board was always informed of the ENA's decisions and in turn informed the Board of Directors about the enforcement proceedings. According to the information provided by the PUK, this information was summarized. However, the Board of Directors asked the Executive Board questions on various occasions and the enforcement reporting also gave rise to discussions of a fundamental nature. For example, the FINMA Board of Directors discussed CS's risk culture and the need to introduce a senior management regime during a briefing on the "Archegos" case.[568]

Criteria for the opening of enforcement proceedings

The ENA decided whether to open enforcement proceedings on the basis of the following two criteria:[569]

- Severity of the (alleged) breach of applicable supervisory law: bank's awareness of the breach; systemic nature of the breach; risk to creditors or investors; hierarchical level involved at the bank; duration of the breach;
- Enforcement interest: Effect in terms general prevention and special prevention; existence of a risk to the financial center; importance for the restoration of orderly conditions.

Applying these criteria, FINMA refrained from opening enforcement proceedings in particular if one or more proceedings were already ongoing in the same context or had only recently been concluded.[570]

FINMA has developed an enforcement matrix as an auxiliary tool for evaluating and documenting the criteria listed above, which the ENA used for the first time in the context of the "Petrobras/FIFA/PDVSA" case (see section 5.3.2.6).[571]

According to the assessment of the investigators Langhart and Hirschle, FINMA made the decision to open or not open enforcement proceedings against CS[572] on the basis of appropriate criteria. Their application and the preliminary examinations based on them were carried out in an appropriate manner in all the cases examined, with one restriction. The only exception is the case of "Enforcement Petrobras/FIFA/PDVSA - Enforcement Single Client View", in which FINMA denied the proportionality of initiating proceedings against natural persons (see section 5.3.2.6 below).[573]

[568] Internal compilation of FINMA dated 28.6.2024; excerpts from the minutes of FINMA's Board of Directors as per FINMA's note dated 28.6.2024

[569] Langhart/Hirschle investigation report (2024), para. 73 et seq. The legislator does not specify when and in which cases proceedings are to be conducted. Practically all Enforcement measures available to FINMA are designed as optional provisions, i.e. as powers (Eymann, Patric [2022]: FINMA's enforcement proceedings. In: Zulauf, Urs /Wyss, David [ed:] Finanzmarktenforcement. 3rd ed. Bern: Stämpfli, p. 105).

[570] Langhart/Hirschle investigation report (2024), no. 117

[571] Langhart/Hirschle investigation report (2024), para. 75 f.

[572] The investigating agents investigated the enforcement proceedings against the bank and not against the executive bodies and employees of CS.

[573] Langhart/Hirschle investigation report (2024), para. 121 f.; FINMA statement of 7.8.2024 as part of the administrative consultation, p. 7

In the opinion of the investigators, FINMA exhausted its powers to take measures before initiating all enforcement proceedings. One exception is the "observation cases" enforcement proceedings: in the opinion of the investigators Langhart/Hirschle, it would have been appropriate to initiate enforcement proceedings earlier in this case.[574] FINMA does not agree with the investigators' assessment.[575]

Special criteria for enforcement proceedings against natural persons

Box 8: Enforcement proceedings against natural persons

The addressees of enforcement measures are primarily the supervised institutions.[576] However, FINMA also has measures at its disposal that are directed against individuals. These include the prohibition on acting as a governing body due to a lack of guarantee in accordance with Article 3 paragraph 2 letter c of the Banking Act and the prohibition on exercising a profession in accordance with Article 33 FINMASA.

The guarantors (members of the Board of Directors and Executive Board, holders of central functions and certain shareholders) must meet moral requirements ("*propriety*") and have the necessary professional qualifications ("*fitness*"). The guarantee is a licensing requirement that must be complied with at all times. If FINMA determines that guarantor of a supervised institution no longer provides a guarantee, it instructs the institution to remove this person from their guarantee function by means of a ruling based Article 31 FINMASA in conjunction with Article 3 paragraph 2 letter c Banking Act. Often, officers who are responsible for serious misconduct leave the institution of their own accord or pressure from the institution during the proceedings or earlier. As FINMA examines the guarantee in relation to a specific position, enforcement proceedings against former guarantors are written off as pointless[577].

Based on Article 33 FINMASA, FINMA may then prohibit persons who are responsible for a serious breach of supervisory law from working in a management position. A prohibition may also be imposed if the person concerned no longer works or wishes to in the financial sector. According to the dispatch on FINMASA, FINMA may refrain from imposing a prohibition if the person concerned will never work in the financial sector again.[578] FINMA therefore discretionary powers when applying the provision.[579]

Since 2014, FINMA's guidelines on enforcement have stipulated that it takes targeted action against natural persons (i.e. individuals) who are responsible for serious violations of supervisory provisions[580].

574 Langhart/Hirschle investigation report (2024), no. 121

575 FINMA states in this regard that instead of opening proceedings, an investigating officer was appointed immediately and the public was informed. The chosen procedure was equivalent to the appointment of an investigating agent in terms of its de facto effects - in terms of time and content as well as the intensity of the intervention (FINMA statement of 7 August 2024 as part of the administrative consultation, p. 7 f.; see section 11.1.1.2 on the PUK's assessment).

576 Kuhn, Christoph (2022): Measures taken by FINMA. in: Zulauf, Urs / Wyss, David (eds.): Finanzmarktenforcement. 3rd ed. Bern. Stämpfli Publishing House. S. 352

577 Kuhn, Christoph (2022): Measures taken by FINMA. in: Zulauf, Urs / Wyss, David (eds.): Financial market enforcement. 3rd ed. Berne. Stämpfli Publishers. P. 365 ff.

578 Message of 1.2.2006 on the Federal Financial Market Supervisory Authority (BBl **2006** 2882)

579 Kuhn, Christoph (2022): Measures taken by FINMA. in: Zulauf, Urs / Wyss, David (eds.): Finanzmarktenforcement. 3rd ed. Bern. Stämpfli Publishers. p. 370 ff.

580 FINMA, Guidelines on enforcement dated 25.9.2014, p. 2

FINMA has opened eight proceedings against individuals in connection with the proceedings against CS. Three of these are currently closed.[581]

Table 7 provides an overview of the preliminary clarification and enforcement proceedings against individuals. *Due to overriding private interests (banking secrecy) or public interests (official secrecy), some enforcement proceedings are anonymized. They are listed in the report and also in the table in the appendix as "anonymized proceedings".*

Table 7: List of FINMA's preliminary clarification and enforcement proceedings against individuals at CS between 2012 and 2022

Short title	Number of persons against whom the opening of proceedings was examined	Number of enforcement proceedings conducted against individuals	Reasons for not the proceedings or the outcome of the proceedings
"US financial services business"	1	-	n/a
"Arab Spring / anonymized procedure"	-	-	n/a
"Petrob- ras/FIFA/PDVSA"	19[582]	-	n/a
"Anonymized procedure"	5	-	n/a
"Anonymized procedure"	20	-	n/a
"Mozambique"	5[583]	-	n/a
"Observation cases"	9	3[584]	Write-off of the proceedings as without merit
"Execution Sin- gle Client View"	-	-	n/a
"Greensill"	11[585]	4	(Proceedings ongoing)
"Archegos"	3[586]	1	(Proceedings ongoing)
TOTAL	**73**	**8**	

Total bans/revocations: 0

[581] FINMA internal document for the attention of the PUK dated 8.8.2023; FINMA (2023): Les- sons Learned from the CS crisis, p. 6

[582] 17 persons were examined as part of an anonymized procedure, which was then combined with the "Petrobras/FIFA/PDVSA" procedure.

[583] According to FINMA, the examination of further proceedings is currently still pending. (internal FINMA table dated 8.8.2023, updated on 30.7.2024).

[584] There is one procedure for examining the warranty of the person concerned and two procedures for a possible disqualification. The guarantee procedure was discontinued when the person concerned gave up their guarantee function. The disbarment proceedings were discontinued when the persons concerned signed a declaration of renunciation. According to this declaration, they renounced any future management or guarantee position on the Swiss financial market.

[585] According to FINMA, the review of four further proceedings is currently still pending (internal FINMA table dated 8.8.2023, updated on 30.7.2024).

[586] According to FINMA, the examination of further proceedings is currently still (internal FINMA table dated 8.8.2023, updated on 30.7.2024).

This illustration shows that in most cases FINMA refrained from conducting enforcement proceedings against individuals at CS. The reasons given for the ENA can be categorized as follows, depending on whether the proceedings involved a prohibition of professional activity or a guarantee procedure:[587]

Table 8: Categorization of the ENA's reasons for not initiating enforcement proceedings against investigated individuals

Occupational ban	Not enough grounds for suspicion
	Excessive legal or reputational risks
	Special preventive purpose already fulfilled without enforcement proceedings (e.g. in the event of a criminal conviction or leaving Switzerland)
	Occupational ban not applicable to the person concerned
	Person concerned has already been dismissed or has already left their job
	Non-relevant or minor violations
Guarantee	Person concerned no longer held position of responsibility
	Insufficient evidence
	Provisional waiver of the opening of proceedings due to ongoing clarification of the facts in another case
	Insufficient grounds for suspicion[588]

According to the investigators Langhart/Hirschle, FINMA should have exerted influence on the investigator enforcement proceedings (proceedings anonymized) after receiving the report of its in order to clarify the responsibilities of the persons involved in this case in a reliable manner.[589] Furthermore, FINMA had not exhausted its authority to take measures in the "Petrob ras/FIFA/PDVSA" case. It should have initiated additional enforcement proceedings with the appointment of an investigator to clarify responsibility for the non-implementation of its 2018 ruling and to examine the question of the warranty of the responsible bodies, which it failed to do (see section 5.3.2.6).[590]

[587] In some cases, several reasons came together so that the ENA decided not to open proceedings due to a mixture of opportunity, proportionality and legal reasons. This list does not take into account developments in case law to clarify the applicable legal bases. However, it should be that FINMA changed its internal policy with regard to enforcement proceedings against individuals in 2014 (following the conclusion of the "Arab Spring" case): had previously exercised restraint with regard to individuals; it then decided to take "targeted" action against individuals.

[588] What is striking about this argument is that FINMA repeatedly faces the same problem. was no evidence that a person at a higher management level or a person entrusted with control functions knew or should have known of a specific breach of supervisory law. Either it was not possible trace which information had been passed on to the person concerned, or the responsibilities within CS were diffuse (organizational deficits). In this last constellation, the indications that the risk culture is the responsibility of the highest bodies and that a guarantee problem at the institutional level should also lead to clarifications at the individual level are striking.

[589] Langhart/Hirschle investigation report (2024), no. 275

[590] Langhart/Hirschle investigation report (2024), no. 16

5.3.2.3 Execution, conclusion and implementation of enforcement proceedings

In the period under review between January 1, 2012 and December 31, 2012, FINMA carried out
December 31, 2022, a total of eleven enforcement proceedings against CS.[591]

The enforcement proceedings were each concluded with a FINMA ruling. FINMA its various instruments in these rulings: In all of the enforcement proceedings investigated, FINMA first found that regulatory provisions had been breached.[592] According to these findings, CS had in particular breached its duty to have an appropriate administrative organization, which sometimes requires appropriate risk management. FINMA then restricted CS's business activities in two cases.[593] In a further case, FINMA threatened to impose such a restriction.[594]

In three cases, it also obliged the bank to submit and implement a plan of measures to restore compliance with a specific deadline.[595] Finally, in one case it confiscated CS's profits, which it had made in serious violation of regulatory provisions.[596]

FINMA also incorporated the findings from the preliminary clarification and enforcement proceedings into its ongoing supervision. In several assessment letters, for example, it addressed the (non-)implementation of certain measures and wrote letters of reprimand.[597] According to its own information, it also filed 16 criminal complaints.[598]

Of the instruments at its disposal, FINMA never used the publication of the ruling or the withdrawal of the license.[599] Nor was CS ever threatened with the withdrawal of its license during the investigation period.[600] With regard to both measures, the investigators concluded that FINMA's actions not objectionable. After all, it did not withdraw the guarantee from anyone (see section 5.3.2.2). One person withdrew from his position during the guarantee proceedings, and further proceedings against former guarantors are still ongoing.

FINMA's legally binding rulings had to be implemented by the bank. In some cases, FINMA appointed an audit officer to check that CS had implemented the ordered measures in full and on time.[601]

The investigators Langhart and Hirschle came to the conclusion that FINMA had not exhausted its authority to take measures to restore orderly conditions in the cases of "Petrobras/FIFA/PDVSA", "DINO" and a further, anonymized case. It did not enforce the reinforcement of the CS Board of Directors and refrained from threatening to impose concrete business restrictions in the event that the single client view was not implemented on timeIn addition, it should have appointed an investigator in the case of "observation cases".[602]

[591] Langhart/Hirschle investigation report (2024), no. 128
[592] See Appendix 6
[593] Langhart/Hirschle investigation report (2024), points 137, 290
[594] Langhart/Hirschle investigation report (2024), no. 337
[595] Langhart/Hirschle investigation report (2024), points 193, 236, 255
[596] Langhart/Hirschle investigation report (2024), no. 269
[597] Langhart/Hirschle investigation report (2024), points 157, 253, 458, 469
[598] FINMA (2023): Lessons learned on the CS crisis, p. 14; Lang- hart/Hirschle investigation report (2024), paras. 92, 109, 111, 229, 281
[599] Langhart/Hirschle investigation report (2024), point 2.2
[600] Langhart/Hirschle investigation report (2024), no. 412
[601] Cf. e.g. Langhart/Hirschle investigation report (2024), point 15
[602] Langhart/Hirschle investigation report (2024), no. 415

FINMA is of the opinion that it has also exhausted its authority to take measures in this case. In FINMA's view, the reconsideration criticized is not objectionable either, as it decided on an equivalent or even stronger measure and sent a stronger signal (new, separate committee of the Board of Directors on the topic of proper compliance, compliance culture and organization) instead of a weaker one (replacement or new member of the Board of Directors with specific knowledge of compliance).

5.3.2.4 Public communication

FINMA followed the guidelines of the Board of Directors introduced in 2014 when communicating publicly about the initiation, conduct, conclusion and implementation of the enforcement proceedings against CS.[603] These guidelines are basedamong other things, on Article 22 paragraph 1 FINMASA, which stipulates that FINMA must communicate at least annually about its supervisory activities and supervisory practice, and only exceptionally about individual proceedings.[604]

Until 31 December 2017, FINMA did not publish any media releases on the opening and conclusion of enforcement proceedings against CS based on the aforementioned principles.[605] From 1 January 2018, it published three media releases on the *opening of* enforcement proceedings against CS. It informed the public about the *conclusion of* enforcement proceedings in five cases.[606] FINMA published a media release for the first time about the "Petrobras/FIFA/PDVSA" and "DINO" cases. However, no mention was made of the extension ordered at Board of Directors level.

The decision to publish a media release was always made in the ENA. The requests to the ENA (for publication or non-publication of a media release) were justified in varying degrees of detail.[607] In the period between 2012 and 2022, the justifications for not issuing a media release ranged from the political explosiveness of the matter under investigation to verbal assurances to a bank that no public communication would be made.[608]

In the opinion of the PUK's investigators, FINMA's public communication was lawful, appropriate and effective with the following exceptions: Firstly, it would have been appropriate to publicly communicate the reinforcement of the CS Board of Directors ordered in the "Petrobras/FIFA/PDVSA" and "DINO" cases. Secondly, in the opinion of the investigators, FINMA should have informed the public at the beginning of 2020 about the incomplete implementation of the legally binding ruling in the "Petrobras/FIFA/PDVSA" case within the set deadline. This would have been appropriate, as it had published a media release on the conclusion of the proceedings in question.

603 Art. 9 para. 1 let. i FINMASA; https://www.finma.ch/> Activities> Guidelines.

604 According to Art. 22 para. 2 FINMASA, three alternative criteria must be met for FINMA to communicate on individual proceedings: The information is necessary to protect market participants or supervised institutions, it is necessary to correct false or misleading information, or it is necessary to protect the reputation of the Swiss financial center. FINMA's guidelines state - in line with the dispatch - that the legislator has imposed restraint on FINMA in its communication on individual supervisory acts and procedures. If FINMA provides information on proceedings, it must also immediately inform the public of their discontinuation in accordance with Art. 22 para. 3 FINMASA.

605 Langhart/Hirschle investigation report (2024), point 3.1

606 Langhart/Hirschle investigation report (2024), no. 421

607 Langhart/Hirschle investigation report (2024), no. 420

608 Langhart/Hirschle investigation report (2024), no. 422

5.3.2.5 Comparison with the enforcement proceedings against other systemically important banks

From January 1, 2012 to December 31, 2022, FINMA conducted a total of eleven enforcement proceedings against CS, most of which were concluded between 2018 and 2022. This was significantly more than against other banks.

According to the investigators, FINMA had to investigate serious systematic and above all organizational deficiencies at CS over a period of years and enforce their rectification, while the enforcement proceedings conducted at the other systemically important banks concerned less serious individual cases in some cases - even if some of these proceedings were very costly.[609]

It should also be emphasized that FINMA immediately issued orders regarding the composition of the board of directors of a systemically important bank in the event of the failure of its board of directors, whereas it ultimately refrained from doing so in relation to CS.[610] This type of behaviour was not observed at any other systemically important bank during the period under review. Accordingly, FINMA's enforcement activities in relation to CS differ from those in relation to other systemically important banks in that it did not enforce any orders regarding the composition of CS's board of directors.

5.3.2.6 Separate notes on the cases "Petrobras/FIFA/PDVSA" and "Enforcement Petrobras/FIFA/PDVSA (Enforcement Single Client View)"

The "Petrobras/FIFA/PDVSA" case concerned the question of whether CS had violated the provisions of the AMLA and the requirements for an appropriate administrative organization and risk management in connection with three major cases of fraud and corruption.[611]

At the end of the enforcement proceedings, FINMA CS in a ruling dated September 3, 2018, among other things, to compose the Board of Directors in such a way that at least one member several years of experience in the financial market and sufficient knowledge and experience with regulatory requirements and compliance in the private client business at comparable financial institutions. CS was also to introduce an overall view of the client dossiers managed (known as a single client view). To this end, it had to submit to FINMA by 30 November 2018 a plan of measures and timetable for the implementation of the single client view for approval.[612]

In its response letter dated November 22, 2018, CS informed FINMA that it did not consider it necessary to add a with additional expertise in regulatory issues and compliance to its Board of Directors as ordered in the "Petrobras/FIFA/PDVSA" case on September 3, 2018. In particular, CS pointed out that various members of the Board of Directors already had the required knowledge and experience. It held out the prospect of creating a new committee at the level of the Board of Directors, which should begin its activities on January 1, 2019.[613]

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609 Langhart/Hirschle investigation report (2024), no. 526

610 In FINMA's opinion, the comparison with this systemically important bank is incomprehensible and incorrect from a supervisory perspective. It argues the cases are based on different issues and findings. In the case of systemically important bank, the Board of Directors itself breached its supervisory duties which consequently also resulted in personal measures.

611 Langhart/Hirschle investigation report (2024), para. 169 et seq.

612 Langhart/Hirschle investigation report (2024), no. 192

613 Langhart/Hirschle investigation report (2024), no. 196

FINMA interpreted this letter as a request for reconsideration and subsequently waived the original measure. In its reconsideration of 25 January 2019, it demanded that the requirements for proper business conduct and the promotion of an adequate compliance culture and organization at Board of Directors level be given the necessary attention by permanently assigning this topic to an independent committee of the Board of Directors.[614]

CS subsequently fell behind schedule with the implementation of the Single Client View. FINMA addressed this issue several times in its assessment letters, but initially did not take any further enforcement measures. FINMA finally CS on June 18, 2021 of the opening of further enforcement proceedings, in the course of which the implementation of the measures ordered in accordance with the 2018 ruling and, if necessary, possible enforcement measures would be examined. On April 1, 2022, more than two years after the deadline for implementing the single client view in accordance with the 2018 ruling, FINMA issued a final warning to CS to fully implement the single client view by December 31, 2024 at the latest.[615]

In its statement as part of the administrative consultation, FINMA states that it considers the procedure in the case "Enforcement Petrobras/FIFA/PDVSA (enforcement single client view)" to be appropriate, lawful and effective.[616]

5.3.3 Origins and development of the regulatory filter

A regulatory filter is a rule with which the requirements of the accounting standards are corrected upwards or downwards for the purpose of calculating regulatory capital. This means that own funds are assessed differently from a regulatory perspective than in financial accounting.[617] Regulatory filters are in various applications. Such a filter was also applied Credit Suisse. As a result, certain lower valuations resulting from the changeover from collective valuation to individual valuation were allowed to be reallocated to common equity tier 1 capital (CET1) for regulatory purposes.[618] This led to the regulatory capital of CS AG reported in the annual reports being increased to the extent of the regulatory filter.

The origins of the regulatory filter, the new requirements introduced with the 2013 Capital Adequacy Ordinance (see section 5.3.3.1) as well as the amendment of this provision and the introduction of the regulatory filter (see section 5.3.3.2) are described below. Section 5.3.3.3 describes the impact of this filter on Credit Suisse's figures.

614 Langhart/Hirschle investigation report (2024), para. 197 ff.
615 Langhart/Hirschle investigation report (2024), para. 326 ff.
616 In its statement, FINMA emphasizes that it insisted on the implementation of the *Single Client View* after the corresponding ruling and that it continuously intensified ongoing supervision after the implementation problems arose. It also refers to its statement in the investigation report Langhart/Hirschle (2024), p. 152 ff. para. 370 ff.
617 Banking Stability Expert Group (2023): Need for reform after the demise of Credit Suisse, p. 68
618 FINMA ruling of 20.10.2017 in the matter of Credit Suisse AG, Paradeplatz 8, 8001 Zurich regarding capital requirements of Credit Suisse AG (individual institution), Dispositive figure 46a (*hereinafter*: revised TBTF ruling of FINMA of 20.10.2017 in the matter of Credit Suisse). See also Birchler, Urs (2024): Impact the regulatory filter on Credit Suisse. Report of 12.11.2024 on behalf of the PUK, p. 6.

5.3.3.1 Relief due to the Capital Adequacy Ordinance and deduction of investments

New requirements in the Capital Adequacy Ordinance

The Capital Adequacy Ordinance (CAO), which was revised as part of the TBTF legislation, came into force on
January 1, 2013 (see section 4.2.2.3). On the one hand, the new Article 32 CAO required all banks to deduct holdings in companies in the financial sector that are to be consolidated at group level from common equity tier 1 capital at individual institution level. The implementation of this rule posed a major challenge for Credit Suisse and UBS, as they had very high investment values of CHF 75 billion and CHF 45 billion respectively.[619]

On the other hand, Article 125 CAO obliges FINMA from 2013 onwards to grant the two big banks relief from the capital requirements, particularly for the parent bank (Credit Suisse AG and UBS AG), if the requirements at financial group level (i.e. Credit Suisse Group AG and UBS Group AG) increase as a result of the requirements at individual institution level.[620]

According to FINMA's explanatory notes, Article 125 CAO was included in the ordinance at the request of the banking sector which feared that setting excessively high requirements for individual institutions would lead to disproportionately high capital requirements for the group as a whole.[621] The commentary on the revision of the CAO describes this undesirable effect for the banking sector.[622]

Furthermore, Article 125 CAO did not provide for any quantitative requirements regarding relief to be granted to the individual institution. However, as outlined above, the aim of Article 125 CAO was to correct excessive capital requirements at group level.

The regulation set an upper limit for the relief granted individual institutions: After the reduction in capital requirements, capital requirements across all relief combinations still had to meet at least the internationally applicable Basel minimum standards.[623]

The 2013 regime can summarized as follows: The Parent Bank's investments in subsidiaries must be deducted from Common Equity Tier 1 capital

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619 Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 80)

620 In practice, this has created a link to the capital requirements of foreign regulatory authorities. The foreign subsidiary must back its business activities with own funds; the regulatory capital requirements of the subsidiary's country are decisive for this. If this authority increases its capital requirements, it must be ensured in accordance with Art. 125 CAO that the requirements at financial group level are still appropriate. If the are too high, FINMA is forced to grant relief at the level of the individual institution. In practice, this can only take place at parent company level. See minutes of the PUK meeting of 13.11.2024, p. 4; Federal Council report of 10.4.2024 on bank stability (BBl **2024** 1023, p.89).

621 FINMA (2023): Lessons learned from the CS crisis, p. 62; Letter from FINMA to the PUK of 14.6.2024. See also: 26 instead of 19 percent? In: NZZ, 12.5.2011 and National Councils want to see ordinance. In: NZZ, 6.7.2011

622 "Due to the individual Group structure and the selected internal debt management system, the In the case of *leverage*, the aggregation of the individual requirements may de facto lead to the regulatory requirements being exceeded at group level. At individual institution level, the backing of intragroup risk positions (loans, guarantees) increases the required capital, while [sic] the deduction participations reduces the eligible capital." FDF commentary of 20.6.2012 on the total revision of the Capital Adequacy Ordinance (CAO), p. 60 f.

623 Own funds of at least 14 % of risk-weighted assets (RWA), a CET1 ratio of at least 4.5 %, a Tier 1 ratio of 6 % and a total capital ratio in
Amount of 8.0 % of the risk-weighted positions (RWA). FDF commentary of 20.6.2012 on the total revision of the Capital Adequacy Ordinance (CAO), p. 16

The requirements of Article 125 of the CAO must be met, whereby exemptions must be granted as long as the cumulation of the requirements at the level of the individual institution actually leads to the regulatory requirements at Group level being exceeded.

FINMA ruling from 2013

The relief under Article 125 CAO was specified for Credit Suisse in a FINMA ruling ("TBTF ruling") in 2013. This the capital requirements at Credit Suisse AG level to the regulatory minimum 14%.[624] However, as this measure was not sufficient to prevent the bank from being significantly above the target level for the overall requirement from a consolidated perspective, i.e. at Credit Suisse Group AG level, FINMA had to grant the bank further relief in this ruling in the area of the treatment of participations in subsidiaries in the financial sector (in accordance with Art. 125 para. 4 let. b CAO at the time). These exemptions related to directly held participations of individual institutions: While these holdings had to be deducted in full from equity until that time in accordance with Article 32 CAO, they could now be recognized up to a certain threshold value with a risk weighting of 200%. Above this threshold, half of the investments had to be deducted from common equity tier 1 capital and half from total capital.[625]

At the same time, FINMA also issued a TBTF ruling against UBS. The individual requirements at group level varied, as they were determined according to size and national market share.[626]

FINMA explained to the PUK that the aim of the 2013 rulings was to correct the effects of Article 125 CAO by setting threshold values. These relaxations would have represented an unacceptable capital relief for the big banks.[627]

624 FINMA ruling of 20.12.2013 in the matter of Credit Suisse Group AG, Zurich, and Credit Suisse AG, Zurich, Paradeplatz 8, P.O. Box, 8070 Zurich regarding special for the systemically important individual institution and the financial group (*hereinafter*: TBTF ruling of FINMA of 20.12.2013 in the matter of Credit Suisse), dispositive no. 9a. See also: "FINMA informs about TBTF rulings", FINMA media release dated 7.5.2014.

625 FINMA TBTF ruling of 20.12.2013 in the matter of Credit Suisse, dispositive no. 9k: "For 2014, the holdings in companies active in the financial sector are to be consolidated. half common equity tier 1 capital and half from total capital for Credit Suisse AG companies that exceed a threshold of 130% of total capital at the level of the individual institution before deductions for participations." See also: "FINMA informs about TBTF rulings", FINMA media release dated 7.5.2014. The threshold was set in such a way that more than nine tenths (approx. CHF 85.8 billion) of the estimated CHF 93 billion in holdings (direct and indirect) was recorded as a risk-weighted position. This was therefore a "blanket risk weighting regime" for CS. See Zellweger-Gutknecht, Corinne (2024): Legality of the TBTF ruling 2017. Legal opinion of 19.11.2024 on behalf of the PUK, P. 17. The fact that these simplifications at Credit Suisse effectively applied to all participations is an effect of Art. 125 CAO, see Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 88).

626 Extrapolated to 2019, this would have resulted in a requirement of 19.2 % of risk-weighted assets for UBS at the time the decree entered into force on 1.1.2014. (RWA) and 16.7% Credit Suisse respectively. The unweighted capital requirement (leverage ratio), the second capital requirement, amounted to 4.6% (UBS) and 4.0% (Credit Suisse). See "FINMA informs about TBTF rulings", FINMA media release dated 7.5.2014.

627 Letter from FINMA to the PUK dated 14.6.2024

5.3.3.2 Regime change in terms of shareholdings and introduction of the regulatory filter

Identified need for adjustment

Following the Federal Council's report on banking stability published in 2015[628] and the new revision of the Capital Adequacy Ordinance, which came into force on July 1, 2016 (see section 5.2.3.1), several stakeholders saw a need for action. In a letter to SIF, FINMA expressed the view that the continuation of the current capital relief regime did not adequately reflect the banks' actual capital situation or the risk arising from investments in the various holdings and that the regime difficult to communicate due to its complexity.[629] In its response, SIF stated that it had also been contacted by the big banks on this issue.[630]

FINMA ruling from 2017

FINMA pushed for the existing regulation to be replaced. According to its statements, however, it had to reach an agreement with the affected institutions UBS and CS on an alternative solution for capital backing of equity investments before the Federal Council was prepared to implement this regulation in the CAO and abolish Article 125 CAO.[631] FINMA was unable to substantiate this statement further, not even with documents on the revision of the CAO.

The solution found between FINMA and CS was by FINMA's revised TBTF ruling 2017[632], which supplemented or replaced the ruling from 2013. This ruling, FINMA describes as an overall regulatory package, contained two aspects: A) a risk weighting of shareholdings and B) a regulatory filter.

A) Regime change: risk weighting of investments instead of deduction

The revised TBTF directive provided for a new capital regime for the treatment investments in subsidiaries for the purposes of capital adequacy: Instead of deducting these participations from common equity tier 1 capital, they were now recognized on the basis of a risk weighting.

This FINMA ruling from 2017 meant, among other things, that Credit Suisse AG (the parent bank) had to switch to this new regime with a risk weighting of investments within a ten-year transition period. On

628 "In order to ensure adequate capitalization of those entities that comprise systemically important functions at all times, the facilitations under 125 of the Capital Adequacy Ordinance should be adjusted", Federal Council report of 18.2.2015 on TBTF (BBl **2015** 1927, here 1939).

629 Letter from FINMA to SIF dated 16.2.2017, Annex "Supplement to Art. 52 report; of the parent companies of the big banks". The relevant Basel III standard is applied exclusively at consolidated level. The regime change only affected the individual institution level (FDF, explanatory notes of 21.11.2018 on the amendment to the Capital Adequacy Ordinance, p. 16). In this respect, the regime change was not related to the international requirements in this area.

630 Letter from SIF to FINMA dated 16.2.2017

631 Letter from FINMA to the PUK dated 9.9.2024; letter from FINMA to the PUK dated 20.9.2024

632 FINMA ruling of 20.10.2017 in the matter of Credit Suisse AG, Paradeplatz 8, 8001 Zurich regarding capital requirements of Credit Suisse AG (individual institution) (*after-following*: revised TBTF ruling of FINMA dated 20.10.2017 in the Credit Suisse matter)

At the end of the transition period, the risk weights should have been 250% for domestic participations and 400% for foreign participations.[633]

However, this regime change would have required a substantial increase in capital in order to be able to report the same level of capitalization,[634] which is why discussions between the banks and FINMA took place in advance. In a letter from CS to the supervisory authority - before an agreement reached on the ordinance - the bank emphasized that it was aware of the need for a regime change. However, as long as the conceptual shortcomings of the legislation remain, it cannot accept any proposal that would abolish Article 125 CAO. It also believes that any such approach would be outside the political and legislative consensus reached in 2012.[635]

From FINMA's perspective, a further element therefore had to be included in the 2017 ruling in order to gain acceptance from CS for the abolition of Article 125 CAO and the regime change. Based on the information and documents available to it, the PUK was unable to clarify the extent to which FINMA was required to accommodate CS on this issue in the political environment at the time. Regulatory decisions (at the level of Parliament, the Federal Council or FINMA) do not require the consent of the institutions concerned. However, according to the SIF, the opinion of the banks concerned, in particular the big banks, in consultations can have an influence on regulatory decisions by Parliament and the authorities.[636]

B) Regulatory filter: individual valuation with special rule for CS

With effect from the 2019 financial year, the Swiss accounting standards were amended to the effect that subsidiaries no longer have to be valued using a portfolio approach (collective valuation), but instead individually.[637] The main reason for the revision of the accounting standards was to

[633] Revised TBTF ruling issued by FINMA on 20.10.2017 in the Credit Suisse case, dis- posal numbers 6-7. This meant the threshold of the 2013 ruling was actually lifted (see section 5.3.3.1) and therefore the risk weighting regime, which had in fact long been dominant, was applied even more consistently. According to the legal opinion, the regime change already took place with the introduction of the TBTF ruling in 2013, as only a tenth of the participations were subject to the deduction regime with the relief granted. The 2017 TBTF ruling merely adjusted the existing regime. The participation deduction was now also abolished for this tenth (Zellweger-Gutknecht legal opinion (2024), p. 16 ff.).

[634] Due to the increased risk weighting, CS AG'core capital requirements rose by CHF 16.8 billion to around CHF 46.8 billion (Zellweger-Gutknecht legal opinion (2024)), S. 21).

[635] Letter from CS to FINMA dated 6.12.2016

[636] Letter from the SIF to the PUK dated 19.9.2024

[637] Banking Stability Expert Group (2023): Need for reform after the demise of Credit Suisse, p. 71; FINMA (2023): Lessons learned from the CS crisis, p. 64. *In the case of collective valuation*, the valuation losses of certain participations must be offset against corresponding surpluses on assets of the same type. They do not have to be recognized in the income statement. According to the *individual valuation principle*, all investments must be considered separately. The lower of cost or market principle stipulates that assets must be recognized in the balance sheet at the lower of cost or market value, so that the book value at most to the current market value. Due to the lower of cost or market principle, individual that have suffered an impairment in value must be written down in the case of individual valuation, without increases in the value of other investments being able to offset this loss. This means that the income statement is generally lower in the case of individual valuation than in the case of collective valuation because market values that are higher than acquisition values do not have a loss-reducing effect in the case of individual valuation. See also expert report Birchler (2024), p. 5 ff.

The revision was based in part on the internationally recognized standards (IFRS, US GAAP), according to FINMA.[639] While the introduction of individual valuation was controversially discussed in the course of the CO revision,[640] the opinion is now held in the literature on accounting regulations that collective valuation is less in line with the principle of prudence prevailing in accounting law than individual valuation.[641]

In the specific case of CS AG, this change in accounting standards would have led to a reduction in equity without any change in the bank's financial situation from an economic perspective.[642]

For this reason, according to FINMA, CS made its acceptance[643] of the regime change (higher risk weighting of participations instead of deduction above the threshold value, see above) and thus the abolition of Article 125 CAO dependent on the effects of the accounting change (switch from collective valuation to individual valuation) being neutralized by means of a regulatory filter.[644] CS thus linked two issues - on the one hand the regime change in accordance with Article 32 and Article 125 CAO and on the other hand the change to the accounting provisions in the CO - in order to maintain the filter: Although both changes concerned the same target figure, namely the capital of the parent company, they were not . UBS was already using individual valuation.

638 FINMA (2013): Explanatory report on the audit of banks' financial reporting, p. 7

639 "Rechnungslegung Banken: Anhörung zu neuen Vorschriften", FINMA media release dated 29.10.2013. IFRS and Swiss accounting standards (Swiss GAAP FER) are based on the principle of individual valuation (Haag, Stefan / Neuhaus, Markus R. (2024): Commentary on Art. 960 OR. In: Watter, Rolf / Vogt, Hans- Ueli (eds.): Basler Kommentar Obligationenrecht II, 6th ed. Basel: Helbing & Lichtenhahn, para. 30 f.). Art. 960 CO qualifies the principle of individual valuation to the effect that this only applies if the assets or liabilities are significant and are not usually combined as a group for valuation purposes due to their similarity. The weakened wording is intended to give a certain amount of leeway, for example when whether holding companies must value their investments individually (Koch, Bernadette (2022): §63 Fundamentals. In: Theus Simoni, Fabiana / Hauser, Isabel / Bärtschi, Harald (eds.): Handbuch Schweizer Aktienrecht, 2nd ed. Basel: Helbing & Lichtenhahn, para. 63.15).

640 EJPD (2007): Summary of the results of the consultation on the preliminary draft revision of the Swiss Code of Obligations, p. 31; Meyer, Dieter / Nagel-Jungo, Gabriela (2014): The new accounting standards for - a critical appraisal. In: Der Schweizer Treuhänder 8/14, p. 607

641 For example, Meyer / Nagel-Jungo (2014), p. 607: "It should also be noted that a collective valuation clearly contradicts the principle of prudence [...]. On the one hand In the case of the collective valuation, impaired items are not adjusted and, on the other hand, the acquisition value principle is broken for the items on which there are unrealized gains. In the interests of comprehensible and transparent accounting, it speaks for FINMA that it remained steadfast here and enforced strict individual valuation." See also Nobel, Peter (2019): Swiss Financial Market Law, 4th ed. Bern: Stämpfli, margin no. 685.

642 FINMA's letter to the PUK dated 14.6.2024. When issuing the 2017 ruling, FINMA on the basis of the figures received from CS that the accounting figures would not change. CS AG's reported equity capital would decrease by CHF 8 billion as a result of the switch to individual . According to SNB estimates, CS would have had to raise new regulatory common equity tier 1 capital in the amount of CHF 3.5 billion as a result (because the RWA of the parent company also fell with the value of the participations, less CET1 was required to back them, which explains the partially offsetting effect). See Birchler expert report (2024), p. 5-6; Zellweger-Gutknecht legal opinion (2024), p. 36.

643 FINMA explicitly refers to CS's "consent" to the abolition of Art. 125 CAO, although the banks are only consulted on amendments to the ordinance.

644 Letter from FINMA to the PUK dated 14.6.2024; written answers to the PUK dated 5.4.2024

As it therefore had no need for a regulatory filter, it did not submit a corresponding application.[645]

As a result, the revised 2017 TBTF decree included the introduction of a regulatory filter as a further element. This allowed CS AG to include certain impairments resulting from the switch from collective valuation to individual valuation in common equity tier 1 capital (CET1) for regulatory purposes[646] (see section 5.3.3.3 for information on how the filter works). According to FINMA, such an exception was based on Article 4 para. 3 of the Banking Act, according to which FINMA may allow exemptions from the minimum requirements or impose stricter requirements in special cases.[647] Ultimately, this allowed the Parent Bank to defer write-downs on participations if the market value of other participations exceeded their book values.[648] According to FINMA, this not only took into account the special legal structure of CS (significantly higher participation values than UBS), but also supported the ongoing restructuring of the investment bank at the time.[649]

FINMA made the granting of the regulatory filter subject to the condition that a third party regularly reviews the relevant valuations of holdings in subsidiaries.[650] According to the Director at the time, this review gave FINMA simplified access the issue of the bank's valuation for the first time. From FINMA's perspective, significant progress was therefore made in this regard. The audit by the third party ultimately led to the valuation of the holdings being adjusted downwards (see section 5.3.3.3).[651] The bank was also obliged to publish the scope of the regulatory filter on a quarterly basis. Investors were therefore aware of this (see section 5.3.3.3 for information on how CS disclosed the filter).[652]

In summary, it can be said that FINMA's 2017 ruling concretized the transition to the new capital regime: this was a system with risk-weighting of shareholdings, which, unlike the previous system, was no longer

[645] "Banking Stability" group of experts (2023): Need for reform after the demise of Credit Suisse, p. 71; Letter from FINMA to the PUK dated 10.1.2024.

[646] Revised TBTF ruling FINMA dated 20.10.2017 in the matter of Credit Suisse, dis- positive number 46a. See also recital 15: "Credit Suisse AG is authorized to issue a At the time of the changeover to individual valuation (Art. 27 para. 2 BankV), the accounting in capital resulting from the difference between collective valuation and individual valuation must be reallocated to common equity tier 1 capital for regulatory purposes (regulatory filter) for the purpose of determining the regulatory capital adequacy of the individual institution." See also: Birchler expert report (2024), p. 6 ff.

[647] Letter from FINMA to the PUK dated 9.9.2024

[648] FINMA (2023): Lessons learned from the CS crisis, p. 64

[649] FINMA (2023): Lessons-learned from the CS crisis, p. 64; written answers of 5.4.2024 to the PUK. The restructuring was intended in particular to reduce risks (risk-weighted assets) in the UK and thus enable capital repatriations from UK subsidiaries to the parent bank in Switzerland in order to strengthen the Swiss parent . The filter also enabled the high market value (compared to the book value) of the subsidiary Credit Suisse Schweiz AG, which was newly separated from the parent bank (in accordance with the requirements of the Swiss TBTF regulation), to continue be taken into account economically. Otherwise, the bank would have been effectively penalized in terms of capital for improving its group structure to implement the Swiss emergency plan (statement of 24.7.2024 as part of the management consultation).

[650] Revised TBTF ruling issued by FINMA on 20.10.2017 in the matter of Credit Suisse, dis-positive number 17: "An audit officer appointed by FINMA will audit the Credit Suisse AG must verify the plausibility of the valuations of the holdings on which the regulatory filter is based at the time of the changeover to individual valuation. FINMA may at any time thereafter order a re-examination by an auditor at the expense of Credit Suisse AG."

[651] Minutes of the PUK meeting of 21.2.2024, p. 32f.; letter from FINMA to the PUK of 10.1.2024

[652] Letter from FINMA to the PUK dated 10.1.2024; revised TBTF ruling by FINMA dated 20.10.2017 in the Credit Suisse matter, dispositive number 18/19

The new law contained significant mandatory simplifications.[653] For CS, however, there was still a kind of relief through the regulatory filter.

Regime change for all banks and repeal of Article 125 CAO in 2018

FINMA's press release on the TBTF ruling of 2017 stated that the risk weighting is also expected to apply to other banks from January 1, 2019 and that the necessary amendment to the CAO has been initiated.[654]

In fact, the Federal Council had also identified a need for adjustment in the treatment of participations (risk weighting instead of equity deduction) (see above). It again expressed this criticism of the equity deduction regime in the TBTF report of 2017, where the mixed system of equity deduction and risk weighting was described as complex and opaque. It was also criticized that the current system was difficult to compare in an international context (see section 5.2.3.3).[655]

The regime change was anchored in the 2018 revision of the Capital Adequacy Ordinance, which came into on 1 January 2019 (see section 5.2.4.1).[656] As part of this revision, Article 125 CAO, which had obliged FINMA to grant relief to systemically important banks, was also repealed. FINMA and SIF described this amendment to the CAO, which applied to all banks, as a tightening of the regime: it was changed from a strict regime with large and non-transparent relief measures to a more transparent, less strict regime with no mandatory relief measures.[657]

This revision of the CAO enshrined the regime change that FINMA already implemented for CS and UBS in 2017 by decree. This caused a certain lack of understanding at SIF: an internal memo from November 2017 stated that "FINMA has made the regime change binding with the decrees issued. It has thus created facts and time pressure for the ERV adjustment. "[658]

In the explanatory notes to the amendment of the CAO, it was emphasized that the two big banks were involved in the assessment of the continued necessity of Article 125 and that they shared the FDF's view that the system change alleviated the problem of overshooting requirements at group level and that the article in question could therefore be repealed.[659]

The FINMA decision of 2017 and the revision of the CAO of 2018 were therefore closely related in terms of content - with the exception of the filter - although they took place at different times.[660]

653 "Big banks: New capital regime for the treatment of participations and status of emergency planning", FINMA press release dated 27.10.2017

654 "Big banks: New capital regime for the treatment of participations and status of emergency planning", FINMA press release dated 27.10.2017

655 Report of the Federal Council of 28.6.2017 on systemically important banks (BBl **2017** 4847, here 4862)

656 According to the transitional provisions in Art. 148i CAO, the transitional provisions on the treatment of participations decreed by FINMA in individual cases before the amendment of 21 November 2018 came into force take precedence over the provisions of Article 32 j and Annex 4.

657 Letter from FINMA to the PUK dated 9.9.2024; letter from SIF to the PUK dated 19.9.2024. However, the fact that CS was granted a regulatory filter is an institution-specific relief.

658 Banking regulation - participation deduction pursuant to Art. 125 CAO, internal note from SIF dated 27.11.2017

659 Explanatory notes of the FDF dated 21.11.2018 on the amendment to the Capital Adequacy Ordinance, p. 10

660 For further information, see also the Federal Council's report of 10.4.2024 on banking stability (BBl **2024** 1023), in particular section 7.3.2.2.

Consultation with the SNB and other stakeholders

It is also important to mention that the SIF and the SNB were consulted on the changes in the new FINMA ruling and on the search for a solution in connection with the repeal of Article 125 CAO. The FDF and SIF were informed of the solution found and the negotiations with the banks at an early stage, i.. in March 2017. During the same period, FINMA discussed with the SIF the inclusion of explanations on the switch to risk weightings and the abolition of Article 125 CAO in the next TBTF report.[661] The PUK does not have any detailed information on the opinions of the individual agencies.

The SNB was also consulted in advance on the draft FINMA ruling of 2017. On this occasion, it criticized the facilitations in a letter to FINMA dated 10 October 2017: For the SNB, "it is not clear on what grounds this 'facilitation' [was] granted, especially since the quanti- tative effects are substantial. [...] The effect of the 'regulatory filter' thus runs counter to the goal of better capitalization of the parent company. "[662] FINMA did not respond further to this critical statement by the SNB, and the SNB did not question the simplifications any further: according to representatives of the SNB, it is not their role to question this once FINMA has decreed it.[663] According to FINMA, it would not have been possible to implement the SNB's additional requirements under the prevailing conditions. A further tightening of the capital requirements for the parent bank would have led to the failure of negotiations on the repeal of Article 125 CAO, as the regulatory filter was a condition of CS's agreement.[664]

5.3.3.3 Consequences of the regulatory filter for Credit Suisse

How the regulatory filter works

An investment can reported in different ways: historically according to book values or currently according to market values (*fair value*).[665] Book values are generally static and are rarely adjusted; market values are more current, but also volatile.[666] If the market value of an investment is higher than its book value, an investment is undervalued (in economic terms). If the market value is lower than the book value, it is overvalued. As described above, the undervalued participations would have continued to be valued at the previous book value in the event of a transition to individual valuation in accordance with the applicable lower of cost or market principle[667] . However, the previously overvalued investments would have had to be revalued at market values below the previous book values. For CS AG (parent bank), this would have reduced the reported value of the participations - and thus the regulatory capital - by

[661] Letter from FINMA to SIF dated 16.2.2017; letter from FINMA to SIF dated 15.3.2017; letter from FINMA to the PUK dated 14.6.2024

[662] Letter from the SNB to FINMA dated 10.10.2017, p. 3

[663] Minutes of the PUK meeting of 13.11.2024, p. 36-37. However, CS's capital situation remained a topic of discussion between FINMA and the SNB, see Chap. 5.5.2.

[664] Letter from FINMA to the PUK dated 14.6.2024

[665] In line with the Birchler expert report, we understand "book value" to mean value shown in the balance sheet (often corresponding to the acquisition value, see glossary in the experts report). The term "fair value" includes the best estimate for those for which there is no market. For reasons of comprehension and readability, the term "market value" is used in this report as a synonym for "fair value".

[666] Birchler expert report (2024), p. 3 f.

[667] For reasons of prudence, the lower of cost or market principle requires measurement at the lower of the two values.

several billion francs.[668] The consequence would have been that CS would have had to raise capital in this amount within a short period of time in order to be able to report the same level of capitalization.[669] This would have been necessary at a time CS had already carried out substantial capital increases for its general restructuring and realignment (2015: CHF 4.7 billion, 2017: CHF 4.0 billion). FINMA introduced the regulatory filter in 2017 in order to avoid a decline in CS's reported equity when switching to individual valuation (for the background to this, see sections 5.3.3.1 and 5.3.3.2). The filter was granted by FINMA in 2017,[670] but CS only effectively used it from the fourth quarter of 2019, when it switched its accounting to individual valuation as at the balance sheet date of December 31, 2019.[671] It therefore did not actually need the filter before then.[672]

From the PUK's perspective, the effect of the filter is of particular interest. During the crisis, the vulnerability of the group was also due to the low equity base of Credit Suisse AG, the parent bank, as the value of its holdings in the subsidiaries had fallen sharply due to their poor business performance.[673] Thanks to the regulatory filter, the switch to individual valuations did not change either the required or the reported equity of the parent bank Credit Suisse AG. However, the filter had an on the regulatory capital ratio, as it partially neutralized the automatic reduction in eligible capital due to the change in accounting rules. According to FINMA, the regulatory filter was economically justified, as no assets were destroyed as a result of the individual valuation for accounting purposes and the economic substance of the equity value was therefore preserved.[674]

The PUK commissioned an expert to analyze and quantify the impact of the regulatory filter on Credit Suisse AG. The results are set out in the expert report.[675] The main findings from the PUK's perspective are set out below.

The regulatory filter introduced in 2017 prevented the transition to individual valuation from tightening the capital requirements.[676] It only had an effect at the regulatory level and did not with accounting.[677] The filter allowed the difference between the carrying amounts and the (lower) market values (*fair value*) of the overvalued investments in financial subsidiaries to continue to be reported as regulatory capital when determining the CET1 ratio (see Figure 5). The higher of the two values was therefore counted instead of the lowest value. However, the regulatory filter only allowed this if other investments were simultaneously undervalued by at least the same amount. It thus shielded the reported own funds from market value losses.[678]

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668 In 2017, the effect was estimated at CHF 8 billion. When the filter was actually applied (2019), the effect amounted to CHF 15 billion.

669 Regulatory requirements are a minimum size. CS AG reported a CET1 capital ratio of 13.5 % at the end of 2019, with a regulatory requirement of 10,1 %. It therefore had a buffer of around CHF 13 billion above the total regulatory requirements, which would have limited the additional capital requirement (FINMA statement of 25.10.2024 as part of the administrative consultation).

670 Revised TBTF ruling of FINMA dated 20.10.2017 in the matter of Credit Suisse

671 Letter from FINMA to CS dated 27.7.2020, p. 2

672 The capital requirements and risk weights already applied before the third quarter of 2019 in accordance with the revised TBTF ruling. See CS Regulatory Disclosures reports.

673 FINMA (2023): Lessons learned from the CS crisis, p. 7 and 64 ff.

674 Letter from FINMA to the PUK dated 10.1.2024

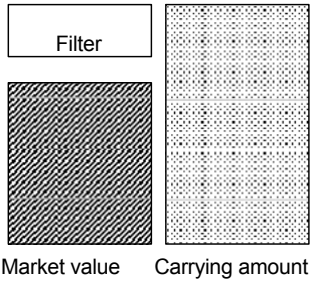
675 Birchler expert report (2024)

676 This was achieved by separating the *prudential* valuation of CS's own funds from their *accounting* valuation when the filter was introduced. See Birchler expert report (2024), p. 8.

677 Legal opinion Zellweger-Gutknecht (2024), p. 34

678 For a detailed explanation of how the filter works, see expert report Birchler (2024), p. 8 ff.

Figure 5: the regulatory filter



Source: adapted figure from the Birchler expert report (2024), p. 5

When it was designed in 2017, FINMA estimated the effect of the filter at around CHF 8 billion. However, when it was first applied at the end of 2019, CS AG reported the effect of the filter at CHF 15.3 billion.[679]

The first-time application of the filter in the fourth quarter of 2019 shows no significant difference between the previously and subsequently reported equity (CET1) or the previously and subsequently reported capital ratio of CS AG (see Table 9). The capital ratio rose slightly from the third to the fourth quarter of 2019, from 12.4 % to 13.5 %. However, the increase is due to the bank's ordinary business activities and is not related to the regulatory filter.[680] The expert concludes in this regard that the filter achieved the goal of neutralizing the new accounting method at the time of its introduction (2019): the transition from collective to individual valuation of the investments hardly changed the reported capital ratio of CS AG thanks to the regulatory filter.

Table 9: Level effect of the introduction of the regulatory filter

Jahr	2018				2019			
Quartal (Ende)	I	II	III	IV	I	II	III	IV
					vor			nach
CHF Mia.								
CET1	48.4	50.0	49.5	47.6	47.5	48.6	48.4	51.6
Filter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	15.3
CET1 ohne Filter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	36.3
Risk Weighted Assets (RWA)	355.9	371.9	360.0	364.1	381.2	377.2	389.1	382.4
Erhöhung RWA aufgrund Filter	-	-	-	-	-	-	-	33.6
RWA ohne Filter	-	-	-	-	-	-	-	348.8
%								
Capital ratio (CET1/RWA)	**0.136**	**0.135**	**0.138**	**0.131**	**0.125**	**0.129**	**0.124**	**0.135**
Capital ratio (CET1/RWA) ohne Filter	-	-	-	-	-	-	-	**0.104**

Source: CS subsidiaries, Regulatory Disclosures: CS AG (parent), Key prudential metrics; CS Pillar III Disclosures. Table from the Birchler expert report (2024), p. 11

679 Letter from FINMA to CS dated 27.7.2020; Birchler expert report (2024), p. 11
680 FINMA statement of 25.10.2024 as part of the administrative consultation

Effect of the filter on CS AG's own funds

CS published figures on the impact of the regulatory filter every quarter in its "Regulatory Disclosures" reports. These figures were not presented together with the other important figures in the "Swiss capital requirements and ratios" table, but were formulated in text form.[681] For example, CS's Regulatory Disclosure report for the fourth quarter of 2022 shows that the CET1 capital impact amounted to CHF 14.5 billion. This was the amount that could be counted towards CS AG's CET1 capital due to the filter. However, this figure only shows part of the impact of the regulatory filter. The regulatory filter also led to higher risk-weighted assets. In order to assess the extent of the regulatory filter, both effects must be taken into account: The filter resulted in both higher risk-weighted assets (+ CHF 35.7 billion as at 31.12.2022) and higher CET1 (+ CHF 14.5 billion as at 31.12.2022).[682]

According to the expert the regulatory filter ultimately remained fairly stable in the period from 2019 to 2022 (see Table 10). By contrast, CS AG's reported equity in the form of common equity tier 1 (CET1) capital, calculated without the filter, fell significantly from the third quarter of 2021 due to the poor business performance.[683] The filter was able to partially offset this decline thanks to the remaining value reserves; the capital ratio (CET1/RWA) with the filter remained above 10 % and therefore still above the overall requirements under the CAO. Without the filter, the capital ratio would have fallen to just under 5 % by autumn 2022 and thus clearly below the overall requirements under the CAO.[684] Thanks to the filter, however, CS was able to report sufficient capital until the end.[685]

Furthermore, the decline in common equity tier 1 capital resulted in an increasing share of the filter in total equity. In the third quarter of 2022, this share even exceeded 50%.[686]

681 These "*Regulatory Disclosures*" reports can be found at https://www.ubs.com/global/en.html > About us > Investor relations > Complementary financial information > Holding company and significant regulated subsidiaries and sub-groups> Archive (Credit Suisse Group) (as at 10.12.2024). Specifically, the figures for the regulatory filter were published in the section "Swiss Capital Metrics - Bank parent company" under "FINMA decrees".

682 Letter from FINMA to the PUK dated 1.7.2024

683 The sharp improvement in the fourth quarter of 2022 is the result of a capital increase of CHF 4 bn. see FINMA (2023): Lessons learned from the CS crisis, p. 58.

684 Birchler expert report (2024), pp. 11-13. In accordance with Art. 130 para. 3 CAO, the capital buffer may be temporarily undercut in the event of losses incurred by the bank. The FINMA introduced the following wording as part of the administrative consultation: "Without the filter, the capital ratio would have fallen to just under 5% by fall 2022 and thus clearly into the capital buffer."

685 Birchler expert report (2024), p. 13

686 Birchler expert report (2024), p. 12. At this time, Credit Suisse had already planned the capital increase of CHF 4 bn (and communicated this together with the publication of the results for the third quarter of 2022). FINMA statement of 25.10.2024 as part of the administrative consultation.

Table 10: Development of own funds at CS AG with and without regulatory filter

Jahr	2019	2020				2021				2022			
Quartal (Ende)	IV	I	II	III	IV	I	II	III	IV	I	II	III	IV
CHF Mia.													
CET1	51.6	51.5	47.5	47.6	49.7	46.5	47.7	47.5	36.8	38.1	37.2	27.6	32.3
Filter	15.3	15.3	12.9	12.9	14.7	16.4	15.3	15.3	10.1	13.4	15.9	15.7	14.5
CET1 ohne Filter	36.3	36.2	34.6	34.7	35.0	30.1	32.4	32.2	26.7	24.7	21.3	11.9	17.8
Anteil Filter	*0.30*	*0.30*	*0.27*	*0.27*	*0.30*	*0.35*	*0.32*	*0.32*	*0.27*	*0.35*	*0.43*	*0.57*	*0.45*
Risk Weighted Assets (RWA)	382.4	394.1	381.7	365.9	357.9	379.6	359.1	353.9	313.7	322.7	324.9	282.8	263.8
Erhöhung RWA aufgrund Filter	33.6	33.6	31.1	31.1	35.2	40.0	39.8	39.8	26.0	37.5	43.7	38.5	35.7
RWA ohne Filter	348.8	360.5	350.6	334.8	322.7	339.6	319.3	314.1	287.7	285.2	281.2	244.3	228.1
%													
Capital ratio (CET1/RWA)	0.135	0.131	0.124	0.130	0.139	0.122	0.133	0.134	0.117	0.118	0.114	0.097	0.122
Capital ratio (CET1/RWA) ohne Filter	0.104	0.100	0.099	0.104	0.108	0.089	0.101	0.102	0.093	0.087	0.076	0.049	0.078
Minimum CET1 ratio Anforderung	0.101	0.100	0.100	0.100	0.100	0.105	0.106	0.106	0.106	0.105	0.103	0.093	0.094

Source: CS subsidiaries, Regulatory Disclosures: CS AG (parent), Key prudential metrics; CS Pillar III Disclosures. Table from the Birchler expert report (2024), p. 12

The expert concludes that without the filter, CS AG would have been slightly undercapitalized from 2021 and clearly undercapitalized from 2022. According to FINMA's lessons learned report, the requirements of the Capital Adequacy Ordinance were always met due to the simplifications and the transitional regime.[687] FINMA does not state that CS AG would have been below the minimum requirements from 2021 without the filter.[688]

Audit by a third-party firm and FINMA's response

As explained in section 5.3.3.2, FINMA made the application of the filter dependent on obtaining a second opinion on the value of the holdings of CS's parent company when it was introduced. It therefore commissioned the audit firm BDO twice - at the end of 2019 and in mid-2021 - to review the valuation of the holdings by CS. In both cases, the audit firm found a substantial overestimation of the market values by CS AG. FINMA supported the audit firm's assessment and in each case limited the maximum fair values that CS AG was allowed to take into account for the entire investment portfolio when deriving the filter. Based on BDO's first audit, FINMA set the permissible filter for CS at CHF 6.1 billion. This amount was CHF 9.2 billion lower than the CHF 15.3 billion claimed by CS at the end of 2019. FINMA therefore limited the eligible fair values as at the second quarter of 2020 to CHF 70.4 billion (instead of CHF 79.6 billion). As CS AG had already made parallel adjustments to the fair values and carrying amounts in the first half of 2020, which had an impact on the value of the filter, the effect of the regulatory filter ultimately amounted to CHF 70.4 billion (instead of CHF 79.6 billion).

687 FINMA (2023): Lessons learned from the CS crisis, p. 61

688 FINMA emphasized to the PUK that the regulatory filter corresponded to a recoverable asset and could therefore be taken into account in equity. Therefore, there was no undercapitalization (FINMA statement of 25.10.2024 as part of the administrative consultation).

second quarter of 2020 at CHF 12.9 billion. [689] According to FINMA, the same mechanism (time lag between the cut-off date for the audit basis and the BDO report, value adjustments already made by the bank) can also explain the impact on the level of the filter after the second BDO report as at mid-2021.[690]

Information from the FINMA Board of Directors

According to the statement made by the former FINMA Director during the consultation with the Board of Directors, the Board of Directors was informed on quarterly basis and in detail about developments at both big banks through regular meetings with the banks' management. The capitalization of CS's parent bank was a regular topic in these reports. The Chairman of the Board of Directors had full access to the business of the Executive Board.[691] However, according to its Chairwoman, the FINMA Board of Directors was not sufficiently informed about the existence and consequences of the regulatory filter.[692] No business relating to the regulatory filter was submitted to the Board of Directors for information or decision. The quantification and impact of the filter were presented to the Board of Directors for the first time by the Executive Board in 2022 as part of the focus topics introduced by the Board of Directors in 2021.[693] The filter was not the cause of the problem. However, if a bank with such a filter is in difficulty, the solution to the problem is made more difficult because restructuring would make the dent even more pronounced.[694] In other words, a major restructuring would exacerbate any capital shortage due to the costs incurred. FINMA also emphasized to the Commission that the granting of the regulatory filter was in no way related to the later necessary emergency merger of CS with UBS.[695]

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689 Letter from FINMA to the PUK dated 15.11.2024. According to the expert report Birchler (2024), pp. 16-19, the measures taken by FINMA were not sufficient. CS had hardly made the corresponding corrections. FINMA contradicts the expert in this regard (FINMA statement of 25.10.2024 as part of the administrative consultation): "There were significant by FINMA in both 2020 and 2022 that were not correctly recorded and mapped. FINMA's stance on the recoverability of the filter was much stricter and more intrusive than the expert opinion shows: a) In its letter dated July 27, 2020, FINMA demanded that the eligible fair values that CS AG was allowed to apply to the investment portfolio as part of the filter be limited to a maximum of CHF 70.4 billion. CS AG reported carrying of CHF 80.2 billion in its Pillar 3 disclosure report in the 2nd quarter of 2020. This limit was applicable from the 2nd quarter of 2020.
b) In a letter dated January 13, 2022, FINMA requested that the eligible fair values that CS AG was allowed to include in the filter for the investment portfolio be limited to a maximum of CHF 55.5 billion. CS AG reported carrying values of CHF 62.4 billion in its Pillar 3 disclosure report in the 4th quarter of 2021. This limit was applicable from the 4th quarter of 2021. Both measures therefore had a significant impact on CS AG's capital situation amounting to several billion Swiss francs. This mechanism was not, or in part incorrectly, presented in the expert report. It is therefore incorrect that FINMA did not take any measures after the first report."

690 The PUK asked FINMA whether it would pass on the BDO's findings to the CS mandated audit firm (PwC) for the annual audits. FINMA confirmed this in a letter dated 18.11.2024. FINMA stated that it had informed the audit firm about the first audit (audit report dated 4.6.2020). It had made the second audit report dated 3.11.2021 available to the audit firm.

691 Statement of 25.10.2024 as part of the administrative consultation

692 Minutes of the PUK meeting of 27.3.2024, p. 39

693 Today, such a matter would be to the attention of the Board of Directors promptly by the Executive as part of the focus topics introduced in 2021. Under this heading, the Executive Board provides prospective information on topics potentially relevant to the Board of Directors at each meeting of the Board of Directors (letter from FINMA to the PUK dated 14.6.2024).

694 Minutes of the PUK meeting of 27.3.2024, p. 39

695 Letter from FINMA to the PUK dated 14.6.2024

5.3.4 Analysis of FINMA's structures, resources and competencies in an international comparison

In connection with the classification of FINMA's microprudential supervision, the PUK commissioned an external expert opinion to compare the structures, resources and competencies of Swiss and foreign supervisory authorities. Lea Hungerbühler's report is based on publicly available reports from the IMF, the BCBS and the FSB, among others (see section 4.1.1). The results of this report can be summarized as follows:

- In principle, FINMA is described in the sources analyzed as an authority that promotes a stable and competitive financial system with *competent employees* and *operational autonomy*.[696]
- FINMA's *human* resources[697] are generally rated as sufficient. In two areas (G-SIB and *recovery planning*), staff resources are too low according to the sources analyzed.[698]
- The *use of audit firms* that are commissioned and remunerated by the banks is critically assessed in the sources analyzed (see section 5.4). In this context, various directions for improvement are mentioned: on the one hand, the mandating of audit firms by FINMA and, on the other, the performance of more on-site inspections.[699]

The expert identifies divergences in FINMA's *competencies* compared to international standards, international *best practices* and foreign regulations:

- The Swiss legal framework for *compensation systems* is currently considered to be compatible with international standards. Nevertheless, certain deficits can be identified.[700]
- The IMF recommends that FINMA should be given additional powers with regard to the *members of governing bodies and the management of banks*, for example by introducing a senior management regime (i.e. a company-wide responsibility document).[701]
- Furthermore, according to the sources analyzed, there is a lack of clarity in current law regarding FINMA's *early intervention options*. This concerns, for example, the authority to restrict dividend distributions.

[696] Hungerbühler expert report (2024), p. 23. According to the report, the sources analyzed also raise fundamental questions about the scope of FINMA's mandate (strengthening the reputation, competitiveness and future viability of the financial center as the purpose of the supervisory authority) and FINMA's authority to issue or publish rulings, and circulars.

[697] These consist of a supervisory team for each major bank (with six full-time positions each), a team for on-site inspections (five full-time positions), around forty full-time positions from
from the Banking division, seven full-time equivalents from the Recovery and Resolution division and around eight full-time equivalents from the Enforcement division (Hungerbühler expert report (2024), p. 24).

[698] Hungerbühler expert report (2024), p. 24 f., 30

[699] Hungerbühler expert report (2024), p. 25

[700] Currently, the provisions on *corporate governance* can be found in company law, self-regulation and FINMA circulars. As a result, FINMA's ability to intervene in *variable remuneration* for bank employees and *whistleblowing* is limited compared to other countries. In the area of variable remuneration, there is a particular lack of legal bases in international comparison that would allow a "*claw back*" (recovery of already paid) (Hungerbühler expert report (2024), p. 26 f.).

[701] Hungerbühler expert report (2024), p. 27

By introducing concrete triggers for specific interventions by FINMA, FINMA's discretionary powers could specified.[702]

- Unlike the authorities in the other jurisdictions analyzed, FINMA does not have the authority to impose fines on institutions or individuals.[703]

In addition to these expert opinion findings, the PUK inquired about *FINMA's external impact* compared to foreign supervisory authorities at the hearing with the representatives of CS and UBS. The answers indicated that FINMA is less visible to banks than foreign authorities.[704] In addition, the acceptance of the SNB at the international level is higher than that of FINMA.[705] Finally, there is room for improvement at the level of FINMA's staff: firstly, FINMA is competent but understaffed,[706] and secondly, FINMA employees lack experience in some areas.[707] This is due not least to the fact that FINMA's employment conditions much less attractive than those at the SNB, for example.[708] However, it was also said that FINMA does not impose rules schematically.[709]

5.4 Supervision of audit firms by the FAOA and FINMA

The FAOA and FINMA play different but complementary roles in the supervision of the financial sector in Switzerland. The FAOA supervises audit firms (3.5.3), FINMA supervises banks (3.5.2).

A special feature of the dual supervisory system in Switzerland is that the institutions to be audited select the auditing company themselves and then also remunerate it. This system has advantages in terms of efficiency and access to specialized expertise, but also entails the risk of conflicts of interest. In theory, audit firms may have an incentive to spare the institutions they audit in order to retain their audit mandate - in particular because Switzerland, unlike the EU, does not have a rotation obligation for audit firms (section 5.2.8).[710]

This chapter describes the audit activities of the FAOA and FINMA in relation to CS audit firms and audit companies between 2015 and 2022. It explains how the FAOA ensured the quality of the audit services provided by the audit firms and how FINMA defined the audit strategy. The chapter is divided into three sub-chapters: Oversight by the FAOA (section 5.4.1), definition of the audit strategy by FINMA (section 5.4.2) and interaction between the FAOA and FINMA (section 5.4.3).

The following explanations are largely based on two commissions awarded externally by the PUK: the expert report "International Legal Pro-

[702] Hungerbühler expert report (2024), p. 28
[703] Hungerbühler expert report (2024), p. 29
[704] Minutes of the PUK meeting of 31.1.2024, p. 10; minutes of the PUK meeting of 14.2.2024, p. 42. In this context, it was also mentioned that FINMA lacked supervisory instruments (minutes of the PUK meeting of 14.2.2024, p. 43).
[705] Minutes of the PUK meeting of 31.1.2024, p. 10
[706] Minutes of the PUK meeting of 14.2.2024, p. 42; Written answers to the PUK of 11.4.2023
[707] Minutes of the PUK meeting of 31.1.2024, p. 82. A senior bank employee out that one difficulty for FINMA that it had a smaller financial center and is therefore less able to compare the supervised entities with each other (written answers to the PUK dated 11.4.2023).
[708] Minutes of the PUK meeting of 31.1.2024, p. 82
[709] Minutes of the PUK meeting of 10.4.2024, p. 6 f.
[710] Geissbühler/Jovanovic expert report (2024), p. 12

on the regulation of audit oversight" of May 24, 2024 and the investigation report "Oversight of the FAOA over the auditors of Credit Suisse" of
The chapter contains a summary of the most important conclusions of the two reports. For the detailed results, please to the two reports themselves, which published at the same time as the PUK report.

5.4.1 Supervision by the FAOA

Auditing is of central importance in ensuring the transparency of banks and compliance with financial market regulations. According to its mandate (Art. 1 AOA), the FAOA is responsible for the licensing and supervision of persons providing auditing services. In this way, it contributes to investor protection and the reliability of financial reporting.[711]

In particular, the FAOA must ensure that audits comply with the applicable auditing and quality assurance standards, FINMA requirements and financial market laws. Its mandate is to ensure that audits are of high quality, independent and professional, and thus to promote confidence in the financial system (see section 3.4).[712] The following section explains how the FAOA exercised its supervisory function between 2015 and 2022.

The inspection of audit firms is the main instrument available to the FAOA for overseeing these firms. At least every three years, the FAOA subjects the state-regulated audit firms to an in-depth audit. During this review, the accuracy of the information in the licensing documents, compliance with legal obligations, the standards for auditing and quality assurance recognized by the FAOA, professional standards, codes of conduct and, if applicable, the listing rules, the quality of the auditing services, which is determined by random sampling, and the implementation of the instructions issued by the FAOA are reviewed. In the event of suspected breaches of legal obligations, the FAOA reserves the right to carry out additional inspections independently of the planned review cycle. It prepares a written report on the outcome of the inspection for the attention of the highest management or administrative body of the audit firm (Art. 16 AOA).[713]

The FAOA plays a central role in the supervision of audit firms. It is responsible for developing the internal procedures for supervision and, in particular, determines the audit frequency. Audits may alternate between financial audits (FA) and regulatory audits (RA).[714]

Internally defined procedures

Two different supervisory concepts form the framework for the FAOA's audit activities: the RA of January 1, 2015 and the FA of January 1, 2020. The RA focuses on supervisory audits in accordance with financial market laws, while the FA focuses on financial audits. A distinction is made between two audit levels: the *firm review* and the *file review*.[715]

The *firm review* examines compliance with the licensing requirements and the existence of a functioning quality assurance system audit firm level. The *file review* is conducted at the level of the individual

[711] RAB: The RAB in brief, https://www.rab-asr.ch > The RAB> About the RAB> The RAB in brief (as at: 19.11.2024)
[712] RAB: The RAB in brief, https://www.rab-asr.ch > The RAB> About the RAB> The RAB in brief (as at: 19.11.2024)
[713] Geissbühler, Alex / Jovanovic, Milan (2024): FAOA oversight of the auditors Credit Suisse. Investigation report of 18.7.2024 on behalf of the PUK, p. 6
[714] Geissbühler/Jovanovic investigation report (2024), p. 6 ff.
[715] Geissbühler/Jovanovic expert report (2024), p. 21

mandates - such as the CS mandate - are examined on a sample basis to determine whether the applicable professional standards and the applicable quality assurance regulations are complied with. Based on risk considerations and assessments, the FAOA can decide which audit and audit mandates (files) it selects for inspection.[716]

In accordance with its legal and regulatory powers, the FAOA draws up and publishes internal circulars to define the scope of its supervisory activities. In addition to the circulars, there is also the *Regulatory Audit Oversight Concept* and the *Financial Audit Oversight Concept*, which specify that the scope and focus of inspections depend on factors such as the size of the audit firm, the size of the audited companies any experience the FAOA has with the individual audit firms.[717]

The decision as to whether a comprehensive inspection or an alternating inspection is carried out, i.e. only the FA or RA area is inspected, is generally the responsibility of the heads of the two responsible departments.[718]

The FAOA also incorporates standards into its supervisory activities. The relevant standards for the FA and RA include those of FINMA, the IAASB and the recommendations of the *Committee of European Auditing Oversight Boards (CEAOB)* (see section 4.1.2). In its strategic objectives for 2020-2023, the FAOA also points out that the international standards must be implemented in Switzerland on an ongoing and immediate basis. According to the expert report commissioned by the PUK, this will ensure that Switzerland adheres to global best practices in the area of audit oversight.[719]

Allocation of responsibilities and documentation of inspections at the FAOA

According to a FAOA guideline[720] , the CS audit mandates were to be inspected annually. As explained above, the decision as to whether a comprehensive or an alternating inspection should be carried out is the responsibility of the two FA and RA heads of department at the FAOA. The investigators of the PUK found that this decision was not always formally documented. Although the CS audit mandates were audited annually, the stringency of the decision-making process is questioned in the investigation report commissioned by the PUK, as the decision does not have to be documented or justified. In other words, although the FAOA has the internal organizational flexibility to decide on the scope and modalities of the inspections, the lack of formal documentation of the decisions raises concerns regarding the transparency and stringency of the process.[721]

Frequency and scope of inspections of the audit companies

Between 2015 and 2022, the FAOA inspected the CS audit mandates annually.[722] The inspection was generally carried out in a procedure in which only one of the inspection types FA or RA was carried out per year. Only twice - in 2015 and 2016 - did a comprehensive inspection (FA and RA simultaneously) take place. The inspections in the following years alternated: in 2017, 2020 and 2021, one FA was carried out in each year and in 2018, 2019 and 2022, one RA was carried out in each year.

716 Geissbühler/Jovanovic expert report (2024), p. 20; Geissbühler/Jovanovic investigation report. ler/Jovanovic (2024), p. 9
717 Geissbühler/Jovanovic investigation report (2024), p. 9
718 Geissbühler/Jovanovic investigation report (2024), p. 10
719 Geissbühler/Jovanovic expert report (2024), p. 34 ff.
720 RAB Guideline 3, Section 3.1
721 Geissbühler/Jovanovic investigation report (2024), p. 10
722 Geissbühler/Jovanovic investigation report (2024), p. 10

an RA was carried out. In 2023, both an FA and an RA review of the CS mandate took place again.[723] The frequency of the audits and the selection for the *file reviews* did not change in view of the special situation of CS and the findings of KPMG and PwC.

Quality of FAOA audits and inspection processes

The FAOA reviewed the quality of KPMG's and PwC's audit services at two levels during the 2015-2023 observation period: at company level and at the level of specific CS mandates.[724] Since 2012, it has taken a total of 61 specific measures to improve audit quality at KPMG and PwC. Of these measures, 38 related to the audit of banks in general, which indirectly influenced the audit quality of the CS mandate, and 23 measures related directly to the CS mandate. In addition, the US supervisory authority, the Public Com- pany Accounting Oversight Board (PCAOB), imposed an additional 15 measures. Over the years, the number of findings and measures has continuously decreased, which, according to the FAOA, indicates improved compliance with audit quality.[725]

At *company level*, the inspections focused on the internal quality assurance system in accordance with international standards. During the FA inspections in 2015, 2016 and 2017, the topic blocks were reviewed annually on a sample basis in accordance with the International Standard on Quality Control 1 (ISQC 1). These are management responsibility for the quality of the practice, relevant professional conduct requirements, acceptance and continuation of client relationships and certain engagements, human resources, engagement performance and follow-up[726]. The RA inspections in 2015, 2016 and 2019 were based the findings of the FA inspections and also focused on quality assurance principles in accordance with the Financial Market Acts and compliance with them at company level.[727]

The *audits of the CS mandates* included annual *file reviews* in which independence, the planning of audits and the conformity of working documents were examined. In the RA area, the audit strategies are based on FINMA's guidelines, while the FA area gives the FAOA greater discretion in defining the audit strategy.[728]

Results of the audits: Findings on CS

Between 2015 and 2022, the FAOA ten audits of the CS mandates of KPMG and PwC. Five of these audits led to findings that required corrective action. The measures focused primarily on training and informing the audit teams.[729] The main points of criticism were

- 2015 (RA): KPMG did not correctly assess the risk in connection with 30,000 uncompleted investigations under the Agreement on the Swiss banks' due diligence standards (CDB) at CS. Action: Identification and evaluation of the problem at KPMG.
- 2018 (RA): Violations by the fund management and valuation errors were not sufficiently criticized by KPMG. Measures: Precise internal review of the mandates and training of the real estate experts appointed by KPMG.
- 2019 (RA): Insufficient sampling in the fight violations of the AMLA. Measure: Adaptation of KPMG's methods.

723 Geissbühler/Jovanovic investigation report (2024), p. 10
724 Geissbühler/Jovanovic investigation report (2024), p. 19
725 Statement by the FAOA dated 27.10.2024 as part of the administrative consultation
726 Statement by the FAOA dated 27.10.2024 as part of the administrative consultation
727 Geissbühler/Jovanovic investigation report (2024), p. 19
728 Geissbühler/Jovanovic investigation report (2024), p. 19
729 Geissbühler/Jovanovic investigation report (2024), p. 11

- 2022 (RA): Inadequate monitoring of AMLA risks at group level at PwC. Measure: Better definition of audit procedures and AMLA-specific training for the regulatory audit at CS.

The corrective measures taken by the FAOA vis-à-vis KPMG and PwC focused on the critical attitude of the respective audit firm, which is necessary to identify violations.

As explained above, the FAOA concluded that the audit performance did not allow the conclusion to be drawn that the legal requirements had been complied with, which might have justified stricter measures. The FAOA subsequently refrained from taking further measures because, in its view, FINMA's requirements were not clear. This decision is understandable. However, the question arises as to why this conclusion did not at least lead to a discussion within the Executive Board to examine further measures.[730]

In their respective statements on the findings in the inspection reports, both KPMG and PwC agreed with the conclusions and measures taken by the FAOA. However, the statements included a standard reservation at the end, according to which the audit firms saw no reason to doubt their approach and the quality of their work in view of the findings and measures taken by the FAOA. During the interviews, the FAOA stated that it did not regard this standard reservation as a relativization of the audit firms, but rather as a legal exclusion of liability to protect against civil law suits. This answer did not entirely convince the investigators of the PUK, especially as such reservations do not appear in the statements of KPMG and PwC on the inspection reports of the US supervisory authority PCAOB.

Checking the implementation of corrective measures and follow-up checks

A key aspect of an effective audit is also the consistent review of whether the recommended corrective actions have been implemented. The FAOA based its review of the implementation of the corrective measures on the "Guideline 1 - Documentation". According to this guideline, the measures to be inspected are selected at the discretion of the team leader and the head of the FA or RA department. The FAOA used software called VI-SION to plan, carry out and document its inspections. This includes the *Implementation of Measures* area, in which assessments of the implementation of measures and comments on the individual measures are stored.

The review of this area of the VISION software showed that for the RA, the implementation of measures checked by a wide margin, while for the FA there was no indication that the implementation was checked on a random basis, as the FAOA had stated to the investigators. These checks were therefore not always carried out consistently. Even if not all measures have the same importance, it would be more expedient to systematically review the implementation of all measures. If the implementation of some measures is nevertheless checked on a random basis, this would have to be justified according to the investigators of the PUK.[731]

In addition, the FAOA would also have the instrument of follow-up inspections at its disposal. During the period under review, however, the FAOA did not carry out any follow-up inspections of the CS audit firms.[732]

[730] Geissbühler/Jovanovic investigation report (2024), p. 3. FINMA subsequently revised and thus clarified the requirements. FAOA statement of July 31, 2024 on the Geissbühler/Jovanovic investigation report (2024), p. 6
[731] Geissbühler/Jovanovic investigation report (2024), p. 14
[732] Geissbühler/Jovanovic investigation report (2024), p. 16 f

No ad hoc review until 2023

The FAOA bases its ad hoc reviews on "Guideline 9 - Ad hoc reviews". The heads of the FA and RA departments decide whether an ad hoc review should be initiated. In the years 2015 to 2022, no ad hoc review was initiated by KPMG or PwC in relation CS. The aforementioned directive stipulates that indications of inadequate audit performance should be investigated during routine inspections whenever possible.[733] Based on the interactions with FINMA - and as there was no suspicion of serious violations - the FAOA was of the opinion that there were no indications that would have justified an ad hoc review.[734] Although FINMA criticized the audit quality of KPMG in 2015, 2016 and 2019, the FAOA considered its approach to be correct - despite the increasingly critical situation in which CS found itself.[735]

Only after the merger of CS with UBS was an ad hoc review of PwC initiated.[736] This review, which was concluded after 18 months with a ten-page report,[737] revealed no indications that PwC's audit results should be called into question. It also did not indicate a failure of the audit or audit in connection with the demise of CS.[738] However, the FAOA found two deviations from the standard-compliant procedure.

1. Audit of the consolidated cash flow statement (2020 financial year): PwC's audit revealed gaps in the consideration of certain transactions, in particular share-based payments and the translation of foreign currencies. These transactions, which common in CS's operating business, were not treated correctly in the accounting policies used for the audit of the cash flow statement. In response, PwC has undertaken to organize specific training courses for the teams in the financial services sector that focus on the particularities of the cash flow statement, taking into account international accounting standards.[739]
2. Multi-year audit strategy (2020-2022): PwC submitted an audit strategy for CS to FINMA, but it did not provide clear rationale as to why certain audit areas were selected or why a certain audit depth was applied. The risk assessment and the choice of audit areas were based on subjective assessments that were not sufficiently documented, which made a critical review by FINMA difficult. PwC has therefore to define specific requirements for banks in supervisory categories 1 and 2 to ensure that the necessary documentation for the multi-year audit strategy and the relationship between net risk and audit depth is fully available.[740]

733 In its statement of 25.11.2024, the FAOA stated that, as part of the file reviews, the FAOA also collected information from FINMA, assessed it with regard to possible effects on audit quality and, if necessary, covered the audit areas concerned. However, the results did not reveal any serious deficiencies in audit quality
734 Geissbühler/Jovanovic investigation report (2024), p. 17
In its opinion dated 25.11.2024 , the FAOA stated that the depth of an ad hoc review does not differ from that of the annual routine file reviews
735 Geissbühler/Jovanovic investigation report (2024), p. 28 f.
736 Geissbühler/Jovanovic investigation report (2024), Chapter III. 1.3.6, p. 17
737 The PUK received the ad hoc review on 11.10.2024
738 Ad hoc review, p. 3
739 Ad hoc review, p. 8
740 Ad hoc review, p. 9

The FAOA concluded that, in its view, the deviations were limited and not affect the overall results of the audits conducted by PwC. According to the FAOA, the measures now taken will to improve the quality and diligence of future regulatory audits in the banking sector.[741]

No enforcement proceedings until 2023

Enforcement is a procedure to the FAOA to enforce compliance with applicable law. This procedure can lead to measures ranging from a reprimand to the withdrawal of a license. The FAOA bases its enforcement proceedings on the *"Directive - Principles of Enforcement"* (2016 and 2024 versions), which provides for different sanctions depending on the severity of the breach.

Between 2015 and 2023, no enforcement proceedings were initiated against either KPMG or PwC in connection with the CS mandate. The corresponding *file reviews* always received a rating of 1 or 2. A rating of 3 would have been required to initiate enforcement proceedings.

During the period under review, the FAOA conducted a total of 19 enforcement proceedings against KPMG and PwC in connection with mandates other than that of CS. According to the investigators of the PUK, the procedure and criteria of the FAOA for initiating enforcement proceedings appear to be coherent and structured, even if the appropriateness of the risk assessments is open to debate.[742]

Cooperation with foreign supervisory authorities for CS mandates in 2016 and 2019

In 2016, the *PCAOB* conducted an inspection of KPMG Switzerland in cooperation with the FAOA. The PCAOB, which was created by the Sarbanes-Oxley Act of 2002, oversees audit firms of public companies in the USA. It conducts regular inspections to detect violations of applicable standards and regulations. During this inspection, the PCAOB identified a deficiency that it as a "*serious matter*". The issue was that the auditor had issued an opinion based on a sample without reasonable assurance that the financial reports free of material misstatements. This criticism highlighted a shortcoming in KPMG's audit procedures and showed how important it is that audit obligations strictly adhered to.

In 2019, the PCAOB, in cooperation with the FAOA, again out an inspection by KPMG Switzerland. The corresponding inspection report did not contain any "*findings*" more. This that KPMG's corrective measures were effective. The PCAOB also inspected the CS mandate at PwC in 2023. The PCAOB did not make any findings during this inspection either.[743]

In addition, the PCAOB carried out inspections of the audit of CS in 2013, 2019 and 2023, which did not result in any significant objections. These international inspections underline the importance of external monitoring and support for audit quality in cross-border mandates.[744] The cooperation between the PCAOB and the FAOA shows that the two supervisory authorities work closely together and are committed to maintaining high audit standards. The FAOA welcomed the results of the PCAOB inspections and recognized

741 Ad hoc review, p. 7
742 Geissbühler/Jovanovic investigation report (2024), Chapter III. 1.3.7, p. 18
743 Statement by the FAOA dated 27.10.2024 as part of the administrative consultation
744 Statement by the FAOA dated 27.10.2024 as part of the administrative consultation

the efforts and improvements that KPMG had made to address the previously identified problems.[745]

On the basis of their investigations, the investigators appointed by the PUK came to the conclusion that the FAOA's supervision of KPMG and PwC with regard to the CS mandate was basically appropriate and adequate under the given legal circumstances.[746]

5.4.2 Definition of the audit strategy by FINMA in dialog with the audit firms

FINMA's supervision of banks is based on an audit strategy which, in the case of complex companies such as CS, is developed in dialog with the audit firms.747 The audit firms play a central role in FINMA's supervisory activities. The following section shows how FINMA defines and implements its audit strategy for the banks.

Development of testing strategies for G-SIB

The G-SIB assessment is central to banking supervision, as it allows an assessment of how stable the institutions are and whether they comply with financial standards based on a series of indicators that the banks must submit to the national authorities.[748] With their independent audits, the audit firms provide essential information for the assessment of risks and compliance with supervisory regulations and thus improve the efficiency of banking supervision.[749]

FINMA defines the audit strategy based on the risks identified. The strategy is regularly adapted to developments in the financial sector and possible new threats. FINMA pursues several main objectives: Identifying and mitigating risks; ensuring the stability of the financial system; protecting clients and investors; and maintaining the competitiveness and integrity of the Swiss financial centre.[750] In connection with CS, contacts between FINMA, the CS Board of Directors and the CS Executive Board intensified from 2020. Regular meetings were at the highest level, in which the audit firm also participated (see section 3.4).[751] There was also a regular exchange between FINMA and the audit firm. There were monthly meetings with the audit manager and a quarterly exchange with CS's internal supervisory team. These contacts were intended to ensure efficient coordination and that the results supervision and enforcement proceedings were taken into account in the audits.[752]

Audit strategy for CS

FINMA drew up the audit strategy for the parent company (Credit Suisse AG) together with the group parent company (Credit Suisse Group AG). From 2017, FINMA drew up a separate audit strategy for Credit Suisse (Schweiz) AG. For the

[745] Geissbühler/Jovanovic investigation report (2024), Chapter III. 3.2.1, p. 27
[746] Statement by the FAOA dated 27.10.2024 as part of the administrative consultation
[747] FINMA Circular 2013/3 Auditing, margin no. 87
[748] BIS (2023): Global systemically important banks: assessment methodology and the additional loss absorbency requirement, 27.11.2023, https://www.bis.org/ > Committees & associations> Basel Committee on Banking Supervision> CCyB and G-SIB buffer (as at 30.7.2024)
[749] FINMA: Supervision as a core task of FINMA, https://www.finma.ch/ >> All about supervision (as at 30.7.2024)
[750] FINMA: Professional supervision for a strong financial center, > https://www.finma.ch/FINMA> Targets (as at 30.7.2024)
[751] Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 1, p. 8
[752] Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 3, p. 10

The following explanations are based on the annual audit strategies that FINMA has provided to the PUK for the years 2015 to 2022.

The audit strategies a wide range of audit topics[753]: The audit of own funds and solvency related, for example, to own funds requirements, own funds buffers, own funds planning and the coverage of privileged deposits; that of liquidity to qualitative and quantitative liquidity requirements. Risks in connection with various banking transactions (mortgage transactions, commercial lending transactions, Lombard lending transactions) were examined as part of the audit of business risks. The audit strategy also covered, for example, legal and process risks, compliance with regulatory rules of conduct, risk concentrations and compliance with money laundering regulations. The audit both the individual institution and the Group as a whole.

As far as the PUK could see, the *audit topics* for CS's parent company largely coincided with the topics of FINMA's standard audit strategy.[754] However, the annual audit strategies for CS deviated from the standard audit strategy in terms of audit frequency and depth for many or even most of the audit topics.[755]

753 The audit topics cover all material areas relevant under supervisory law for each licensee (Frigo, Patrick / Pajer, Daniel (2021): Commentary on Art. 63. In: Sethe, Rolf / Bösch, René / Favre, Olivier / Schott, Ansgar (eds.): Commentary on the Financial Institutions Act FinIA. Zurich: Schulthess Verlag, margin no. 46).

754 In the standard audit strategy, FINMA defines the audit areas and minimum audit depths. and audit periods for banks and securities firms, fund management companies and managers of collective assets. The standard audit strategy is contained in the Annex to FINMA Circular 2013/3. It does not apply to systemically important banks.

755 For example, the standard audit strategy for banks stipulates that compliance with capital adequacy requirements is to be audited every six years at the "audit" depth if the risk of a breach of the capital adequacy requirements has been identified.
risk is assessed as medium. If the risk is high, the audit is carried out every three years; if the risk is very high, it is carried out annually (Annex 2 to FINMA Circular 2013/3). At the parent company of CS, the audit was carried out with audit depth "Audit" in 2015, 2017, 2019, 2020 and 2022.
In 2016 and 2018, the audit was conducted at the "critical assessment" level. The net risk was assessed as either "very high" or "high".

The audit strategies for the parent bank of CS show that over the years a large number of risks[756] have been classified as "high" or "very high".[757] High or very high risks were identified in areas such as the capital requirements of the parent bank,[758] certain credit risks in the context of business risks and risk management,[759] qualitative[760] and quantitative liquidity requirements[761] and compliance with money laundering regulations[762] . In addition, there were the audit topics relating to the supervision of the entire Group, which included Group-wide measures to combat money laundering,[763] compliance with qualitative liquidity requirements[764] and compliance with capital adequacy and risk diversification requirements[765].

The audit depth[766] and audit frequency were defined on the basis of the risk assessment.[767]

The reasons for the risk assessment are not apparent from the audit strategies for CS. Nor does it describe how the audit was to be carried out in concrete terms or how FINMA and the audit firms interacted with each other when drawing up the audit strategy.

In addition to the annual basic audit, which applies to every licensed institution and covers the basic regulatory requirements, FINMA can

756 In 2020, 6 of 62 audit topics were rated as "very high" risk and 19 as "high" risk. rated "high". In 2021, there were 9 "very high" and 23 "high" for 64 audit topics.

757 The "net " is decisive for determining the audit depth and audit frequency. The net risk is the product of the "inherent risk" and the "control risk" according to the table in FINMA Circular 2013/3. The inherent risk to the link between the scope of a risk and its probability of occurrence. Control risk takes into account the adequacy and effectiveness of internal controls (Frigo, Patrick / Pajer, Daniel (2021): Commentary on Art. 63. In: Sethe, Rolf / Bösch, René / Favre, Olivier / Schott, Ansgar (eds.): Commentary on the Financial Institutions Act FinIA. Zurich: Schulthess Verlag, margin no. 46). According to FINMA Circular 2013/3, the net risk is high if the inherent risk is high and the control risk is high or the inherent risk is very high and the control risk is low (FINMA Circular 2013/3, para. 85).

758 Between 2015 and 2022, the risk assessment was "very high" in four years and "high" in four years.

759 Between 2015 and 2022, the risk assessment was "medium" in the first two years and then consistently "very high".

760 This probably refers to the requirements for liquidity management. Between 2015 and 2022, the risk assessment was consistently "very high".

761 This probably refers to the LCR and the NSFR. Between 2015 and 2022, the risk assessment was "very high" twice, "high" four times and "medium" once.

762 Between 2015 and 2022, the risk assessment consistently "very high".

763 Between 2016 and 2022, the risk assessment consistently "very high".

764 Between 2016 and 2022, the risk assessment fell with two exceptions ("very high") high".

765 Between 2016 and 2022, the risk assessment was consistently "very high" with one exception ("high").

766 Two audit depths are provided for: the "audit" and the "critical assessment". During an audit, the audit firm must obtain an in-depth picture of the matter to be audited. A clear audit opinion must be issued on compliance with the provisions of supervisory law ("positive assurance"). In the case of a critical assessment, the audit firm must an appropriate overview of the matter to be audited. The auditor comments on whether the audit procedures performed (review of documents, interviews, etc.) have revealed any facts that would lead to the conclusion that the provisions are not being complied with ("negative assurance") (FINMA Circular 2013/3, point 32 ff.)

767 Cf. footnote 765: At the parent company of CS, the audit of the capital adequacy requirements in 2015, 2017, 2019, 2020 and 2022 was conducted at the "audit" audit depth. In 2016 and 2018, audit was conducted at the "critical assessment" audit depth.

order additional audits.[768] Between 2015 and 2022, five audit strategies (2015-2018, 2022) provided for additional audits on various topics.[769]

Impact of the risks identified *at CS between 2015 and 2022*

According to FINMA, it pursues a risk-oriented approach,
In words, it is intensifying its activities in those areas where the risks are classified as increased, particularly at CS. FINMA confirmed that it intensified the use of its supervisory instruments at CS due to the bank's increased risk profile and, in particular, carried out on-site inspections, appointed external auditors and conducted enforcement proceedings.[770]

As part of this approach, the audit strategy for CS was defined in close collaboration with the audit firms (initially KPMG and, from 2020, PwC). This strategy was based on an annual risk analysis, taking into account the risks identified by FINMA and the conclusions drawn from the enforcement proceedings. The areas with increased risk were monitored more closely. The risk in connection with money laundering, for example, was deemed to be high, which is why annual control measures were considered justified from 2015.[771]

Determination of the audit areas and the supervisory strategy

According to the documents received the PUK, FINMA carries out a risk analysis in collaboration with the audit firms to determine the specific areas to be audited. This analysis takes into account the risks identified and the conclusions of the enforcement proceedings. The audit area covers various topics, but mainly high-risk topics such as dealing with money laundering issues.[772]

During the PUK's investigation period, the audit strategies were regularly adjusted in accordance with the information received in order to cover newly emerging risks. These adjustments were made following several discussions between the audit firms and FINMA's risk management experts in order to consistency between the risk analyses and the selected audit areas.[773]

768 It does this, for example, due to a special risk situation at the institution question or due to its activity in a specific business area (Art. 4 Financial Market Audit Ordinance of 5.11.2024 (FINMA-PO; RS **956.161)**). If FINMA orders such an additional audit, the audit firm audits additional audit areas (Art. 4 FINMA-PV). The audit firm must propose additional audits to FINMA based on its risk analysis if there are risks that are not by the basic audit (Frigo, Patrick / Pajer, Daniel (2021): Commentary on Art. 63. In: Sethe, Rolf / Bösch, René / Favre, Olivier / Schott, Ansgar (eds.): Commentary on the Financial Institutions Act FinIA. Zurich: Schulthess Verlag, margin no. 65)

769 For example, on cyber risks, foreign exchange trading, the Strategic Resolution Unit, the Financial Services Act, Lombard loans and the plausibility check of the market values of the parent company's investment (see section 5.3.3.1)

770 Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 1, p. 8

771 Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 2, p. 8

772 Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 2, p. 8

773 Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 2, p. 8

Use of external auditors and other supervisory instruments

FINMA may entrust auditors with case-related audits if the targeted deployment of specialists is required or if an exceptional event at a licensee needs to be investigated or monitored.[774]

FINMA various supervisory instruments at CS, including external auditors. More than 160 on-site were carried out between 2013 and 2022. External auditors were deployed 16 times between 2012 and 2022 to examine the areas of compliance and risk management. According to FINMA, thanks to these measures, which were taken in addition to the audits carried out by the audit firms, all risk areas were covered without the need to appoint additional external auditors.[775]

In some cases, these case-related examinations were related to matters that the subject enforcement proceedings against CS. In other cases, case-related examinations were ordered, for example to examine the implementation of BCBS Standard 239 (see section 5.3.1.) or the assessment of participations within the scope of the regulatory filter (see section 5.3.3).

5.4.3 Interaction between the FAOA and FINMA: cooperation and exchange of information

Task sharing and cooperation

Cooperation between the FAOA and FINMA is governed by Articles 22 AOA and 28 FINMASA. These provisions stipulate that the two authorities must provide each other with all information and documents that they require to enforce the respective legislation. They must coordinate their supervisory activities in order to duplication. Since the

Since 1 January 2015, the FAOA has been responsible for the licensing and supervision of audit firms in the areas of financial and regulatory audits, while FINMA is responsible for the content and principles of regulatory audits. In their Exchange of Letters dated 30 January/20 February 2015, FINMA and the FAOA specified their mutual expectations regarding cooperation, specifically with regard to the licensing of audit firms, FAOA reviews, preliminary clarifications, *enforcement* and sanctioning as well as audit delegates.[776]

Few interactions at the individual levels

At a *strategic level*, the FAOA and FINMA exchanged information on various occasions between 2015 and 2023, namely in the context of office consultations or on regulatory projects that affected the FAOA. However, there are no documents or information indicating that a specific exchange on the *situation of CS* took place at this level.[777]

At the operational level, a distinction must be made between two types of audit, the RA and the FA.

FAOA area: According to the FAOA, the head of FAOA had a monthly exchange with the FINMA representative responsible for auditing. This

774 Frigo, Patrick / Pajer, Daniel (2021): Commentary on Art. 63. In: Sethe, Rolf / Bösch, René / Favre, Olivier / Schott, Ansgar (eds.): Commentary on the Financial Institutions Act FinIA. Zurich: Schulthess Verlag, margin no. 66

775 Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 4, p. 11

776 Hungerbühler expert report (2024), p. 46

777 Geissbühler/Jovanovic investigation report (2024), p. 41

Meetings were documented by the FAOA. However, no mutually signed minutes were prepared.

In addition, there was regular interaction between FINMA and the FAOA in the run-up to the annual audits of the audit firms to ensure that FINMA's feedback on the quality of the audit firms' work was incorporated into the respective review. FINMA forwarded what it considered to be important information on CS and the audit firms and the FAOA with various documents such as the reports of audit representatives[778], for example with regard to the independent assessment of CS AG subsidiaries.[779] In 2015, FINMA pointed out the risk that KPMG was not objecting to breaches of supervisory duties, but only communicating them as recommendations. In 2018, FINMA provided the FAOA with a good impression of KPMG's work. The following year, however, it stated that KPMG's critical stance be reviewed. In 2022, among other things, it informed the FAOA that CS still had major weaknesses in the area of AMLA. The FAOA integrated what it considered to be relevant information from FINMA into its inspection areas and topics. Following the FAOA inspections, the corresponding inspection reports were sent to FINMA. The reports were often also discussed with FINMA on this occasion.[780]

FA area: The investigators noted that the FAOA's audit strategies always referred to information provided by FINMA. For example, FINMA informed the FAOA in 2016 that CS's financial situation was critical but that it relied on the clean-up strategy. FINMA also pointed out in 2017 that CS's provisions with regard to the lawsuits in the US were possibly too low. After 2017, the audit strategies no longer contain any references to FINMA's advice. According to the FAOA, this is due to the fact that FINMA did not provide the FAOA with any further information that would have affected FA.[781]

According to information provided by the FAOA to the investigators of the PUK, the head of the RA attended the meetings of the FA team and was therefore able to pass on relevant information from FINMA to the FA department.[782]

5.5 Macroprudential tasks of the SNB with regard to the stability of the financial system

The SNB's macroprudential tasks relate to the system level (see section 3.3). The SNB contributes to the stability of the financial system in various ways. The following chapter describes the measures it has taken in this context up to 2022, specifically in connection with CS. Section 5.5.1 presents the SNB's powers in determining systemically important financial groups, section 5.5.2 deals with the SNB's reports on financial stability, section 5.5.3 outlines the developments in connection with the ELA and section 5.5.4 presents the SNB's various cyclical measures.

5.5.1 Definition of systemically important financial groups

Since the revision of the Banking Act as part of the TBTF legislation (see section 4.2.2.1 and section 5.2.3), certain banks are considered *systemically important*.

778 In some cases however, this was only done in response to the FAOA's request for administrative assistance to FINMA dated September 28, 2023.
779 Information from FINMA dated 9.09.2024 on the PUK's request for information dated 2.09.2024, question 3, p. 10
780 Geissbühler/Jovanovic investigation report (2024), p. 41
781 Statement by the FAOA dated 27.10.2024 as part of the administrative consultation
782 Geissbühler/Jovanovic investigation report (2024), Chapter 10, p. 41

bank, SIB). This refers to institutions that perform indispensable functions for the Swiss economy and whose failure would significantly damage the Swiss economy and the Swiss financial system (see section 2.1).[783]

In Switzerland, the SNB is responsible for determining which banks are systemically important (see section 2.2).[784] The SNB bases its decision on the following criteria: the market share of systemically important functions, the amount of secured deposits that exceeds the statutory maximum amount,[785] the ratio between the bank's total assets and Switzerland's annual GDP, and the bank's risk profile, which is determined by the business model, balance sheet structure, asset quality, liquidity and leverage ratio.[786]

On November 16, 2012, the SNB ruled that CS is systemically important.[787] A systemically important bank must meet special requirements under TBTF law that go beyond the requirements of Basel III (see section 4.2.2.1 and section 5.2.3). The implementation of these measures is primarily the responsibility of the bank concerned and, secondarily, FINMA.

5.5.2 Continuous monitoring by the SNB as part of the annual Financial Stability Report

The SNB continuously analyzes developments on the financial markets and the developments that particularly affect the Swiss banking sector and financial market infrastructures. It summarizes these analyses in a Financial Stability Report, which published every summer.[788] The primary of the report is to draw attention to stresses or vulnerabilities that could pose a risk to stability of the Swiss banking system in the short or long term. These reports provide an overview of the development of the economic environment and the financial markets over the past year and contain comprehensive analyses of the situation of the Swiss big banks and domestically focused banks.

Development of the SNB assessment between 2015 and 2022

From 2015, the start of the period under review, until 2020, the financial stability reports described a macroeconomic environment that fluctuated between improvements in the profitability of financial institutions and pressure on their profitability. The reports also highlighted the measures taken by the big banks in connection with TBTF regulation.

The *2015* report emphasized that the economic and financial environment in has become more difficult due to the strong appreciation of the Swiss franc. The big banks should therefore not let up in their efforts to strengthen their resilience. This applies in particular to the *leverage ratio*. However, the report pointed out that the big banks already largely met the fully implemented requirements of the Swiss TBTF regulation and the international Basel III framework, both of which came into force in 2019.[789]

The *2016* Financial Stability Report presented the most important changes resulting from the TBTF regulation and the reform of the Basel III minimum requirements.

783 Art. 7 para. 1 BankA
784 Art. 8 para. 3 Banking Act; Art. 25 para. 2 FMIA
785 Art. 37h para. 3 let. b Banking Act
786 Art. 8 para. 2 BankA
787 "Rulings of the Swiss National Bank on systemic importance", SNB media release dated 20.12.2012, https://www.snb.ch/de/publications/communica- tion/press-releases/2012/pre_20121220 (as at: 9.4.2024)
788 These reports are available at www.snb.ch> News and publications>publications > Financial Stability Report (as at 29.4.2024). They are published every year was first published in English in June.
789 SNB (2015): Financial Stability Report 2015, p. 4

ted. According to the report, the two major Swiss banks, CS and UBS, would have to take additional precautions to meet the new requirements applicable from the beginning of 2020, namely in terms of *the leverage ratio* and *gone concern*.[790] Based on the analysis of credit default swap premiums, the report showed that the resilience CS was assessed as lower than that of UBS and the median of globally active major banks in the market.[791]

The *2017* report emphasized that the two banks were on track to meet the requirements of the revised TBTF regulation, i.e. after the expiry of the transitional provisions. However, further progress must be made in the development of robust recovery and resolution plans.[792]

This conclusion was repeated in the *2018* Financial Stability Report. It stated that the big banks would have to prove to FINMA by 2019 that they credible and implementable emergency plans in place.[793] According to this report, the market also rated CS's resilience as lower than that of UBS and the median of globally active big banks.[794]

There were no significant changes in *2019*: According to the SNB report, progress was made in the areas of resilience as well as restructuring and orderly resolution, the pillars of the revised TBTF regulation. However, the potential for losses remains substantial. The market's assessment of the resilience of the two banks remained largely unchanged.[795]

Although the economic and financial environment presented some difficulties, the SNB's assessment up to 2019 was positive overall. With the Covid-19 crisis and the resulting difficulties for the banks, *2020* was a low point. Nevertheless, the report stated: "Thanks to their solid capital base, however, they [note: CS and UBS] are well equipped to overcome these challenges." This good starting position is due to the reduction of risks and in particular the build-up of capital buffers in recent years - in line with TBTF regulation.[796]

The Financial Stability Report *2021* pointed out that CS had suffered large losses in the first quarter of 2021 due to the Archegos scandal, but that the good results in other areas of the bank's activities helped to absorb these losses.[797]

Until then, the situation of the two big banks was assessed very similarly in the SNB's reports. This changed with the Financial Stability Report *2022*, in which the SNB made a clear distinction in its assessment of the two Swiss big banks, whose profitability had "developed differently". While UBS's profit had risen sharply, CS's *return on assets* had been negative. The market then "maintained the more positive assessment UBS relative to CS".[798] The report also emphasized the high operational risks in an international comparison and illustrated this in particular using the example of CS. The high relevance of business risks for the two big banks was also highlighted.[799] The PLB was also mentioned for the first time in the 2022 report. It was stated that the Federal Council intended to introduce a mechanism that would enable the

790 SNB (2016): Financial Stability Report 2016, p. 4/5
791 SNB (2016): Financial Stability Report 2016, p. 15
792 SNB (2017): Financial Stability Report 2017, p. 4/5, pp. 18-20
793 SNB (2018): Financial Stability Report 2018, pp. 5-7
794 SNB (2018): Financial Stability Report 2018, p. 18
795 SNB (2019): Financial Stability Report 2019, p. 5/6
796 SNB (2020): Financial Stability Report 2020, p. 6
797 SNB (2021): Financial Stability Report 2021, p. 6
798 SNB (2022): Financial Stability Report 2022, p. 6
799 SNB (2022): Financial Stability Report 2022, p. 27

SNB would make it possible to provide liquidity to a systemically important bank in the form of a loan that would be covered by a federal guarantee.[800]

According to some of the persons heard by the PUK, the report on financial stability is not suitable for preventing specific problems at a bank - such as those that led to the Credit Suisse crisis - due to its macroeconomic focus.[801] Nevertheless, it shows the main developments and thus provides a basis for assessing financial stability and deciding whether further measures may be necessary.

Discussion of the financial stability reports between the SNB and FINMA

The reports on financial stability are among the topics discussed at the regular meetings between FINMA and the SNB in connection financial stability (see section 3.6.2). With regard to the events that led to the Credit Suisse crisis, it is worth noting that the 2022 report, in which the delicate situation at CS was explicitly pointed out for the first time, was discussed both at the meeting between the FINMA Board of Directors and the SNB Governing Board on June 29, 2022 and at the meeting of the SNB-FINMA Steering Committee on June 29, 2022.
May 31, 2022 was discussed. The documents from the meeting in May show that, among other things, the loss of confidence that the bank facing was addressed. The SNB referred to the confidence deficit, the weak capital situation at CS parent company, the greater loss potential and the deterioration in overall profitability. With regard to the CS parent company, the SNB saw a need for action to strengthen its capital, including through capital repatriation from the subsidiaries.[802] The meeting participants addressed the change in strategy announced by CS and noted that the bank's capital buffer was low and that the next incident could be critical.[803] At this meeting, the SNB Chairman already asked how the negative spiral could be interrupted. However, no concrete measures were taken at that time.[804]

5.5.3 Extraordinary liquidity assistance (ELA)

As *lender of last resort* (see section 2.2), the SNB can provide a bank with *emergency liquidity assistance (ELA*) in the event of financial instability. Although this instrument is only used in crisis situations (see section 7.2.2.5), the SNB has considered this in recent years, which is explained below.

The SNB has the option of liquidity in the form of ELA to a bank that can no longer refinance itself on the market. As explained above (see section 2.2), the SNB's internal guidelines specify the conditions under which such assistance can be granted: The bank requesting credit must be a SIB, it must be solvent, and the extraordinary liquidity assistance must be fully covered by sufficient collateral at all times.[805] The SNB itself determines which collateral is sufficient to meet the legal requirements and takes FINMA's opinion into account when assessing a bank's solvency.[806]

800 SNB (2022): Financial Stability Report 2022, p. 32
801 Various written responses dated 18.3.2024, 26.3.2024, 8.4.2024 to the PUK
802 Situation in the banking sector, Powerpoint presentation by the SNB at the meeting of the SNB-FINMA Steering Committee on 31.5.2022, p. 9
803 "However, the [capital] buffers are low, so the next incident could be critical", minutes of the meeting of the SNB-FINMA Steering Committee of 31.5.2022
804 Minutes of the meeting of the SNB-FINMA Steering Committee of 31.5.2022
805 Art. 6 of the SNB Guidelines of 25 March 2004 Monetary Policy , www.snb.ch> The SNB > Implementation of monetary policy> Guidelines on Monetary Policy Instruments (as at 9.4.2024)
806 Art. 6 of the SNB Guidelines

The requirement that liquidity assistance must be secured[807] is based on legal considerations. The dispatch on the revision of the National Bank Act is clear in this regard: "However, the wording of the law already the granting of loans without any collateral (unsecured loans) or against collateral that does not fully cover the risks that arise (in particular market and credit risks). "[808] The SNB does have a certain amount of leeway in defining which collateral is "sufficient".[809] However, the granting of unsecured loans and thus the decision as to whether a bank established under private law is supported with the use of public funds and a corresponding risk of loss for the public sector does not fall within the SNB's remit.[810]

The term "sufficient collateral" refers to the quantity, quality and modalities of the collateral.[811] In case of extraordinary liquidity assistance, these requirements are revised downwards compared to ordinary monetary policy operations.[812] The SNB accepts a broad range of collateral, which is defined in consultation with the banks, is thus known to them, and further developed in consultation with the banks.[813] What "sufficient collateral" determined individually for each bank, taking into account its special features. In addition, liquidity assistance is reviewed annually with each systemically important bank.[814]

At the SNB, these analyses are the responsibility of the Risk Management organizational unit of the
Department II.[815] The collateral should enable the SNB to cover its claims in the event of the bank's bankruptcy. The collateral must therefore quickly transferable to the SNB.[816] In addition, it must be possible to establish a legally valid security interest in the assets in question, and they must actually be realizable in favor of the SNB in the event of non-repayment. Furthermore, assets may not already be used as collateral for other creditors, and the set-off rights of creditors must be taken into account. Finally, the bank must be in an operational position to map the corresponding processes in its systems.[817] The bank must therefore provide an overview of the available collateral on a quarterly basis in a form.[818]

807 Art. 9 para. 1 lit. e NBA

808 Message of 26.6.2002 on the revision of the National Bank Act (BBl **2002** 6097, here 6199)

809 Plenio, Martin and Senn, Myriam (eds.) (2021): National Bank Act. Federal Act Currency and Payment Instruments. Commentary. Zurich/St. Gallen: Dike Verlag AG, S. 225

810 SNB: Why must liquidity assistance be collateralized?, www.snb.ch > Media > Topics dossiers> Other topics> The SNB's role as lender of last resort (as at: 26.4.2024)

811 Plenio, Martin and Senn, Myriam (eds.) (2021): National Bank Act. Federal Act Currency and Payment Instruments. Zurich/St. Gallen: Dike Verlag AG, p. 225

812 Letter from the SNB dated 17.6.2024 to the PUK; Plenio, Martin and Senn, Myriam (eds.) (2021): National Bank Act. Federal Act on Currency and Payment Instruments. Comment. Zurich/St. Gallen: Dike Verlag AG, p. 238

813 Written answers to the PUK dated 8.4.2024

814 Written answers to the PUK dated 26.3.2024, written answers to the PUK dated 22.1.2024

815 Written answers to the PUK dated 18.3.2024

816 SNB: How does the SNB determine the collateral for extraordinary liquidity assistance?, www.snb.ch > The SNB> Implementation of monetary policy> Guidelines on monetary policy instruments (as at 26.4.2024)

817 Letter from the SNB to the PUK dated 17.6.2024

818 Extraordinary liquidity assistance against mortgage collateral. Memorandum of Understanding (MoU) between the SNB and CS (*hereinafter*: ELA MoU), undated, points 3.1 and 3.2 (*note*: the name of the bank is blacked out, but it can be assumed that the MoU was concluded with CS); written answers to the PUK dated 22.1.2024

Over the years, the SNB has expanded the range of eligible collateral. The table below lists the most important adjustments that have been made since 2015.

Table 11: Chronology of the most important adjustments to the group of safeguards for ELA

Date	*Customization*
Before 2015	Prior to 2015, the range of collateral for ELA included mortgages on residential real estate with associated debt certificates and securities eligible for SNB repos[819].
September 2015	Creation of the securities facility (WeFa) as a new facility. The WeFa contained two important innovations: 1) The volume of liquidity assistance was no longer restricted by a limit, but by the volume of eligible collateral. 2) Banks could now also apply for liquidity in US dollars and euros instead of just Swiss francs.
June 2016	Integration of foreign triparty agents (TPA). Since June 2016, systemically important banks have also been able to submit collateral for the WeFa via TPAs abroad. TPAs are specialized service providers in the area of securities settlement and management. Previously, banks had to transfer securities for the securities facility to the SNB via the SIX custodian. This change simplified the process for securities held abroad.
March 2020	Creation of the Covid-19 refinancing facility (CRF). The CRF allowed banks to deposit the Covid-19 credits guaranteed by the Confederation with the SNB as collateral in order to obtain liquidity (see also section 5.5.4).
March 2020	Expansion of the CRF to include further collateral. The SNB made it possible for systemically important banks to obtain liquidity within the CRF against Swiss mortgages and securities. This allowed systemically important banks to use the CRF to cover refinancing needs beyond Covid-19 loans.
April 2020	Expansion of ELA to include mortgages collateralized by commercial property. In spring 2020, the SNB both big banks to submit proposals for an increase in the ELA volume. In response, the SNB expanded the range of eligible collateral to include mortgages collateralized by commercial property. There was no significant potential for expansion in the securities facility.
November 2021	Reduction of haircuts on mortgages and securities. Like other central banks, the SNB applies risk discounts - known as haircuts - to collateral deposited with it for the purpose of obtaining liquidity. In this way, central banks take into account the fact that liquidation does not necessarily bring in the entire original value of the deposited collateral. At the end of 2021, the SNB lowered the risk discounts on mortgages and securities.
2019-2024	Expansion to the entire banking sector: liquidity against mortgage collateral (LGHS). With the already 2019 started LGHS initiative, the SNB can grant all banks in Switzerland

[819] Repo-eligible securities are securities that meet high requirements in terms of creditworthiness and liquidity.

Date	Customization
	(not only systemically important banks) if required liquidity against grant mortgage collateral. The condition for access is that a bank has prepared its mortgages accordingly.

Source: Annex 1 "Chronology of the most important adjustments to the scope of collateral for ELA (from 2015)", SNB, 17.6.2024

However, in order for financial institutions to be able to use the expanded range, they must take the necessary precautions. If the SNB expands the range of collateral, the amount that a bank receives in the event of the ELA being utilized is therefore not automatically increased. According to several persons heard by the PUK, CS had not prepared sufficiently, which is why it was unable to exploit the potential of the ELA in due course (see section 7.2.2).[820] It should also be noted that the SNB cannot oblige a bank to increase its collateral.[821]

CS did not submit an ELA application until March 2023, even if this possibility had existed (see section 5.1.2).

5.5.4 Economic measures taken by the SNB

During the reporting period, the SNB used or instruments with the involvement of the other responsible authorities in order to react to certain economic developments. These measures are described below.

Countercyclical capital buffer

Since July 2012 and as part of the implementation of the TBTF provisions, Switzerland has had a countercyclical capital buffer (see section 2.2). Since this instrument was introduced, the Federal Council has used it four times at the request of the SNB, each time in different situations. In February 2013, the countercyclical capital buffer was activated for mortgage loans to finance residential properties in Switzerland. The SNB justified its request by stating that the strong growth in loans and real estate prices had led to imbalances on the mortgage and residential real estate markets. The buffer was set at 1 % of the corresponding risk-weighted positions.[822] In January 2014, this rate was increased to 2 %, as the SNB believed that the imbalances had worsened.[823] In March 2020, in the wake of the Covid-19 crisis, the SNB requested that the capital buffer be deactivated in order to give banks the greatest possible leeway in lending.[824] Finally, in January 2022, the Federal Council reactivated the sectoral countercyclical capital buffer at the request of the SNB, which argued that pandemic-related uncertainties with regard to access to credit for companies had decreased significantly, while vulnerabilities on the mortgage and residential real estate markets had increased considerably.[825]

[820] Written answers to the PUK of 22.1.2024, written answers to the PUK of 26.3.2024; written answers to the PUK of 8.3.2024; minutes of the AF of 24.1.2023
[821] Minutes of the PUK meeting of 29.11.2023; written answers to the PUK of 8.4.2024
[822] "Countercyclical capital buffer: proposal by the Swiss National Bank and decision by the Federal Council", SNB press release dated 13.2.2013
[823] "Proposal by the Swiss National Bank to increase the countercyclical capital ", SNB press release dated 23.1.2014
[824] "SNB creates SNB COVID-19 refinancing facility and submits application for de-Activation of the countercyclical capital buffer", SNB press release of 25.3.2020
[825] "Application by the Swiss National Bank to reactivate the sectoral capital buffer to 2.5%", SNB press release dated 26.1.2022

The rate was increased to 2.5% and was therefore higher than before it was deactivated in 2020.

Covid-19 refinancing facilities

Due to the Covid-19 crisis in 2020, economic activity fell sharply, causing the global economic and financial situation to deteriorate. Authorities around the world took measures to support the economy in their respective countries and the banking system with liquidity. To supplement the federal government's guarantee program, which facilitated companies' access to credit, the SNB introduced the SNB Covid-19 refinancing facility in Switzerland to enable banks refinance the guaranteed portion of these corporate loans at the SNB key interest rate. The facility provided a stable refinancing basis for bank loans. The banks were thus able to grant higher loans without compromising their regulatory liquidity ratios, such as the *liquidity coverage ratio* (LCR).[826] Thanks to these measures, the banks granted 137,870 Covid-19 loans totaling around CHF 17 billion to 23% of companies in Switzerland.[827]

At the beginning of the crisis, the authorities were concerned about CS's situation due to the bank's low liquidity (section 5.1.2). From the SNB's perspective, there were signs at CS that the liquidity might not only be necessary for refinancing, but "also for other purposes".[828] In light of CS's problems, the SNB structured the Covid-19 refinancing facility in such a way that it could also been used for systemically important banks, and thus for CS, in the event of an emergency. The SNB was therefore prepared to provide CS with liquidity outside of the normal ELA process in return for collateral. The reason for this flexibility was that the SNB wanted to avoid stigmatizing a systemically important bank through a possible liquidity withdrawal.[829] The regulation applied not only to CS, but to all systemically important banks in Switzerland and was communicated to them by means of letters.[830]

At the end of March 2020, the SNB facilities "appeared to be the only permanent solution for CS". A week later, however, the bank's liquidity situation stabilized without government intervention.[831]

5.6 Specific performance of the federal authorities' supervision of FINMA, the SNB and the FAOA in the first phase

Although FINMA and the FAOA legally independent entities, they are subject to a certain degree of supervision by the Federal Council and are administratively assigned to the FDF and the FDJP respectively (see section 3.5.2 and section 3.5.3).[832] The Federal Council also supervisory responsibilities in various areas at the SNB. However, these are narrowly defined (see section 3.5.1). How the Federal Council, the FDJP and the FDF supervised the management of these three units in the period between 2015 and 2022 is in more detail in the following chapters.

826 SNB (2020): Financial Stability Report 2020
827 Covid-19 solidary guarantee loans, interim report of the Federal Council of 29.11.2023
828 Minutes of the PUK meeting of 27.3.2024, p. 6
829 Minutes of the PUK meeting of 27.3.2024, p. 6; minutes of the PUK meeting of 24.4.2024; written answers to the PUK of 12.5.2024
830 Letter from the SNB to CS dated 26.3.2020; Letter from the SNB to UBS dated 26.3.2020; Letter from the SNB to PostFinance dated 7.4.2020; Letter from the SNB to Raiffeisen dated 7.4.2020; Letter from the SNB to Zürcher Kantonalbank dated 7.4.2020
831 Excerpt from the minutes of the AF 23.3.2020 and 30.3.2020
832 Point III 2.2.3 and point V.2.2.1 Annex 1 RVOV

5.6.1 Supervision of the SNB

Supervisory bodies of the federal authorities

With regard to the management of the SNB, the PUK is not aware of any specific interactions between the Confederation and the SNB with regard to systemically important banks and their impact on financial stability. No relevant events are to be mentioned within the scope of the Federal Council's powers of appointment and approval during the period under investigation. The aforementioned discussions between the SNB Chairman and the Federal Council are also not recorded. One exception was the Federal Council's discussion with Thomas Jordan on the introduction of the PLB on November 2, 2022 (see section 6.3.4.1).

Supervisory bodies of the Federal Assembly

As part of its accountability to the Federal Assembly, the SNB presents its annual accountability report to the audit committees. CS was generally mentioned together with UBS as part of the implementation of various TBTF requirements and was not negatively highlighted until 2021. In 2021, the SNB mentioned that CS had become aware of the importance of capital adequacy following the Archegos and Greensill scandals and had taken various measures to save capital. The SNB stated that it would continue to monitor developments closely despite capital increase.[833] A year later, the SNB announced at the presentation of the 2021 annual report that both CS and UBS had good capital buffers, but that the two banks had developed differently. While UBS was able to increase its capital buffers with profits, CS had to raise new capital and reduce risks following the collapse in its share price as a result of the Archegos loss.[834] Furthermore, CS's business conduct or its capital and liquidity situation were not explicitly addressed.

5.6.2 Supervision of FINMA by the Federal Council and the FDF between 2015 and 2022

The following table provides an overview of the various formats in which the Federal Council or the FDF exchange information with FINMA. These channels are presented and explained in detail below.

Table 12: Overview of the supervisory and exchange channels between the FC, FDF and FINMA[835]

Designation	*Participants*	*Contents*	*Frequency*
Institutionalized talks between the Federal Council and FINMA	Full Federal Council, Chairman of the Board of Directors of FINMA, Director of FINMA	Strategic objectives and activities, problems in the context of supervisory activities, general issues relating to financial center policy	Once a year, more often if required
Owner's meeting	Head of FDF, GS-FDF, Chairman of the Board of Directors FINMA, Secre- Board member FINMA	Cooperation and governance between the FDF and FINMA, regulatory changes, implementation of the FINMASA Ordinance, Key topics from	Once or twice a year

[833] Minutes of the FDF-WBF NS CC subcommittees on the SNB Accountability Report 2020 of 26.4.2021

[834] Minutes of the FDF-WBF subcommittees GPK NS on the SNB Accountability Report 2021 of 25.4.2022

[835] The dialog between FINMA and the central federal administration is described here. The exchange within the framework of the tripartite memorandum

(LG and AF) is described in section 3.6.1.

Designation	*Participants*	*Contents*	*Frequency*
		the strategic dialog, Budget issues, personnel	
Strategic diary	Head of the FDF, State Secretary for International Financial Matters, Chairman of the Board of Directors and Director of FINMA	Current situation financial markets, annual report and target achievement FINMA, operational development, personnel matters	Half-yearly
Policy Dialog	State Secretary for International Financial Matters, Director FINMA	Regulatory topics (ongoing projects, regulatory scope of action), international activities of SIF and FINMA	Quarterly

Supervisory bodies of the Federal Council via FINMA

As explained in section 3.5.2, FINMA is an organizationally independent administrative unit. Supervision of FINMA is correspondingly limited. During the period under review, cooperation between the FDF and FINMA and supervision of FINMA took place both in the context of the institutionalized discussions with the Federal Council described in section 3.5.2 and the owner discussions[836] .

During the period under review, general topics such as the achievement of FINMA's strategic objectives, the institutions budget, human resources, cryptocurrencies, mobile working and the impact of the war in Ukraine were addressed in the owner meetings, which take place after the strategic dialog (see below).[837] Cooperation between the FDF and SIF and FINMA was also a permanent item on the agenda. For example, the draft ordinance on the Financial Market Supervision Act[838] was discussed under this agenda item and it was emphasized that the FDF and FINMA had reached a consensus on a number of critical points.[839] However, the situation of CS in particular and the risk of insolvency or illiquidity were not addressed in the owners' meetings until 2023, as the LG and the AF responsible for such issues. In March 2023 - with reference to the discussion in the LG and AF - the possible effects of a restructuring of CS on FINMA's resources in the event of a restructuring were discussed.[840]

Development of cooperation with the FDF under the head of the FDF 2010- 2015

At the beginning of the term of office of the Head of the FDF, who held office from 2010 to 2015, the willingness to implement and enforce sustainable regulations was high. This was reflected in the development of the TBTF regulation and the revision

[836] Minutes of the FDF-FINMA owner meetings of 15.10.2019, 9.3.2020, 22.10.2020, 15.3.2021, 31.10.2022, 6.3.2023, 22.1.2023
[837] Written answers to the PUK dated 25.6.2024, p. 14
[838] Ordinance of December 13, 2019 on the Financial Market Supervision Act
[839] Minutes of the owners' meeting FDF-FINMA of 15.10.2019
[840] Agenda items and minutes of owners' meetings FDF-FINMA of 15.10.2019, 9.3.2020, 22.10.2020, 15.3.2021, 14.3.2022, 31.10.2022, 6.3.2023, 2.11.2023. Some aspects of the CS were not discussed until 2023, but not with regard to immediate crisis management.

of the Banking Act, which introduced specific provisions for the regulation of systemically important banks (see section 5.2.1). According to the assessment of those responsible at the FDF and FINMA, this willingness declined again after a short time as the influence of the financial sector grew.[841] The exchange between the FDF and FINMA and the discussion of the TBTF issue during this phase were described by those involved as intensive.[842] According to the then Head of the FDF, the situation of systemically important banks, their business activities and, in particular, their supervision was a key topic in meetings with the Chairman and the Director of FIN.MA throughout her time in office at the FDF.[843] The former FINMA Director described the then Head of the FDF as interested, committed and present in these areas. Collaboration with the FDF was very good during this time. FINMA also had the impression that the then head of the FDF supported the supervisory authority in the face of lobbying pressure from the banking sector and viewed FINMA's supervisory work positively.[844]

Development of cooperation with the FDF under the head of the FDF2016-2022

According to various FINMA managers, the political and regulatory context in which FINMA operated changed after the head of the FDF took office in 2016 until 2022: FINMA's regulatory activities were increasingly criticized and various political initiatives were at weakening the authority's independence.[845] According to various FINMA managers, this development hand in hand with increased lobbying by the banks against strong TBTF regulation. In FINMA's perception, the arguments of the banks were also increasingly taken up by the FDF. The political discussions led to regulatory steps being delayed in some cases.[846]

The assessment of the cooperation between FINMA and the FDF during this phase tended to be more negative within FINMA than before. On the one hand, the then head of the FDF was as being less interested in supervisory and regulatory issues than his predecessor. This , among other things, in the declining frequency of contacts between the then head of the FDF and FINMA.[847] The head of the FDF was said to have a fundamental scepticism towards FINMA's regulatory activities.[848] This mistrust was also in FINMA's perception of direct contact with FDF employees.[849] There was a consensus within FINMA that the political pressure on FINMA increased significantly during this period and that it had to fight harder for its own independence, which tied up internal resources.[850] According to the former Director and the former Chairman of the Board of Directors, the increase in the number of political initiatives concerning FINMA's activities was caused by the fact that FINMA's activities were not subject to political pressure.

[841] Written answers to the PUK dated 16.4.2024; Written answers to the PUK dated 15.4.2024
[842] Written answers to the PUK dated 16.4.2024
[843] Written answers to the PUK dated 16.4.2024
[844] Minutes of the PUK meeting of 21.2.2024; written answers to the PUK of 25.3.2024
[845] Minutes of the PUK meeting of 21.2.2024; written responses to the PUK of 9.4.2024 and 5.4.2024
[846] Minutes of the PUK meeting of 21.2.2024; written responses to the PUK of 18.3.2024 and 5.4.2024
[847] Minutes of the PUK meeting of 21.2.2024
[848] Minutes of the PUK meeting of 20.3.2024
[849] Written answers to the PUK dated 15.4.2024
[850] Minutes of the PUK meeting of 21.2.2024; Written answers to the PUK of 5.4.2024; Written answers to the PUK of 25.6.2024, p. 1

FINMA's activities were also viewed with concern by foreign supervisory authorities.[851] The then Head of the FDF expressed different views on FINMA in the CAC during discussions of parliamentary business. When discussing motion 17.3317 ("Clear responsibilities between financial market policy and financial market supervision"), he expressly pointed out the importance of FINMA's independence and its maintenance on behalf of the Federal Council. At the same time, he firmly supported the drafting of the Ordinance to the Financial Market Supervision Act (see below).[852] A few years later, in the same committee, he was critical of FINMA's regulatory activities and called on the members of parliament to show FINMA the limits of its independence.[853]

In the view of the then Head of the FDF, cooperation with FINMA improved over time. In his opinion, there was intensive cooperation and an open dialog between the FDF and FINMA from 2020 at the latest. There was close cooperation at an operational level, which was characterized by weekly contacts.[854] The Chair of FINMA's Board of Directors and the State Secretary for International Financial Matters confirmed this positive impression for the period during the Covid pandemic and for the initial phase of the sanctions against Russia in their introductory assessments of cooperation between the authorities at a meeting of the audit committees in April 2022. The State Secretary for International Financial Matters mentioned the new exchange processes with FINMA, which were introduced in 2020 as part of the Ordinance to the Financial Market Supervision Act[855], in a positive light.[856] However, the effects of this ordinance were not always assessed positively. In fact, various FINMA representatives identified the ordinance as a trigger for a lot of internal FINMA work[857] and as one of the causes of a general deterioration in relations with the FDF.[858]

Change in the chairmanship of the Board of Directors 2021

As described in section 3.5.2, the Federal Council is responsible for electing the members of FINMA's Board of Directors. On January 1, 2021, there was a change in the Chairman of the Board of Directors: the Chairman of the Board of Directors, who was also in office during the CS crisis in 2022/2023, replaced her predecessor. In the view of the former Chairman of the Board of Directors, there was a lack of a good relationship of trust with the Head of the FDF, which had been a reason for him not to exercise his mandate beyond his retirement age.[859] The FINMA Board of Directors did not consider this situation to be optimal, as it had made it difficult for FINMA to present its concerns to the Federal Council in a targeted manner.[860] The Head of the FDF at the time felt that the former Chairman of FINMA's Board of Directors had little presence, was not assertive enough vis-à-vis the then FINMA Director, was generally not uncontroversial on the Board of Directors and was also too old for a further mandate after the end of his first term of office.[861]

[851] Minutes of the GPK subcommittees FDF-WBF NS of 16.4.2018; minutes of the PUK meeting of 21.2.2024
[852] Minutes of the WAK-S of 1 and 2.11.2018, p. 8, 26
[853] Minutes of the WAK-S of 18 and 19.1.2021, p. 3
[854] Minutes of the GPK subcommittees FDF-WBF NS of 27.4.2021
[855] Ordinance of December 13, 2019 on the Financial Market Supervision Act
[856] Minutes of the FDF-WBF NS GPC subcommittees of 27.4.2021; minutes of the FDF-WBF NS GPC subcommittees of 26.4.2022
[857] Written answers to the PUK dated 9.4.2024
[858] Written answers to the PUK dated 5.4.2024; Written answers to the PUK dated 15.4.2024; Written answers to the PUK dated 25.6.2024, p. 1
[859] Minutes of the PUK meeting of 20.3.2024, p. 9
[860] Minutes of the PUK meeting of 27.3.2024, p. 26
[861] Minutes of the PUK meeting of 22.5.2024, p. 18

The need for a stronger Board of Directors to counterbalance the strong FINMA Director was already mentioned by the former head of the FDF in 2018 during the discussion of motion 17.3317 in the WAK-S.[862] According to a person heard by the PUK, communication between the then head of the FDF and the then Chairman of the FINMA Board of Directors only took place in writing after a certain period of time. Several people told the PCC that the head of the FDF decided to ask the then Chairman of the FINMA Board of Directors to resign or not to re-elect him because of the breakdown in relations.[863] The current Chairman of the FINMA Board of Directors was an obvious candidate to succeed him as Vice-Chairwoman of the Board of Directors at the time.[864] It was in line with the FDF's practice to consider all members of the Board of Directors to take over the chairmanship in such situations.[865]

The former Chairman of FINMA's Board of Directors his resignation on 31 December 2020, eight months after his re-election in March 2020.[866] The was made in consultation with the then Head of the FDF and had already been planned in advance.[867] For the then FINMA Director, however, the timing of the resignation in March 2020 came unexpectedly early. He stated that FINMA had only expected the announcement to be made in autumn 2020.[868] Following his re-election, the then Chairman of FINMA's Board of Directors received a letter of confirmation from the then President of the Swiss Confederation and Head of the FDF in early July 2019, him that he would be stepping down from his role at the end of the coming year, as discussed, and that the Federal Council would initiate the search for a successor in good time.[869] According to his own statement, the then Chairman of the FINMA Board of Directors interpreted the letter to mean that he had only been elected until the end of 2020 and therefore did not need to submit a formal letter of resignation. Nor had he been asked to do so.[870]

FDF supervisory bodies - change of competence in favor of the FDF following the enactment of the Ordinance to the Financial Market Supervision Act

The implementation of motion 17.3317[871] through the aforementioned Ordinance to the Financial Market Supervision Act[872] (see section 5.2.5.2) specified FINMA's powers in the international area and in regulation and clarified their relationship to the powers of the Federal Council and the FDF.[873] The Ordinance ensured that FINMA complies with the tiered approach in its own regulation and that regulatory projects that within the remit of the FDF are regulated,

862 Minutes of the WAK-S of 1 and 2.11.2018, p. 25 f.
863 Minutes of the PUK meeting of 27.3.2024; minutes of the PUK meeting of 24.4.2024
864 Written responses to the PUK dated 1.5.2024
865 Letter from the then Head of the FDF to the FINMA Board of Directors dated 6.11.2019
866 "Federal Council appoints Marlene Amstad as future Chairwoman of the Board of Directors", Federal Council media release dated 13.3.2020
867 Minutes of the PUK meeting of 20.3.2024, p. 19
868 Minutes of the PUK meeting of 21.2.2024
869 Letter from the then President of the Swiss Confederation to the then Chairman of the Board of Directors of FINMA dated July 3, 2019
870 Written answers to the PUK dated 17.6.2024, p. 11
871 Mo. Landolt "Clear responsibilities between financial market policy and financial market supervision" of 4.5.2017 (17.3317). The motion called for a clear separation between the responsibilities of the Federal Council and those of FINMA as well as a more effective guarantee FINMA's political management and control while maintaining its independence in concrete supervision.
872 Ordinance of December 13, 2019 on the Financial Market Supervision Act
873 "Federal Council adopts new ordinance on the Financial Market Supervision Act", Federal Council media release dated 13.12.2019

not initiated or announced on its own initiative. FINMA now requires the prior explicit approval of the FDF for regulatory projects involving changes at the legislative or ordinance level.[874]

The FDF was also more closely involved in international standard setting through the aforementioned ordinance. Among other things, the possibility was provided for FDF or FINMA to participate in international organizations and bodies through the participation of the other authority, provided this is possible in accordance with the relevant bodies. Previously, the exchange of information between SIF and FINMA in relation to international institutions had difficult in the view of the former State Secretary for International Financial Matters, which had made SIF's work more difficult.[875] The specific form of cooperation and the exchange of information in the international activities of the FDF and FINMA has also been governed by an unpublished bilateral agreement since 2020.[876]

FDF-FINMA exchange channels

Similar to the discussions between the Federal Council and FINMA, the FDF holds talks with FINMA's bodies throughout the year, for example on current issues and challenges in regulation and in the international environment.[877] These include the semi-annual *strategic dialogues* between the FDF and FINMA (since 2019), but also a quarterly *policy dialogue* between SIF and FINMA. Although the latter has existed since 2018, it was only institutionalized in February 2020 through a bilateral memorandum of understanding.[878]

With the entry into force of the Ordinance to the Financial Market Supervision Act[879] , the aforementioned MoU also the *strategic dialogues* between the FDF and FINMA, which have since been held at least twice a year at the invitation of the FDF.[880] In addition to the head of the FDF, these dialogues were also by the Chairman of the FINMA Board of , the FINMA Director and the State Secretary for International Financial Matters. No joint minutes have been taken since the introduction of these meetings. However, FINMA prepares an internal note each time.[881] During the period under review, the strategic dialogues were used to discuss a variety of topics, such as FINMA's digital strategy and cyber security in banking supervision. FINMA assessed the current situation on the financial markets the beginning of each exchange.[882] In phase 1 (2015 to summer 2022), the situation at CS was not a topic in the strategic dialog.[883]

[874] Explanatory notes of the FDF on the Ordinance to the Financial Market Supervision Act of 13.12.2019, p. 23

[875] Written answers to the PUK dated 15.4.2024

[876] Minutes of the hearing of the GPK Subcommittees FDF-WBF NS of 20.4.2023

[877] Explanatory notes of the FDF on the Ordinance to the Financial Market Supervision Act of 13.12.2019, p. 24

[878] Letter from the SIF to the PUK "Excerpts from policy dialogues 2018-2024" dated 10.5.2024; hearing minutes of the FK-SN1 dated 28.4.2021; hearing minutes of the GPK Subkommissions FDF-WBF NS of 20.4.2023; Agreement on cooperation and information exchange in international activities and regulation, agreement between the FDF and FIMA of 1.2.2020

[879] Ordinance of December 13, 2019 on the Financial Market Supervision Act

[880] Letter from FINMA "Explanatory notes on its 2012-2023 chronology" to the PUK dated 26.9.2023

[881] FINMA statement of 7.8.2024 as part of the administrative consultation

[882] Brief reports on the FDF-FINMA strategic dialogues of 14.3.2022, 31.10.2022; hearing minutes of the FC-SN1 of 28.4.2021

[883] According to the crisis organization, the AF is the format in which an acute crisis such as the CS is being discussed. According to the Chair of the FINMA Board of Directors, the strategic dialog was not the right format for discussing the CS crisis, as no parallel format to the AF was to be created. Source: Written answers to the PUK of 25.6.2024, p. 13

Since their introduction, the *Policy Dialogues* have always taken place at the invitation of SIF. The recurring core topics of these exchanges include regulatory issues and the activities of SIF and FINMA in multilateral bodies or international negotiation processes. FINMA's supervision of systemically important banks was and still is not a fixed component of these exchanges and was/is instead discussed in the AF as required.[884] Nevertheless, were regular discussions between the authorities regarding the drafting of the TBTF regulation (see section 5.2) and the related demands of the two big banks UBS and CS. In particular, the revision of the Capital Adequacy Ordinance, but also the question of whether the liquidity requirements for systemically important banks need to be increased, were addressed several times.

Some meetings also revealed differing views regarding FINMA's management or tensions in the cooperation between the two authorities. For example, at the Policy Dialogue on 1 April 2019, SIF expressed concern about "the persistently fast pace at which the financial market regulatory framework has been adjusted for years" and requested an outlook from FINMA on upcoming regulatory projects. FINMA anticipated differences with the large banks affected in the area of TBTF regulation and explained that the high frequency of revisions was intended to simplify implementation for FINMA and those affected and was not part of a larger strategy ("salami-slicing").[885] FINMA made it clear that it considers a high level of liquidity and sufficient emergency planning to be key in the event of a crisis. In this context, reference was also made to a seminar held by FINMA and the SNB in March 2019 on the topic of liquidity and the public liquidity backstop (see section 5.2.5.3). In 2019, the SIF rejected a public discussion on an explicit PLB. Prior to this, the requirements for the first line of defense in the area of liquidity, namely the liquidity resources of the bank itself, were to be tightened again by law.[886] As this work was already underway, the SIF announced in January 2020 that Federal Councillor Maurer had agreed to the formation of a working group on possible forms of a PLB (see section 5.2.5.3).[887]

In November 2021, SIF informed the Federal Council that, as the risk owner, it had to submit a risk assessment in the area of TBTF. As the information publicly published by FINMA was not sufficient for this, SIF asked FINMA for an in-depth exchange on the data used. However, FINMA rejected such a bilateral exchange and referred to the AF, as in its opinion the SNB should also take part in such discussions. It also pointed out that

- in-depth discussions on existing gaps in processability and contingency plans can quickly become technical,
- the quantification of probabilities of occurrence and the amount of damage always depends on the specific scenarios and therefore only reflects reality to a limited extent, and
- information can only be passed on at institute level in an appropriate circle.

FINMA and the SIF subsequently agreed that the SIF could prepare specific questions that would be addressed in the context of the AF or at a technical level.[888] However, the specific documents were not made available to the SIF.[889]

884 Letter from SIF to the PUK "Excerpts from policy dialogues 2018-2024" dated 10.5.2024
885 Minutes of the policy dialog of 1.4.2019
886 Minutes of the policy dialog of 1.4.2019
887 Minutes of the Policy Dialogue of 15.1.2020
888 Minutes of the Policy Dialogue of 24.11.2021
889 Minutes of the PUK meeting of 24.4.2024

Addressing CS in the policy dialogues

CS's business situation between 2018 and 2023 was rarely discussed as a separate agenda item in the policy dialogs. One exception was the discussion on dealing with the Archegos and Greensill incidents. In September 2021, the question of whether FINMA sees a need to adjust its supervisory approach after analyzing the events was discussed in this context. FINMA stated in this regard that the bank's culture was mainly responsible for these incidents and that the decision-making responsibilities, incentive systems and governance by CS itself needed to be reviewed and adjusted if necessary.[890] FINMA had analyzed its own supervisory processes with regard to these two cases, but had not identified any fundamental need for improvement.[891] From September 2022 until the summer of 2023, all agenda items relating to CS or TBTF regulation were postponed to the meetings of the AF.

Exchange between FINMA and the parliamentary superintendence regarding CS between 2015 and 2022

As mentioned in section 3.5.2, the responsible FDF/FDEA subcommittees of the Control Committees deal annually with both the Federal Council's report on the achievement of strategic objectives as well as the strategy implementation report and FINMA's annual report. CS was mentioned several times between 2018 and 2022, often not in the context of its business activities, but with reference the impact of the TBTF legislation on the two Swiss G-SIBs.

When discussing the aforementioned reports in April 2021, the then FINMA Director mentioned the dangerous market environment for large banks and referred to FINMA's enforcement proceedings following CS's large losses in the Archegos and Greensill cases. He described the two cases as failures in risk management, but also saw them as an example of the limits of supervision, as the supervisory bodies such as the boards of directors and audit firms had not identified these positions as dangerous. He positively emphasized the banks' high TBTF capital buffers and stated that FINMA had required CS to fundamentally review its risk appetite in the investment bank.[892]

A year later, his successor also informed the subcommittees about these two enforcement proceedings and drew their attention to the fact that no other financial institution was taking up as much of FINMA's attention and resources as CS, against which eight enforcement proceedings had been opened in four years.[893]

Subcommittee 1 of the two Finance Committees, which are responsible for the FDF, have also been dealing with the Federal Council's annual report since 2017. The situation of CS was never explicitly discussed. However, the status of the implementation of the TBTF regulation was discussed.[894] However, discussions on the specific situation or business activities of an individual FINMA supervisor are generally not the task of parliamentary oversight.

890 Minutes of the policy dialog of 2.9.2021
891 Minutes of the policy dialog of 8.6.2022
892 Minutes of the FDF-WBF N/S GPK subcommittees on the Federal Council's report on the achievement of strategic objectives in 2020, FINMA's 2020 strategy implementation report and FINMA's 2020 annual report of 27.4.2021
893 Minutes of the FDF-WBF N/S GPK subcommittees on the Federal Council's report on the the achievement of the strategic objectives in 2021, FINMA's 2021 Strategy Implementation Report and FINMA's 2021 Annual Report of 26.4.2022
894 Minutes of the FC subcommittees 1 B+G/EFD on reporting on the achievement FINMA's strategic objectives of 28.10.2020 and 28.4.2021.

5.6.3 Supervision of the FAOA

The following table provides an overview of the various formats in which the FDJP exchanges information with the FAOA. These formats are presented and explained in detail below.

Table 13: Overview of the oversight and exchange channels between the FDJP and FAOA

Designation	*Participants*	*Contents*	*Frequency*
Owner's meeting with the FDJP	Head of the FDJP, General Secretary of the FDJP, Chairman of the BoD FAOA, Director of the FAOA	Strategic objectives and fulfillment of the tasks of the FAOA	Once or twice a year
Management meetings	Director FAOA, specialist responsible for risk management, information security, data protection of the FAOA and the GS- FDJP	Risk management, IT security, data protection	Periodically (three meetings since 2015)

The FAOA is an institution under public law with its own legal personality and oversight of audit firms in a professionally independent manner.[895] Like FINMA and other institutions under public law, it is also subject to administrative oversight by the Federal Council,[896] as explained in section 3.5.3, which in this case acts through the FDJP.

Supervision as part of the owner meetings

The minutes of the owner meetings held in this context between 2017 and December 2023 are summarized. The FAOA prepared extensive preparatory information notes in advance of each meeting. The minutes of the owner meetings show that the topic of CS was not raised until May 2023, i.e. after the emergency merger had taken place. No reference was to other cases involving systemically important banks in owner meetings until May 2023. Only in August 2021 and December 2022 was the FDJP informed by the FAOA about the Wirecard case in Germany.[897] As part of the annual owners' meeting, the FAOA also makes a statement from a risk management perspective on whether there is a major audit scandal that has or could have political significance. To date, the FAOA has not drawn attention to any possible scandal, as there was no objective reason to do so.[898]

Review of the achievement of strategic goals

In addition to the owner discussions, the Federal Council reviews the achievement of the FAOA's strategic objectives annually in the form of a publicly published summary report. According to the Federal Council's summary reports, the implementation of the strategic

[895] Art. 28 para. 2 RAG
[896] Art. 38 para. 2 RAG
[897] Minutes of the owner meetings FDJP-RAB of 16.2.2017, 30.1.2018, 28.10.2019, 30.8.2021, 16.12.2022, 10.5.2023, 1.12.2023
[898] Letter from the FAOA to the PUK dated 6.12.2023, p. 18

targets in the period under review according to plan. The Federal Council's short report of 2022 also shows that the FAOA has satisfactorily taken into account long-term trends such as the digitalization of the industry and reacted to short-term monitoring issues such as the war in Ukraine, the possible split-up of Ernst&Young or the review of reports on sustainability or crypto companies.[899] No explicit reference to the CS case can be seen in the naturally generic strategic objectives for 2024-2027.

Exchange during the management meetings

At the three management meetings between the GS-FDJP and the FAOA that took place between 2015 and 2023, neither CS nor general concerns about individual audit firms were discussed.[900] According to the FAOA and the FDJP, the FDJP was informed of how the FAOA's review frequency and risk-based review approach work and that the FAOA has reviewed CS's audit mandate annually since 2012.[901]

Supervisory bodies of the Federal Assembly

The Federal Council submits an annual report to Parliament on the achievement of objectives by the independent units (see section 3.5.2). All Federal Council reports on the achievement of strategic objectives are sent to the Control Committees. Some reports are dealt with annually by the relevant body as standard, others only at the request of a member of a committee.[902] The achievement of strategic objectives by the FAOA was not on the agenda of the audit committees during the period under review.[903]

5.7 Risk management and structures for early crisis detection

The Confederation's crisis management and early crisis detection are important components of risk management. Risk management is intended to identify, analyze and monitor risks, which is why there is a mutual dependency between risk management and early crisis detection.

In the present thematic context, important questions also arise with regard to risk management and early crisis detection.

5.7.1 The risk of insolvency of a financial institution in the risk management of the federal government

5.7.1.1 The main features of the Confederation's risk management system

The current risk management system was established and further developed between 2002 and 2009. Risk management is a management tool on the

899 Federal Audit Oversight Authority: Summary report of the Federal Council on the achievement of strategic objectives in 2022, 5.4.2023, https://www.rab-asr.ch/> The FAOA
> Strategic objectives> Period Objectives 2020-2023> Summary report by the Federal Council on the achievement of the strategic objectives in 2022 (as at 19.8.2024)

900 Minutes of the discussions between the FAOA and GS-FDJP of 12.11.2015, 10.1.2019, 30.8.2021

901 Letter from the FAOA to the PUK dated 25.4.2024, p. 5; letter from the GS-FDJP to the PUK dated
22.2.2024, S. 3

902 This information is published in the annual program of the GPK.

903 The subcommittees 4 of the Finance Committees responsible for the FDJP also deal with the achievement of the FAOA's strategic objectives every year. In 2023 and 2024, questions relating to the audit at CS were also discussed. A report on the key findings is to the plenary committees each year. Source: Minutes of Subcommittee 4 (FDJP/DDPS) of the Finance Committees of 28.4.2021; 27.4.2022; 18.4.2023 and 24.04.2024.

The Federal Council, department and administrative units are responsible for identifying and managing risks. According to the manual of the Federal Finance Administration, which is responsible for this, the findings of risk management must be integrated into the business and management processes.[904] In particular, risk management should enable the authorities to take timely measures to minimize or avoid risks.

Federal risk management is organized on a decentralized basis. All administrative units record their own risks. In addition to the various administrative units, the Risk Management Coordination Office, which is based at the FFA, on the one hand, and the General Secretaries' Conference, on the other, have important central tasks. While the Coordination Office ensures the homogeneous implementation of risk management in the Federal Administration - without the authority to issue directives - the GSK consolidates and prioritizes the risks at Federal Council level. The Federal Council takes note of the risk reporting once a year, in spring. The most important risks are brought to the attention of the Federal Council a second time as part of an update, in the fall of each year. Parliamentary oversight is exercised by the Risk Management Working Group of the CPC, which deals with risk reporting to the Federal Council on an annual basis.[905]

In order for risk management to be optimally designed and to the expected effect, requires cooperation between those responsible for management and those persons who are entrusted with risk management in an administrative unit. Regular exchange is therefore of great importance, especially in the vertical relationship between the various management levels.

The Confederation's risks are based on the objectives and tasks of the Confederation as defined by law and the Constitution.[906] The most important risks of the Federal Administration are reported to the Federal Council and designated as Federal Council risks. The decisive factor here is the classification of a risk according to its impact[907] and its probability of occurrence[908]. If a risk is above a predefined threshold value, it is automatically a Federal Council risk.

5.7.1.2 Insolvency of systemically important financial institutions as a risk

Following the financial crisis of 2007/08 and the state rescue of UBS, a new risk was added to the Confederation's risk reporting: "Imminent insolvency of systemically important financial institutions". This has always been classified at the level of Federal Council risks. Its designation has been slightly adjusted over the years.

The developments in this risk during years 2014-2023 are presented below. During this period, the GSK dealt explicitly with this risk once, specifically in 2016 (see below).

The risk has been the responsibility of SIF since the beginning. Nevertheless, up to and including the reporting on the 2019 risk update, the respective head of department was listed as the risk owner, which was not necessarily the case for other risks. Since the 2019 risk reporting

904 FFA: Handbuch zum Risikomanagement Bund, p. 8 and 13

905 In this context, the PCC asked the CPC for access to the excerpts from the minutes of the working group meetings in the period 2014-2023 relating to the risk of "insolvency of a systemically important financial institution". The GPK complied with this request and provided the PUK with the relevant excerpts from the minutes.

906 Risk: "Events and developments that have a certain probability of occurring.
and have a significant negative financial and non-financial impact on the achievement of the objectives and the fulfillment of the tasks of the Federal Administration". In: FFA: Handbuch zum Risikomanagement Bund, p. 64

907 Risk reporting recognizes the following impact levels: CHF 0-1 million (very low), CHF 1-10 million (low), CHF 10-100 million (moderate), CHF 100-500 million (significant), CHF 500-
CHF 1000 million (high), greater than CHF 1000 million (very high).

908 Risk reporting recognizes the following levels of probability of occurrence: 0-1 % (very unlikely), 1-2 % (unlikely), 2-10 % (rare), 10-33 % (possible), 33-50 % (likely), 50-100 % (very likely).

the State Secretary for International Financial Matters acts as the risk owner. It is the task of the SIF to promote the stability of the Swiss financial sector (Art. 7 para. 1 lit. b OV-EFD).

Risk reporting 2014 - the starting position

In the 2014 risk report, it was stated in the risk description that the insolvency of a systemically important financial institution would have far-reaching consequences for the entire economy (impact on private households, companies and pension funds). In order to avert these drastic consequences, the federal government would have to the affected bank with public funds. The *credible worst case* was the example of the government support of UBS with CHF 60 billion in 2008 on the one hand and massive tax losses on the other. In addition to an international financial or banking crisis, criminal and regulatory misconduct by Swiss financial institutions or risky business practices were also cited as the main causes. Both risk-reducing and risk-increasing factors were also listed.

The risk-reducing measures included strengthening the equity base, increasing the requirements of domestic and international financial market regulation with regard to crisis resilience, organizational adjustments for ex ante segregation of systemically important domestic business as part of emergency planning, international withholding tax agreements, the adoption of the automatic exchange of information, the agreement with the USA in the tax dispute and CS's settlement with the US judiciary.

Risk-increasing factors at the time were the tax dispute with EU states, proceedings against individual Swiss institutions abroad and an intensification of the debt crisis in the EU. According to reporting, the overall risk had decreased somewhat in the reporting period, in particular because the big banks' legacy issues with the US authorities were resolved. At the time, UBS, CS, Zürcher Kantonalbank and the Raiffeisen Group were considered systemically important banks.

The 2014 risk report contains numerous measures to reduce or prevent the occurrence of risk, some of which had already been included in previous years. The measures primarily related to the further development of TBTF regulation (adoption of Basel III, memorandum of understanding between the FDF, FINMA and SNB, tightening of regulatory measures, amendment of the Banking Act and the corresponding ordinance provisions). As a new measure, the adjustment of TBTF regulation based on the Federal Council's report was included within the meaning of Article 52 of the Banking Act. The TBTF regulation ultimately represents a central measure to prevent the occurrence of the risk or to mitigate its consequences.

Unchanged classification in risk reporting 2015

In 2015, the classification and description of the risk and the related measures remained essentially unchanged. The only notable change was the designation of PostFinance as systemically important by the SNB. In the meantime, the Federal Council's review report on TBTF regulation had been published, and the need for action set out therein was integrated as a new measure in the 2015 risk reporting. The automatic exchange of information and agreements on the regularization of the past were also included in the set of measures.

As part of the preparation of the risk report for the Federal Council by the GSK, the question was raised as to why the probability of occurrence of the risk had not decreased despite the numerous measures taken. The then Director of the FFA argued that not all measures had yet been implemented and that the global economic situation was uncertain. Otherwise, the SIF could have downgraded the risk.[909]

909 Minutes of the GSK 26.2.2016.

Constant assessment in risk reporting 2016

In the following year, 2016, both the classification and the description of the risk remained unchanged. No new measures were formulated. However, risk reporting referred to the recent amendments to the TBTF regulation. These related to the Capital Adequacy Ordinance and the Banking Ordinance and were adopted in May 2016 (see section 5.2.3).

On the occasion of the discussion between the Working Group on Federal Risk Management of the CPC and the then Secretary General of the FDF, the latter held out the prospect that the stabilization of the international financial markets and the effective measures within the framework of TBTF regulation could lead to the risk being downgraded in the future.[910]

Downgrading of the risk in risk reporting 2017

With the 2017 risk report, the Federal Council effectively downgraded the probability of occurrence by one level from "possible" (once every 3 to 10 years) to "rare" (once every 10 to 50 years) at the request of the FDF. The impact classification remained unchanged at "very high". The FDF justified the downgrading by stating that the measures introduced and decided upon had been partially implemented by the institutions concerned or that their implementation was well advanced. Furthermore, according to the reporting, both the political and economic environment had stabilized. The risk description was not adjusted further and contained the same elements as in previous years. The introduction of emergency plans both international and national systemically important institutions was listed as a new measure. The emergency plans for the international systemically important institutions had to be in place by December 21, 2019.

New measures in risk reporting 2018 and 2019

In 2018, classification and risk description from the previous year were carried over. However, the FDF introduced new measures. Due to the finalization of the Basel III package, there was also a need for adjustments for Switzerland (section 5.2). In addition, further measures were taken in the area of TBTF regulation on the basis of the Federal Council's second audit report (new capital requirements), which in particular made a revision of the Capital Adequacy Ordinance necessary. At the same time, the then Head of the FDF the CPC that the TBTF regulations had now been finalized and were to be implemented accordingly. The aim was to ensure liquidity so that deposits could paid out in the event of a crisis. Overall, Switzerland is "doing well", as Swiss banks are among the best capitalized internationally.[911]

There were also no significant adjustments in the 2019 risk reporting, neither in the classification nor in the risk assessment. Compared to the previous year, there is one new measure in the reporting, which again shows an adjustment to the TBTF regulation. A revision of the CAO was intended to ensure that sufficient capital is available in Switzerland in the event of a crisis. Furthermore, the discounts on gone-concern requirements that FINMA could grant a bank in the event of an improvement in resolvability should be abolished by 2022 (see section 5.2).

During the annual discussion with the Federal Risk Management Working Group, the then Secretary General of the FDF stated for the record that with the implementation of the Basel III standards, the risk could be further downgraded or completely removed from the core risks in the coming years.[912]

910 Minutes of the ArG Risk Management Federation of the GPK of 28.4.2017, p. 22 f.
911 Minutes of the ArG Risk Management Federation of the GPK of 2.5.2019, p. 30
912 Excerpt from the minutes of the ArG Risk Management Federation of the GPK of 30.4.2020, p. 1

Neither deletion nor downgrading of the risk in risk reporting 2020

However, the FDF maintained the risk in subsequent years: neither a deletion nor a downgrade was made in the 2020 risk report. Only minor adjustments were made to the description of the risk scenario. For example, a new distinction was made between banks and other financial market infrastructures.[913]

In the explanations of the impact and probability of occurrence, the FDF now stated that there were no indications that the Covid-19 crisis would have jeopardized the stability of systemically important banks or the systemically important financial market infrastructure in Switzerland. However, the situation is more difficult to assess for Swiss TBTF institutions in an international context. Nevertheless, the FDF decided to adjust the classification.

At the same time, the introduction three new measures was mapped. With regard to the emergency plans, the SIF noted that both the CS and UBS plans were deemed feasible by FINMA. In the case of UBS, however, the FDF expressed a reservation, as UBS had to further reduce the financial interdependencies within the Group. The second measure concerned the review of financial market infrastructure regulation as well as the supervision and monitoring of the financial market infrastructure. The FDF hoped for a critical examination of the current rules. Finally, it was about revising the Liquidity Ordinance. This was intended to strengthen the resilience of a systemically important bank during restructuring and resolution.

Confirmation of the assessment in the 2021 risk reporting

The 2021 reporting confirmed the assessment that the Covid-19 crisis had not jeopardized the stability of the systemically important banks and the systemically important financial market infrastructure in Switzerland. The report did not contain any significant innovations. However, the comments on the measures introduced are worth mentioning: With regard to the already outlined revision of the Liquidity Ordinance, the corresponding description of measures stated that Switzerland did not have a public liquidity backstop. The revision of the ordinance is intended to ensure that systemically important banks have the necessary liquidity to better absorb so-called liquidity shocks and to be able to meet their payment obligations even in these situations.

During the annual discussion with the FDF working group, the then Secretary General of the FDF stated that the FDF did not see any particular potential for the risk to materialize at that time.[914]

Increase in the probability of occurrence in risk reporting 2022

In the 2022 risk report, which was prepared by the FFA on February 15, 2023 and submitted to the Federal Council, the was reassessed and reclassified. The SIF increased the probability of occurrence from "rare" to "possible", primarily due to the liquidity crisis at CS. When changing the assessment, the SIF noted that the risk to a financial institution due to risky business practices or misconduct in Switzerland and abroad should not be underestimated. The massive loss of confidence in CS was explicitly mentioned for the first time. This had already been going on for several months at the time. In terms of the causes of the risk, it was noted that risky business conduct could lead to a loss of confidence on the part of market participants, which could result in high liquidity outflows. The consequences of a loss of confidence could be mitigated preventively by introducing a PLB.

The measures were also assessed in the 2022 risk reporting. This showed whether the implementation of a measure was, in the opinion of the

913 The language of the "credible worst-case scenario" was also revised, although this had no impact on the content.

914 Excerpt from the minutes of the ArG Risk Management Federation of the GPK of 12.4.2022, p. 3

of the risk owner went according to plan and how the effectiveness of a measure was assessed. For example, the effectiveness of the audit reports on TBTF regulation was only rated 3 on a scale of 1 to 4, with 1 being the best rating. In contrast, the implementation and effectiveness of the entire set of measures was rated 2. FINMA also concluded that the emergency plans of CS and UBS could be implemented. Both banks had made further progress. After it had been emphasized in the previous year that Switzerland did not have a PLB, a corresponding measure was now explicitly in the reporting. This was intended to ensure a federal default guarantee for SNB liquidity loans. This was accompanied by the hope of preventing a possible loss of confidence. The necessary revision of the Banking Act was to be discussed by the parliamentary committees in 2023.

The annual discussion with the CPC working group took place in April 2023, i.e. after the emergency merger of CS with UBS. The Secretary General of the FDF explained that thanks to the measures taken by the Federal Council, Finance Delegation, FINMA and the SNB, it had been possible to prevent the credible worst-case scenario from occurring. With such a loss of confidence, even more liquidity would not have been effective. Therefore, the TBTF legislation could not have been applied.[915] The then President of the Swiss Confederation testified that there had already been signs of problems in 2022. However, it was not the time to adjust the risk reporting at that time, as the risk had already begun to materialize.[916]

5.7.1.3 Need for optimization from the point of view of the CPC regarding the Confederation's risk management (CPC Report 2018)

The CPC has been dealing with risk reporting to the Federal Council since 2009. On January 30, 2018, they published a report on the Confederation's risk management.[917] In it, the CPC formulated a total of seven recommendations to the Federal Council. The recommendations did not directly concern the risk of "insolvency of a systemically important financial institution", but rather the need for action identified at the time from the perspective of the superintendence and thus the following areas: Risk updates, indicators of probabilities of occurrence and criteria for escalation to the Federal Council. The most important finding in the GPK report was that the top-down approach to risk management, according to which the Federal Council actively uses risk management and reporting as a management tool, was partially lacking.

The Federal Council commented on the recommendations of the FPC on 21 March 2018.[918] The Federal Council countered the finding that the top-down approach was partially lacking at Federal Council level by referring to the decentralized organization of risk management, the collegial and departmental principle and the importance of the coordination office in the FFA.

With regard to the recommendation to introduce criteria for escalation to the Federal Council, the Federal Council stated that suitable escalation criteria already existed. The departments must inform the Federal Council immediately in the event of an extraordinary risk situation.[919] The Federal Council was of the opinion that the terms "extraordinary" and "immediately", which primarily refer to the probability of occurrence and the impact, were clear enough.

915 Excerpt from the minutes of the ArG Risk Management Federation of the GPK of 20.4.2023, p. 2 ff.

916 Excerpt from the minutes of the ArG Risk Management Federation of the GPK of 20.4.2023, p. 8.

917 Risk reporting for the attention of the Federal Council - a review, Report of the GPK-N/S of 30.1.2018 (BBl **2018** 1457)

918 Risk reporting for the attention of the Federal Council - a review, Federal Council statement of 21.3.2018 on the GPK report of 30.1.2018 (BBl **2018** 2381)

919 Federal Council directives of 24.9.2010 on the Confederation's risk policy (BBl **2010**

6549, No. 5 para. 4 lit. d.)

5.7.2 Early crisis detection

Early crisis detection at Federal Council level is the responsibility of the Federal Chancellery and is of a strategic nature. In accordance with Article 32 lit. g RVOG, the Federal Chancellor advises and supports the Federal Council in the timely detection and management crises. He also ensures a long-term and continuous analysis of the situation and environment (Art. 32 lit. c^{ter} RVOG), which is upstream of early crisis detection. These tasks are carried out within the Federal Chancellery by the Strategic Command Support Section. It provides an external view and a picture of the crisis potential outside the Federal Administration to complete risk management.

5.7.2.1 Role of the BK

Early crisis detection by the FC has an observation horizon of one to one and a half years. The task of early crisis detection is to identify, analyze and risks that could potentially lead to a crisis relevant to the Federal Council. In order to be able to recognize and manage crises, the Federal Chancellor has cross-departmental coordination tasks (Art. 33 para. 1bis RVOG). The FC reports new findings or deviating assessments in the context of early crisis detection to the responsible department via the Federal Risk Management Coordination Office.

5.7.2.2 How early crisis detection works

At a hearing of the responsible Vice Chancellor by the Working Group on Federal Risk Management of the Audit Committee in 2017, the Vice Chancellor stated that early crisis detection consisted, among other things, of reviewing all risks in risk reporting. The aim was to analyze whether all risks had been recorded. It is primarily about an external view. The BK's analysis is based on sources external to the administration. Early crisis detection is primarily based on the evaluation of various media or publications from think tanks and universities. The then Vice-Chancellor this aspect in particular as added value in connection with risk management. The responsible administrative units would then be confronted with the findings. Various risks were supplemented by this process. The procedure described was part of the risk reporting process.[920]

5.7.2.3 Cooperation between the FC and FDF on risk "Insolvency of a systemically important financial institution"

The PUK clarified how the risk of insolvency of a systemically important financial institution was factored into the early recognition of the crisis and what impact the early recognition of the crisis had on risk management. The various players involved in managing the risk on the one hand and the Vice-Chancellor responsible at the time on the other were asked for an assessment.

According to the Director of the FFA, the FFA works closely the FC as a coordinating body with regard to risk management. The FC prepares a report for the FFA, which may also contain recommendations. Following an exchange with the administrative unit concerned, the FFA informs the FC whether a new risk has been included.[921]

The Vice-Chancellor, who was responsible for early crisis detection at the time, again stated - as he had already done to the GPK working group in 2017 - that early crisis detection is carried out in addition to risk management.

920 Minutes of the ArG Risk Management Federation of the GPK of 9.11.2017, p. 5 f.
921 Minutes of the PUK meeting of 24.1.2024, p. 38 f.

As the risk of "insolvency of a systemically important financial institution" had already been identified, the FC had no further role to play with regard to early crisis detection.[922] According to him, the risk and the measures taken were monitored and followed up by the FDF. As soon as the risk began to materialize, the FC and the Federal Council - according to the then Vice Chancellor - were no longer in the early detection stage anyway, but in crisis management.[923] No documents on early crisis detection were submitted to the PUK.

6 Phase 2: Start of the crisis, fall 2022 to March 2023

CS's situation came to a head from summer 2022 onwards. This chapter begins with a description of how the financial markets in general and CS in particular developed (see section 6.1). The following subchapters (sections 6.2 to 6.4) describe the management of the authorities in the context of a situation that first slowly (from summer) and then noticeably (from October) became more acute.

Three sub-phases are distinguished: 1. the period between summer and September (first signs of a crisis, section 6.2), 2. the period from October to December (liquidity outflows in October, intensified crisis preparation and preparation for a change of department, section 6.3) and 3. the phase from January to the beginning of March 2023 (continued preparation for a possible acute crisis under new departmental management, section 6.4).

FINMA's ongoing microprudential supervision of CS is described at the beginning of each of the three sub-chapters mentioned above (sections 6.2.1, 6.3.1, 6.4.1), as this the most direct point of contact between the federal authorities and CS: As part of its ongoing supervision, FINMA was the first authority to be informed of CS's changing situation. It was also up to FINMA to take appropriate measures as part of its statutory duties. The SNB also various measures during this period as part of its macroprudential duties (sections 6.2.2, 6.3.2). The description of these supervisory activities therefore forms a suitable starting point for the subsequent explanations of the actual crisis management by the Federal Council, the FDF and the LG and AF coordination units (from sections 6.2.3, 6.3.3 and 6.4.2 respectively). For illustration purposes, the introduction to Chapters 6.2, 6.3 and 6.4 contains a diagram of the CS minimum liquidity ratio.

6.1 Relevant context

This chapter first sets out the events that influenced the global economy and financial markets between the beginning of 2022 and spring 2023. then outlines the most important developments at CS from the second half of 2022 to the beginning of March 2023. Developments at CS from mid-March 2023 are closely linked to the acute crisis in March 2023 and are therefore explained in section 7.1.

922 Written answers to the PUK dated 12.4.2024, p. 2 f.
923 Written answers to the PUK dated 12.4.2024, p. 2 f.

6.1.1 Development of the financial markets, 2022 to March 2023

In 2022, the economy recovered as a result of the extensive lifting of pandemic restrictions. The associated increase in demand led to a rise in prices. Following the emergence of new waves of infection in various regions, particularly in China and the major eurozone countries, measures were again to contain the pandemic, which disrupted global supply chains. These supply chain disruptions were significantly exacerbated by the Russian invasion of Ukraine on February 24, 2022, causing prices to rise again and more sharply and sustainably than expected.[924] In order to counteract the unexpectedly high inflation, central banks quickly key interest rates. Between June and December 2022, the SNB raised its key interest rate three times, from minus 0.75 % to plus 1 %.[925] This also increased nominal interest rates for loans, which reduced demand for credit.[926] On the one hand, the aforementioned developments slowed global economic growth in 2022.[927] On the other hand, they led to a general slump in bank share prices, which affected eurozone banks the most.[928]

The high inflation slowly decreased at the beginning of 2023. However, the above-average level further weakened purchasing power and tightened conditions on the financial markets.[929] Some corporate credit ratings also deteriorated and risk premiums on corporate loans tended to remain high.[930]

6.1.2 CS: Developments from summer 2022

After CS announced a comprehensive strategy review by the end of October 2022 in July 2022 (see section 5.1.2), things went quiet around the bank for a few months. This changed on October 1, 2022, when an Australian journalist wrote on Twitter (now "X") that he had learned from a credible source that an international investment bank was on the verge of going out of business. The already existing uncertainties surrounding CS and the pending concretization of its strategy review led to speculation that the tweet could refer CS.[931] On the following Monday, 3 October 2022, CS's share price fell by 11 %. Shortly afterwards, customers deposits worth over 100 billion francs.[932] This was a bank run of historic proportions. Despite the huge outflow of funds, FINMA still considered CS to be in compliance with regulatory liquidity requirements.[933]

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924 SNB (2022): Financial Stability Report 2022, p. 8. By way of illustration, consumer prices in Switzerland rose by 2.8% in 2022 compared to the previous year. In the previous four years, the year-on-year change was less than 1 %. Source: FSO: Prices, https://www.bfs.admin.ch/bfs/de/home.html > Statistics > Prices > Consumer prices > Indexation (as at 20.6.2024)

925 SNB: Official interest rates, 21.5.2024, https://data.snb.ch/de/topics/snb/cube/snboff-zisa?fromDate=2020-01&dimSel=D0(LZ,UG0,OG0)&toDate=2023-04 (as at: 20.6.2024)

926 EZB (2022): Economic Bulletin Issue 8, p. 2

927 SNB (2023): Financial Stability Report 2023, p. 11

928 SNB (2022): Financial Stability Report 2022, p. 11. To illustrate: at the end of 2021, the eurozone equity index, with a base value of 100 on 31.12.2019, was around 120. There were sharp fluctuations over the course of 2022, and at the end of the year the index was still just under 100. Source: SNB (2024): Financial Stability Report 2024, p. 14

929 SNB (2023): Financial Stability Report 2023, p. 11

930 SNB (2023): Financial Stability Report 2023, p. 12

931 FINMA (2023): Lessons learned from the CS crisis, p. 34

932 Expert report Hau/Rochet (2024), p. 24 f.

933 FINMA (2023): Lessons learned from the CS crisis, p. 34. See chapters 6.2, 6.3, 6.4 and 7.1.1 for charts on the minimum liquidity ratios of CS Group, CS Stammhau and CS (Switzerland) Ltd. between July 2022 and March 2023.

On October 27, 2022, CS presented its new strategy, as planned and communicated in the summer of 2022 (see section 5.1.2). This envisaged an accelerated reduction in costs over the next three years and, in particular, a restructuring of the investment bank.[934] The restructuring was financed by means of a capital increase of CHF 4 billion by issuing new shares to "qualified" investors.[935] These investors included Saudi National Bank, which became CS's largest shareholder with a stake of 9.9 %.[936] CS also in its media release that progress had been on the partial sale of the Securi- tized Products Group to Apollo Global Management (see Box 9 in section 6.3.1.1).

The markets reacted cautiously to CS's restructuring strategy. There was uncertainty about its implementation and the future profitability of CS. As a result, the rating agencies S&P[937] and Moody's[938] lowered CS Group's ratings again in November 2022, just a few months after the last downgrade (see section 5.1.2). These downgrades further increased CS's financing costs and severely restricted its access to short-term financing markets and thus also its ability to enter into business relationships and retain its client base.[939]

At the beginning of January 2023, CS was nevertheless able to place long-term bonds worth over CHF 4 billion on the market and thus stabilize its liquidity position.[940] The extent of the losses recorded in 2022 became public when CS published its results for the fourth quarter of 2022 on 9 February 2023. Assets under management alone had fallen by CHF 107 billion. The CS Group's net cash outflows amounted to CHF 110.5 billion in the fourth quarter of 2022. By comparison, it had recorded net new assets of CHF 1.6 billion in the fourth quarter of 2021.[941] According to FINMA's analysis, there were initially no significant negative client reactions to this publication.[942] This changed when CS had to announce on March 9, 2023 that it had to postpone the publication of its annual report due to an intervention by the Securities and Exchange Commission (SEC) (see section 7.1.2).

Figure 6 shows the development of the CET1 capital ratio. This ratio can be used to estimate how well a bank can absorb losses and thus maintain its obligations.[943] Since 2015, FINMA has demanded that CS

934 "Credit Suisse unveils new strategy and transformation plan", CS media release dated 27.10.2022, https://www.ubs.com/global/en.html > About us > Media > Credit Suisse, Part of UBS group (as at: 14.11.2024)

935 "Credit Suisse unveils new strategy and transformation plan", CS media release dated 27.10.2022, p. 1, https://www.ubs.com/global/en.html> About us> Media> Credit Suisse, Part of UBS group (as at 14.11.2024)

936 FINMA (2023): Lessons learned from the CS crisis, p. 35

937 "Credit Suisse AG Downgraded To 'A-/A-2' On Execution And Franchise Risks Under Restructuring Plan; Outlook Stable", announcement by S&P Global dated November 1, 2022, https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/2910979 (as of 11/14/2024)

938 "Moody's affirms Credit Suisse Group's AG senior unsecured debt at Baa2 and downgrades Credit Suisse AG's senior unsecured debt to A3 and deposits to A3/Prime-2; out- look negative", press release by Moody's Investors service dated 1.11.2022, https://www.credit-suisse.com/media/assets/about-us/docs/investor-relations/debt-investors/ratings-credit-reports/csg-moodys-rating-action-011122.pdf

939 SNB (2023): Financial Stability Report 2023, p. 26

940 Expert report Hau/Rochet (2024), p. 25

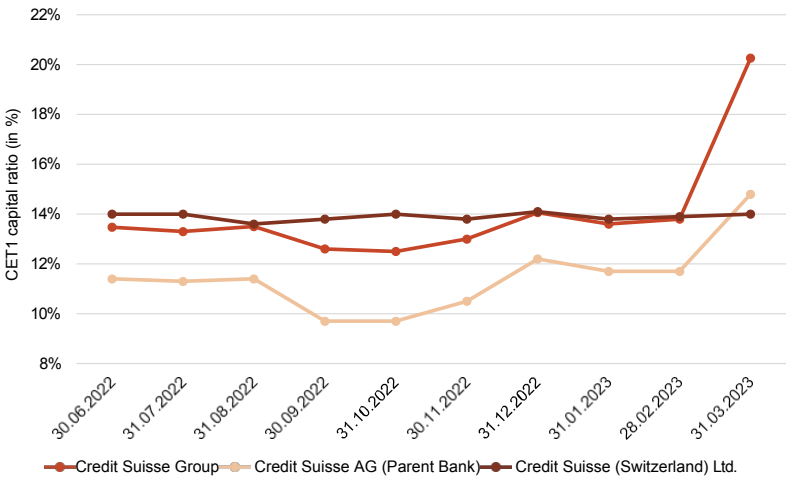
941 "Credit Suisse publishes financial results for the fourth quarter of 2022", Credit Suisse media release dated 9.2.2023, https://www.ubs.com/global/de/ > Global Topics > Media > Credit Suisse, part of the UBS Group (as at 22.11.2024)

942 FINMA (2023): Lessons learned from the CS crisis, p.36

943 BIS: Definition of capital in Basel III - Executive Summary, https://www.bis.org/fsi/fsisummaries/defcap_b3.pdf (as at: 4.7.2024)

always a ratio of at least 10 %. At times in 2021, it was almost 11%.[944] CS Group AG always complied with this requirement between July 2022 and March 2023.[945]

Figure 6: Monthly CET1 capital ratio of the three most important CS entities, July 2022 to March 2023



Source: This chart is based on the figures to FINMA by CS.[946] CS provided FINMA with the figures shown on a monthly basis.

6.2 Management of the authorities against the backdrop of the deteriorating situation of CS (July to September 2022)

Until the decision by the AF and FINMA on October 5, 2022 to switch to crisis mode, the federal authorities monitored CS's business activities primarily within the framework of the existing regulatory structures. For this reason, the coordination bodies such as the AF did not yet meet with increased frequency. CS's liquidity ratio remained largely stable between July and September 2022, as can be seen in Figure 7.

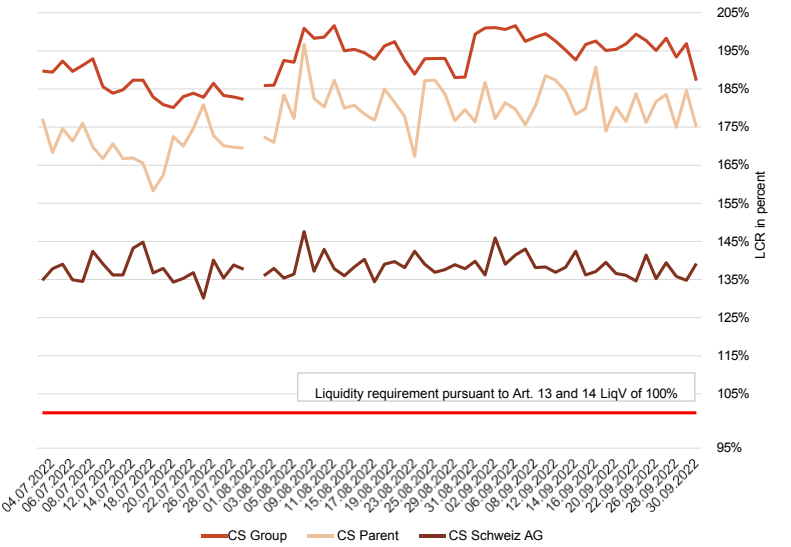
As the massive liquidity outflows were the trigger for the red phase of the various bodies and these "only" took place in October 2022, this chapter is primarily structured according to the responsibilities of the bodies. The description of FINMA's microprudential supervision (section 6.2.1) is followed by a description of the macroprudential measures taken by the SNB (still without explicit coordination with the other bodies, section 6.2.2), and finally it is shown how the AF and the LG dealt with the increasingly serious crisis situation at CS (section 6.2.3).

944 FINMA (2023): Lessons learned from the CS crisis, p. 59

945 The CET1 capital ratio sharply in March 2023, mainly due to the of AT1 capital. Source: CS; "Credit Suisse Group announces first quarter 2023 financial results", CS media release dated 24.4.2023, https://www.ubs.com/global/en.html > About us > Media > Credit Suisse, Part of UBS group> Credit Suisse Group announces first quarter 2023 financial results p. 2 (as at 22.11.2024)

946 The figures for CS AG therefore include the regulatory filter, see section 5.3.3.

Figure 7: Minimum liquidity ratio of the three most important CS units, July-September 2022 (LCR in %)



Source: This chart is based on the figures provided to FINMA by CS. CS provided FINMA with figures every Friday with values from Thursday to Wednesday. The liquidity requirement of 100% shown in red, which CS had to comply with, comes from FINMA's public communication and applied to all banking institutions in Switzerland.[947]

6.2.1 FINMA: Supervisory measures as part of its microprudential supervision of CS in the context of the growing crisis

FINMA monitored CS's capital situation and contingency measures during this phase as part of its ongoing supervisory activities. On the other hand, it launched a project on July 5, 2022 to support the change in strategy. It thus dealt intensively with the bank's restructuring plans (code name "Project Africa").

FINMA supervision of the capital situation contingency measures

In view of the bank's "structural loss-making situation", FINMA turned to the On July 14, the bank sent a letter with two demands to the Executive Board and the Board of Directors of CS. Firstly, it criticized the bank's previously submitted *contingency measures*, which aimed to comply with the regulatory requirements on capital ratios in the event of unplanned events. FINMA again demanded the submission of a concrete plan with options for action by the end of the month, which should be immediately implementable and effective in the short term. Secondly, it that it would closely monitor the implementation of the planned *capital* and *financing instruments*. It also demanded results on this by the end of the month. The bank should show how it intends to build up or replace the AT1 instruments.

[947] For details of the regulation, see FINMA, Welche Anforderungen an Eigenmittel und Liquidität müssen die Institutionen erfüllen?, 17.6.2022, https://www.finma.ch/de/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/key-metrics-chart-pack-2021.pdf?sc_lang=en&hash=B165AAA8F2364D7633AF34F0A2AC79A9 (as at 8.7.2024)

The bank is planning to issue bail-in bonds in order to with the Pillar 2 requirements for the core capital ratio (Tier 1). FINMA also expressed its expectations to CS regarding the issuance of bail-in bonds to ensure its global resolvability. It also demanded an increased liquidity holding with a sufficient buffer to the already existing increased liquidity requirements of FINMA for CS and justified this with the difficult market environment and the bank's structural loss situation.[948]

In its response dated July 25, 2022, CS outlined various capital scenarios for CS Group and CS AG and also presented four options for strengthening the capital position of both entities. It also addressed the overview of the planned issuance of AT1 bonds requested by FINMA and stated that it had taken various measures to protect its liquidity position in view of the tense macroeconomic situation and the specific concerns regarding the bank's current profitability[(949).]

In August 2022, FINMA once again formulated its expectations of CS with regard to the upcoming work and intensified its monitoring of the preparatory processes. On August 5, 2022, it requested weekly status updates with the bank's CEO and Chairman of the Board of Directors on the progress of the various packages of measures. The reasons for the closer monitoring included the short time until the announcement of the new strategy, FINMA's expectations of a capital increase to finance the strategy and FINMA's clearly stated expectation that CS would prepare for an adverse scenario and prepare measures for this or shorten their implementation period.[950]

The capital increase was also deemed necessary by FINMA because, based on the initial financial figures on business performance in the third quarter of 2022, it assumed that the bank's structural loss situation would persist and that the financial plans could not be met. In the same letter, FINMA therefore requested a timetable for the preparation of a robust and resilient financial plan by August 9, 2022, as well as a revised capital plan for the CS Group and CS AG by September 9, 2022.[951]

With regard to the bank's contingency measures, which it had submitted July 25, FINMA also requested at the beginning of August that concrete preparations be made for individual measures, such as the reduction of risk-weighted assets and the review of an expansion of the measures. At FINMA's instruction, CS should also prepare for a scenario in which the strategic realignment was not deemed credible by the market at the end of October, the planned capital increase failed or another significant incident occurred. As possible preparatory work, it proposed measures that would have allowed the bank to restructure or recover under its own responsibility, such as a partial initial public offering (IPO) of CS Schweiz AG. FINMA informed CS that it expected a report by September 30, 2022.[952]

According to FINMA's assessment, the *liquidity maintenance measures* initiated by CS had also not yet been fully implemented by August 5, 2022. For this reason, FINMA expected CS to increase its liquidity bufferimplement the initiated measures and provide more information on liquidity transfers and the bank's liquidity situation. However, FINMA described CS's planned AT1 capital raising as "extremely ambitious" and stated that CS at an increased risk of not meeting the Pillar 2 capital requirements.

948 Letter from FINMA to CS dated 14.7.2022
949 Letter from CS to FINMA dated 25.7.2022
950 Letter from FINMA to CS dated 5.8.2022, p. 2 f.
951 Letter from FINMA to CS dated 5.8.2022, p. 2 f.
952 Letter from FINMA to CS dated 5.8.2022, p. 4

to fulfill. It therefore demanded further efforts on the part of CS to comply with the capital requirements and reserved the right to order measures[953].

According to the meeting documents of the GC on August 23, 2022, FINMA informed the Head of the FDF, the Chairman of the SNB and representatives of the FDF (including SIF) about the critical situation at CS. It reported the first signs that market access was becoming more difficult in the area of liquidity and that there was a risk that the capital requirements at Credit Suisse AG level would not be met. In this context, FINMA also announced that it would shorten the preparation time for the bank's restructuring and recovery measures.[954]

FINMA's work on "Project Africa"

The above-mentioned project to accompany CS's change in strategy took shape on 16 July 2022, when FINMA CS its initial considerations regarding the planned restructuring of the bank called "Project Africa". Although FINMA welcomed the planned restructuring, which envisaged a reduction in the size of the investment bank, it identified a need for clarification on various points regarding the operational feasibility and financing of the plans.[955]

In addition, FINMA was very skeptical about the bank's request change the valuation method for determining the regulatory filter. According to FINMA's assessment, the [net] *asset value approach956* proposed by CS for the valuation of participations would have led to a need for more in-depth clarification, partly because it would have increased the value of the underlying portfolio of participations.[957]

On August 29, FINMA informed CS in a letter to the Chairman of the Board of Directors and the CEO of its position regarding the need for regulatory relief with regard to the capital situation. It stated that CS's new strategy should also be implementable without regulatory measures from FINMA. As CS AG had already been granted extensive relief at that time with regard to the treatment in regulatory perspective, FINMA considered its scope for action to be severely restricted (see section 5.3.3.3). FINMA also stated that additional regulatory relief at parent bank level could only be considered if CS succeeded in out a sufficient capital increase in October 2022. In addition, this relief would be to further conditions. As before, FINMA was critical of a change in the valuation methodology to a *net asset value approach* and described CS's general timetable as ambitious, not least because too little time had been set aside for interaction with FINMA.[958]

On September 15, FINMA informed the bank of its definitive decision to reject CS's application for an adjusted valuation methodology. It had come to the conclusion that the net asset value approach would be an unsuitable method for valuing the participations. Among other things, it feared that the economic value of the participations would not be correctly reflected.[959]

953 Letter from FINMA to CS dated 5.8.2022, p. 4 f.
954 Meeting documents of the Steering Committee for the meeting on August 23, 2022
955 Email from FINMA to CS dated 16.7.2022, 1.05 p.m.
956 A method for the valuation of parts of the company. Switching to this would led to significantly higher values for regulatory capital without changing anything in terms of economic substance; minutes of the PUK meeting of 14.2.2024, p. 73
957 Email from FINMA to CS dated 16.7.2022, 1.05 p.m.
958 Letter from FINMA to CS dated 29.8.2022
959 Letter from FINMA to CS dated 15.9.2022

Excursus: FINMA Board of Directors dealing with the looming crisis

From June 2022, the FINMA Board of Directors focused on CS at every meeting.(960) At its meeting on 17 and 18 August 2022, it took note of the bank's quarterly results and the change of CEO. At this meeting, the FINMA Director emphasized that the future profile of the investment bank and the capitalization of CS were priorities and that a capital increase was unavoidable.[961]

The Board of Directors then discussed various ways in which such a capital increase could be structured and placed on the market. In the view of the FINMA Board of Directors, it was conceivable that the capital requirements could be undercut at short notice if CS could clearly demonstrate how the capital would be rebuilt. However, the FINMA Board of Directors did not want to accommodate CS with regard to *risk-weighted assets* or FINMA's valuations. The cooperation with the Fed and the PRA within the framework of the *Credit Suisse College* was ultimately described as "very good"(962).

At a further meeting on September 21 and 22, 2022, the Board of Directors addressed the focus topic of "Credit Suisse's strategy and financial situation". The FINMA Director informed the Board of Directors that CS would still have to show how the situation could be improved in October 2022. He also explained that the bank was in the process of defining the scope of the reduced investment bank and the (partial) sale of the Securitized Products division in more detail. The FINMA Director also assured that FINMA prepared to confirm CS's solvency to the SNB with regard to an ELA application[963].

6.2.2 SNB: first activities as part of its macroprudential tasks

In view of the deterioration in CS's situation, the SNB took various macroprudential measures in the period between July and September 2022, even though the bank's new strategy announced for October 2022 gave reason to believe that the situation would ease.

In particular, the SNB stepped up preparations for extraordinary liquidity assistance (ELA) by requesting CS to identify additional assets that could serve as collateral for the SNB in the event of ELA being utilized.[964] In autumn 2022, CS submitted a proposal to the SNB to use the Lombard loans as collateral in a *covered bond structure* (a covered bond).[965] However, these loans did not meet the criteria required by the SNB as they lacked legal robustness, the quality of the underlying collateral was unclear and the rating was missing. CS was therefore unable to identify any other significant positions that have served as collateral.[966] The main reason for this was that the bank had not included any transfer clauses in its Lombard loans - contrary to the SNB's requirement, which it had communicated to CS before the crisis. Without a legally valid assignment as security

960 Minutes of the PUK meeting of 1.11.2023
961 Minutes of the FINMA Board of Directors meeting of 17 and 18.8.2022
962 Minutes of the FINMA Board of Directors meeting of 17 and 18.8.2022
963 Minutes of the FINMA Board of Directors meeting of 21 and 22.9.2022
964 Written answers to the PUK dated 19.2.2024; written answers to the PUK dated 8.3.2024
965 Letter from the SNB to the PUK dated 17.6.2024, Annex 2 "Exchange with Credit Suisse (CS) - Collateral checks"
966 Written responses to the PUK dated 19.2.2024 and 8.3.2024; letter from the SNB dated 17.6.2024 to the PUK, Annex 2 "Exchange with Credit Suisse (CS) - Collateral checks". See also section 5.5.3 on the collateral required for an ELA.

or pledge, these assets would fall into the bankruptcy estate of the bank and could therefore not be realized by the SNB as collateral.[967]

In addition, operational contacts between the SNB and CS were intensified, in particular daily liquidity monitoring from June 2022.[968] The SNB Chairman also held a telephone conversation with the Chairman of the Board of Directors of CS on September 26. On September 29, the Chairman and Vice-Chairman of the SNB met with the Chairman of the Board of Directors and the CEO of CS. These were primarily information meetings: The CS managers presented the bank's current situation and outlined the prospects for success of the announced new strategy. The representatives of the SNB were also informed by the bank about the short and medium-term options discussed with FINMA.[969]

6.2.3 Initial discussions in the committees and information for the Federal Council (between July and September)

At the invitation of FINMA and at the request of the [FDF970] , an ad hoc meeting of the AF was held on August 3, 2022, at which all AF members were informed about developments at CS for the first time in this context. While FINMA had already discussed the situation at CS with the SNB in May 2022 (see section 5.5.2), SIF and the FFA had not yet actively the bank's situation prior to this meeting. In July 2022, the State Secretary for International Financial Matters had only been informed by the Chairman of the CS Board of Directors shortly before the publication of the media release about the rotation in the Executive Board and the restructuring plans planned for the end of October.[971]

At the aforementioned AF meeting, FINMA underlined the bank's worrying situation. In view of the structural losses and the finding that the bank could not get out of this situation without major adjustments, the FFA asked whether the authorities should take preparatory measures in the area of emergency law or otherwise. Due to the fact that FINMA was already in with the SNB at *working level*, the CS Group had a respectable CET1 capitalization of 13.5% and instruments such as ELA were available, preparations for state intervention were not made for the time being.[972]

As the LG only meets as required in accordance with the Memorandum of Understanding and the AF has not yet declared the crisis phase, only one meeting of the LG took place by the end of September. The LG met for the first time on August 23, 2022 to discuss the situation at CS. The aim of the meeting was to inform the LG members about the situation at CS. It was announced that, according to the AF's assessment, the "green" phase still applies. FINMA explained that its focus at CS was on the areas of capital (CS Group and Parent Bank) and liquidity as well as the planned restructuring of the bank (see section 6.2.1). The SC decided to leave the decision on the next steps, in particular the frequency of further meetings and a possible switch to the red phase, to the AF.[973]

[967] Written response to the PUK of 19.2.2024, p. 4; minutes of the PUK meeting of 27.3.2024, p. 5
[968] Written answers to the PUK dated 22.1.2024
[969] Minutes of the PUK meeting of 31.1.2024; minutes of the PUK meeting of 15.5.2024
[970] Email from the State Secretary for International Financial Matters to FINMA dated July 27, 2022, 7.43 a.m.
[971] Minutes of the PUK meeting of 24.1.2024, p. 13
[972] Transcription of the AF meeting of 3.8.2022, p. 2 ff., 8 f.
[973] Minutes of the LG meeting on 23.8.2022

At the Federal Council meeting the following day, the head of the FDF the full Federal Council verbally for the first time about the bank's situation. It is not clear from the documents available to the PUK what specific information the Head of the FDF provided. The information was provided at the end of the meeting under "enquiries "[974] and was very brief.[975] However, as liquidity was secure at the time, the situation in the Federal Council was deemed stable according to the summary entry in the minutes, and no measures were decided.[976] According to several members of the Federal Council, the information provided was general and did not trigger any discussion within the committee.[977]

On 12 September, the AF held an ordinary meeting to receive an update from FINMA on the capitalization of CS. Among other things, FINMA provided information on the planned realignment of the investment bank and the public communication on the bank's further strategic plans and capital increases scheduled for 27 October. CS's liquidity situation was also discussed, as CS forecasts that significant liquidity outflows were to be expected by the end of 2022. The SIF stated that the work for the statutory introduction of a PLB, which had been started with the adoption of the parameters by the Federal Council in March 2022 (see section 5.2.6.2), had not yet been completed and that the ongoing TPO project (see section 5.2.5.6) had been postponed.

The AF finally decided to make certain preparations with regard to internal communication channels. In addition, the SIF was instructed to draw up a roadmap and a draft ordinance for the introduction of a PLB outside of the ordinary legislative procedure. The SNB and FINMA were also to test the processes for the allocation of ELA.[978]

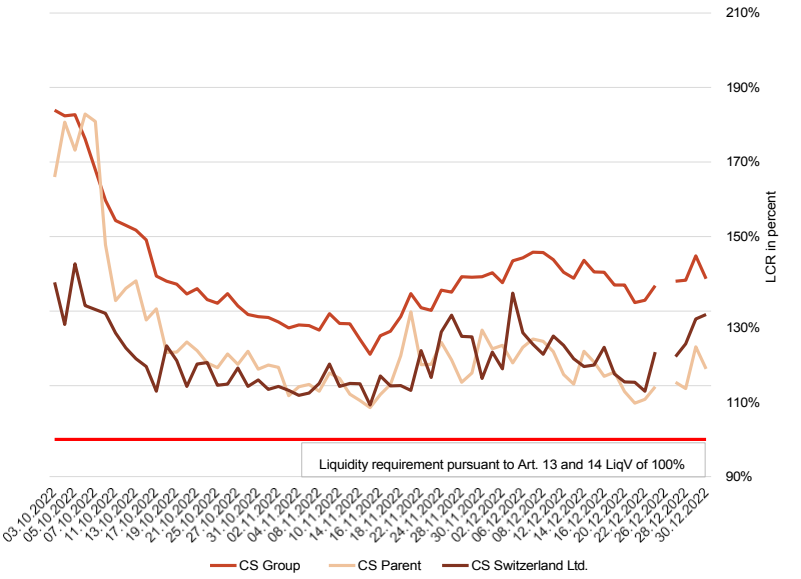
As far as the PUK is aware, this was the first time that the authorities considered the early introduction of a PLB as a possible measure against the backdrop of CS's economic difficulties.

6.3 Start of preparations for a possible acute crisis as result of the worsening of CS's problems from October 2022

Due to the significant deterioration in CS's situation from fall 2022, the authorities took action beyond their regulatory structures. The main reason for this was the massive liquidity outflows from the beginning of October 2022, which are illustrated in Figure 8 below (see section 6.1 for the background). Section 6.3.1 sets out FINMA's intensified supervision of CS following the start of the capital outflows from the beginning of October 2022. The SNB's macroprudential measures are presented in section 6.3.2. This is followed by a description of the crisis preparation by the individual authorities, coordination bodies and the Federal Council. Specifically, the switch to crisis mode in October 2022 (section 6.3.3), the intensified crisis preparations from November (section 6.3.4) and the preparations for the departmental and year-end changes (section 6.3.5) are described. The public communication of the various players during this phase is dealt with in section 6.4.4, which covers the entire period from October 2022 to February 2023.

974 A type of Varia agenda item at the end of the meeting to discuss detailed questions.
975 Minutes of the PUK meeting of 17.1.2024, p. 20, 28; minutes of the GPK-NS of 15.5.2023, S. 2
976 Minutes of the Federal Council meeting of 24.8.2022
977 Minutes of the PUK meeting of 11.10.2023, p. 56 f.; Minutes of the PUK meeting of 8.11.2023, p. 53 f.
978 Transcription of the AF meeting of 12.9.2022, p. 16 ff., 23 ff.

Figure 8: Minimum liquidity ratio of the three most important CS units, October-December 2022 (LCR in %)



Source: This chart is based on the figures provided to FINMA by CS. CS provided FINMA with figures every Friday with values from Thursday to Wednesday. The liquidity requirement of 100% shown in red, which CS had to comply with, comes from FINMA's public communication and applied to all banking institutions in Switzerland.[979]

6.3.1 Increased supervision of CS by FINMA at operational and strategic level in the wake of the liquidity outflows from October

Due to the massive outflow of liquidity, FINMA intensified contact with CS at both *technical* and *strategic* level from the beginning of October. From then on, weekly meetings were held between the operational management level at FINMA and the strategic level at CS, while meetings at the operational level, such as FINMA's discussions with CS's treasury function, were held daily in phases.[980]

The most important measures taken by FINMA regarding CS's liquidity and capital situation are described below. It also provides an overview of other important topics discussed at the high-level meetings between the two parties (section 6.3.1.1). Finally, it shows the extent to which FINMA's Board of Directors was informed about the bank's situation (section 6.3.1.2) and how FINMA was in contact with the US and UK authorities (section 6.3.1.3).

[979] For details of the regulation, see FINMA (2022): What and liquidity requirements must institutions meet?, 17.6.2022, https://www.finma.ch/de/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/key-metrics-chartpack-2021.pdf?sc_lang=en&hash=B165AAA8F2364D7633AF34F0A2AC79A9 (as at: 8.7.2024)

[980] Written answers to the PUK dated 9.4.2024, p. 4 f.

6.3.1.1 Operational and strategic supervision of CS's liquidity and capital situation and contingency measures from October 2022

Until the beginning of September, FINMA held monthly and then weekly high-level meetings with CS management to the bank's strategic and operational development. Initially, only selected members of the FINMA Executive Board, the Chairman of the Board of Directors, the CEO and other senior managers[981] of CS attended these meetings. As CS did not respond adequately to FINMA's repeated requests to prepare further con- tingency measures, the regular interactions on the part of FINMA were supplemented by additional meetings with other representatives of the Board of Directors from November 2022. Among others, meetings were now also held with the Vice Chairman of the Board of Directors of CS, the Head of the Risk Committee of the Board of Directors and the Head of the Audit Committee of the Board of Directors. The situation at CS and its contingency measures were also discussed directly with other members of the CS Board of Directors. FINMA also met with the bank's entire Audit Committee and Risk Committee to discuss the bank's critical situation.[982]

Recurring topics at these meetings were the bank's liquidity situation and capital resources as part of its strategy implementation, as well as the planned sale of the Securitized Products business (see Box 9 below). At regular intervals, FINMA also voiced criticism and demands regarding the liquidity and contingency measures, which it subsequently formalized in letters to the Chairman of the Board of Directors and the CEO of the bank after the high-level meetings.

At the beginning of October, FINMA urged CS to prepare for the withdrawal of ELA as part of the high-level meetings. In FINMA's assessment, the bank was at risk of reaching a liquidity PONV in the immediate future. The bank representatives showed understanding and agreed to initiate the necessary preparations for the ELA withdrawal.[983] However, they wanted to use this measure as a last resort, as they did not want to send any negative signals to the market before the announcement of the new strategy on 27 October. CS management feared that an ELA withdrawal before October 27 would lead to a bank run. FINMA, on the other hand, told the bank that ELA would stabilize the situation until the bank had improved access to the capital markets again.[984]

Although the CS Board of Directors had the ELA reference prepared in mid-October[985] and the authorities had to deal with a possible application by the bank within the framework of the LG (see section 6.3.3.1), CS ultimately refrained from submitting an application as it did not consider such an application to be necessary at that time.

FINMA's reaction to the shortfall in certain liquidity buffers

On October 12, 2022, FINMA determined that certain Pillar 2 liquidity buffers of CS AG had fallen below the threshold of CHF 30 billion on October 7. According to FINMA's requirements, this would have made it necessary to notify the supervisory authority. By October 10, these buffers had even fallen below the CHF 25 billion mark, which required FINMA to be informed immediately, including an action plan to increase the buffers within five days.

981 Including the CFO and the Head of Strategic Regulatory Communication.
982 Written answers to the PUK dated 9.4.2024, p. 7 f.
983 Minutes of the FINMA high-level meeting with CS on 6.10.2022, p. 1 f.
984 Minutes of the FINMA high-level meeting with CS on 12.10.2022, p. 1 ff.
985 Minutes of FINMA's high-level meetings with CS on 14.10.2022, p. 1, and 18.10.2022, p. 1

should have been triggered. FINMA sharply criticized CS for its failure to report and, in addition to compliance with the duty to inform, also demanded that senior management participate in daily telephone calls on the liquidity and refinancing situation.[986]

In a letter to FINMA on October 14, 2022, CS explained various measures to restore the liquidity buffer. The bank was generally optimistic that it would find improved refinancing options on the market again after the presentation of the new strategy on October 27, 2022. However, it still requested the use of the Pillar 2 liquidity buffers until the proposed measures would take effect.[987] As a result, FINMA granted CS the temporary use of liquidity buffers on the liquidity requirements several times in October before the announcement of the new strategy so that the bank could ensure sufficient liquidity in the Group companies. At the same time, however, FINMA demanded further measures to increase liquidity.[988]

According to the information provided by the PUK, FINMA began preparing the restructuring order and the restructuring plan for CS mid-October 2022.[989] The first drafts of these two documents were available at the beginning of November 2022. The head of FINMA's Recovery and Resolution division estimated at the time that FINMA would need around ten days to prepare the runway period (see Box 12 in section 6.3.4.2).[990]

On October 31, 2022, FINMA concluded a contract with a Swiss corporate law firm to act as its agent in any restructuring or bankruptcy proceedings. The restructuring plan and the restructuring order were successively updated and revised over the course of the CS crisis until March 19, 2023.[991]

Tolerance granted for falling short of regulatory liquidity requirements

In the week before the strategy announcement on October 27, 2022, the liquidity situation deteriorated further. CS informed FINMA of this negative trend on October 20, 2022. The bank requested further temporary easing of the Pillar 2 requirements and the *net stable funding ratio* as well as provisional permission draw even partially on the Pillar 1 buffers. Despite this drastic deterioration in the situation due to the ongoing liquidity outflows, CS managers were convinced that they would be able to replenish the Pillar 2 liquidity buffers beyond the regulatory requirements by the end of 2022 with the help of a positive market reaction to the new strategy.[992]

From FINMA's perspective, it was necessary to the requested facilitations. This ensured that CS had sufficient leeway at all times to provide liquidity in the various legal entities and to meet its payment obligations at all times. The chosen approach corresponds to the requirements of the LiqV: the buffers are built up in normal times so that they can be used in the event of shortages. By transferring the available liquidity between Group units, any shortfalls in Pillar 2 requirements should be absorbed proportionally. On October 24, 2022, FINMA lowered the tolerance threshold once . However, FINMA also criticized the fact that

986 Email from FINMA to CS dated 12.10.2022, 2.37 p.m.
987 Letter from CS to FINMA dated 14.10.2022
988 E-mail from FINMA to CS dated 14.10.2022, 13.; e-mail from FINMA to CS dated 19.10.2022, 18.27
989 Transcription of the AF meeting of 15.10.2022, p. 16
990 Transcription of the AF meeting of 4.11.2022, p. 9
991 Minutes of the FINMA Board of Directors meeting of 1.11.2022, p. 3; FINMA statement of 7.8.2024 as part of the administrative consultation
992 Letter from CS to FINMA dated 20.10.2022

the measures introduced by the bank to counteract the outflow of liquidity were inadequate and fell far short of FINMA's expectations. Theoretically, the entirety of the measures compiled CS in the Contingency Funding Plan could have brought about an improvement of around CHF 100 billion. However, it quickly became apparent that CS's planned measures could not be implemented during the crisis, either due to time constraints or the expected stigmatization. FINMA expressed its astonishment that CS had only decided to implement measures amounting to around CHF 18.1 billion up to this point.[993]

As CS would probably also have to discuss the client outflows at its quarterly presentation on October 27, 2022, FINMA warned of a further loss of confidence and the resulting outflows. FINMA therefore once again called on the Board of Directors and Executive Board of CS to a clear and feasible plan to ensure solvency and independently stabilize the liquidity situation before 27 October 2022. FINMA also its expectation that CS would inform it immediately if the new tolerance levels were to be breached or if such breaches were foreseeable.[994]

Just two days later, on October 26, 2022, CS notified FINMA that it at risk of falling below tolerance thresholds for liquidity buffers already lowered by FINMA before the end of the week, possibly violating the Pillar 1 requirements in the event of further outflows after October 27 and no longer meeting the *net stable funding ratio* by the end of October. It disclosed to FINMA which liquidity measures it had already taken, which medium-term measures were planned until the end of the year and which measures could not be implemented in the current situation. CS continued to place great hope in the positive effect of the presentation of the new business strategy on October 27, which should enable the bank to replenish its liquidity buffers. As a result, there was no breach of the Pillar 1 requirements for the *liquidity coverage ratio* or the *net stable funding ratio*.[995]

Discussion about the rating downgrades following the strategy announcement

Following the announcement of CS's new strategy on October 27, 2022, the rating agency Moody's informed CS of a planned rating downgrade of the bank in all categories. This was due to uncertainties regarding the success of the strategy implementation and the bank's future profitability as well as the outflows.[996]

CS informed FINMA on October 30, 2022 that Moody's had not taken into account all the information provided by the bank when making its decision. In addition, the use of the liquidity buffer had been incorrectly interpreted. CS therefore asked FINMA whether it would be prepared to seek a discussion with Moody's in order to clear up any misunderstandings. CS expected further outflows as a result of the rating downgrade, which it felt was unjustified. FINMA signaled that it could explain its regulatory requirements and their effect to Moody's in general terms if necessary. However, CS did not respond to this offer with a specific request. At the same meeting, CS informed the supervisory authority that it might have to obtain ELA next week if liquidity outflows similar to those at the beginning of October were to occur.

993 Letter from FINMA to CS dated 24.10.2022
994 Letter from FINMA to CS dated 24.10.2022
995 Letter from CS to FINMA dated 26.10.2022
996 Minutes of the FINMA high-level meeting with CS on 30.10.2022, p. 1 f.; FINMA (2023): Lessons learned from the CS crisis, p. 35

On October 31, 2022, the discussion about the upcoming rating downgrades continued, and FINMA requested further information from CS on the expected liquidity outflows in the event of a downgrade.[997] The negative reactions to the rating adjustments ultimately much weaker than originally feared, which CS attributed to its efforts with the rating agencies - CS provided Moody's further information on the new strategy, for example.[998]

At the same meeting on October 31, 2022, the Chairman of the CS Board of Directors also presented FINMA for the first time with an analysis of the compatibility of potential counterparties the event that a sale of the bank should become necessary. In CS's opinion, UBS had the best prerequisites. CS generally preferred a Swiss solution, but wanted to examine all options and also considered BNP, Morgan Stanley and HSBC to be suitable.[999]

Operational supervision of CS's own funds situation

As part of its strategic realignment, CS submitted an application to FINMA for regulatory capital relief. At the end of October 2022, FINMA informed CS that it would grant it various temporary capital relief measures during the restructuring phase and would also accept a temporary, proportionate shortfall in the CET1 capital buffer[1000] at CS AG level. However, it made these assurances subject to a number of conditions and restrictions, including a substantial reduction in risk through the sale of the Securitized Products division, implementation of the announced cost-cutting programme including a reduction in variable remuneration, a share capital increase of at least CHF 3 billion and compliance with the Group's existing capital targets.[1001]

In this context, FINMA allowed the parent bank CS AG to weight a certain portion of the regulatory filter in future using the risk weighting rate for participations in companies domiciled in Switzerland instead of the rate for foreign participations.[1002] The risk weights for domestic participations are lower than for foreign participations in accordance with FINMA's TBTF ruling and the Federal Council's Capital Adequacy Ordinance.[1003] CS subsequently part of the filter in the amount of CHF 7.9 billion from foreign to domestic as at the third quarter of 2022. This measure did not increase the bank's own funds, but reduced its RWA and thus increased its capital ratio by 0.19 percentage points.[1004] This measure was only granted by FINMA on condition that CS carried out the planned capital increase of CHF 4 billion.[1005] In addition, FINMA CS to verify the plausibility of the

997 Minutes of the FINMA high-level meeting with CS on 31.10.2022
998 Minutes of the FINMA high-level meeting with CS on 2.11.2022, p. 1
999 Minutes of the FINMA high-level meeting with CS on 30.10.2022, p. 3
1000 According to Art. 130 para. 3 ERV
1001 Letter from FINMA to CS dated 18.10.2022; Letter from FINMA to CS dated 26.10.2022
1002 Letter from FINMA to CS dated 26.10.2022. For the regulatory filter, see section 5.3.3.3
1003 Revised TBTF ruling of FINMA dated 20.10.2017 in the matter of Credit Suisse, dispositive number 12
1004 Birchler expert report (2024), p. 12 f.
1005 Letter from FINMA to the PUK dated 9.9.2024; letter from FINMA to CS dated 26.10.2022

valuations of the holdings concerned by a third-party firm.[1006] The adjustments made by CS to the market values of the holdings were audited by PwC. They were not subject to any review or approval by FINMA.[1007]

FINMA's criticism of the provision of information by CS

According to the head of FINMA's CS Group Supervision department, CS had problems monitoring the effectiveness of its measures and producing reliable scenario analyses and forecasts of liquidity outflows when monitoring the liquidity situation in early fall 2022.[1008] FINMA escalated this criticism when it issued a warning to the Board of Directors and management of CS on 5 November in view of the still critical liquidity situation. FINMA out glaring deficiencies in the provision of information and documentation. These were "often provided by CS only slowly, incompletely, only after repeated follow-up or sometimes not at all".[1009]

According to FINMA, this made the work of the Swiss and foreign supervisory authorities more difficult, as the bank unable to produce forecasts for the liquidity ratios of the various CS units, among other things. In FINMA's view, the expectations formulated on October 24 regarding the measures to restore the liquidity buffers had also not been met, which called into question the appropriateness of the bank's crisis and risk management. For these reasons, FINMA urged CS to ensure that resolutions are passed promptly in future and that the measures adopted are reported and presented to the supervisory authorities.[1010]

In their response to this criticism on November 16, 2022, the Chairman of the Board of Directors and the CEO of CS showed understanding and promised to respond promptly to FINMA's information requests in future and to improve the quality of data. However, the bank also referred to the numerous exchanges with FINMA at various levels and the regular meetings between management and the Chairman of the Board of Directors and the supervisory authority.[1011]

The bank's problems . CS informed FINMA on
On November 10, 2022, FINMA once again reported a shortfall in liquidity requirements.[1012] As a result, on November 16, 2022, FINMA questioned the bank's ability to meet its Pillar 2 liquidity requirement by the end of 2022. FINMA once again pointed out the bank that all measures taken to date to avoid falling short of the Pillar 1 requirements were inadequate. Accordingly, it the bank to immediately "take all available measures to sustainably stabilize the liquidity and cash situation".[1013]

Prioritization of preparations for a potential sale scenario

Over the course of November, FINMA insisted at the high-level meetings that CS should press ahead with the sale scenario and asked CS about potential buyers.[1014] CS was unable to identify any interested parties, but pointed to the positive feedback from the industry on the new strategy. The industry believed in the successful implementation of the strategy. A sale scenario as a plan B was therefore not necessary. CS considered a merger with UBS in an emergency scenario (i.e.

1006 Letter from FINMA to CS dated 26.10.2022
1007 Letter from FINMA to the PUK dated 9.9.2024
1008 Written answers to the PUK dated 9.4.2024, p. 6 f.
1009 Letter from FINMA to CS dated 5.11.2022
1010 Letter from FINMA to CS dated 5.11.2022
1011 Letter from CS to FINMA dated 16.11.2022
1012 Letter from CS to FINMA dated 10.11.2022
1013 Letter from FINMA to CS dated 16.11.2022
1014 Minutes of FINMA's high-level meetings with CS on 11.11.2022 and 21.11.2022

with a liquidity PONV) is possible. A merger would probably be preferable to a resolution. For a medium-term scenario, which could also include partial sales, CS also foreign counterparties, as a full takeover by a foreign institution seemed simpler from its perspective. With regard to a merger with UBS, CS expressed concerns about the problematic capital situation that would arise, as well as possible competition law and social policy risks.

FINMA was skeptical about the legal hurdles and the capital situation in the event of a takeover by a foreign institution. With regard to the legal risks in the event of a merger with UBS, however, it referred to its special competencies in competition law issues in a stress scenario or in the event of an emergency merger. It demanded that CS make significant progress in developing the emergency scenario and shorten the preparation time, as ELA would not be sufficient for long in such a case.[1015]

Criticism of CS intensified at the beginning of December 2022

In FINMA's assessment, however, CS had not improved its crisis management at the beginning of December 2022. FINMA drew the attention of CS management and the Chairman of the Board of Directors to this assessment in a new letter on December 6, 2022. The liquidity outflows had continued, which is why FINMA that CS would no longer able to increase the Pillar 1 surpluses or even restore the Pillar 2 buffers even if all the measures planned by the end of 2022 were fully implemented. FINMA continued to assess CS's liquidity situation as "very fragile" and expressed its doubts about the implementation of the measures still planned by CS. In its view, CS did not make sufficient efforts to sell business lines or financial holdings.[1016]

FINMA therefore threatened the bank with consequences in a letter dated December 6, 2022 if the Board of Directors and the Executive Board did not comply with their duty to take and implement decisions to effectively and sustainably improve the liquidity and cash situation. The supervisory authority set the bank a deadline of 13 December 2022 to draw up a revised list of measures and a timetable for their .[1017] The following day, FINMA took note of the bank's updated contingency plans, which envisaged a merger with another globally active financial institution in the event of a rapid deterioration in the situation. FINMA urged CS to continue preparations for a merger with both a short-term and a medium-term time horizon. As part of the medium-term stabilization measures, partial sales of further business divisions, the partial IPO of CS Schweiz AG, strategic partnerships and the implementation of further capital measures should also be considered.[1018]

The above-mentioned critical letter from FINMA dated December 6, 2022 caused irritation at CS management level. On 12 December, it criticized FINMA's tone and criticism, which it felt was harsh and unjustified, and rejected all accusations.[1019] At the same time, the CEO and the Chairman of the Board of Directors of CS assured the supervisory authority that everything was subordinate to overcoming the liquidity crisis. They emphasized the measures taken since October and the bank's good liquidity situation prior to the outflows in October, which had made it possible for the bank to survive the massive outflows in the first place. In the

1015 Minutes of the FINMA high-level meeting with CS on 11.11.2022, p. 1 f.
1016 Letter from FINMA to CS dated 6.12.2022
1017 Letter from FINMA to CS dated 6.12.2022
1018 Letter from FINMA to CS dated 7.12.2022
1019 "harsh and unjustified"; letter from CS to FINMA dated 12.12.2022, p. 1

In the same letter, they explained the reasons why certain measures were implemented or discarded and why there several differences between the forecasts and the actual data in the liquidity situation. They also provided an overview of the upcoming measures and plans for the bank's liquidity situation. CS requested a discussion at the highest level to discuss the consequences threatened by FINMA.[1020]

The requested high-level meeting took place on December 13, 2022. The Chair of the FINMA Board of Directors also attended. FINMA confronted CS with three specific demands and deadlines for implementing the requested measures. CS was to draw up a plan for the reconstruction of the Pillar 2 liquidity requirements by the end of 2022. In addition, FINMA expected CS to prepare a short-term plan B for the contingency measures by the end of 2022.
December 23, 2022 and a recovery plan with a time horizon of three to six months until January 6, 2023. The FINMA delegation reminded the CS representatives that the Chairman of the Board of Directors and the CEO were obliged to examine alternatives to restructuring. FINMA assured them that it would take all precautions for the restructuring or bankruptcy of the bank in the event of a PONV[(1021).]

In mid-December, CS informed FINMA that it could carry out a sale within two to three weeks, provided the liquidity-shortage financing facility or ELA would give the bank the time it needed. However, it had to admit that it not yet prepared the data room required by FINMA, which is why it was requested by FINMA to complete this work.[1022]

The members of CS's Audit Committee also assured the supervisory authority at a meeting on December 21, 2022 that preparing the sale of the bank a high priority for them. According to the members of the Audit Committee, the Chairman of the Board of Directors did not attach great to this option (one member that the Chairman of the Board of Directors regarded the sale as "Plan Z"). He had therefore not held any formal discussions with the Board of Directors about it. However, the Board of Directors pressure on him in this regard. FINMA informed the Audit Committee that if the bank did not submit its own plan, it might have to declare the PONV in accordance with Article 25 of the Banking Act if the situation deteriorated further. The Board of Directors had a duty to the shareholders and the holders of bail-in bonds. FINMA told those present that for a long time it had not felt that the Board of Directors shared FINMA's concerns.1023

Shortly before the end of the year, on December 28, 2022, FINMA made further demands to CS regarding contingency measures in connection with the increasingly critical liquidity situation (see section 6.3.5.4).

[1020] Letter from CS to FINMA dated 12.12.2022, p. 2 et seq.
[1021] Email from the Head of FINMA's Banks division to the of FINMA's Board of Directors and the then Director of FINMA dated 16.12.2022, 4.01 p.m.
[1022] Minutes of the FINMA high-level meeting with CS on 12.12.2022, p. 1 f.
[1023] Minutes of the FINMA high-level meeting with the Audit Committee of CS on 21.12.2022, p. 2 ff.

Box 9: Sale of the securitized products business (securitization business)

The securitized products business (SP business, securitization business) comprises the sale of securitized financial assets - combined into portfolios - such as loans, in the form of securities to investors.[1024]

CS already in October 2021 and then again on 27 July 2022, as part of its strategy review and restructuring announcement, that it was examining various strategic options for the securitized products business. These included the procurement of equity from third parties ("*third party capital*") in order to promote the growth of the division.[1025]

In the discussions between FINMA and CS on the liquidity situation and the bank's strategy adjustment, the sale of the SP business under the code name "Project Egypt" was discussed on various occasions.

As far as the PUK is aware, various options were discussed within CS, a sale of 49% of the shares or a sale of the entire business.[1026] On October 6, 2022, CS informed FINMA that it would prefer a full sale of the SP business.[1027] FINMA did not have to approve this transaction per se, but had to ensure that CS did not violate FINMA's capital requirements as a result of the sale.[1028] While the sale would have improved the CS Group's capital situation, the sale would have the opposite effect on the capital ratio of the parent bank (CS AG).[1029] In this context, CS also requested that FINMA apply the net asset value measurement. This would have led to an increase in own funds, which would have absorbed the subsequent loss.[1030]

As an alternative, FINMA already signaled to CS at the various high-level meetings in September 2022 in the context of the restructuring plans that a drop in the CET1 ratio at parent bank level below 10% (the regulatory minimum at the end of the second quarter was 10.3% CET1, including the Pillar 2 surcharge for Greensill) was acceptable under the CAO as long as CS could show how it could remedy the shortfall.[1031] However, CS did not want to accept the possibility of a temporary shortfall, as it did not want to send a negative signal to the market by lowering the CET1 ratio.[1032] Instead, CS requested further relief, in particular the switch to the net asset value approach for the valuation of investments. However, this would have increased CS AG's own funds without any change in economic substance, which was not an option for FINMA.[1033]

As a result, FINMA enabled CS to increase its strategic scope for restructuring. Firstly, it reduced the regulatory minimum by approximately 0.3% by adjusting the progressive component of the total exposure slightly earlier than planned. Secondly, it allowed CS a temporary

1024 FINMA (2023): Lessons learned from the CS crisis, p. 84
1025 "Credit Suisse appoints Ulrich Körner as the new Group Chief Executive Officer and future CEO.
a comprehensive strategy review", CS media release dated 27.7.2022,
> https://www.ubs.com/global/de/Global topics> Media> Credit Suisse, part of the UBS Group (as at: 22.11.2024)
1026 Minutes of the PUK meeting of 20.3.2024, p. 47
1027 Minutes of the high-level meeting between FINMA and CS on 6.10.2022, p. 1
1028 Minutes of the PUK meeting of 14.2.2024, p. 73
1029 FINMA presentation to the LG "Credit Suisse situation update" of 17.10.2022
1030 Minutes of the PUK meeting of 14.2.2024, p. 73
1031 Minutes of the high-level meeting between FINMA and CS on 12.10.2022; transcript tion of the AF meeting of 15.10.2022, p. 5
1032 Minutes of the PUK meeting of 14.2.2024, p. 73
1033 Minutes of the high-level meeting of 4.10.2022; Minutes of the high-level meeting from 26.10.2022

shortfall of the Pillar 2 requirement at parent bank level, which gave CS a further 0.7 % room for maneuver. The regulatory minimum was therefore now 9.3% as at the end of the third quarter of 2022.[1034]

A complete sale of the securitized products business would have caused the parent bank's CET1 ratio to fall below this threshold. FINMA signaled that it would also tolerate a further temporary drop below 9% (in accordance with the CAO).[1035]

On October 17, 2022, FINMA made it clear to CS that it had already granted it considerable leeway. The expectation for the parent bank's CET1 ratio fell from 10.3% to 9% as a result of the above-mentioned FINMA measures, which corresponded to CHF 2.7 billion at the end of the third quarter of 2022. FINMA emphasized that it was now up to CS to act instead of for further relief.[1036] The tolerance threshold of 9% was also due to the fact that the foreign supervisory authorities in the Crisis Management College had reacted negatively to the possible CET1 shortfall and FINMA feared ring fencing.[1037] CS explained the ongoing work on the SP sale during the exchange on 17 October 2022. In addition to the full and partial sale, a third option was also available, under which the SP assets would have been reduced while complying with the CET1 limit of 9%.[1038] In a letter dated 18 October 2022, FINMA wrote to CS setting out the conditions that must be met for the relief to apply.[1039]

A complete sale was discussed once again with FINMA on October 24, 2022, but appeared unrealistic due to the high probability of falling below the CET1 ratio of 9 %. CS therefore on drawing up the framework agreement for the partial sale by Wednesday, October 26, 2022.[1040]

On the occasion of the strategy adjustment presented on October 27 (see section 6.1.2), CS also announced the partial sale of the SP business to an investor group led by Apollo Global Management. CS announced that it had already signed an exclusivity agreement with an investor group led by Apollo Management Group.[1041]

On November 9, 2022, FINMA spoke to CS again about the sale process. CS expected the transaction to be completed in the first quarter of 2023, releasing liquidity of CHF 2 billion in the fourth quarter of 2022 and around CHF 10 billion in the first quarter of 2023.[1042]

In mid-November, CS publicly announced that the definitive transaction agreements on the sale of a large part[1043] of the SP business to Apollo

1034 FINMA statement of 7.8.2024 as part of the administrative consultation
1035 Minutes of the high-level meeting on 17.10.2022
1036 Minutes of the high-level meeting between FINMA and CS on 17.10.2022
1037 Minutes of the FINMA Board of Directors meeting of 21.10.2022, p. 2
1038 Minutes of the high-level meeting between FINMA and CS on 17.10.2022
1039 Letter from FINMA to CS dated 18.10.2022, p. 3 f.
1040 Minutes of the high-level meeting between FINMA and CS on 24.10.2022
1041 Under this agreement, a majority of the SP assets were to be acquired by the Credit Suisse the buyers. In addition, they should also take over the remaining manage assets on behalf of CS and provide certain ongoing CS services. to ensure client support, see "Credit Suisse unveils new strategy and transformation plan", CS media release dated 27.10.2022, > https://www.ubs.com/global/de.htmlGlobal topics> Media> Credit Suisse, Part of the UBS Group, p.2 (as of 22.11.2024)
1042 Minutes of the high-level meeting between FINMA and CS on 9.11.2022
1043 CS wrote of a reduction in assets of 75 billion US dollars to around 20 billion US dollars.

and completion was expected in the first half of 2023.[1044] The reaction of the markets to this announcement less positive than CS had hoped. CS noted a general mistrust of the CS Group, which it wanted to counteract by concretely implementing its strategy in the coming months.[1045]

On February 9, 2023, CS announced that the first closing of the sale to Apollo Global Management had taken place the day before.[1046] The second closing took place a few weeks later on February 23. The sale was to completed in the first half of 2023. The measures taken were expected to improve the liquidity ratios and the CET1 ratio.[1047] After the merger with UBS, the latter renegotiated the sale and completed it at the beginning of 2024.[1048]

Assessment of the sale by FINMA

The FINMA Executive Board regularly informed the Board of Directors in fall 2022 about CS's progress in selling its SP business. The sale was emphasized positively as it would lead to a de-risking of the bank(1049).

The sale was also considered important because it allowed CS to show the public that it was effectively implementing its announced strategy. However, a fundamental improvement in CS's liquidity situation was not expected as a result of the sale, even if, in FINMA's opinion, CS high hopes for this transaction with regard to the required replenishment of the Pillar 2 buffer.(1050) A total sale of the securitization business would also have been preferable to a partial sale from FINMA's perspective. In the end, this was not carried out for regulatory reasons(1051).

Finalization of CS's stabilization, contingency and resolution plans at the end of 2022

In addition to the discussions on CS's capital and liquidity situation and FINMA's concrete preparations for a resolution, work continued on the regular stabilization, emergency and resolution planning as well as the recoverability and liquidability of CS. The assessments that FINMA sent to CS at the end of 2022 took into account the submissions made CS as at the cut-off date of the end of 2021. On this cut-off date

1044 "Credit Suisse accelerates radical restructuring of Investment Bank ; Enters into definitive transaction agreements to sell a significant part of its Securitized Products Group to Apollo ", CS media release dated 15.11.2022, https://www.ubs.com/global/de/ > Global Topics > Media > Credit Suisse, part of the UBS Group (as at 22.11.2024, available in English only)

1045 Minutes of the high-level meeting between FINMA and CS on 15.11.2022

1046 "Credit Suisse publishes financial results for the fourth quarter of 2022", CS media release dated 9.2.2023,www.ubs.com/global/de/ > Global Issues > Media > Credit Suisse, part of the UBS Group (as at 22.11.2024)

1047 CS (2023): Annual Report 2022. Zurich, p. 6; "Credit Suisse publishes financial for the fourth quarter of 2022", CS media release dated 9.2.2023, www.ubs.com/global/de/ > Global topics> Media> Credit Suisse, part of the UBS Group (as at 22.11.2024)

1048 "UBS Group AG (UBS) and Apollo conclude investment management and transition services agreement as final step in carve-out of former Credit Suisse Securitized Products business, Atlas SP", UBS media release dated 27.3.2024www.ubs.com/global/de/ > Global Issues > Media > UBS Group AG (UBS) and Apollo conclude investment management and transition services agreement as final step in carve-out of former Credit Suisse Securitized Products business, Atlas SP (as of 25.6.2024, available in English only)

1049 Minutes of the FINMA Board of Directors meeting of 21.10.2022, p. 2

1050 Transcription of the AF meeting of 10.11.2022, p. 6; Transcription of the AF meeting of 22.2.2023, p. 6; Transcription of the AF meeting of 28.2.2023, p. 2

1051 Minutes of the PUK meeting of 14.2.2024, p. 73

the situation was unchanged compared to a year earlier, at the end of 2020: CS was resolvable and the bank's planning met the legal requirements. Accordingly, FINMA assessed the submitted plans as it had a year earlier, as no legal changes had been made between these assessment periods and no changes in practice had been initiated.[1052]

6.3.1.2 Excursus: Involvement of the FINMA Board of Directors

During the phase of intensive discussions with CS between October and December, FINMA's Board of Directors was regularly informed by FINMA's Executive Board about developments at the bank and FINMA's operational work. The Executive Board had prepared the Board of Directors for transactions of major significance in accordance with FINMASA at various extraordinary Board meetings.[1053] According to FINMASA, the Board of Directors decides on such transactions.[1054] According to FINMA's organizational regulations, transactions of major significance are individual transactions with potentially far-reaching consequences for all creditors, investors and insured persons or transactions that have a significant impact on the functioning of the financial markets. These include five types of transactions at systemically important institutions, such as protective measures, restructurings and (bankruptcy) liquidations, the withdrawal of licenses, the initial approval of legally required emergency plans or capital and liquidity surcharges or restrictions. The Board of Directors can also designate a transaction as a transaction of major significance at any time and refer it to it.[1055] According to FINMA, this has never been to date. The definition of transactions of major significance in the organizational regulations was also sharpened and significantly restricted by the FINMA Board of Directors in 2019 following a federal court ruling[1056].[1057]

On October 10, the Board of Directors discussed a possible ELA application by CS and was informed about its role in this process. It decided that, in the event of an application, it would only make a decision via a presidential decision - as provided for in the organizational regulations - if time was short, but that the decision on the solvency confirmation would otherwise be made by majority vote. If an ELA application is submitted, the SNB would send FINMA capital spreadsheet with information on the bank's solvency. FINMA's crisis unit would check the plausibility of the data and submit a request to the Board of Directors to issue (or not issue) a solvency confirmation. The Board of Directors pointed out that the SNB alone would decide whether to grant an ELA and that FINMA would only provide advice.[1058]

Two days later, the Board of Directors held an extraordinary meeting to discuss the documents and processes that would be necessary for solvency confirmation in the event of an ELA application. Based on the documents available at that time, the members agreed to a positive solvency confirmation. They then discussed the confidentiality of the ELA and the risk of an information leak.

1052 FINMA statement of 7.8.2024 as part of the administrative consultation; FINMA Resolution Report 2023, available at www.finma.ch > Durchsetcation> Recovery and resolution> Resolution Reporting> Resolution Reporting 2023 (status: 27.11.2024) Minutes of the PUK

1053 meeting of 1.11.2023, p. 54

1054 Art. 9 para. 1 let. b FINMASA

1055 Art. 2bis Regulations on the Organization of the Swiss Financial Market Supervisory Authority
FINMA of 18.12.2008 (FINMA Organizational Regulations) (status: 15.5.2024)

1056 Judgment of the Federal Supreme Court 2C_387/2018 of December 18, 2018

1057 FINMA statement of 7.8.2024 as part of the administrative consultation

1058 Minutes of the FINMA Board of Directors meeting of 10.10.2022, p. 2 f.

leaks. The Chairwoman drew the Board of Directors' to the fact that constant readiness for an application was still appropriate. Finally, the Board of Directors spoke with the Director about the bank's capital situation and the planned sale of the Securitized Products division.[1059]

In the weeks that followed, the Executive Board provided regular updates at several ordinary and extraordinary meetings of the Board of Directors on CS's capital measures, bank's steadily deteriorating liquidity situation and the crisis development scenarios discussed in the AF. However, the Executive Board only requested business for information and did not propose a resolution.[1060] On October 24, the Board of Directors also discussed FINMA's role in a PLB. It came to the conclusion that the SNB in particular would be in the foreground, as it is a liquidity instrument. The Head of the Recovery and Resolution division explained that the use of the PLB could result in the AT1 bonds being written off. This was provided for the regulation by the legislator in the sense of the TBTF regulation. The Board of Directors subsequently also discussed the difficulty of identifying the AT1 investors and the impact of the AT1 write-down on the capitalization of CS's parent bank.[1061] At the beginning of November, the Board of Directors dealt extensively with the procedure and the requirements for a restructuring, as well as the planned tests for the course of a resolution weekend.[1062]

The Chair of the Board of Directors informed the Board on November 3 about the discussions between the Head of the FDF, the SNB President and Federal Council on the introduction of the PLB and its mechanism of action. The Head of the Banks division also out that FINMA was dissatisfied with the data provided by CS. The weekly presentation of the bank's key figures was "incomplete, partially outdated and not sufficiently broken down to enable FINMA to potential decisions on the basis of solid data".[1063] He also gave an introduction to the concrete planning for a resolution of CS and explained various aspects, including how FINMA determines the liquidity PONV and assesses the prospect of restructuring success.[1064]

On November 7, the Board of Directors dealt with the PLB Ordinance drawn up by the SIF and discussed various proposed amendments, which were brought to the attention of the FDF (see section 6.3.4.2).[1065] At the remaining meetings in November, the Board of Directors received regular updates on CS's liquidity and capital situation, the ongoing preparations for a potential ELA reference and the work on the PLB Ordinance. It also deepened its discussions on the implementation of a restructuring, during which it considered the capital and liquidity requirements, the governance structure and the negative economic consequences of a restructuring or bankruptcy.[1066]

After October 10, 2022, the Board of Directors was prepared by the Executive Board for an ELA application or a solvency confirmation. The handling of such an application was practised using effective CS data on October 12, 2022 and again - with updated data - on November 14, 2022. To

1059 Minutes of the FINMA Board of Directors meeting of 12.10.2022, p. 2 f.
1060 Minutes of the FINMA Board of Directors meetings of 14.10.2022, 21.10.2022 and 26.10.2022
1061 Minutes of the FINMA Board of Directors meeting of 24.10.2022, p. 2 f.
1062 Minutes of the FINMA Board of Directors meeting of 1.11.2022, p. 3 f.
1063 Minutes of the FINMA Board of Directors meeting of 3.11.2022, p. 2 f.
1064 Minutes of the FINMA Board of Directors meeting of 3.11.2022, p. 3
1065 Minutes of the FINMA Board of Directors meeting of 7.11.2022, p. 2 f.
1066 Minutes of the FINMA Board of Directors meetings of 10.11.2022, 14.11.2022 and 30.11.2022

A consultative vote was then held. The management was then instructed to provide information immediately if fundamental changes to the situation were foreseeable.[1067]

At the beginning of December, the Board of Directors was informed that CS's continu- gency plans were not satisfactory and that an ELA withdrawal was possible over the festive period. It decided to prepare the best possible decision between restructuring or bankruptcy at one of the following meetings. To this end, it commissioned the preparation of documents and data to determine the prospects of a successful restructuring, as well as a list of the roles of the various units involved in a restructuring.[1068] Although CS's situation deteriorated over the holidays and an ELA claim was on the cards (see section 6.3.6), no further meeting was necessary. However, the Board of Directors remained on constant standby - as it had been since October 2022.

6.3.1.3 FINMA's exchange with foreign authorities

FINMA cooperates with foreign supervisory authorities in the global supervision of large international banks in colleges[1069].[1070] These include the General College, which basically comprises all international supervisory authorities that were relevant to CS, and the APAC College with various authorities from the Asian and Pacific regions.[1071] However, cooperation took place in particular within the *Core College of Supervisors*, to which the Fed, the Federal Reserve Bank of New York and the PRA belong. In non-crisis times, this type of exchange took place at least monthly. During the crisis phase from October 2022, the frequency of meetings increased and the members of the *Core College of Supervisors* were in contact with each other almost daily.[1072]

In addition, there was the *Crisis Management Group (CMG*), which comprised the supervisory and insolvency authorities relevant to the banks concerned - in the case of CS also the SNB[1073] . This dealt with the assessment of the bank's resolvability, the development of the G-SIB's resolution planning and the planning for a crisis or resolution.[1074] Finally, *Crisis Management Colleges (CMC)* have been held annually for the two major Swiss banks since 2011. These took place annually, lasted two to three days and served to inform the foreign authorities about the status of crisis preparation and crisis management at the banks.[1075]

From the beginning of October, FINMA intensified its exchanges with the US and UK resolution authorities as part of the *Core College of Supervisors*. According to FINMA, daily interactions took place between , the partner authorities, the SNB and the authorities responsible for liquidity.

[1067] Minutes of the FINMA Board of Directors meetings of 10.10.2022, 12.10.2022 and 14.11.2022

[1068] Minutes of the FINMA Board of Directors meeting of 7 and 8.12.2022

[1069] The colleges are permanent platforms for cooperation between the international in relation to a financial group or a financial conglomerate. They serve to exchange information and experience and are intended to intensify cooperation between the authorities and improve the supervision of internationally active groups. FINMA runs *supervisory* or *crisis management colleges* for various groups domiciled in Switzerland.

[1070] FINMA: Colleges, https://www.finma.ch/de/> FINMA> International cooperation > Supervisory cooperation> Colleges (as at: 21.6.2024)

[1071] FINMA (2023): Lessons learned from the CS crisis, p. 11 f., 82

[1072] FINMA (2023): Lessons learned from the CS crisis, p. 11

[1073] Written answers to the PUK dated 22.1.2024, p.11

[1074] FINMA (2023): Lessons learned from the CS crisis, p. 82

[1075] Written answers to the PUK dated 15.4.2024

CS departments took place. Among other things, the authorities urged CS to supplement the *liquidity crisis template* so that they could carry out in-depth supervisory monitoring of the bank's daily liquidity situation.[1076] In addition, the *Crisis Management* College[1077] was formally convened at the beginning of October - around the same time as the AF determined phase red.[1078] According to FINMA, there were various high-level telephone calls with the foreign authorities between October 2022 and February 2023 as part of the CMG and CMC as well as at bilateral level.[1079] These mainly involved informing each other about the situation at CS, exchanging views on regulatory issues and answering technical questions. According to FINMA, there were further exchanges between the authorities to provide status updates on the situation at CS, for which no notes or minutes were taken.[1080]

As part of the CMC, FINMA informed the foreign authorities on 11 October 2022 about the intensified supervision of the bank's liquidity situation, the temporary relief to be granted to CS and the preparations in the event of a further deterioration in the situation.[1081] In the context of the use of the Pillar 2 buffer and the pending breach of the Pillar 1 requirements, FINMA discussed CS's upstreaming options in Switzerland and abroad with the PRA on October 20 and with the Fed on October 23, 2022. The (partial) sale of the securitized products business (see Box 9 in section 6.3.1.1) and the preparatory work of the Swiss authorities in the resolution scenario (including PLB) were also discussed. A full sale was difficult given CS's lack of financing capacity, which is why a partial sale seemed more likely. At the time, there was little willingness on the part of the Fed to allow CS to use its Pillar 1 buffers.[1082] On October 24, 2022, the trilateral exchange between the authorities revolved around CS's dwindling Pillar 1 buffers, which were confirmed by all authorities. At this meeting, FINMA also provided information on CS's weighing up between an ELA withdrawal and falling short of the Pillar 1 requirements.[1083]

From the end of October and throughout November, FINMA regularly informed the UK and US authorities, both in the CMC and bilaterally, about the development of CS's liquidity situation, its contingency measures, the sale of the Securitized Products business, FINMA's work on a resolution and the ongoing preparations for the PLB.[1084] On 16 November, FINMA also met with the Chairman and other high-ranking SEC staff discuss the consequences of the sale.

1076 FINMA (2023): Lessons learned from the CS crisis, p. 70

1077 Initially, only FINMA, the Fed (USA) and the PRA (UK), and from November also, based on temporary cooperation agreements, the SEC (USA) and the New York State Department of Financial Services . Source: Minutes of the High-Le vel CMG telephone calls of 1.11.2022 and 2.11.2022

1078 FINMA (2023): Lessons learned from the CS crisis, p. 34

1079 FINMA's chronology of 19.9.2023. The FINMA has not published any information on various of these discussions.
FINMA prepared notes of the discussions (not actual minutes), which form the basis for the
for the following overview.

1080 FINMA (2023): Extended chronology dated 26.9.2023; letter from FINMA to the PUK dated 22.3.2024

1081 Minutes of the high-level CMC telephone call of 11.10.2022

1082 Minutes of the high-level call with the PRA on 20.10.2022; minutes of the high-level call with the Fed on 23.10.2022

1083 Minutes of the high-level meeting between FINMA, the Fed and the PRA on 24.10.2022

1084 Minutes of the high-level CMC call on 31.10.2022; minutes of the high-level call with the Fed on 2.11.2022; minutes of the high-level CMC call on 8.11.2022; minutes of the high-level call with the Fed on 10.11.2022

a write-down of CS's bail-in instruments in the USA would have from their point of view.[1085]

On December 16, FINMA informed the Fed and the PRA in a CMG telephone call that CS's capital increase had been successful and that there was no imminent capital problem given the CET1 ratio of over 13%. She described the liquidity situation as stable but fragile. The completion of the sale of the Securitized Products division should have a positive impact over the coming months. It is of the opinion that it is not in a runway period and does not currently have to make use of resolution measures. FINMA noted that an operational readiness of seven to ten days remains key. It also positively acknowledged the constructive exchange on resolution planning with the other authorities.[1086] On 19 December, the bilateral exchange with the Fed also focused on CS's low liquidity buffer and possible breaches of liquidity regulations in the US. According to the US authorities, the lower limit of USD 18 billion set by the Fed for cash holdings, which the Fed expected CS to notify if it was reached (see Box 16 in section 7.2.2.2), was under pressure at the time.[1087]

Two further exchanges with the Fed took place at the beginning of February. According to the information available to the PUK, high-level phone calls with the US and British authorities did not take place again until the days of the acute crisis in March 2023 (see section 7.2).

6.3.2 SNB measures from October 2022

From October 2022, the SNB was primarily active in the various crisis bodies (see section 6.3.3 and following). The measures taken by the SNB as part of its usual macroprudential tasks vis-à-vis CS and in line with its monetary policy instruments are set out below.

Specifically, in October 2022, the SNB held a discussion with CS about reducing the limit to which CS is entitled for the liquidity-shortage financing facility (EFF) (see section 3.3). By reducing this limit, CS could have generated up to CHF 10 billion in liquidity without having to mention an EFF reference when publishing its results in the third quarter of 2022. The SNB supported CS's plan, as a reference to the EFF in the environment at the time (announcement of the strategic realignment on October 27, 2022) could have led to uncertainty among market participants. However, CS withdrew its application for a reduction in the limit at the end of October on its own initiative.[1088]

In October 2022 and again at the end of December 2022, the SNB evaluated options with CS as to how it could provide CS with liquidity without using the terms "ELA" or "extraordinary liquidity assistance" in order to avoid the stigmatization associated with the disclosure of an ELA withdrawal. However, this approach was not pursued further, as the formal designation of the liquidity withdrawal at the SNB would have had no influence on CS's disclosure obligations in Switzerland and the USA.[1089]

1085 Written answers to the PUK dated 15.4.2024, p. 4 f.
1086 Minutes of the high-level CMC call on 16.12.2022
1087 Minutes of the high-level call with the Fed on 19.12.2022
1088 Letter from the SNB to the PUK dated 17.6.2024, Annex 2 "Exchange with Credit Suisse (CS) – Collateral Examinations"
1089 Letter from the SNB to the PUK dated 17.6.2024, Annex 2 "Exchange with Credit Suisse (CS) – Collateral Examinations"

Box 10: The SNB's various liquidity facilities

During the CS crisis, the SNB focused on several liquidity facilities: EFF, ELA, ELA+ and PLB. These instruments were not all available in parallel, nor were they all used at the same time. This box explains the special features of the liquidity facilities and indicates when they were used.

Bottleneck financing facility

The SNB can use the EFF to provide its business partners with liquidity so that they can bridge an unexpected liquidity bottleneck at short notice (see section 3.3).

Credit Suisse drew CHF 10 billion under the EFF on March 16, 2023 (see section 7.2.2.5).

Emergency Liquidity Assistance

As *lender of last resort*, the SNB can grant extraordinary liquidity assistance (*ELA*) to a bank that can no longer finance itself on the market. According to the law, this can only be done if sufficient collateral is provided for the loans.[1090]

How much ELA a bank can obtain (ELA potential) depends on various factors, including whether a bank has carried out the necessary preparatory work with regard to collateral and whether the collateral has not already been used for other purposes (see section 5.5.3).

On March 16, 2023, CS drew around CHF 38 billion under ELA (see section 7.2.2.5).

Emergency Liquidity Assistance plus

With ELA+, the SNB provides liquidity assistance without this being directly secured by collateral from the bank or a guarantee from the Confederation (for which the approval of FinDel required). This possibility was created by the Federal Council with an emergency ordinance on March 16, 2023, which formed the legal basis for this new type of liquidity assistance by the SNB. According to the emergency ordinance, the SNB was a bankruptcy privilege in return for granting ELA+. Based on an assessment by the authorities of the value of this bankruptcy privilege at the time, the maximum amount to be paid out under this title was initially set at CHF 50 billion (for CS only) by federal decree on March 16 after consulting the SNB. On
On March 19, this maximum amount was increased to CHF 100 billion (CHF 50 billion each for CS and UBS).

The first loan under ELA+ was granted by the SNB to CS shortly after the emergency ordinance was passed on March 16, specifically on
March 17 and therefore before the PLB loans were granted. At this point, the ELA potential had already been exhausted. A second loan was granted on March 19, 2023. In total, the SNB granted the two Swiss CS companies (Credit Suisse AG and Credit Suisse (Schweiz) AG) CHF 50 billion in liquidity under ELA+ on request (see sections 7.2.3.5 and 7.2.5.5).

Public Liquidity Backstop

If a bank itself no longer has assets that can serve as collateral for ELA, a third-party guarantee - namely a guarantee from the federal government - can also serve as collateral. The legal basis for the federal government to issue such a guarantee did not exist in March 2023. A corresponding law was only planned (see section 6.3.4.2). The Federal Council created the basis for such a guarantee and thus for PLB loans by means of an emergency ordinance dated

[1090] Art. 9 para. 1 lit. e NBA

The FinDel subsequently approved an urgent commitment credit of CHF 100 billion required for this purpose (see section 7.2.5.5).

On this basis, the SNB was able to grant Credit Suisse liquidity in the form of PLB loans in the maximum amount of CHF 100 billion from March 19. The SNB granted the bank a total of CHF 70 billion in liquidity under this title on request.

6.3.3 Closer monitoring of the situation by the authorities from October 2022

As mentioned above (see section 6.1.2), CS was confronted with massive liquidity outflows at the beginning of October 2022. This led to closer monitoring by the authorities.

6.3.3.1 Switch to crisis mode and initial discussions on the scenarios in the coordination committees

Activation of the crisis mode

At the meeting of the AF on October 5, the head of FINMA's Banking division presented the figures on CS's liquidity and informed the members of the AF that FINMA had switched to crisis mode on that day in accordance with its internal directives.[1091] The crisis mode had an impact on the project structure at FINMA, primarily in that a committee of the Executive Board[1092] was created that could report directly to the Board of Directors without having to involve the entire Executive Board.

The AF discussed whether it should also switch to crisis mode, the red phase, in application of its organizational regulations. According to the SNB's Organizational Regulations, crisis mode must be triggered if the situation on the financial markets or at individual Swiss institutions poses an immediate threat to the Swiss economy or the functioning of the Swiss or international financial system.[1093] In view of the situation and in order to ensure the credibility of any measures, the SNB Vice-Chairman, the State Secretary for International Financial Matters, the Director of the FFA and the Director of FINMA decided to activate the red phase and - as provided for in the regulations - to inform the members of the SC about this.[1094] As a result, the frequency of meetings of the SC increased. Instead of one or two meetings per year, as was usual in normal times, were now several meetings per month or even per week. The LG, which is convened as required and in particular at the request of the AF, also increased the frequency of its meetings in view of the activation of Phase Red.[1095] In addition, the members of the AF defined a brief crisis communication concept - as provided for in its organizational regulations[1096] - with a focus on the following two elements: CS is in the process of reviewing its strategy and is being closely monitored by FINMA during this phase.[1097] Com- munication remains passive and only takes place in the event of media inquiries to the authorities.

[1091] Transcription of the AF meeting of 5.10.2022
[1092] This made up of the Director, the Head of the Recovery and division, the Head of the Banks division and the Head of FINMA's Enforcement division.
[1093] Art. 3.2.1 Organizational regulations of the Financial Crisis Committee dated 6.1.2015
[1094] Art. 3.2.5 Organizational regulations of the Financial Crisis Committee dated 6.1.2015
[1095] The list of meetings held by the LG and the AF from summer 2022 can be found in the chronology in the appendix to this report.
[1096] Art. 3.2.4 Organizational regulations of the Financial Crisis Committee dated 6.1.2015
[1097] Transcription of the AF meeting of 5.10.2022

Initial discussions on the various crisis management scenarios

At the AF meeting on October 5, a working group was finally set up in which the SNB, FINMA, FFA and SIF were represented. Its task to examine the authorities' various options and their advantages and disadvantages in greater detail. The working group was by the head of FINMA's Recovery and Resolution division.[1098] The initial analyses of this working group were discussed at the AF on October 11. At that time, the authorities spoke of various steps:[1099] The first step was to take measures address CS's lack of liquidity, in particular by means of an ELA - a measure that was already available.[1100] The second step was to consider a restructuring and the use of the PLB in the event that an ELA did not have the desired effect. It was noted that the preparatory work required for this had not yet been carried out. The third step mentioned was liquidation with the triggering of an emergency plan for the Swiss unit ("*break-up*")[1101] . However, the head of the working group considered it premature to discuss this option, as it would be secondary to the preferred strategy of restructuring by means of a single point of entry bail-in and PLB (so-called fallback scenario).[1102] The members of the AF agreed that the situation had to be closely monitored and that the bank's assessments alone could not be relied upon.[1103] According to the information available to the PUK, the order to write off the AT1 bonds was also discussed for the first time in the AF at the aforementioned meeting.[1104]

Box 11: Elaboration of the scenarios for exiting the crisis

From autumn 2022, the authorities analyzed various (hypothetical) scenarios for exiting the crisis. This box provides an overview of the scenarios discussed and refers to the relevant chapters so that it is possible to understand how the discussions between the authorities developed.

CS overcoming the crisis under its own steam

This scenario envisaged that CS would able to overcome the crisis on its own. The bank would have had the option of on the support available to it, such as the ELA (standard instrument already provided for in the legislation, see section 5.5.3) or, if necessary, the ELA+[1105] (option that would have had to be introduced by means of emergency legislation).[1106] This scenario was favored by the authorities for a long , as they were concerned about intervening too quickly. It was not until March 15, 2023 that they came to the conclusion that this solution was definitely no longer realistic.

The role of the individual players in this scenario would have been the same as their normal role: FINMA would have supervised and supported the bank's own measures. Under certain circumstances, it would have granted temporary regulatory relief. The SNB, as *lender of last resort*, would have

1098 Transcription of the AF meeting of 5.10.2022
1099 Later, the authorities spoke mainly of "scenarios".
1100 In this context, FINMA put the ELA potential at around CHF 30 billion and qualified this amount as "very large". It also stated that a large amount "could be up-streamed". Transcription of the AF meeting of 5.10.2022, p. 9 and 13.
1101 Transcription of the AF meeting of 11.10.2022; PowerPoint presentation "Interpretation a confidence crisis scenario", AF meeting of 11.10.2022
1102 Transcription of the AF meeting of 11.10.2022, p. 14/15; PowerPoint presentation for the LG of 23.10.2022
1103 Transcription of the AF meeting of 11.10.2022, p. 17
1104 Transcription of the AF meeting of 5.10.2022, p. 10
1105 ELA+ was not used as a term until later.
1106 Other designations for this scenario: Option A or A+, Scenario 1. Chronology of the FDF scenarios of 22.11.2023 prepared at the request of the PUK.

ELA and, if necessary, the ELA+. The FDF and the Federal Council would have been responsible for overarching political support.

Takeover of Credit Suisse by another bank

This scenario envisaged the following two options: the takeover of CS by a Swiss bank or by a foreign bank.[1107] This option was by the authorities from the end of October 2022. Measures such as ELA (instrument already available), ELA+ or PLB were considered. This required the application of emergency law (for the latter two options) and the write-off of the AT1 bonds. The takeover by a foreign bank was discussed. However, such a transaction would have been highly complex due to its cross-border nature and would most likely have required more time both in terms of preparation and implementation.

During the crisis weekend, the authorities decided to pursue a variant of this scenario (merger with UBS). However, should be noted that the loss guarantee to UBS and the emergency restriction of shareholder rights were not part of the preparations and were only discussed in the period from March 17 to 19, 2023 (see sections 7.2.3-7.2.5).

Restructuring of the bank and capital measures

This scenario envisaged that CS would be wound up in accordance with FINMA's restructuring plan. This instrument is provided for in the TBTF legislation (see section 5.2.2.1).[1108] The shares and AT1 capital would have been written off (total loss) and a bail-in of debt capital for recapitalization would have followed. FINMA's role in this scenario would have been to implement the recovery plan and the bail-in, while the SNB would have been responsible for implementing the ELA and, if necessary, the ELA+ and the PLB. As the introduction of the ELA+ and the PLB required emergency law, the SNB would have been accompanied by the FDF and the Federal Council in this regard. This measure was already introduced and discussed at the beginning of the deliberations.

Bankruptcy of the bank and triggering of the emergency plan

This scenario envisaged the bankruptcy of CS (Credit Suisse Group and Credit Suisse AG) and the continued operation of systemically important functions in Switzerland thanks to the triggering of the emergency plan as provided for in the legislation (see section 5.2.2.1).[1109] This scenario was not discussed until November 2022. A TPO - i.e. temporary nationalization until a private solution is found - was mentioned as a variant for the bank's Swiss unit. Although this not a classic instrument of TBTF legislation, the authorities had already initial consideration to this in 2020 (see section 5.2.2.1 and section 5.2.5.6). This variant should not be confused with the nationalization of the entire Credit Suisse Group (see the following scenario).

(Temporary) nationalization of CS

This scenario envisaged that the Confederation would temporarily take over the entire Credit Suisse Group as part of a TPO.[1110] In this scenario, which was only implemented from March

[1107] Other names for this scenario: Option B, Scenario 2, Project Como, Project Africa. See the chronology of FDF scenarios of 22.11.2023 drawn up at the request of the PUK.

[1108] Other terms for this scenario: Option C, Scenario 3. The term "liquidation" is in some French documents. See the chronology of FDF scenarios of 22.11.2023 prepared at the request of the PUK.

[1109] Other designations for this scenario: Option D, Scenario 4.
documents, the term "liquidation" is used. See the chronology of the FDF scenarios of 22.11.2023 prepared at the request of the PUK.

[1110] Other names for this scenario: Plan B. See the chronology of the FDF scenarios of 22.11.2023 at the request of the PUK.

2023 was discussed, the application of emergency law would have been necessary for several aspects: ELA+, PLB, creation of a legal basis for the takeover by the federal government and the expropriation of shareholders. This scenario would also have resulted in the AT1 bonds being written off.

Other measures discussed, but not in depth

Strengthening of own funds by the Confederation (capital participation): The Confederation would have made a capital contribution to CS for the purpose of increasing capital and stabilization. This would have resulted in a write-down of the AT1 bonds. This measure can be regarded as a type of TPO (see section 5.2.5.6). It was discussed in the AF on October 15, 2022, but was scrapped after the initial analysis and only briefly considered again in March 2023.[1111]

PLB as a pure liquidity measure: The Federal Council would have introduced the PLB by emergency law and outside of a restructuring or merger in order to ensure CS's liquidity. This instrument falls within the scope of the TBTF measures and has already been introduced in other countries. It was not yet available in Switzerland (see section 5.2.6.2). At the Federal Council meeting on November 4, 2022, the possibility of adopting the mere legal basis for a PLB (but without activating the PLB) by emergency law should have been discussed. However, this meeting was canceled at short notice due to the assessments of CS's liquidity situation and the impact of the instrument (see section 6.3.4.1).

Chronology of the discussions of the scenarios between the authorities

- October to December 2022: Discussion of the various action steps in the LG and AF (sections 6.3.3, 6.3.4, 6.3.5)
- January 2023: Formalization of the four scenarios in the LG and AF (section 6.4.2)
- February 2023: Discussion of the scenarios in the Federal Council (section 6.4.3.1)
- February to mid-March 2023: Elaboration of the scenarios in the LG and AF (section 6.4.3.2)

The possible measures were discussed again at the meeting of the AF on October 15. At this meeting, the discussion about ordering the write-off of the AT1 bonds intensified at the level of the AF in connection with various capital or support measures by the federal government (e.. a possible participation by the federal government or a PLB). Such an order would be made in a restructuring or if there is a so-called viability event that triggers the write-down order.[1112]

According to the information available to the PC, the first so-called non-meeting between the authorities and CS took place on Sunday evening, October 16 (see section 6.3.3.2). At this meeting, the CS Chairman an overview of the measures planned by CS in view of the presentation of the new corporate strategy at the end of October. CS had expected positive reactions from the markets and hoped that this would lead to new financing opportunities.[1113] Like the meeting on October 23, the meeting on October 16 was limited to the exchange of information which, according to the Chair of the Board of Directors, was already available to FINMA via LG and AF.[1114]

[1111] Transcription of the AF meeting of 15.10.2022; chronology of the scenarios developed by the FDF on 22.11.2023
[1112] Transcription of the AF meeting of 15.10.2022, p. 25
[1113] Written answers to the PUK of 22.1.2024, p. 5 [1114]
Minutes of the PUK meeting of 1.11.2023, p. 38 f.

At the following meeting of the LG - on October 17, 2022 - both FINMA and the SNB assured that they were ready intervene within the scope of their respective legal mandates (restructuring and ELA). However, they considered it necessary to weigh up the political interests in connection with a possible intervention by the state.[1115] The members of the SC also discussed the scenarios prepared by the AF, which assume a sustainable stabilization of the bank after the
October 27, 2022 to an ongoing crisis of confidence with corresponding possible measures on the part of the bank and the authorities.[1116] According to the information provided by the PUK, the write-off of the AT1 bonds as a capital measure was discussed at this meeting in connection with a possible participation of the Confederation CS.[1117] According to the FDF, this possible participation was subsequently rejected by the FDF itself.[1118] Ultimately, a further meeting was scheduled for the following week in order to keep abreast of developments.

The preparation of the technical aspects of the scenarios continued in the AF: At the meeting on October 19, a restructuring was discussed in detail. The members of the AF were also informed by the SNB that the CEO of CS had called the SNB Chairman in the late afternoon of the previous day (i.e. on October 18) to inform him that the bank intended to submit an ELA application, even though the authorities it risky to grant ELA before the time required for the
CS's new strategy announced on October 27.[1119] The bank ultimately decided against this request in view of the public reaction (see section 6.3.4.1). The AF also considered from what point in time and under what circumstances the AT1 bonds could be written off. Among other things, the question was discussed as to whether a write-down could be ordered even without a bail-in and whether the PLB would constitute a so-called *viability event* that would trigger the write-down order.[1120]

The very next day, October 20, the AF met again and discussed four options:[1121] PLB only; PLB with an order to write off the AT1 bonds and protective measures regarding the bank's strategy and management; PLB and partial bail-in; bail-in without PLB.[1122]

First mention of a sale of CS in the LG (October 2022)

The four options mentioned were also discussed at the meeting of the SC on October 21, 2022. Other options that had not previously been discussed were also brought up, including the scenario of a sale, which was briefly addressed for the first time at the LG at that time.[1123] According to the SNB Chairman, this scenario was taken up on the basis of the discussions that had previously been held with the Chairman of the Board of Directors of UBS, among others, at the annual meeting of the IMF from October 10 to 16, 2022.

At the same meeting, the Chair of FINMA's Board of Directors also noted that the risk of a liquidity crisis still existed, particularly as a result of ring-fencing measures by foreign authorities (see Box 16 in section 7.2.2.2).[1124]

[1115] Minutes of the LG meeting on 17.10.2022
[1116] Minutes of the LG meeting on 17.10.2022
[1117] Draft minutes of the meeting of the Board of Directors of 17.10.2022, agenda item 2: Measures to strengthen the equity base
[1118] FDF chronology alternative scenarios from 22.11.2023. The legal aspects were examined from March 7, 2023.
[1119] Transcription of the AF meeting of 19.10.2022, p. 1-3
[1120] Transcription of the AF meeting of 19.10.2022, p. 17 ff., 22
[1121] These options did not yet correspond to the scenarios described above.
[1122] Transcription of the AF meeting of 20.10.2022; PowerPoint presentation "Possible and options after 27.10.2022", LG of 21.10.2022
[1123] Minutes of the PUK meeting of 29.11.2023; minutes of the LG meeting of 21.10.2022
[1124] Minutes of the LG meeting of 21.10.2022, p. 2

The then Head of the FDF and the Chairman of the SNB are said to have discussed possible options in Washington in the event that the situation at CS escalated.[1125] According to the Chairman of the SNB, they also discussed the idea of a merger between UBS and CS during this exchange, as the banks already held preliminary talks on this a few years previously.[1126] Following this exchange, the Chairman of the SNB sought talks with the Chairman of the Board of Directors of UBS for the first time. The latter had indicated to him that UBS was prepared to merge with CS if this became necessary for financial stability and the Swiss financial center.[1127] The Chairman of the Board of Directors of UBS, however, the PUK that a merger was only discussed on 23 October 2022 at the second informal high-level meeting with the SNB Chairman in the presence of the then Head of the FDF (see section 6.3.3.2). According to the parties involved, a meeting was actually held with the Chairman of the Board of Directors of UBS on October 23, but without the involvement of FINMA.[1128] The option of a merger or a purchase was discussed as a fallback solution the event that CS was unable to manage on its own. The Chairman of the Board of Directors of UBS had confirmed UBS's willingness participate in finding a solution if necessary. However, details were not discussed, not least because both the authorities and UBS preferred a solution that ensured the continued existence of two major Swiss banks.[1129] According to the then Head of the FDF, the impression arose that the UBS Board of Directors had dealt with the takeover of CS in more detail than CS itself.[1130]

The contact with the Chairman of the Board of Directors of UBS thus appears to have taken place without the LG having been or having issued a corresponding mandate.[1131] At the end of their meeting on October 21, the members of the LG decided to wait for CS's new strategy, which was to be announced a few days later, to see how the situation developed.[1132]

On October 26, the day before the announcement of CS's new strategy, the AF another meeting at which the members discussed the current situation. They noted that the outflows had slowed down and that the

[1125] FINMA only found out about these meetings in 2024 as part of the PUK investigation. Source: FINMA statement of 7.8.2024 as part of the administrative consultation

[1126] Minutes of the PUK meeting of 29.11.2023, p. 7

[1127] Minutes of the PUK meeting of 29.11.2023, p. 7

The Chairwoman of FINMA's Board of Directors did not take part in this meeting because, as a representative of FINMA, she could not talk to UBS about another supervised banking institution, let alone one in serious difficulties and without its participation. She also feared that it appeared that the authorities had asked UBS to merge CS, and if a merger actually took place later, UBS could exert pressure on FINMA to obtain easier regulatory conditions. The Chairman the Board of Directors of FINMA had advised the Chairman of the SNB against a meeting in advance for these reasons. In addition, UBS had a large exposure to CS. The Chairwoman of the FINMA Board of Directors described the talks with UBS as and "negotiated at the wrong end of the table". Minutes of the PUK meeting of 1.11.2023, p. 39; Minutes of the PUK meeting of 27.3.2024, p. 31; Written answers to the PUK of 25.6.2024; Minutes of the PUK meeting of 29.11.2023, p. 7

[1129] Minutes of the meeting of the PUK of 8.11.2023, p. 24; minutes of the meeting of the PUK of 29.11.2023, p. 7; minutes of the PUK meeting of 14.2.2024, p. 32 f.; written answers to the PUK of 19.2.2024

[1130] Minutes of the PUK meeting of 8.11.2023, p. 31

[1131] According to information provided by the SNB during the administrative consultation, however, the decision to contact was made in consultation with the three members of the SC (SNB statement of 31.7.2024 during the administrative consultation). The minutes of the LG meeting of 21.10.2022 do not contain any information on this.

[1132] Minutes of the LG meeting on 21.10.2022

was the first day with a net positive liquidity result. Neverthelessthose present emphasized that there no all-clear. The AF also spoke about the amounts available in the event of the ELA being utilized.[1133]

Reactions to the announcement of CS's new strategy

The focus of the discussions at the LG meeting on October 28 was the announcement of CS's new strategy. The Head of the FDF summarized the situation as follows: The reaction of the markets to CS's announcement ranged from rather wait-and-see to negative, and the authorities would continue to work on crisis exit scenarios with unchanged pressure.[1134] The further work of the authorities in the individual committees is described in section 6.3.4. In addition, the SC again discussed possible ring fencing abroad (see Box 16 in section 7.2.2.2). The Chairwoman of the Board of Directors and the Director of FINMA reported that FINMA had received clear signals from foreign authorities regarding ring fencing.[1135]

6.3.3.2 Intensified informal exchange the authorities and the banks begins in October

From October 2022, as CS's difficulties intensified, there were various meetings between representatives of the authorities and banks that did not take place within the framework of regular structures or institutionalized exchange forums, but were of an informal nature and were therefore not recorded.

According to the information available to the PUK, the first informal talks between the authorities and bank representatives took place on the margins of the annual meeting of the IMF and World Bank in Washington between October 10 and 16, 2022 (see section 6.3.3.1). During this time, there was also a telephone exchange between the SNB Chairman and the Chairman of the CS Board of Directors, who promised to prepare a document for the authorities on a possible sale or merger of CS in the event of an emergency.[1136] This concept paper was available at the beginning of November.[1137]

Non-meetings between the FDF, SNB, FINMA and the banks

Later October 2022, the SNB Chairman and the then Head of the FDF recognized the need for regular informal meetings with the Chairman of the CS Board of Directors. According to the SNB Chairman, the aim of these talks was to maintain a dialog at the highest level with CS and to regular updates from the Chairman of the CS Board of Directors on the status of matters. In addition, the authorities wanted to be able to exert the necessary pressure to ensure that preparations made in the event of a crisis.[1138] The Chair of the FINMA Board of Directors was also invited to three of these meetings and, according to her own account, was informed by the SNB Chairman in mid-October that he and the Head of the FDF wanted to initiate so-called non-meetings with the Chairman of the CS Board of Directors.[1139] These were described her as meetings that not on any agenda and that only those members of the Board of Directors who were not involved in the crisis would know about.

1133 Transcription of the AF meeting of 26.10.2022
1134 Minutes of the LG meeting on 18.10.2022
1135 Minutes of the LG meeting of 28.10.2022, p. 2
1136 Minutes of the PUK meeting of 29.11.2023, p. 7
1137 Written answers to the PUK dated 19.2.2024, p. 2; "M&A Considerations", Ar-CS contribution paper from November 2022
1138 Minutes of the PUK meeting of 1.11.2023, p. 38; Minutes of the PUK meeting of 29.11.2023, p. 7
1139 Minutes of the PUK meeting of 1.11.2023, p. 38

The Chairman of the FINMA Board of Directors was critical of the format of the meetings. She therefore referred to the authorities' regulated channels of exchange and considered the lack of written form to be particularly problematic. As it was agreed at the suggestion of the Chair of FINMA's Board of Directors that one additional person per institution[1141] should be informed and she wanted to meet the other authorities' need for information whenever possible, the Chair of FINMA's Board of Directors nevertheless attended three[1142] of the non-meetings with CS.[1143] The former head of the FDF explained FINMA's absence the remaining meetings by saying that it was hoped that it would have better access to the Chair of CS's Board of Directors. The relationship between CS and FINMA had seemed strained due to its supervisory activities, and CS had not seemed receptive to FINMA's concerns.[1144] In contrast, the Chair of FINMA's Board of Directors explained that the lack of binding nature of the non-meetings on October 16 and 23 had, in her view, led to the Chairman of the Board of Directors of CS feeling confirmed in his unrealistic assessment. Pure information meetings, on the other hand, should be held within the normal framework of the LG or the AF.[1145]

The frequency of these meetings could not conclusively clarified, as the statements do not provide a consistent picture in this regard and hardly any written information is available due to their informal nature.[1146] According to the information available to the PUK, the then Head of the FDF and the Chairman of the SNB met with the Chairman of the CS Board of Directors at intervals of several weeks. The following an overview of the meetings known to the PUK and their contents, insofar as they are comprehensible. Detailed information on the individual meetings can be found in the chapters below on the management of the authorities, which are structured chronologically.[1147]

Table 14: List of non-meetings according to information from the PUK

Date	Participants	Topic	Further details
16.10.2022	Head of the FDF, Chairman of the SNB, Chairman of the FINMA Board of Directors, Chairman of the CS Board of Directors	Outline of the measures planned by CS	Chap. 6.3.3.1
23.10.2022	Head of the FDF, Chairman of the SNB, Chairman of the FINMA Board of Directors, Chairman of the CS Board of Directors sident	CS target picture, capital increase, restructuring of the bank	Chap. 6.3.3.1

[1140] Minutes of the PUK meeting of 1.11.2022, p. 37 f.; Written answers to the PUK of 25.6.2024, p. 11 f.

[1141] According to the Chairwoman of the FINMA Board of Directors and the Chairman of the FINMA Board of Directors
The former Chairman of the SNB, the then Director of FINMA, the then Chairman of the SNB and the State Secretary for International Financial Matters.

[1142] On October 16 and 23 and on December 30, 2022

[1143] Minutes of the PUK meeting of 1.11.2023; Written answers to the PUK of 25.6.2024, p. 11 f.; Minutes of the PUK meeting of 27.3.2024, p. 7

[1144] Minutes of the PUK meeting of 8.11.2023, p. 31 f., p. 39

[1145] Minutes of the PUK meeting of 1.11.2023, p. 37 f.; Minutes of the PUK meeting of 27.3.2024, p. 29 ff.

[1146] According to the former head of the FDF, they were held weekly on Sunday evenings. at the SNB headquarters in Zurich. Others involved, however, spoke of a rhythm.

[1147] Since no official minutes were taken and the participants in the meeting were
As the participants had not taken notes or no longer their own notes, this information is based on hand notes from debriefings and statements the participants made to the PUK.

Date	Participants	Topic	Further details
23.10.2022	Head of the FDF, Chairman of the SNB, Chairman of the UBS Board of Directors	UBS willing merge with CS as a fall-back solution	Chap. 6.3.3.1
13.11.2022	Head of the FDF, Chairman of the SNB, Chairman of the CS Board of Directors	Future of CS and planned introduction of the PLB in December 2022	Chap. 6.3.4.2
04.12.2022	Head of the FDF, Chairman of the SNB, Chairman of the CS Board of Directors	Challenges in working with FINMA, role of the authorities, communication with CS	Chap. 6.3.5.1
29.12.2022	Head of the FDF, Chairman of the SNB, Chairman of the FINMA Board of Directors, Chairman of the CS Board of Directors	Unexpected deterioration in CS's liquidity situation: FINMA's demands on CS for preparation of the data room and sale	Chap. 6.3.5.4

Passing on information to the authorities involved

The way in which the participants passed on information from the meetings to their respective authorities varied considerably. Although there appeared to be an effort to inform one other person per institution about the meetings,[1148] this was handled differently. For exampleSNB and FINMA[1149] held verbal debriefings and informed the responsible units,[1150] while such debriefings at the FDF took place only in a rudimentary form or not at all.[1151] The meeting of
December 29 was also extensively prepared and followed up internally at FINMA.[1152]

According to the Chairman of the SNB and the then Head of the FDF, the positions that the authorities present represented vis-à-vis CS were defined in the LG and in other meetings and agreed with the Chair of the FINMA Board of Directors.[1153] However, this information transfer in the LG did not take place in an institutionalized format and generally kept brief.[1154] The Chair of the FINMA Board of Directors, on the other hand, stated that the meetings of 16 and 23 October 2022 were purely informational meetings and that there was no need for any further information.

1148 Minutes of the PUK meeting of 1.11.2023, p. 37
1149 Minutes of the PUK meeting of 1.11.2023, p. 43
1150 Written answers to the PUK dated 22.1.2024
1151 Minutes of the PUK meeting of 24.1.2024, p. 19; Minutes of the PUK meeting of 8.11.2023, S. 81
1152 The Chair of FINMA's Board of Directors involved several of her employees in the planning and debriefing of the meeting. For example, she arranged for FINMA's demands to be sent to CS in writing on the evening before the meeting and conducted an oral debriefing after the meeting. Sources: Email from the of FINMA's Board of Directors to the then Director of FINMA and the Head of FINMA's Banking division dated 28.12.2022, 12.30 p.m.; email from the of FINMA's Board of Directors to the then Director of FINMA and the Head of FINMA's Banking division dated 28.12.2022, 4.49 p.m.; email from the of FINMA's Board of Directors to the then Director of FINMA and the Head of FINMA's Banking division dated 29.12.2022, 8.02 p.m.
1153 Minutes of the PUK meeting of 27.3.2023, p. 11, Minutes of the PUK meeting of 8.11.2023, S. 39
1154 Written answers to the PUK dated 12.1.2024, p. 4

FINMA had not been aware of any joint position of the authorities in terms of demands and measures vis-à-vis CS before 29 December 2022.[1155] The minutes of the SC only contain references to meetings between the then head of the FDF, the SNB President and the Chairman of the CS Board of Directors from the end of November.[1156] Concrete information on the content of a meeting with the Chairman of the CS Board of Directors was only shared at the SC meeting on 9 December.[1157] According to its own statement, FINMA had no knowledge that challenges in the cooperation between it and CS were also discussed.[1158] The members of the AF and other members of the SC therefore had knowledge of two meetings - irrespective of the information provided by the respective SC member on the non-meetings - but not of their specific motivation or the format of these non-meetings.[1159]

With regard to the meetings that the Chairwoman of the FINMA Board of Directors did not attend, the SNB Chairman and the former FDF Chairman stated that they had informed her of the content of the discussions.[1160] In contrast, the Chair of FINMA's Board of Directors testified before the PUK that she was only aware of the meeting with the Chairman of the UBS Board of Directors and of another meeting that was noted in the minutes of the LG[1161].[1162] As far as the PUK is aware, she was therefore only not informed about the meeting on 13 November 2022.

Evaluation of the non-meetings by the authorities involved

In general, the attitude of the Chairman of the CS Board of Directors at these meetings was described by all meeting participants as optimistic, sometimes even overly optimistic. When answering questions from the authorities, mainly positive aspects were emphasized.[1163] It had become clear that the Chairman of the Board of Directors of CS had underestimated and glossed over the situation, among other things in order to radiate security to the outside world.[1164]

The usefulness of the non-meetings was assessed differently. The FINMA managers saw the non-meetings with CS - with the exception of the meeting of December 29, 2022 - is of little use due to the lack of commitment. According to FINMA, it is not aware of any demands or deadlines for CS or a "solution" with CS from the other non-meetings. FINMA did not receive any useful new information or results from the non-meetings either. Non-meetings between the authorities and UBS were considered very sensitive for various reasons.[1165] The FINMA Director criticized the fact that the positions of the Chairman of the CS Board of Directors had sometimes taken up too much space after such meetings.[1166] However, he also commented positively on these meetings in December 2022, as the FDF and the SNB had taken FINMA's concerns into account with regard to the

[1155] Minutes of the PUK meeting of 1.11.2023, p. 38 ff.
[1156] Minutes of the LG meeting of 25.11.2022, p. 2; Minutes of the LG meeting of 9.12.2022, p. 2
[1157] Minutes of the LG meeting of 9.12.2022, p. 2
[1158] FINMA statement of 7.8.2024 as part of the administrative consultation
[1159] Minutes of the PUK meeting of 24.1.2024, p. 49; FINMA statement of 7.8.2024 as part of the administrative consultation
[1160] Minutes of the PUK meeting of 27.3.2024, p. 10
[1161] Minutes of the LG meeting of 9.12.2022, p. 2
[1162] Minutes of the PUK meeting of 27.3.2024, p. 30 f.
[1163] Minutes of the PUK meeting of 1.11.2023, p. 37 f.
[1164] Minutes of the PUK meeting of 29.11.2023, p. 16; Minutes of PUK meeting of 1.11.2023, p. 37; Minutes of the PUK meeting of 8.11.2023, p. 24
[1165] Written answers to the PUK dated 25.6.2024, p. 9 et seq. consultation, FINMA described the meetings with UBS as "highly problematic". Source: FINMA statement of 7.8.2024 as part of the administrative consultation
[1166] Minutes of the PUK meeting of 27.3.2024, p. 63 f.

contingency measures were able to lend weight to the bank in these discussions (see section 6.3.5.1).[1167]

After the first meeting with the Chairman of the Board of Directors of CS on 16 October 2022, the Chair of the FINMA Board of Directors criticized the form of the exchange. The content of the conversation was disproportionate to the rank of the participants. For this reason, she made her continued participation dependent on CS being given specific demands with binding deadlines at these meetings.[1168] At the last non-meeting at the end of December 2022, FINMA implemented this and formulated specific demands to the Chairman of the CS Board of Directors (see section 6.3.5.4).

The SNB Chairman was particularly positive about the benefits of the non-meetings. According to his statements to the PUK, they made a significant to the authorities being able to find a solution with CS. In his view, thanks to the meeting with UBS, UBS's fundamental willingness to take over CS in the event of a crisis was clarified and a takeover was pursued as a realistic option.[1169] In his view, FINMA was unable to request CS to take certain actions in the fall of 2022 as it still met the necessary liquidity and capital requirements. The authorities would therefore have used the non-meetings as an opportunity to nevertheless require the bank to make certain preparations for a sale - in his opinion crucial for the further course of the crisis management - which could only have been imposed on the bank at a later date through official channels.[1170] The then head of the FDF also saw the meetings as an opportunity to exert pressure on the bank despite the tense relationship between FINMA and CS.[1171]

The Chairman of the CS Board of Directors was similarly positive about the effect of the informal meetings. He found the meetings to be a helpful, adequate supplement to the formalized meetings that took place with FINMA. The non-meetings were a framework in which both sides were able to discuss the measures to be taken more openly and transparently than would otherwise have been possible.[1172]

No further non-meetings took place after Federal Councillor Karin Keller-Sutter took office in the FDF.[1173] Although the then SNB President made efforts in January 2023 to continue this type of informal meeting[1174] , the new FDF head decided against this, taking into account the regulatory structures provided for in the Memorandum of Under- standing.[1175]

6.3.4 Crisis preparation in the Federal Council and in the various coordination bodies as a result of the accentuation of CS's difficulties from the end of October 2022

On October 26, 2022, one day before CS presented its new strategy, the Head of the FDF informed the Federal Council a second time verbally about the situation at CS. He referred to the upcoming restructuring and explained that the bank should be able to solve its problems on its own.[1176]

1167 Transcription of the AF meeting of 5.12.2022, p. 4 f., p. 12
1168 Written answers to the PUK dated 4.2.2024, p. 6
1169 Written answers to the PUK dated 19.2.2024, p. 3
1170 Minutes of the PUK meeting of 29.11.2023, p. 17
1171 Minutes of the PUK meeting of 22.5.2024, p. 26
1172 Minutes of the PUK meeting of 31.1.2024, p. 21 ff.
1173 Minutes of the PUK meeting of 29.11.2023, p. 18 f.
1174 Minutes of the PUK meeting of 29.11.2023, p. 19
1175 Minutes of the PUK meeting of 8.11.2023, p. 80; Minutes of the PUK meeting of 29.11.2023, p. 8; minutes of the PUK meeting of 27.3.2024, p. 16
1176 Minutes of the Federal Council meeting of 26.10.2022

CS's situation was also the subject of the strategic dialog between the FDF and FINMA on 31 October 2022. FINMA assessed the macroeconomic environment at the time as difficult. This would have a negative impact on the risks on the financial market.[1177] As FINMA considered a further massive outflow of liquidity possible due to the expected downgrades of CS by Moody's and S&P, the then Head of the decided to inform the full Federal Council on Wednesday,
November 2, on the occasion of the annual meeting between the Federal Council and the SNB.[1178]

Meeting of FDF, SNB, FINMA and AF

On the morning of 1 November 2022, a meeting of the Steering Committee was held.[1179] The topic was the imminent downgrading of CS.[1180] The FINMA representative reported a threatening liquidity situation at CS, a liquidity squeeze and a possible payment freeze, *ring fencing* in the US and an imminent application by CS to the SNB for ELA.[1181] At this meeting, was apparently clear for the first time that the PLB was to be introduced by emergency law. At this point, the SIF had largely prepared the necessary papers for a Federal Council motion to introduce the PLB by emergency law.[1182]

Following this meeting, the then Head of the FDF and the Chairman of the SNB telephoned the Chairman of the Board of Directors of CS and asked him to prepare immediately for a sale or merger, in particular with UBS. The Chairman of the CS Board of Directors promised to get to work quickly.[1183]

In the afternoon of the same day, the AF held a meeting at which the members discussed the preparation of the documents for the PLB. The scenario of a sale of CS was also discussed. In this context, FINMA representatives that the Fed had sent negative signals regarding the possibility of a takeover of CS by a US bank.[1184] Those present also pointed out the time horizon: there were not many options for a solution in the short term. If more time were , further options - including foreign options - could be examined. The participants discussed a possible takeover of CS by UBS. A representative of the SNB stated that only UBS could be considered as a buyer. In this , it was also suggested that regulatory conditions or exceptions might have be created to ensure that UBS could support this takeover in the coming months and years. There was of a "Lex UBS". The main responsibility for this lay with the SIF. The minutes of the meeting show that no corresponding mandate has yet been issued to the Board of Directors.

In addition, the State Secretary for International Financial Matters informed the Committee members that the Head of the FDF had canceled a trip to Singapore that had not yet been publicly announced and that a meeting had been held on the same day with the

[1177] Summary report of the FDF on the strategic dialog with FINMA dated 31.10.2022
[1178] Email from the State Secretary for International Financial Matters to FINMA dated 24.11.2022, 19.34;
[1179] Statement of the SIF dated 5.8.2024 as part of the administrative consultation
[1180] Minutes of the PUK meeting of 1.11.2023, p. 43 and FDF chronology of 26.6.2023
[1181] Minutes of the PUK meeting of 29.11.2023, p. 7
[1182] Transcription of the AF meeting of 1.11.2022
[1183] Minutes of the PUK meeting of 29.11.2023, p. 7. According to FINMA, even after this request there no discernible effect on progress, scope and quality of the preparatory measures on the part of CS. Source: FINMA statement of 7.8.2024 as part of the administrative consultation
[1184] A high-ranking representative of the Fed had said in general terms that "he would not consider taking over a G-SIB in difficulties by another G-SIB, in particular one from the USA [...], was not considered a good idea; this was ultimately also due to the contagion risks for the acquiring bank". Minutes of the PUK meeting of 14.2.2024. FINMA representatives: the then Director and the Head of the Banks division.

Chairman of the Board of Directors of CS. He had expressed relief at the announcement that a PLB being prepared in the background for an emergency. According to the State Secretary for International Financial Matters, CS had instructed to look into the sale scenario so that it could be discussed at a further meeting between the Head of the FDF and the Chairman of the SNB and the Chairman of the Board of Directors of CS on November 4. FINMA promised that it also be involved in this meeting, but this was not the case.[1185]

At this meeting, the AF also discussed whether COMCO should be consulted. The AF decided against this, as there was still too much uncertainty about the impact of the various scenarios on the Swiss market.[1186]

A *valuation-in-resolution exercise took* place at the beginning of November 2022 (see box 12 in section 6.3.4.2)

6.3.4.1 First in-depth discussion of the Federal Council on the CS crisis at the beginning of November 2022

At the annual exchange between the Federal Council and the SNB on November 2, 20221187, the then Head of the FDF and the Chairman of the SNB gave an oral report on the situation at CS. They explained that CS's situation had deteriorated rapidly. As a possible measure, they proposed the introduction of the PLB by emergency law in the next two days. The Chairman of the SNB and the Head of the FDF pointed out the risks of introducing the PLB for Switzerland and the international financial market: such a decision could be interpreted as meaning that CS was in a very critical situation and could trigger a payment freeze in the USA, which could further increase CS's risk of bankruptcy.[1188]

At the ordinary Federal Council meeting that the annual exchange between the Federal Council and the SNB, the members of the Federal Council were surprised by the information they had received in advance about the extraordinarily critical situation at CS. This differed significantly from the previous information provided by the then head of the FDF.[1189] The Federal Council subsequently held an in-depth discussion on the possible introduction of an emergency mechanism to ensure liquidity. The "takeover by another bank" scenario, specifically UBS, was discussed by the Federal Council on November 2, 2022.[1190]

According to the then Federal Chancellor, the CS crisis was addressed by the FDF, SNB and FINMA on 2 November 2022 as a problem for the Confederation, and the Federal Council in particular, with an unusual and, in his opinion, surprising clarity. From this point onwards, according to his statements, the other members of the Federal Council asked critical questions of the

[1185] Transcription of the AF meeting of 1.11.2022, p. 19; FINMA statement of 7.8.2024 as part of the administrative consultation

[1186] Transcription of the AF meeting of 1.11.2022, p. 21

[1187] The minutes of the Federal Council meeting of 2 November 2022 contain summary of the discussion between the full Federal Council and the Chairman of the SNB prior to the actual Federal Council meeting. This approach was unusual, as these exchanges are not part of the Federal Council meetings and are informal in nature. Due to the importance of the exchange on November 2, 2022, it was recorded in the minutes. The same procedure was then followed in March 2023.
Minutes of the PUK meeting of 17.1.2024; Minutes of the PUK meeting of 17.1.2024; Minutes of the PUK meeting of 21.2.2024

[1188] Minutes of the PUK meeting of 29.11.2023, p. 7 and minutes of the Federal Council meeting of November 2, 2022

[1189] Minutes of the PUK meeting of 11.10.2023, minutes of the PUK meeting of 17.1.2024, Minutes of the PUK meeting of 17.1.2024

[1190] Minutes of the PUK meeting of 21.2.2024, p. 62

FDF, the SNB and FINMA. The Federal Council had been made aware of the need for meetings of the Federal Council's Finance Committee and the FDF had been asked to provide the Federal Council with ongoing documentation.[1191] According to its own statement, a member of the Federal Council had requested a list of the powers of the SNB and FINMA, the intervention mechanisms in the crisis and information on the actual situation of CS with an assessment by FINMA.[1192] To the best of the PUK's knowledge, the FDF neither commissioned nor provided any such documentation.

In response to the comments made by the SNB Chairman and the then FDF Chairman, the full Federal Council instructed the FDF to prepare a proposal and the necessary written documents for an extraordinary meeting on November 4, 2022 by the evening of November 2, 2022.[1193] The proposal was to include information on the situation of CS, the options for action and the draft ordinances and explanations required for the introduction of a PLB. The Federal Chancellery was also tasked with developing a communication concept in collaboration with the FDF (see section 6.4.4).[1194]

The Federal Council's decision on November 2, 2022 came as a surprise to the State Secretary for International Financial Matters. The aim of the LG and SIF had been to inform the full Federal Council in accordance with the Memorandum of Understanding on tripartite cooperation that "extraordinary measures by the authorities were likely" and to inform it that the entry into force of a PLB could probably be necessary in the near future. An immediate introduction in the same week had not been discussed in the LG on November 1, 2022 and had not been planned given the situation of CS at the time.[1195]

Following the Federal Council meeting on November 2, 2022, the Vice-Chancellor responsible for Federal Council business contacted the FDF Secretary General to request the written documents for the co-reporting procedure with regard to the planned meeting on November 4. According to his own statement, the then Vice-Chancellor realized that the FDF Secretary General had not been informed of the content of the CS dossier at that time.[1196] At his hearing, the former Secretary General of the FDF testified that the CS dossier had effectively been under the management of the SIF and that he had therefore only been marginally involved.[1197]

Consultation between SIF and CS after the Federal Council meeting and the steering committee meeting on November 2, 2022

Following the Federal Council meeting on November 2, a conference call was held in the afternoon. The Head of the FDF reported on the Federal Council meeting. FINMA reported that CS had announced an ELA application the previous day due to the low liquidity, but had not submitted it.[1198] The reason for this was that CS would have had to inform the public about the withdrawal of ELA, which would have posed a risk. The bank always wanted to give the signal that it was solid.[1199] The members of the committee discussed the further procedure and the decision-making process for the introduction of a PLB. With regard to the

1191 Minutes of the PUK meeting of 21.2. 2024, p. 65
1192 Minutes of the PUK meeting of 21.2.2024
1193 Minutes of the Federal Council meeting of 2.11.2022, Federal Council resolution of 2.11.2022.
1194 Minutes of the Federal Council meeting of 2.11.2022, Federal Council resolution of 2.11.2022.
1195 Minutes of the PUK meeting of 24.1.2024; SIF memorandum for the then FDF Director General.
Head from 2.11.2022
1196 Minutes of the PUK meeting of 17.1.2024, p.17
1197 Minutes of the PUK meeting of 31.1.2024, p. 33
1198 Minutes of the LG meeting on 2.11.2022
1199 Minutes of the PUK meeting of 1.11.2023, p. 23

Various variants and their advantages and disadvantages were discussed in this telephone conference in preparation for the Federal Council proposal.[1200]

The members of the LG present came to the conclusion that a decision to create the PLB *without activation*, i.e. without granting a loan CS, in principle be made by the Federal Council on 4 November.[1201] At the same time, the committee also agreed that a provision of the PLB under emergency law, i.e. a risk guarantee from the Confederation to the SNB for a certain amount, would be too risky. Activation of the PLB in this sense should only take place after an ELA withdrawal by CS. After the ELA withdrawal, there would be five to seven days to an emergency introduction of the PLB.[1202] It was decided that the FDF should analyze the procedure in this regard again and inform the LG of the results of this analysis. A conference call was agreed for November 3, 2022.[1203] The FDF prepared a Federal Council application to create the legal basis for a PLB without activation. It was already busy with the translations and the opening of the co-reporting procedure when the State Secretary for International Financial Matters was instructed by the Head of Department to the Chairman of the Board of Directors of CS. The latter had spoken out against a decision in principle by the Federal Council at the planned extraordinary meeting, as he feared that a decision by the Federal Council would have been directly linked to the situation at CS. The State Secretary passed this information on to her superior.[1204]

Cancellation of the extraordinary Federal Council meeting on November 4, 2022

The extraordinary Federal Council meeting planned for November 4, 2022 was finally canceled on the evening of November 2 due to a corresponding decision by the head of the FDF. In an email dated November 2 at
6.41 p.m., the State Secretary for International Financial Matters informed the representatives of the SNB and FINMA[1205] involved of this. She explained that the Chairman of the CS Board of Directors had "expressly described a precautionary basic decision by the Federal Council on a PLB on Friday as counterproductive and premature". The decision had been taken after the State Secretary of SIF had discussed the issue with the head of the department, the Director of the FFA and the Director of FINMA.[1206]

According to the then Federal President, he met with the Federal Chancellor on
On November 2, he had a telephone conversation in which the Chancellor informed him that the requested written documents could not be provided for the meeting on November 4. The FDF did not want to distribute the documents due to the risk of a leak. At around 9.30 p.m., the President of the Swiss Confederation then telephoned the head of the FDF. The latter informed the President that a meeting was no longer necessary, as the situation at CS had calmed down somewhat and any unrest now be avoided.[1207] The Head of the FDF promised to comprehensive information at the ordinary meeting on November 9. The President of the Confederation then informed the Federal Chancellor, who

1200 Minutes of the LG meeting on 2.11.2022
1201 Minutes of the LG meeting on 2.11.2022
1202 Minutes of the PUK meeting of 24.1.2024
1203 Minutes of the LG meeting on 2.11.2022
1204 Minutes of the PUK meeting of 24.1.2023, p. 26, and of 24.4.2024, p. 57-58
1205 The then Chairman of the SNB, the then Vice-Chairman of the SNB, the Director of the FFA, the Chairwoman of FINMA's Board of Directors and the then Director of FINMA (the then head of the FDF received a copy of the message)
1206 Email from the State Secretary for International Finance to the members of the LG dated 2.11.2022
1207 Written answers to the PUK dated 7.5.2024

subsequently communicated to the members of the Federal Council that the meeting on November 4 had been canceled.[1208]

The Federal Council as a whole was informed that the meeting on November 4 had been canceled at 9.51 p.m. on the evening of November 2 via a Threema message from the Vice-Chancellor in charge at the time. The cancellation was justified by the fact that the situation had calmed down.[1209] According to Federal Councillor Maurer's statement, however, he had the meeting of 4 November canceled because the LG did not want to submit a PLB application and the CS in particular had spoken out against a decision by the Federal Council on the PLB. The meeting on November was therefore unnecessary.[1210]

Despite the cancellation of the meeting on November 4, the Federal Chancellery decided to continue the preparatory work already begun for crisis communication regarding the introduction of the PLB in order to be prepared in the event of a renewed deterioration in the situation. A coordination meeting was at 9 a.m. on November 3, attended by the Federal Chancellery and the communications officers of FINMA, the SNB, SIF and the FDF.[1211]

6.3.4.2 Further discussions in the Federal Council and in the various coordination bodies in November

Following the first more detailed information from the Federal Council, the heads of the FDF, FINMA and the SNB in particular met repeatedly in the institutionalized committees (in particular the LG, AF and the Federal Council Committee on Financial Matters) to exchange information on the situation at CS and to discuss and prepare possible measures. The situation at CS was assessed as stable and tense at a low level. It was also whether CS would manage the turnaround following the announced change in strategy.[1212]

Continuation of the preparatory work for the PLB

After the cancellation of the Federal Council meeting scheduled for November 4, the meeting of the LG took place as planned on November 3. At this telephone conference of the LG, the Head of the FDF explained that there was a preference to submit the PLB to the Federal Council in combination with the activation by CS in the event of a risk of destabilization of CS. In addition to the Federal Council's decision, this would also require a decision by the FinDel. As were still uncertainties regarding the roles and responsibilities of the individual authorities, it was agreed to clarify these issues quickly in the AF and prepare everything (documents, script and communication concept).[1213]

On November 4, 2022, the AF once again discussed the current situation of CS. The meeting participants criticized the fact that the bank had not provided the required figures. FINMA a letter of reprimand to the bank. However, the main subject of the meeting was the preparation of the meeting of the SC on November 7. In this context, the outstanding points relating to the roles and responsibilities in the preparation of a PLB were defined.[1214]

On November 7, 2022, in view of the still tense but not worsened situation, the Regional Court came to the conclusion that it was not appropriate to grant the federal

1208 Minutes of the PUK meeting of 14.2.2024, p. 80
1209 Threema chat of the Federal Council from 2.11.2022
1210 Minutes of the PUK meeting of 8.11.2023, p. 26
1211 Minutes of the PUK meeting of 17.1.2024, p. 43
1212 Minutes of the LG meeting of 11.11.2022; transcription of the AF meeting of 25.11.2022
1213 Minutes of the LG meeting on 3.11.2022
1214 Transcription of the AF meeting of 4.11.2022

Council to propose the introduction and simultaneous activation of the PLB under emergency law. According to the assessment at the time, there was no sufficient emergency legal situation at the time. The conditions for the introduction of the PLB under emergency law were therefore not met. The participants also discussed the roles and responsibilities of the individual authorities. The remaining questions in this regard were delegated to the AF.[1215]

Information of the full Federal Council and the Financial Affairs Committee on November 9, 2022

At the Federal Council meeting on November 9, 2022, the Head of the FDF again informed the Federal Council verbally about CS's situation. The full Federal Council was informed that the PLB should only be introduced under emergency law if the bank actually needed liquidity very quickly, as the effects could otherwise counterproductive. The relevant documents had been prepared.[1216] According to the Head of the FDF at the time, the opinion regarding the introduction of the PLB was shared by the college.[1217]

At this meeting, the members of the Federal Council criticized the fact that this was the second time a discussion had been held on this topic without written documents and called for these (see end of this chapter). Specifically, written information on the responsibilities of the players, the procedure in the event of an intervention in the event of a crisis and an assessment of the situation of CS were required. The FDF was instructed to examine the procedure in the event of an urgent intervention by the Confederation.[1218]

Immediately after the aforementioned Federal Council meeting, the Federal Council's Financial Affairs Committee held a discussion with the Chairman of the SNB, the Chair of the Board of Directors and the Director of FINMA against the backdrop of the downgrading of CS by rating agencies. They informed the committee members about current developments, explained the legal basis for the authorities' options for action as well as the relationship with foreign supervisory authorities and central banks and their role and stance in this context. The functioning of the LG and the AF was also explained.[1219]

The committee also held a discussion on the possible introduction of the PLB. A document on the introduction of the PLB within three days was distributed ("PLB process diagram, as long as there is no legal basis"). This diagram outlined the provision of decision-making bases, the responsibilities for the upcoming work and the involvement and decision-making powers of the authorities concerned (FDF, FINMA, SNB, FC, FinDel) in the event of an emergency introduction of the PLB.[1220]

Against the background that emergency law should only be applied in an emergency situation, the question of whether the can be introduced by emergency law was discussed, although the Federal Council has known since November 2022 that the PLB would have to be introduced if the situation at CS were to deteriorate further. The committee members asked questions about the various scenarios. At this meeting, one committee member once again emphasized the need for the full Federal Council to be informed by means of written documents. The head of the FDF at the time saw a great risk that there be indiscretions about the situation at CS. In addition, CS was apparently very to disclose documents to the Federal Council.[1221] At this committee meeting

1215 Minutes of the LG meeting on 7.11.2022
1216 Minutes of the Federal Council meeting of 9.11.2022
1217 Minutes of the PUK meeting of 8.11.2023
1218 Minutes of the Federal Council meeting of 9.11.2022
1219 Minutes of the Federal Council Committee on Financial Matters of 9.11.2022
1220 Minutes of the Federal Council Committee on Financial Matters of 9.11.2022
1221 Minutes of the PUK meeting of 21.2.2024

neither the employees of the Head of DETEC nor those of the Head of the EAER were allowed to attend; FINMA, the SNB and the FDF were represented by several employees.[1222] At this committee meeting, the Head of the FDF pointed out that it was important to keep the content of the meeting absolutely confidential.

According to the minutes, the members of the committee decided that the Federal Council should be informed about the PLB by the Chair of the Board of Directors and the Director of FINMA at the next meeting on November 16, 2022 and that no additional written information should be provided to the Federal Council for the time being (with the exception of the aforementioned flowchart for the introduction of the PLB).[1223] The committee meeting scheduled for November 16 did not take place until November 22.

All members of the Federal Council received the minutes of the committee meeting and the above-mentioned flowchart for the introduction of the PLB.

Further meetings in November 2022

At the meeting on November 11, 2022, the participants in the LG meeting expressed a positive view of the meeting with the Federal Council's Financial Affairs Committee on the previous Wednesday. The meeting had been helpful in gaining a common understanding of the situation and the possible course of action. With regard to the situation at CS, FINMA stated that the situation was stable at a low level but remained tense.[1224]

Shortly afterwards, on November 13, 2022, the Head of the FDF and the SNB Chairman held a non-meeting with the Chairman of the CS Board of Directors to discuss existing doubts about the bank's profitability, the planned introduction of a PLB in December 2022 and a possible sale of CS to another bank.[1225] The information available to the PUK did not allow the specific content and exact positions of the participants in the discussion to be reconstructed.

As the President of the Swiss Confederation questions about the cooperation and actions of the SNB and FINMA, he met with the Chair of FINMA's Board of Directors on November 14, 2022.[1226] She explained FINMA's assessment to the President that this not a classic TBTF crisis, but a crisis of confidence in which liquidity at the forefront. She discussed the mechanisms and instruments available to FINMA and the causes of the crisis of confidence at CS. She identified the bank's poor management as the main reason. Subsequently, the President of the Swiss Confederation also with the President of the SNB, who explained the instruments and financial amounts at stake. Both had told the President of the Confederation that it was difficult to predict a possible collapse of the bank.[1227]

On November 16, 2022, FINMA met with the Federal Council for its annual exchange of views. FINMA was represented by the Chair of the Board of Directors and the CEO. The situation at CS and the procedure in the event of an emergency were the subject of an in-depth discussion. This exchange (like the exchange with the SNB) was also recorded in the minutes of the Federal Council's subsequent meeting.[1228]

At the subsequent Federal Council meeting, the head of the FDF once again provided oral information on the situation at CS. The exchange with FINMA had shown that the

1222 Minutes of the PUK meeting of 21.2.2024
1223 Minutes of the Federal Council Committee on Financial Matters of 9.11.2022
1224 Minutes of the LG meeting on 11.11.2022
1225 Written answers to the PUK dated 22.1.2024, p. 6
1226 Written answers to the PUK dated 7.5.2023; FINMA chronology dated 19.9.2023
1227 Minutes of the PUK meeting of 14.2.2024
1228 Minutes of the Federal Council meeting of 16.11.2022

application of the PLB cannot ruled out by emergency law. It was pointed out how delicate the communication was and that it had to be carefully prepared. At this meeting, the Federal Council discussed and adopted the Federal Council resolution that been drafted by the then Vice Chancellor after the canceled meeting on 4 November 2022. It formally stated that the Federal Council had taken note of the cancellation. The FDF was also instructed to prepare written documents for the Federal Council in good time in the event of an escalation of the crisis. The Federal Council's Financial Affairs Committee was to be involved in the work. The FC was also instructed to submit a communication concept to the Federal Council together with the FDF.[1229]

The LG held a conference call in the evening of the same day. The participants from the FDF and FINMA were positive about the meeting with the Federal Council. In their opinion, the open questions were answered and a common understanding "sharpened". With regard to the current situation at CS, the Director of FINMA informed the meeting participants that it tense but reasonably stable. FINMA had written to CS to out that the measures taken by the bank to date considered inadequate. The participants of the LG discussed the status of the preparation of the PLB and, in particular, the question of the possibility of accelerating the ordinary legislative procedure. They were critical of the latter option, in particular because they feared that it would send out the wrong signals.[1230]

According to an email exchange on 17 November 2022 between a SIF employee and the Director of the Federal Office of Justice, two "work streams" were running in parallel: on the one hand, the preparation of the documents for a PLB introduction in accordance with the ordinary procedure (only creation of the legal framework, no activation of the PLB) with consultation between March and May 2023; on the other hand, the preparation of an "emergency law package" with the creation of the PLB instrument and its immediate activation in favor of CS (within a few days, if necessary).[1231]

The next meeting of the Federal Council's Financial Affairs Committee was held on November 22, 2022 in the presence of the Director of the FOJ (and the Federal Chancellery) (see section 6.3.4.3). At the express request of the Head of the FDF, only brief on the situation of the CS was provided at this meeting.[1232] The meeting focused the question of whether the Federal Council could introduce a PLB by means of emergency legislation. The Director of the FOJ provided information on this at the meeting and also prepared a classified note for the minutes following the meeting.

The LG held a scheduled conference call on November 25, during which it was once again informed about the current situation at CS: The bank's liquidity remains critical, but stable at a low level, and CS's situation remains extremely tense. The SNB expressed doubts as to whether the bank would be able to implement the announced strategy and a turnaround. FINMA shared these concerns. It was agreed that in addition to FINMA, which was already in contact with the bank in this regard, the SNB and the FDF should also discuss possible alternatives with CS. FINMA stated that the pressure on CS had to be kept high and that it should not be released from its responsibility to develop contingency measures. The

[1229] Minutes of the Federal Council meeting of 16.11.2022; minutes of the PUK meeting of 17.1.2024

[1230] Minutes of the LG meeting on 16.11.2022

[1231] E-mail from the SIF to the Director of the FOJ dated 17.11.2022

[1232] The information included a summary presentation of the liquidity situation and the development of the bank's restructuring by SIF (situation stable at a low level (Liq)); e-mail from the State Secretary for International Financial Matters to the former Vice-Chairman of the SNB and the Chairman of the Board of Directors of FINMA dated 22.11.2022, 8.10 a.m.

From the meeting of the Federal Council Committee on Financial Affairs, the Head of Department informed that the use of emergency law to introduce the PLB was possible in principle and that the consultation on the introduction of the PLB in the ordinary legislative process would no longer be opened this year.[1233] A further committee meeting was scheduled for the beginning of December, but this did not take place.[1234]

Criticism of lack of written form

Since the meeting on November 2, 2022 at the latest, the members of the Federal Council repeatedly complained that the head of the FDF had not submitted any written documents on the various, extremely complex issues.[1235] At the meeting on November 9, the other members of the Federal Council insisted that the Federal Council needed documents in order to deal with such an important topic. Information was on the responsibilities of the players, the procedure for intervening in the event of a crisis and a written assessment of CS's situation.[1236] According to their statements to the head of the FDF at the end of November 2022, the Federal Chancellor and the President of the Swiss Confederation also emphasized the importance of providing information to the Federal Council in writing.[1237] According to his own statement, the then Federal Chancellor also explained verbally to the former Head of the FDF in November 2022 that the risk of a leak was not a reason not to inform the Federal Council, in the opinion of the CPC.[1238]

Box 12: Valuation-in-resolution exercise in November 2022

FINMA is responsible for organizing regular meetings of the *Crisis Management Group* to assess, together with the other crisis authorities, the recovery and resolution planning of a global systemically important bank and its necessary technical capabilities. In view of the regular November workshop of the respective CMGs of CS and UBS, exercises on *valuation-in-resolution* (ViR) were planned for both big banks in May 2022.[1239]

At the beginning of November 2022, the rating agencies downgraded CS's ratings (see section 6.1.2). This renewed downgrade entailed the risk of additional liquidity outflows. To ensure that the necessary financial data was available in good time should this risk materialize, FINMA decided to conduct a ViR exercise with real-time data. The ViR exercise planned for CS was adapted accordingly: It was no longer an exercise as it regularly took place, but a simulation with real numbers. The aim of this exercise was to provide the authorities responsible for the restructuring with concrete and up-to-date figures on the effects of a restructuring plan on the bank's balance sheet and income statement. These figures should allow an assessment of whether and to what extent a restructuring of the group is possible and whether the recapitalization via *bail-in* has sufficient capacity to absorb future losses.[1240]

Procedure for a valuation-in-resolution exercise

According to the head of FINMA's Banking division, the advantages and disadvantages of such an exercise were weighed up, as there is a high risk of indiscretion.

1233 Minutes of the LG meeting on 25.11.2022
1234 Minutes of the Federal Council Committee on Financial Matters of 22.11.2022
1235 Minutes of the Federal Council meeting of 2.11.2022; minutes of the PUK meeting of 21.2.2024, S. 54
1236 Minutes of the Federal Council meeting of 9.11.2022
1237 Minutes of the PUK meeting of 21.2.2024, p. 54, 56 and 58 f.
1238 Minutes of the PUK meeting of 21.2.2024
1239 Letter from FINMA dated 14.6.2024 to the PUK
1240 Letter from FINMA dated 14.6.2024 to the PUK; FINMA (2023): Lessons learned from the CS crisis, p. 35, 77 and 85

existed. Such an exercise could have led to a further destabilization of the bank on the markets. However, the authorities came to the conclusion that a ViR exercise was absolutely necessary in order to prepare for any implementation of the restructuring plan and to ensure that the necessary data would be available to them within a reasonable period of time.[1241]

This real-time exercise, the first of its kind for a G-SIB,[1242] took in early November 2022. It brought together numerous authorities in the CMG, namely FINMA, the SNB, the Bank of England (BoE), the PRA, the Federal Deposit Insurance Corporation (FDIC), the Fed and the temporary CMG members SEC and *New York State Department of Financial Services*.[1243] In total, more than 70 people were involved.[1244]

CS was also involved. In particular, it prepared an ad hoc balance sheet for the Group and the most important Group companies and simulated a restructuring.[1245] In a crisis, the Credit Suisse Group had to be able to make the necessary assessments and calculate the liquidity and capital requirements on an ongoing basis and inform FINMA. The bank concerned must prepare an interim balance sheet and carry out an assessment within a short period of time so that a decision can be made on a possible risk of insolvency and the specific planned procedure with regard to a (partial) liquidation and the costs of a (partial) liquidation can be determined.[1246] The results of the exercise were discussed at a workshop held on the weekend of November 5, 2022, which was attended by the bank and the authorities. The exercise was concluded one week later, on
November 11, 2022, repeated.[1247]

According to the information available to the PUK, CS management did not like the fact that FINMA carried out this exercise. The Chairman of the Board of Directors had complained at the non-meeting on December 4, 2022 that the ViR exercise had caused confusion among the foreign authorities.[1248]

An ordinary ViR exercise was carried out at UBS as planned. The ViR workshop with the CMG members and the presentation of the results (without real-time data) by UBS took place on November 29, 2022.

Results of the valuation-in-resolution exercise

The ViR exercise provided insight into CS's bail-in capacity and showed that CS met FINMA's ViR requirements[1249] and that the bank had the

[1241] Minutes of the PUK meeting of 14.2.2024, p. 74
[1242] Letter from FINMA dated 14.6.2024 to the PUK; minutes of the PUK meeting of 24.4.2024, p. 9
[1243] Letter from FINMA dated 14.6.2024 to the PUK; notes of the CMG meeting "Technical Workshop ViR" of 5.11.2022
[1244] FINMA (2023): Lessons learned from the CS crisis, p. 35 and 77; minutes of the meeting of the PUK of 14.2.2024, p. 58/59; notes of the CMG meeting "Technical Workshop ViR" of 5.11.2022. The FINMA Board of Directors speaks of over 150 people involved on the part of the bank and 100 people from foreign regulatory authorities; see minutes of the FINMA Board of Directors of 10.11.2022.
[1245] FINMA (2023): Lessons learned from the CS crisis, p. 77; minutes of the PUK meeting dated 14.2.2024, p. 74
[1246] Draft of the FINMA restructuring ruling dated 9.12.2022
[1247] Transcription of the AF meeting of 14.11.2022, p. 3; notes of the CMG meeting of 1.11.2022; notes of the CMG meeting "Technical Workshop ViR" of 5.11.2022; draft of the FINMA restructuring order of 9.12.2022
[1248] Minutes of the PUK meeting of 24.4.2024, p. 9; written answers of 22.1.2024 to the PUK
[1249] Letter from FINMA dated 14.6.2024 to the PUK

could deliver the necessary figures on time and without major quality problems.[1250]

The results of this exercise were subsequently discussed at the meetings of the AF on November 14 and 21, 2022. In particular, the deadlines for implementing the scenario that envisaged a restructuring of the bank were discussed.[1251] The head of FINMA's Recovery and Resolution division informed the AF that the final preparation of the readiness to initiate a restructuring would take seven to ten days. This time - known as the "runway period" - is necessary for the concrete and situation-specific preparation of the resolution. The runway period is initiated when the authorities come to the conclusion that there is a high probability that the PONV can no longer be averted. It includes the preparatory work that can only take place very shortly before an intervention in the PONV (e.g. resolution).[1252]

According to FINMA, the ViR exercise was a key factor in the international recognition procedures[1253] and showed that coordination between the individual authorities worked well.[1254]

The exercise was also discussed by FINMA's Board of Directors. After a relatively brief orientation on November 10, 20221255, more detailed information was provided on January 12 and 18, 2023. aim was to prepare a potentially far-reaching decision, i.e. a restructuring order for CS or, if restructuring had no prospect of success, a bankruptcy order (see section 6.4.1).[1256]

In summary, it can be said that the ViR exercise in November 2022 was a necessary step in the preparatory work for the scenario of the bank's restructuring, according to several persons heard by the PUK.[1257]

[1250] Notes of the CMG meeting "Technical Workshop ViR" of 5.11.2022. See also written answers of 9.4.2024 to the PUK; FINMA (2023): Lessons learned from the CS crisis, p. 77

[1251] However, the State Secretary for International Financial Matters testified before the PUK that she had no knowledge of this exercise (minutes of the PUK meeting of 24.4.2024, S. 76/77).

[1252] Transcription of the AF meeting of 14.11.2022, p. 3-6; transcription of the AF meeting of 21.11.2022, p. 4-6. This preparatory work includes, in particular, a resource-intensive and therefore not continuous ViR with a time horizon of T+5. This serves to ensure the best possible valuation of the bank's balance sheet after the measures taken by the authorities. In addition, the governance measures (e.g. the recruitment of the Chairman of the Board of Directors) and international coordination must be finalized. It is generally assumed that the runway period must last approx. 14 days. This assumption was rejected by FINMA from October 2022, as events develop quickly in a liquidity crisis. In the period between October 2022 and March 2023, it prepared the restructuring several times based on specific key dates. As a result, it was ultimately able to shorten the effective runway period to 4 days (FINMA statement of 7.8.2024 as part of the administrative).

[1253] FINMA (2023): Lessons learned from the CS crisis, p. 77

[1254] Minutes of the PUK meeting of 15.5.2024, p. 24

[1255] Minutes of the FINMA Board of Directors meeting of 10.11.2022

[1256] Minutes of the FINMA Board of Directors meeting of 12.1.2023 and 18.1.2023

[1257] Minutes of the PUK meeting of 24.4.2024, p. 9; Minutes of the PUK meeting of 15.5.2024, p. 24, p. 30 and p. 77

6.3.4.3 Excursus: Clarifications on the introduction of a PLB by means of emergency law with the involvement of the Federal Office of Justice

Initial situation

As explained in section 5.2.6.2, the Federal Council decided on the key parameters of a PLB on March 11, 2022 and instructed the FDF to draw up a consultation draft by mid-2023. The purpose of the PLB, as the Federal Council intended to implement it in spring 2022, was to provide rapid and subsidiary support to a SIB domiciled in Switzerland in the event of restructuring.

However, due to the critical situation of CS from fall 2022, the authorities were forced to discuss the short-term introduction of a PLB (or the legal basis for a PLB) under emergency law. Two options were up for discussion (see section 6.3.3.1): the emergency introduction of a legal basis for a PLB without immediate lending to CS or, the situation require it, the enactment of an emergency legal basis for a PLB with the simultaneous provision of liquidity. The clarifications made by the authorities with the involvement of the FOJ in November 2022 regarding the introduction of a PLB under emergency law are presented below.

Work on the PLB following the Federal Council's decision on the benchmarks in spring 2022

The FOJ has been involved at a technical level (Legislation Monitoring II Division) since the
On October 10, 2022, the FOJ was involved in work on a draft emergency ordinance on the introduction of a PLB. In particular, the FOJ dealt with the question of the admissibility of the SNB's bankruptcy privilege in the case of ELA+,[1258] the question of the admissibility of a penalty provision for any breaches of obligations under the emergency ordinance and the question of the exclusion of access to information provided for in the Public Access Act.[1259]

The FDF (FFA and SIF), SNB and FINMA, the authorities primarily responsible, continued their work on the introduction of a PLB under emergency law in fall 2022 (see sections 6.3.3 and 6.3.4.1). The SNB, in collaboration with the FFA, drew up the necessary contracts for the distribution of PLB liquidity,[1260] and the FDF, in collaboration with the other authorities (FINMA, SNB), prepared a script for the activation of a PLB as well as question and answer catalogs with regard to public communication.[1261] The Federal Council discussed this with reference to a corresponding recommendation of the GPK in its report of 30 May 2010 on the rescue of the PLB.

1258 The granting of ELA by the is based on Art. 5 para. 2 let. e in conjunction with Art. 9 para. 1 let. e NBA. The SNB may only provide this liquidity assistance against sufficient . In the wake of the CS crisis, the authorities considered whether a further step should be taken before granting a PLB: ELA+, the granting of additional extraordinary liquidity assistance by the SNB without a federal guarantee. This raised the fundamental question of whether the requirement of sufficient collateral, the SNB must have in order to provide liquidity, could be fulfilled in the form of a bankruptcy for the SNB. Both forms of liquidity provision are associated with risks that the Confederation or the must bear. The bankruptcy privilege means that in the event of the bankruptcy of CS, the SNB's claims against CS from the liquidity assistance loans (ELA+) would be satisfied preferentially, i.e. in the order of the bankruptcy claims after the claims privileged under bankruptcy law (e.g. employees' salaries, social security contributions or privileged deposits), but before the other claims.

1259 Minutes of the PUK meeting of 24.1.2024, p. 65

1260 Draft framework credit agreement dated 8.11.2022

1261 Questions / answers on public liquidity backstop in the Credit Suisse case, FDF working paper dated 7.11.2022; script activation PLB dated 11.11.2022; questions / answers on public liquidity protection (Public Liquidity backstop) in the case of Credit Suisse dated 7.11.2022

UBS[1262] several times the necessity and timing of the involvement of FinDel with regard to the introduction of a PLB in the fall of 2022.[1263]

From the beginning of November, the legal basis and documents for the introduction of a PLB by emergency law were largely ready in the FDF and could be implemented quickly if necessary (see Chapters 6.3.3 and 6.3.4.1). A PLB by emergency law was thus prepared.[1264]

Involvement of the Director of the FOJ on the question of the application of emergency law

The Director of the FOJ was invited to the extraordinary meeting of the Federal Council's Financial Affairs Committee on November 22, 2022 to explain to the committee the requirements for the application of emergency law and to provide an assessment of whether these requirements were met.

Box 13: Emergency law requirements

Four cumulative requirements must be met for the Federal Council to issue a so-called emergency ordinance in accordance with Article 184 paragraph 3 or Article 185 paragraph 3 of the Federal Constitution:

1. the endangerment of a relevant protected good (public order, internal or external security or the interests of the country),
2. objective urgency (the asset to be protected is directly and seriously threatened or is already seriously impaired),
3. urgency in terms of time (the Federal Council may only issue an emergency ordinance if there is neither a formal legal basis nor sufficient time to create such a basis in the ordinary legislative procedure)[1265] and
4. Subsidiarity (it is not possible to take more suitable measures).

If fundamental rights are restricted by the Federal Council's right to issue emergency ordinances, the requirements of Article 36 paragraphs 2-4 of the Federal Constitution must be met. In particular, such a measure must be justified by an overriding public interest and be proportionate.

In preparing for this meeting, the Director of the FOJ noted that the objective pursued with the introduction of a PLB had changed since the Federal Council's decision of
March 11, 2022 to have a consultation draft prepared for the creation of a PLB. While the key parameters adopted by the Federal Council on March 11, 2022 provided for the introduction of a PLB in the event of a restructuring, it was a matter of

[1262] GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3237)
[1263] Minutes of the Federal Council meeting of 2.11.2022, p. 2; Minutes of the Federal Council meeting of 9.11.2022, p. 2
[1264] Minutes of the PUK meeting of 24.1.2024; p. 24; information on the bank, note from the FDF, SIF, Banks (B) for the attention of the Head of the FDF dated 1.11.2022; information on the
Bank, note from the FDF, SIF, Banks (B) for the attention of the Head of the FDF dated 8.11.2022; information on the bank, note from the FDF, SIF, Banks (B) for the attention of the Head of the FDF dated 15.11.2022; drafts of the PLB Ordinance and the explanatory notes dated 2.11.2022
[1265] Künzli, Jörg (2015): Commentary on Art. 184 BV. In: Waldmann, Bernhard / Belser, Eva Maria / Epiney, Astrid (ed.): Basler Kommentar Bundesverfassung. 1 ed. Basel: Helbing & Lichtenhahn, para. 31

in the fall of 2022 for the introduction of a PLB for the purpose of continuing the business activities of a systemically important bank in general.[1266] In the opinion of the FOJ, such an expansion of the purpose of the PLB would possibly have required focusing the support granted by the PLB on the systemically important or Swiss business area of the bank concerned, given the applicable TBTF regulation, which sought to eliminate a de facto, implicit state guarantee in favor of systemically important banks as far as possible (cf. Art. 7 para. 2 Banking Act). The Director of the FOJ already expressed these considerations to the SIF in advance of the meeting of the Federal Council's Financial Affairs Committee on November 22, 2022.[1267] The Director of the FOJ suggested to the SIF that the Federal Council's proposal to introduce a PLB by means of emergency legislation should at least include a rough cost-benefit assessment from the point of view of the public interest.[1268] In particular, it should be shown that the probable economic costs of inaction in the event of a crisis exceed the probable economic costs of the PLB, whereby it is up to the specialist offices to define the comparative size of such an estimate in a meaningful way (disorderly bankruptcy or liquidation according to TBTF).[1269]

Discussions on the introduction of a PLB under emergency law at the meeting of the Federal Council's Financial Affairs Committee on November 22, 2022

At the meeting of the Federal Council's Financial Affairs Committee on 22 November, SIF briefly presented the situation of CS and the developments since the public announcement of the restructuring on 27 October 2022. The Director of the FOJ then discussed the question of whether the relevant law allows the Federal Council to introduce a PLB under emergency law. Following the meeting on November 22, 2022, the Head of the FDF instructed the Director of the FOJ to write up his comments in a memo for the Federal Council, taking into account the questions posed by the three members of the Federal Council Committee at the meeting. This note dated November 28, 2022 was made available to the Federal Council as an annex to the minutes of the meeting of the Federal Council Committee on Financial Matters on November 22, 2022 (see section 6.3.4.2).

In particular, the members of the Federal Council committee asked the FOJ to clarify whether the foreseeability of the threat meant that the requirement (for the application of emergency law) of temporal urgency was no longer met, meaning that the Federal Council could not act under emergency law, and whether it should instead adopt a dispatch on the adoption of an urgent federal law.[1270] The FOJ answered this question in the negative at the meeting on November 22, 2022 and in its note, stating that urgency exists if the imminent danger cannot be combated through ordinary legislation. Furthermore, the FOJ clarified that the requirement of temporal urgency does not refer to the immediacy of the danger, but to the need for defensive measures due to the temporal proximity to the occurrence of the harmful event. Finally, the foreseeability of the danger is not an independent criterion for the application of emergency law. The criterion of the foreseeability of the danger comes into play at most in the balancing of interests and is intended to protect against an executive that is excessively eager to act. In view of the special situation, the FOJ also denied that the Federal Council had a duty to immediately submit a dispatch to Parliament for the urgent introduction of the PLB.

[1266] E-mail from the Director of the FOJ to the State Secretary for International Financial Matters dated 22.11.2022, 15.46 hrs

[1267] E-mail from the Director of the FOJ to the State Secretary for International Financial Matters dated 22.11.2022, 3.46 p.m.; minutes of the PUK meeting of 24.1.2024, p. 73; e-mail excerpt
exchange between SIF employees from 22.11.2022, 17.16 hrs

[1268] E-mail from the Director of the FOJ to the State Secretary for International Financial Matters dated 22.11.2022, 15.46 hrs

[1269] Minutes of the PUK meeting of 24.1.2024, p. 72

[1270] Minutes of the PUK meeting of 24.1.2024, p. 65

The reason for this was that, according to financial market experts, there was a concrete fear that this could accelerate the loss of confidence in the financial markets and thus cause the very damage that a PLB is intended to mitigate.[1271] Based on the explanations provided by the FOJ, it was clear to the authorities that the emergency instruments could not be created in advance, but only when there was an actual need for them.[1272]

The Director of the FOJ focused on the requirement of subsidiarity in the planned introduction of a PLB by means of emergency law in autumn 2022 in his statements to the Federal Council committee and in the note of 28 November 2022, as the expansion of the scope of application of a PLB introduced by emergency law, which the Director of the FOJ had already in the run-up to the meeting of 22 November 2022, brought this criterion to the fore. Accordingly, the FOJ stated in the note of November 28, 2022 that it had to be shown that no milder alternative measure was available under the current legal system to deal with the situation.[1273] The Director of the FOJ pointed out that the subsidiarity of the introduction of a PLB under emergency law in autumn 2022 was questionable, particularly in view of the legislator's long-standing efforts to introduce TBTF regulation, which provides for measures in the event of the bankruptcy of important market participants.[1274] In the note, the FOJ therefore requested an examination of the following restrictions on the introduction of a PLB under emergency law:

- Restriction to the specific bank affected (instead of general, abstract introduction of the PLB),
- Restriction to one systemically important bank undergoing restructuring,
- Restriction to the systemically important parts or to the Swiss business activities of the systemically important bank.[1275]

The FOJ subsequently received no feedback on whether the Federal Council had been informed in detail by the relevant specialist offices on the issues raised by the FOJ. It was also not informed whether the specialist offices had initiated further work on the basis of the FOJ note. The FOJ was not involved in the work on the CS dossier and the question of the application of emergency law by the lead FDF until March 15, 2023 (see section 6.4.3.2).[1276]

In-depth clarifications on the PLB following the meeting of the Federal Council's Financial Affairs Committee on November 22, 2022

The responsible authorities discussed the introduction of a PLB in more detail in the responsible bodies (LG, AF and PLB working group) in the fall and winter of 2022 and then from January 2023 (see sections 6.3.4 and 6.4). The scenario of a PLB as a pure liquidity measure without further measures was already viewed skeptically shortly after the meeting of the Federal Council's Financial Affairs Committee on 22 November 2022 and ultimately rejected.[1277] However, authorities continued to clarify the PLB as part of other scenarios and as part of the preparations for the regular introduction of a PLB. It was possible to build on the preliminary work carried out in fall 2022. In December 2022, discussions took place between the FDF and FINMA on the role and competencies of the various authorities in the event of the emergency and ordinary introduction of a PLB. FINMA pointed out that the powers of the authorities involved must reflect their legal mandates. Thus

[1271] Note FOJ dated 28.11.2022, point 2.3, p. 5
[1272] Minutes of the PUK meeting of 24.4.2024, p. 52; Minutes of the PUK meeting of 24.4.2024, p. 8
[1273] Note from the FOJ dated 28.11.2022, point 2.4, p. 5
[1274] Minutes of the PUK meeting of 24.1.2024, p. 65 f.
[1275] Note from the FOJ dated 28.11.2022, point 2.4, p. 6
[1276] Minutes of the PUK meeting of 24.1.2024, p. 71-73
[1277] Minutes of the LG meeting on 25.11.2022; Minutes of the LG meeting on 11.1.2023

FINMA should not, for example, issue any opinions or confirmations on the appropriateness and availability of other authorities' instruments, as provided for in the emergency ordinance with regard to the SNB's use of ELA and the PLB. Furthermore, in view of its statutory mandate, it is FINMA's task to give the federal government the option to opt for or against a PLB. However, it was not up to FINMA to assess the proportionality or necessity of the federal government's measures.[1278] This feedback was integrated by the FDF in the versions of the emergency ordinance revised from January 2023 and in the provisions of the consultation draft for the ordinary introduction of a PLB.[1279]

The points raised by the FOJ at the meeting on November 22, 2022 and in its memo of November 28, 2022 were included in the authorities' further deliberations on the instrument of a PLB, whether as part of the preparation of the consultation draft for the ordinary introduction of a PLB from the beginning of 2023 (see section 6.4.2) or as part of the crisis measures in view of the situation of CS (see sections 6.4 and 7.2).

No emergency introduction of a PLB in fall 2022

When weighing up the options of introducing a legal basis a PLB under emergency law without immediately granting a loan to CS on the one hand and issuing an emergency legal basis for a PLB with simultaneous provision of liquidity on the other, the authorities preferred the second option in the course of November 2022 (see sections 6.3.4.1 and 6.3.4.2). The reason for this was that the authorities feared that the emergency introduction of a PLB without immediate activation could send a negative signal about CS's situation and only increase CS's liquidity outflows.

However, in the fall of 2022, the authorities also discussed bringing forward the ordinary introduction of the PLB and conducting the ordinary consultation process instead of, as on
March 11, 2022 announced that it would start in mid-2023, on December 16, 2022. In fact, the Head of the FDF informed the full Federal Council at the Federal Council meeting on 9 November 2022 that he would submit the consultation draft to the Federal Council in December 2022.[1280] Ultimately, in autumn and winter 2022, the authorities refrained from both the accelerated ordinary introduction of a PLB and the emergency introduction with simultaneous activation of a PLB due to a lack of necessity and the fears outlined above.[1281]

6.3.5 Continuation of work in December and preparation for the change in the head of the FDF and the change in the Federal Council at the start of the new year

The responsible authorities and committees continued their monitoring of CS's situation and their discussions on possible courses of action in December 2022. For most of the month, the situation at CS remained critical but comparatively stable. At the end of December 2022, however, the situation was once again extremely critical. This period depicted in this chapter.

The work of the authorities in the comparatively quieter phases of December 2022 was characterized by the ongoing discussions on possible scenarios. In addition, the Federal Council was faced with the transfer of Federal Councillor Keller-Sutter from the FDJP

[1278] Letter from FINMA to the Head of the FDF dated 15.12.2022
[1279] Draft of the Emergency Ordinance as at 18.1.2023; consultation draft BankA of 25.5.2023
[1280] Minutes of the Federal Council meeting of 9.11.2022, p. 2
[1281] Minutes of the Federal Council meeting of 16.11.2022, p. 1 f.; Timing PLB legislation, e-mail exchange between FINMA and SIF of 14.11.2022

into the FDF and the arrival of two new members, Federal Councillor Baume-Schneider and Federal Councillor Rösti. The latter were elected by the United Federal Assembly following the resignations of Federal Councillor Sommaruga and Federal Councillor Maurer on December 7, 2022. Federal Councillor Keller-Sutter's change of department was announced after the allocation of portfolios in the Federal Council on 8 December 2022.[1282]

6.3.5.1 Situation monitoring by the authorities in December 2022

Work by the authorities at the beginning of December 2022

At its meeting on December 2, 2022, the Federal Council received the minutes of the meeting of the Federal Council's Financial Affairs Committee on November 22, 2022, including the FOJ's note of November 28, 2022. The Head of the FDF provided oral information on the situation at CS. He explained that the share price was low, but that the capital outflows had not worsened. The situation remains volatile. The Federal Council discussed the question of how much time it would have to react from the moment CS drew ELA from the SNB. The Head of the FDF assumed more than a week.

The Federal Council also discussed other scenarios, such as a takeover of CS by another financial institution. In addition, the members of the Federal Council agreed to carry their encrypted telephones them over the holidays to ensure that they could be reached. The Federal Chancellery was also instructed to carry out a test of the encrypted telephones of all Federal Council members to ensure their functionality.[1283]

Non-meeting on December 4: Dissatisfaction of CS and discussions on public communication by the authorities

At another non-meeting between the then Head of the FDF and the Chairman of the SNB with CS on December 4, 2022, the Chairman of the Board of Directors of CS is said to have complained about FINMA, according to the SNB's debriefing notes. The value-in-resolution exercise at the beginning of November 2022 (see Box 12 in section 6.3.4.2) had caused confusion among the foreign authorities from CS's perspective.[1284] In addition, the sale of the securitized products business (see Box 9 in section 6.3.1.1) had been made more difficult by FINMA's requirements and therefore could not be carried out as planned.

Once again, the head of the FDF and the Chairman of the SNB approached the Chairman of the Board of Directors of CS about the possibility of a sale of CS. However, the latter out the risk of an information leak, which limited the preparatory work for CS. According to the Chairman of the SNB, the Chairman of the Board of Directors of CS was generally very optimistic and referred to the examination of other contingency measures - e.g. partial sales or further risk reductions - as alternatives to a sale.[1285] The meeting participants also considered the possible stabilizing effect of positive signals from the authorities. The head of the FDF at the time had announced that he would say something about the bank's situation.[1286]

In fact, both the Head of the FDF and the Chairman of the SNB made public statements on CS in December 2022 (see section 6.4.4). The outgoing head of the FDF

[1282] "Federal Council allocated departments", Federal press release of 8.12.2022
[1283] Minutes of the Federal Council meeting of 2.12.2022
[1284] Minutes of the PUK meeting of 24.4.2024, p. 7 f.; Written answers to the PUK of 22.1.2024, p. 6 f.
[1285] Minutes of the LG meeting of 9.12.2022, p. 2
[1286] Written answers to the PUK dated 22.1.2024, p. 6 f.

praised CS's new strategy in various media before leaving office and was optimistic about the bank's future.[1287] The SNB Chairman also made positive public statements about the strategy and the resulting reduction in risk.[1288]

Meetings of the authorities on December 5/6: information on ongoing liquidity outflows and discussions on possible scenarios for action

On 5 December 2022, FINMA informed the AF that the liquidity outflows at CS were continuing and that no massive improvement in liquidity was to be expected by the end of the year, even with limiting measures.[1289] As a result, various scenarios were discussed that be considered to stabilize or rescue CS. These included the withdrawal of ELA, a sale of the bank, the introduction of a PLB to support liquidity without restructuring, the introduction of a PLB as part of a restructuring or the bankruptcy of the bank. Restructuring was described by FINMA as a feasible solution. However, an alternative that would also achieve the objectives of creditor protection would be preferable. In FINMA's opinion, a credible sale scenario would have fulfilled this requirement.[1290]

The members of the AF agreed that CS needed to press ahead with the sale scenario and that FINMA should push this option with it, partly because the bank had previously seen a sale as an unwelcome plan B.[1291] UBS was mentioned as a possible buyer. Based on its bilateral discussions with CS, FINMA informed the AF that CS still had no contacts with potential buyers. At the same time, it pointed out that it could not approach banking institutions to initiate a takeover of CS due to its institutional role. The authorities present on this committee therefore did not know whether UBS was even interested in making a purchase. In FINMA's opinion, contacting another bank and thus selecting a buyer was problematic and not the task of the authorities. Rather, the correct course of action was to encourage CS to prepare a sale as a possible contingency measure.[1292] The PLB also continued to be discussed as an instrument. However, following the critical discussions in the Federal Council's Financial Affairs Committee and the FOJ's assessment of the PLB (see section 6.3.4), the SIF and the FFA took the view that such a PLB should only be envisaged in the context of a restructuring.

A state liquidity facility prior to any restructuring was seen as an alternative that could be introduced by emergency law. Its mode of operation would have corresponded to the PLB prior to a restructuring in that the SNB would have provided the liquidity and the Confederation would have assumed the default risk. The existing emergency ordinances for the PLB could therefore have been used as a basis. In this context, the FDF has been trying since fall 2022 to estimate the risk that the Confederation would assume if it to guarantee the SNB loan. At the request of the FDF, FINMA prepared a simplified statistical analysis for this purpose and also commissioned an expert opinion from the consulting firm Oliver Wyman check the plausibility of FINMA's estimates.

1287 Federal Councillor Maurer, what would you have done differently in hindsight? In: SRF, 13.12.2022, https://www.srf.ch/news/schweiz/bilanz-als-finanzminister-bundesrat-maurer-was-haet- ten-sie-im-nachhinein-anders-gemacht (as of 16.5.2024); In between, you just have to let it rip. In: NZZ,31.12.2022, https://www.nzz.ch/schweiz/ueli-maurer- zwischendurch-muss-man-es-halt-mal-krachen-lassen-ld.1717343 (as at: 16.5.2024)

1288 "Swiss National Bank Chairman welcomes new Credit Suisse strategy", Reuters, 15.12.2022, https://www.reuters.com/business/finance/swiss-national-bank-chairman-welcomes-new-credit-suisse-strategy-2022-12-15/ (Stand: 20.11.2024)

1289 Transcription of the AF meeting of 5.12.2022, p. 2 f.

1290 Transcription of the AF meeting of 5.12.2022, p. 12

1291 Transcription of the AF meeting of 5.12.2022, p. 4

1292 Transcription of the AF meeting of 5.12.2022, p. 8 ff.

Oliver Wyman submitted their analysis on November 16, 2022.[1293] The authorities then decided to have additional questions clarified by Oliver Wyman. At the AF meeting on 5 December, the question of the supervision and financing of this follow-up work on the risks of a PLB for the Confederation led to discussions. FINMA did not see itself as the main party responsible for the PLB. The SNB referred to its alternative estimates and explained the corresponding results. However, further refinement of the analysis would require additional information from FINMA, e.g. on the ring fencing of foreign supervisory authorities. In the end, the authorities agreed that SIF should take the lead, FINMA and the SNB should contribute their expertise to the work and CS should bear the costs.[1294]

The following day, on December 6, the SNB-FINMA Steering Committee discussed whether the poor situation at CS could be improved by providing additional liquidity or by other measures in view of the existing confidence problem. FINMA was of the opinion that a sufficient supply of liquidity would calm the markets, which the SNB doubted. From the SNB's point of view, ELA and PLB were useful instruments in the event of a sudden loss of confidence. However, CS had a chronic confidence deficit. The causes of the loss of confidence must therefore also addressed. CS had fallen into a vicious circle due to tight capitalization, a lack of market confidence and negative pro- fitability.[1295] In the documents for this meeting with FINMA on 6 December 2022, the SNB wrote: "Parent bank tight capitalization prevents de-risking". From the PUK's perspective, this statement is all the more remarkable given that Parent Bank benefited from the regulatory filter of CHF 14.5 billion at the end of 2022. This sum represented almost half of CS AG's regulatory capital. Another point of discussion was the question of whether the scope of the ELA (CHF 50 billion) was sufficient. With regard to the option of a takeover of CS by another bank or a merger, FINMA informed the SNB that, at FINMA's request and after much resistance, CS had drawn up a list of domestic and foreign banks that could be considered as buyers or merger partners. The meeting participants came to the that of the five banks listed, only UBS was a credible option. FINMA and the SNB decided to further prepare the various options (CS manages it on its own, restructuring with possible liquidity assistance, faster de-risking, takeover by another financial institution).[1296]

LG meeting on December 9: no prospect of easing CS's capital or liquidity problems

At the LG meeting on December 9, 2022, FINMA and the SNB expressed concerns that CS's quarterly results could be worse than expected despite the capital increase at the end of November as the bank's profitability remained poor. However, the bank's critical liquidity situation was still seen as the most urgent problem. FINMA had therefore called for further continu- gency measures to be taken by the bank (see section 6.3.1.1). According to the FINMA director, there was no prospect of a sustained easing of the situation, and certainly not

[1293] Accompanying letter from FINMA to the FDF dated 21.11.2022 on the analysis by Oliver Wyman dated 16.11.2022

[1294] Transcription of the AF meeting of 5.12.2022, p. 18 ff. At the meeting of the LG on 22.12.2022, contrary to these intentions, it was decided that the FDF would bear the costs of the
However, the costs were ultimately charged to and paid by CS or the acquiring UBS after the legal basis for this had been created in March 2023.

[1295] Minutes of the SNB-FINMA Steering Committee of 6.12.2022, p. 6; SNB slide set on the same meeting, p. 3 and 5

[1296] Minutes of the SNB-FINMA Steering Committee of 6.12.2022

a turnaround of the situation can be expected. FINMA will therefore continue to maintain the pressure and urge CS to examine and prepare alternatives to restructuring. In this context, the Chair of the FINMA Board of Directors appealed to the other authorities to also call on CS to prepare measures discussions.[1297]

Information from the full Federal Council in December 2022

The then Head of the FDF informed the Federal Council at its meetings of 9 and 16 December 2022 that the situation at CS was stable at a low level.[1298] According to the minutes of the Federal Council meetings available to the PUK, the PLB was not discussed. Various members of the Federal Council also criticized the sparse and only verbal information provided by the Head of the FDF during this phase. The shared information and the lack of written form were not sufficient for the Federal Council committee to have been able to assess the extent of the CS's difficulties in concrete terms.[1299] The former head of the FDF told the PUK that he had feared a major risk of leaks, particularly in the Federal Councillors' environment. This fear had also been fueled by the negative experiences during the coronavirus pandemic. The serious consequences of an indiscretion for the stock markets had also been factored into his considerations.[1300]

Increased sensitivity of the authorities ahead of the holidays: assessment of the situation at the AF meeting on December 22

On December 22, the AF met once again to assess the situation shortly before the Christmas holidays and define further steps for action. FINMA's key figures showed that around CHF 130 billion in deposits had flowed out since the beginning of October and that CS's situation was still so critical that another major outflow would immediately lead to liquidity problems. FINMA announced that for this reason it had ensured that the conditions for CS to utilize the EFF and ELA capacity were met.

In general, a certain skepticism towards the information and forecasts made by CS in the past regarding certain key figures was noticeable in the AF. The SNB was particularly concerned about CS's liquidity situation at the beginning of 2023, as the SNB believed that CS had made incorrect assumptions in its previous liquidity forecast at the end of the year. CS's liquidity forecasts for the first quarter of 2023 were also too optimistic and could therefore not serve as a baseline for the authorities.[1301] The SNB's criticism of CS's liquidity forecasts was also shared by FINMA, which contacted the bank several times in November and December due to the still questionable liquidity situation.[1302] Although it had received an answer from CS that the liquidity situation would remain challenging until the end of the first quarter of [20231303] , according to FINMA this forecast was primarily based on CS's hope that it would be able to successfully sell the securitized products business.[1304]

[1297] Minutes of the LG meeting of 9.12.2022, p. 1 f.
[1298] Minutes of the Federal Council meetings of 9.12.2022 and 16.12.2022
[1299] Extract from the minutes of the ArG Risk Management Federation of the GPK of 20.4.2023, p. 2 f.; minutes of the PUK meeting of 11.10.2023, p. 53, 57; minutes of the PUK meeting of 24.2.2024, p. 80 ff.
[1300] Minutes of the PUK meeting of 8.11.2023, p. 30 ff.; Minutes of the PUK meeting of 22.5.2024, p. 24
[1301] Transcription of the AF meeting of 22.12.2022, p. 3 f.
[1302] Letter from FINMA to CS dated 16.11.2022, 6.12.2022, 19.12.2022
[1303] Letter from CS to FINMA dated 12.12.2022
[1304] Transcription of the AF meeting of 22.12.2022, p. 4

In a letter dated 19 December 2022, FINMA pointed out to the Chairman of the Board of Directors and the CEO of CS that the measures taken to date had not been sufficient to rebuild the bank's liquidity buffers and that CS would now have to set binding internal targets for meeting the liquidity targets.[1305] Despite these concerns, FINMA stated that on
22 December 2022, there was no *point of non-viability* either at solvency level (in terms of capital) or at liquidity level that could have been used to justify the initiation of a restructuring.[1306]

Increased sensitivity of the authorities before the holidays: considerations for the sales scenario in the AF

On December 22, 2022, the AF was aware that CS's chances of rescuing itself on its own had deteriorated and that other scenarios needed to be well prepared, with a sale or a distress sale in a crisis scenario with a short deadline appearing to be the obvious solution. A sale was also viewed rather positively in terms of minimizing risk for taxpayers and from a financial stability perspective.[1307] According to information provided by FINMA at the aforementioned AF meeting, CS had drawn up a longlist[1308] of possible - mostly international - buyers. However, this list was based on the assumption that a sale would take place in the medium term and that it would take several months to make contact. FINMA, which had urged CS several times in December 2022 to prepare for a possible sale and shorten the implementation time required,[1309] came to the conclusion that, in the event of an emergency sale, there was only one domestic solution to date, namely a sale to UBS.[1310] FINMA therefore instructed CS on 19 December 2022 to develop solutions for the short and medium-term scenarios by the beginning of January and to prepare these scenarios as far as possible. The required preparatory work also included the creation of a data room.[1311] Although the SNB's initial documents on the economic consequences of a disorderly default of CS were available at this meeting,[1312] they were not discussed due to time constraints.

The members of the AF finally agreed on various follow-up work on the possible scenarios until the next meeting in the first week of January. In addition to the further development of the sale scenario with CS, this also included the further preparation of ELA and contact at a technical level between FINMA and the FDF regarding a TPO for the Swiss unit in the event of a break-up scenario. Oliver Wyman's analysis of the risks of a PLB for the Confederation, which has been available since November 2022, was deemed insufficient by the AF to serve as a basis for decision-making by the Federal Council and FinDel. Further follow-up work was therefore also announced in this regard. The authorities did not contact UBS for the time being, as such an intervention was considered too dangerous given the circumstances.[1313]

1305 Letter from FINMA to CS dated 19.12.2022
1306 Minutes of the meeting of the AF of 22.12.2022, p. 10 f.
1307 Transcription of the AF meeting of 22.12.2022, p. 6 f., p. 10, p. 20
1308 On 23.12.2022, CS sent FINMA a brief analysis of various possible Buyers, including JP Morgan, Bank of America, Morgan Stanley, Goldman Sachs, BNP Paribas, Barclays, Deutsche Bank, Standard Chartered, Saudi National Bank and the UBS; e-mail from CS to FINMA dated 23.12.2022, 22.09 Letter from
1309 FINMA to CS dated 19.12.2022
1310 Transcription of the AF meeting of 22.12.2022, p. 7 f.
1311 Letter from FINMA to CS dated 19.12.2022; minutes of the LG meeting of 22.12.2022, S. 2
1312 Conséquences économiques d'une défaillance désordonnée de Credit Suisse, SNB working of 20.12.2022

1313 Transcription of the AF meeting of 22.12.2022, p. 21, p. 25

Increased sensitivity of the authorities before the holidays: measures taken by the LG to prepare for an unexpected crisis situation

The heightened awareness of the problems facing CS was also clearly at the meeting of the LG on the evening of the same day (December 22, 2022). Following a briefing on the most important points of discussion at the AF meeting, the committee came to the conclusion that it had become unlikely that the bank would be able to extricate itself from its difficult situation. For this reason, it was decided to examine the option of a sale of CS even more intensively and, where possible and sensible, to prepare for it. FINMA was instructed to contact CS and clarify how far the bank's preparations for emergency measures - particularly in connection with a short-term takeover - had progressed and to analyze the preparations immediately. In turn, the SNB should consider how a takeover by a Swiss bank would differ from a takeover by a foreign bank. Despite the focus on a sale scenario, in the event of a failed sale, the already largely prepared variant of the PLB by emergency law (see section 6.3.4.2) should be used. For further analyses of the PLB, the FDF should request CS to give Oliver Wyman access to the bank's data for follow-up work. The LG also discussed a possible extension of the ELA (in the sense of ELA+), without making a decision in this regard.[1314]

6.3.5.2 Preparations for the turn of the year in the Federal Council

In the days following their election to the Federal Council, the then Federal Chancellor informed the two new members of the Federal Council, Eli- sabeth Baume-Schneider, the new head of the FDJP from January 1, 2023, and Alber- t Rösti, the new head of DETEC from January 1, 2023, about the status of the Federal Council's deliberations on the CS situation.[1315] The Federal Chancellor the two new members of the College with various documents on the CS crisis, including Federal Council resolutions and minutes of the Federal Council meetings in November and December 2022. He also informed them of the possibility of extraordinary meetings at the beginning of 2023 should the bank's situation deteriorate.[1316] According to the Director of the FOJ, the key persons involved in the handover of the FDJP were, i.e. the previous Secretary General and the new Secretary General, both in possession of the FOJ note dated November 28, 2022.[1317]

On 1 JanuaryFederal Councillor Berset also succeeded Federal Councillor Cassis as President of the Swiss Confederation. To this end, the two had a brief telephone conversation on December 31, 2022, without discussing CS.[1318] Like the other members of the Federal Council - with the exception of Federal Councillor Keller-Sutter (see section 6.3.5.3) - the outgoing and incoming Federal Presidents were not informed by the Head of the FDF about the worsening situation at CS in the last days of December 2022 (see section 6.3.5.4).

[1314] Minutes of the LG meeting of 22.12.2022, p. 2
[1315] Minutes of the PUK meeting of 21.2.2024, p. 55 and 60; minutes of the PUK meeting dated 29.11.2023, p. 15
[1316] Minutes of the PUK meeting of 29.11.2023, p. 16. Ultimately, there was no extraordinary meeting, meaning that the two new members of the College received direct information from the new head of the FDF for the first time at the Federal Council meeting of 11 January 2023, see section 6.4.2.
[1317] Minutes of the PUK meeting of 24.1.2024, p. 75
[1318] Minutes of the PUK meeting of 8.11.2023, p. 55; Minutes of the PUK meeting of 14.2.2024, p. 81

6.3.5.3 FDF: Handover by the outgoing head to the future head

With the resignation of the previous head of the FDF at the end of 2022, there was a change at the top of the FDF. As mentioned, the Federal Council decided on the departmental allocation on December 8, 2022. From that day on, it was clear that Federal Councillor Keller-Sutter, the previous head of the FDJP, would take over as head of the FDF from January 1, 2023. This section deals with this change and the associated preparations.

Contacts between Federal Councillor Maurer and Federal Councillor Keller-Sutter

The only meeting between the then Head of the FDF and Federal Councillor Keller-Sutter to prepare the handover of the department place on December 19, 2022 in the presence of the Secretary General of the FDJP and the Secretary General of the FDF.[1319] On this day, the then Head of the department handed over the dossiers to Federal Councillor Keller-Sutter. According to statements made by Federal Councillor Keller-Sutter and her Secretary General to the PUK, they did not receive any written documents relating to CS. The head of the FDF at the time described the situation at CS as stable.[1320]

In addition, the then Head of the FDF and Federal Councillor Keller-Sut- ter spoke on the phone twice in total. The first telephone call took place on December 23, 2022. It focused on informing Federal Councillor Keller-Sutter about a meeting of the then Head of the FDF in the UK. According to Federal Councillor Keller-Sutter, the then Head of the FDF reiterated during this telephone conversation that CS was stable.[1321] The second telephone conversation place on 29 December 2022. On this occasion, Federal Councillor Keller-Sutter was by the then Head of the FDF that CS had experienced difficulties over the festive period, but that the situation was stable (see section 6.3.5.4) and that he had had an exchange with the SNB and FINMA in the previous days.[1322]

Exchange between various administrative units and Federal Councillor Keller-Sutter

FINMA

According to statements made by Federal Councillor Keller-Sutter, the Chair of FINMA's Board of Directors approached her directly after the departmental allocation on December 8, 2022 with a request for a meeting. However, according to Federal Councillor Keller-Sutter's statement, Federal Councillor Maurer declined a meeting between her and the Chair of FINMA's Board of Directors. As a result, the first meeting did not take place until January 10, 2023. The Chair of FINMA's Board of Directors justified her contact by stating that the flow of information was very important to her. Howeverher contact with Federal Councillor Keller-Sutter was not well received by the then Head of the FDF.[1323]

The former head of the FDF, however, stated on the record that he had been asked by the Chair of the FINMA Board of Directors to intervene so that Federal Councillor Keller-Sutter would her before the of the year if possible. In his opinion, however, Federal Councillor Keller-Sutter had wanted to take a slower approach to the situation.[1324]

[1319] Minutes of the PUK meeting of 11.10.2023, p. 58; Minutes of the PUK meeting of 1.11.2024, p. 47; Minutes of the PUK meeting of 31.1.2024, p. 33
[1320] Minutes of the PUK meeting of 11.10.2023, p. 58 and 17.1.2024, p. 47
[1321] Minutes of the PUK meeting of 11.10.2023, p. 59
[1322] Minutes of the PUK meeting of 11.10.2023, p. 59
[1323] Minutes of the PUK meeting of 1.11.2023, p. 42 and 51
[1324] Minutes of the PUK meeting of 8.11.2023, p. 40

FFA and SIF

The Director of the FFA and the future Head of the FDF met twice in December (on December 14 and 20, 2022). The focus was on budget planning for the following year. On December 20, 2022, the Director of the FFA informed Federal Councillor Keller-Sutter verbally about the CS situation for half an hour.[1325] These meetings were also attended by the two personal staff members of Federal Councillor Keller-Sutter - on December 20, 2022 only the personal staff member -, the then Secretary General of the FDJP and other FFA employees.[1326]

According to her own statements, Federal Councillor Keller-Sutter did not receive an information note prepared by the FFA on the topic of the possible introduction of a PLB dated 21 December 2022.[1327] According to the FFA Director, the former head of department had asked the FFA not to pass on any written documents directly because the written dossier on CS was the responsibility of the SIF and should be consolidated by it.[1328]

In addition, the then Head of the FDF mentioned in his hearing that the FDF had already offered to involve and inform Federal Councillor Keller-Sutter through the State Secretary for International Financial Matters and the Director of the FFA in December. There had then a single contact between these persons. In his opinion, this introduction by the specialists "did not work out optimally", although this was not only due to the FDF.[1329]

No meeting took place between Federal Councillor Keller-Sutter and the State Secretary for International Financial Matters in 2022. According to FDF e-mail documents, the State Secretary for International Financial Matters the then Secretary General of the FDF on December 14, 2022, as she it "urgent" to hold a briefing for Federal Councillor Keller-Sutter together with the then Head of the FDF on the "secret topic of the bank". Subsequently, in consultation with Federal Councillor Keller-Sutter, her personal assistant suggested a specific date to the then Secretary General of the FDF.[1330] However, the then Head of the FDF did not consider such a meeting to be absolutely necessary.[1331]

After no meeting held, the State Secretary wanted to raise the issue with the future head of the FDF on the fringes of an official trip to the UK. However, Federal Councillor Keller-Sutter did not take part in this trip.[1332] After the situation at CS deteriorated over the holidays, the State Secretary for International Financial Matters requested and received the telephone number of Federal Councillor Keller-Sutter, according to information provided by the then Head of the FDF, but did not contact her.[1333]

The head of the FDF at the time the PUK that Federal Councillor Keller-Sutter was still on vacation and therefore not ready for a meeting until the second week of January.[1334] According to the statements of Federal Councillor

1325 Minutes of the PUK meeting of 17.1.2024, p. 50
1326 Written answers to the PUK dated 19.12.2023; note from the FFA for the meeting on 20.12.2023
1327 Minutes of the PUK meeting of 8.11.2023, p. 75
1328 Minutes of the PUK meeting of 24.1.2024, p. 48
1329 Minutes of the PUK meeting of 8.11.2023, p. 39
1330 E-mail from Federal Councillor Keller-Sutter's personal assistant to the GS-EFD of 15.12.2022: Specifically, the then Head of the FDJP announced a meeting on Wednesday, 21.12.2022, from 7.00-8.30 am.
1331 E-mail from the State Secretary for International Financial Matters to the GS-FDF dated 14.12.2022; e-mail from the personal assistant of Federal Councillor Keller-Sutter to the GS-FDJP dated 15.12.2022
1332 Minutes of the PUK meeting of 24.1.2024, p. 29
1333 Minutes of the PUK meeting of 24.1.2024, p. 29
1334 Minutes of the PUK meeting of 8.11.2023, p. 36 and 22.5.2024, p. 27

She was certainly available for meetings with Keller-Sutter, as evidenced by the two meetings with the Director of the FFA (see above). Furthermore, she had not taken any vacations, but had prepared the discussions on the budget together with her staff and studied the files submitted to her on the FDF's business.[1335]

The first contact between the State Secretary for International Financial Matters and Federal Councillor Keller-Sutter did not take place until January 5, 2023, i.e. in the first week of January (see section 6.4.2).

Exchange at the level of the Secretary General and the Secretary General

The then Secretary General of the FDJP and current Secretary General of the FDF was in contact with the then Secretary General of the FDF several times in December 2022. However, the then Secretary General of the FDF was not involved in the work on the CS dossier.[1336] Consequently, the future Secretary General of the FDF did not receive any information on this dossier from her predecessor.[1337]

6.3.5.4 Management of the authorities due to a worsening of the situation at the end of December 2022

Deterioration of the situation between Christmas 2022 and New Year 2023

On December 28, 2022, the Chairman of the Board of Directors of FINMA was alerted by the head of the FINMA crisis unit, as CS in a critical condition: The bank's cash positions were in the single-digit billion range, which is why a payment default could have triggered a domino effect. [1338] Although she was not a member of the FINMA crisis team, the Chairman of the Board of Directors was informed because the FINMA Director at the time was unavailable due to the accident. SIF and the SNB were also aware that CS was very close to drawing ELA and that FINMA had granted it a shortfall in the Pillar 1 requirements.[1339]

The Chairwoman of FINMA's Board of Directors then contacted the SNB President and the then Head of the FDF to a meeting between the authorities and the Chairman of the CS Board of Directors before the end of the year. On the following day, a high-level exchange took place between the authorities and CS, in which the then Head of the FDF, the SNB President and the Chairman of the FINMA Board of Directors as well as the Chairman of the CS Board of Directors took part. This was another non-meeting (see section 6.3.3.2), which was therefore not minuted.[1340] At this non-meeting, the Chair of the FINMA Board of Directors made demands of CS and announced measures. In order to ensure written form as far as possible, the Chairwoman of FINMA's Board of Directors arranged for these demands to be sent to CS, the FDF and the SNB on the eve of the meeting.[1341]

[1335] Statement by the Head of the FDF of 5.8.2024 as part of the administrative consultation, p. 14
[1336] Minutes of the PUK meeting of 31.1.2024, p. 28 f. and of 17.1.2024, p. 50
[1337] Minutes of the PUK meeting of 17.1.2024, p. 55
[1338] Minutes of the PUK meeting of 1.11.2023, p. 40
[1339] Hand note by the State Secretary for International Financial Matters on a telephone conversation with the Head of FINMA's Banking Division on 28.12.2022; minutes of the PUK meeting of 1.11.2023, p. 40
[1340] E-mail from a FINMA employee to the then Director of FINMA and the Chairman of FINMA.
Head of FINMA's Banks division of 28.12.2022, 1818; minutes of the PUK meeting of 1.11.2023, p. 40
[1341] Minutes of the PUK meeting of 1.11.2023, p. 40 f.; FINMA statement of 7.8.2024 as part of the administrative consultation, p. 52

At this meeting, FINMA called on CS to take the following measures:

- to provide the authorities with five names of potential buyers who plausibly be considered for a takeover of CS by January 4, 2023;
- to set up a data room that would enable a potential buyer to quickly gain an overview of CS's situation in order to accelerate a possible takeover;
- prepare for the takeover by UBS, so that a press conference on January 27, 2023 would be possible.

As a four-week due diligence would still have been required for potential buyers despite the preparations for a data room to date, FINMA linked the fulfilment of the second condition with the threat of a restructuring under Article 25 of the Banking Act as an unavoidable consequence in the event of destabilization.[1342]

The discussion with the Chairman of the CS Board of Directors was characterized by tension. The authorities agreed on the matter, even though FINMA, as far as the PUK was aware, demanded that CS should be approached with greater unity and clarity.[1343] In any case, none of the authorities present disagreed with FINMA's demand that CS should speed up the preparation of the sale scenario so that contact with UBS could be made soon. The Chairman of the CS Board of Directors replied that he would only contact UBS after an ELA reference. The CS Board of Directors had not yet been included by the Chairman of the Board of Directors in the considerations regarding a sale of CS to UBS. On the part of CS, a meeting with a committee of the Board of Directors was planned at the beginning of January and then the full Board of Directors would be informed at the beginning of February.[1344]

After the meeting on 29 December, the head of the FDF summarily informed his successor about the critical phase during a telephone conversation about his meeting with the Chinese Vice-President (see section 6.3.5.3).[1345] However, the head of the FDF refrained from informing the full Federal Council that CS had again suffered large liquidity outflows in the week of the end of 2022.[1346] The full Federal Council and the Federal Chancellor only learned of the critical events at the end of 2022 during the acute crisis phase in March 2023. The same applies to the FFA, which was not informed of these meetings and only became aware of them in January.[1347]

According to the Chairman of the Board of Directors of CS the establishment of a data room required by FINMA to shorten the preparation time for a takeover was carried out during the course of January in accordance with FINMA's requirements, following his internal influence.[1348] According to information provided by CS on 12 January 2023, the data room had been prepared to the extent that the necessary data was available and it could have been operational within 48 hours (see section 6.4.1).[1349]

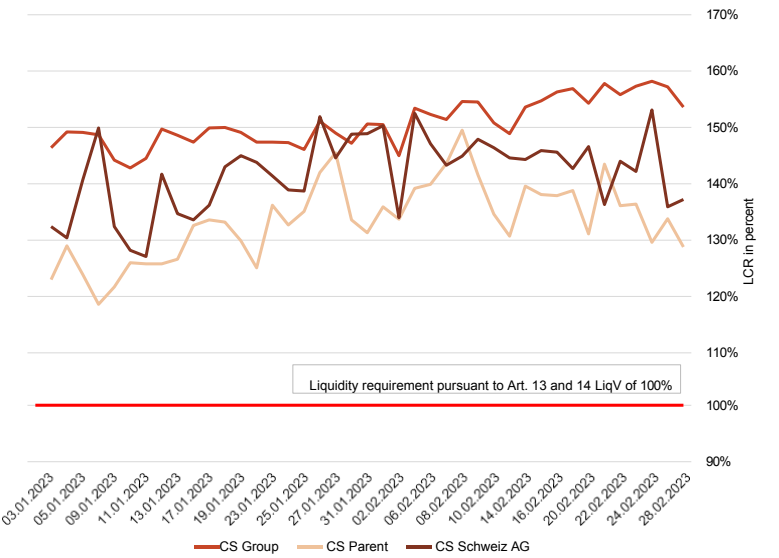
[1342] Minutes of the PUK meeting of 1.11.2023, p. 40 f.; e-mail from FINMA to CS dated 28.12.2022, 6.36 p.m.
[1343] Email from the Chairwoman of FINMA's Board of Directors to the then Director of FINMA and the Head of FINMA's Banks division dated 29.12.2022, 20:02
[1344] Email from the Chairwoman of FINMA's Board of Directors to the then Director of FINMA and the Head of FINMA's Banks division dated 29.12.2022, 20:02
[1345] Minutes of the PUK meeting of 11.10.2023, p. 59
[1346] Minutes of the PUK meeting of 21.2.2024, p. 54, 76
[1347] Minutes of the PUK meeting of 1.5.2024, p. 41
[1348] Minutes of the PUK meeting of 31.1.2024, p. 14
[1349] Letter from CS to FINMA dated 12.1.2023

6.4 Continuation of crisis preparation and further development of scenarios under the new departmental management (January to February 2023)

When Federal Councillor Karin Keller-Sutter took over the department at the beginning of January 2023, she joined the LG as the new head of the FDF. The bank's situation appeared to stabilize somewhat, as evidenced by higher liquidity ratios, for example (see Figure 9). Nevertheless, the situation remained tense.

Section 6.4.1 discusses FINMA's supervisory activities in the context of crisis preparation during this period. Section 6.4.2 deals with the first meetings and sessions under the leadership of the new head of the FDF. Section 6.4.3 describes the development of the scenarios following the first written information to the Federal Council, and finally, section 6.4.4 deals with the authorities' public communication since fall 2022.

Figure 9: Minimum liquidity ratio of the three most important CS units, January-February 2023 (LCR in %)



Source: This chart is based on the figures provided to FINMA by CS. CS provided FINMA with figures every Friday with values from Thursday to Wednesday. The liquidity requirement of 100% shown in red, which CS had to comply with, comes from FINMA's public communication and applied to all banking institutions in Switzerland.[1350]

[1350] For details of the regulation, see FINMA: What capital and liquidity requirements must institutions meet?, 17.6.2022, https://www.finma.ch/de/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/key-metrics-chart-pack-2021.pdf?sc_lang=en&hash=B165AAA8F2364D7633AF34F0A2AC79A9 (as at 8.7.2024)

6.4.1 FINMA's continued supervision of CS in the context of crisis preparation

Shortfall in liquidity requirements as part of the buffer on January 3

As FINMA had already feared in December (see section 6.3.1.1), it determined on 3 January 2023 that CS would temporarily fall short of the liquidity requirements by the end of January. FINMA therefore requested written justification for the shortfall and an action plan (funding plan) by January 12, 2023.[1351] CS subsequently submitted this funding plan.[1352]

Further preparatory work for the solution scenarios from January 4 to 10

At the same time, preparations for the solution scenarios continued in January. In a letter dated January 4 on the status of the solution preparations, CS presented a possible transaction structure as part of the sale solution scenario (see Box 9 in section 6.3.1.1 above). At that time, CS was considering a public tender offer in accordance with takeover law, a merger within the meaning of the Merger Act or an asset deal in which the CS Group would sell its subsidiaries and then liquidate itself.[1353] At the same time, CS shared a short list of four candidates - UBS, a US bank, a bank from the EU and a previous shareholder of the CS Group - with FINMA.

In the same letter, CS listed the key risks and challenges of such a transaction, as requested by FINMA in an email dated December 28, 2022. There was a risk of leaks. In addition, it would be difficult to find a contractual party that was willing and able to carry out such a transaction and to secure the approval of foreign regulatory authorities, investors and . In addition, the regulatory requirements for such a transaction would have to be specified. Furthermore, CS and the other contracting party would be exposed to considerable risks between the announcement of the transaction and the closing.[1354] CS also specific risks relating to UBS: Many clients of CS and UBS were interested in having a client relationship with two major banks and would switch to a third-party bank in the event of a transaction. Furthermore, a reduction in jobs is to be expected. The would also pose a risk to the Swiss economy and the Swiss financial center.

According to CS, it had not yet made contact with UBS at this time. However, it referred to the talks held in 2020 (see Fig. 2 in section 5.1.2). The aforementioned challenges would make it considerably more difficult to make contact with potential contracting parties and to concretize the transaction.[1355]

In a telephone conversation on January 5, 2023, CS also informed FINMA's Banks division that it would continue to avoid the use of ELA. Following this telephone call, representatives of FINMA and the SNB a workshop with representatives of CS. The authorities discussed the above-mentioned letter from CS dated January 4 and the current situation at CS. They also discussed the various possible solution scenarios and the potential risks of a merger with UBS. Among other things, CS identified cultural differences between the banks, the preservation of CS's client base and a lack of synergies in the area of wealth management as potential risks. Nevertheless, UBS would have the most synergies CS. CS confirmed that

[1351] Letter from FINMA to CS dated 3.1.2023, p. 1
[1352] Letter from FINMA to CS dated 3.1.2023; statement dated 5.8.2024 as part of the administrative consultation, p. 13
[1353] Letter from CS to FINMA dated 4.1.2023, p. 3 ff.
[1354] Letter from CS to FINMA dated 4.1.2023, p. 2 [1355]
Letter from CS to FINMA dated 4.1.2023, p. 7

the data room could be used. However, FINMA did not share this view. According to its assessment, around four more weeks of preparatory work would be needed to make the data room suitable. FINMA and the SNB jointly called on CS to press ahead with the preparations for the solution scenarios.[1356]

On January 10, 2023, FINMA met with the Chairmen of the *Audit Committee* and the *Risk Committee* of CS. They discussed CS's slightly improving liquidity situation and the preparatory work for the various solution scenarios. FINMA and CS agreed that only three solution scenarios possible at this point: CS could the crisis on its own, CS would merge with another financial institution or it would be restructured. FINMA expressed its disappointment with CS's preparatory work. CS replied that FINMA's demands were somewhat naïve, partly because of the assumption that CS could approach potential merger partners.[1357] On the same day, the Chair of the Board of Directors of FINMA and the Head of the FDF discussed the situation at CS together for the first time, according to the former (see section 6.4.2).[1358]

The following day, FINMA and CS held another meeting. The subject of the meeting was the weekly update on the situation at CS and FINMA's forthcoming media release on the conclusion of the Greensill enforcement proceedings[1359].

Confirmation of the CS for the virtual data room from mid-January 2023

According to the information provided by the PUK, work on the provision of the data room was intensified in January and February.[1360] At the beginning of the year, FINMA criticized CS's preparatory work and demanded that it provide the data room more quickly and upload updated data.[1361]

In a letter dated 12 January, CS confirmed to FINMA that the majority of the data required for the data room had now been prepared and that the data room would be operational within 48 hours. CS also provided an overview of the documents already contained in the data room.[1362] FINMA took note of this in its letter of 23 January 2023 and the bank to add further key documents to the data room, such as the capital and financial planning documents that were outstanding at the time.[1363]

FINMA also clearly stated that the bank's Board of Directors is responsible for regularly reviewing the current situation and CS's remaining options, initiating measures at a sufficiently early stage and thereby safeguarding the interests of investors and clients[1364].

Extraordinary meetings of the FINMA Board of Directors on the CS crisis on January 12 and 18

After the Board of Directors was informed about various decisions of major importance from October 2022 (see section 6.3.1.2), it met on 12 and 13 October 2022. January 18, 2023, in order to further intensify possible decisions. In doing so, it focused on criteria for a possible decision between

1356 FINMA internal memo dated 5.1.2023, p. 2
1357 FINMA internal memo dated 10.1.2023, p. 1
1358 Minutes of the PUK meeting of 1.11.2023, p. 43
1359 Chronology of FINMA, p. 27; Email exchange between FINMA employees from 11.1.2023
1360 Minutes of the PUK meeting of 14.2.2024, p. 61 f.
1361 Minutes of the PUK meeting of 31.1.2024, p. 60
1362 Letter from CS to FINMA dated 12.1.2023, p. 1
1363 Letter from FINMA to CS dated 23.1.2023, p. 1
1364 Letter from FINMA to CS dated 23.1.2023, p. 1

Restructuring and bankruptcy.[1365] On January 12, the Chairwoman of the Board of Directors, the Director and the heads of FINMA's business divisions informed the Board of Directors about CS's capital and liquidity situation. 's liquidity situation had been very tight over the festive period, but had since improved slightly. The Board of Directors was also informed about the *valuation-in-resolution exercise* (see Box 12 in section 6.3.4.2).[1366]

On 18 January, FINMA's Board of Directors discussed the critical values that the valuation-in-resolution exercise had revealed and which could jeopardize a possible restructuring of CS. It noted that, based on the figures at the time, capital hardly a problem. The critical values were primarily in the area of liquidity. FINMA itself had no instruments for additional liquidity, only instruments for solvency (AT1 bonds, *bail-in bonds*). Therefore, access to liquidity via the SNB's liquidity facilities or via a PLB from the federal government is extremely important as a basis for decision-making in the event of a restructuring or bankruptcy. In this context, the FINMA Board of Directors discussed whether a corresponding liquidity confirmation from the SNB to FINMA would be worth examining, analogous to the solvency confirmation from FINMA to the SNB(1367).

Further work on CS's stabilization, contingency and resolution plans

Following FINMA's request on 13 December 2022 for CS to develop further concrete measures to stabilize the bank (see section 6.3.1.1), CS submitted a list of the measures it had implemented and planned on 6 January 2023.[1368] In a letter dated 23 January 2023, FINMA CS that only a few measures to stabilize the bank were still in preparation and that these were already part of the ordinary financial and capital plan. In this context, FINMA asked CS to present further contingency measures that the bank could take if the situation deteriorated further.[1369]

Further exchange between FINMA and CS to prepare the sale scenario from the end of January to the end of February 2023

Another weekly meeting on the situation at CS took place on January 24, 2023. In addition to the Director of FINMA and the Head of Supervision of the CS Group, the Chairwoman of the Board of Directors also attended as an exception on the FINMA side. On the CS side, the Chairman of the Board of Directors, the CEO and the *Head of Regulatory Affairs* took part. Topics discussed included CS's capital and liquidity situation and the planned media release regarding Greensill. At this meeting, FINMA criticized CS's presentation with regard to the regulatory requirements. FINMA had explored the possibilities of supervisory law and had granted CS numerous exemptions since the change in strategy, which were now reaching their limits. In particularthe regulatory filter was very generous. Foreign supervisory authorities had also granted relief. CS replied that the valuation of the Parent Bank's shareholdings using market value models had a procyclical effect and was therefore problematic.[1370]

1365 Minutes of the extraordinary meeting of the Board of Directors of FINMA on 12.1.2023, According to the information provided by the PUK, the degree of preparation of the restructuring at this time was around 90% (minutes of the PUK meeting of 1.11.2023, p. 61).
1366 Minutes of the extraordinary meeting of the Board of Directors of FINMA on 12.1.2023, p. 1
1367 Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.1.2023, p. 2
1368 Email from CS to FINMA dated 6.1.2023, "Contingency Measures"
1369 Letter from FINMA to CS dated 23.1.2023
1370 Internal note from FINMA dated 24.1.2023

FINMA and CS spoke at the following weekly meeting of
On January 30, the Director of FINMA, the Head Supervision of CS, the Chairman of the Board of Directors of CS and other members of the Executive Board discussed CS's AT1 bonds. This was not about a possible write-down, but about a buyback of the oldest AT1 bond series as of July 2023 without a replacement issue, as desired by CS.[1371]

The topic of the buyback of AT1 bonds was raised again at the weekly meeting on February 6, 2023. The Director of FINMA and the Head of the Banking division the CEO and CFO as well as the Chairman of the Board of Directors of CS that FINMA could not yet allow the announcement of a buyback of an AT1 bond series for July 2023 requested by CS without issuing a new series: CS had not yet provided FINMA with the necessary analyses to carry out the loss potential analysis (LPA) and its profitability was still too low. CS representatives replied that this was a bad signal for the market and that they had hoped for an exception from FINMA.[1372]

A short time later, on February 24, FINMA discussed the various solution scenarios with CS. The topic was the possible sale of some business areas and the reduction of the so-called Capital Release Unit (CRU), i.e. those assets that were no longer compatible with CS's strategy. While CS wanted to continue to focus on strengthening the market's confidence in the bank, FINMA demanded that it also explore other solution options.[1373]

Conclusion of the Greensill enforcement proceedings at the end of February

On February 28, FINMA published its media release on the conclusion of the Greensill enforcement proceedings. In it, it announced that CS had seriously breached its regulatory obligations with regard to risk management and appropriate business organization and that FINMA had ordered corrective measures. In future, CS was obliged to periodically review the most important business relationships at management level, in particular with regard to counterparty risks. Furthermore, CS must set out the responsibilities of its (around 600) most senior employees in a responsibility document. Finally, FINMA opened four enforcement proceedings against former CS managers. FINMA appointed an audit officer to review the implementation of the measures it had ordered(1374).

CS criticized this media release at the weekly meeting with FINMA on 1 March 2023. In its view, the media release could have focused more on the measures it had already taken and the progress it had made, as it still in a crisis of confidence. FINMA pointed to CS that it had discussed the media release with it in advance and taken its feedback into account.[1375]

1371 FINMA internal memo dated 30.1.2023 1372
FINMA internal memo dated 6.2.2023 1373
FINMA internal memo dated 24.2.2023
1374 "FINMA 'Greensill' proceedings against Credit Suisse", press release by FINMA from 28.2.2023
1375 Email exchange between FINMA employees dated 2.3.2023 (9.38 a.m.)

6.4.2 First meetings and sessions under the new department management (January 2023)

Exchange of views between the new Head of the FDF Department and the authorities and CS

From the time she took office in January 2023, the new head of the FDF met with various representatives of the authorities to obtain information on the situation in the CS dossier in preparation for the first meeting of the LG on January 11, 2023. On 5 January 2023, she was introduced to the CS dossier by the State Secretary for International Financial Matters, who also briefed her on the discussions to date within the AF in preparation for the LG meeting.[1376] The new Head of Department also met with the Chair of the FINMA Board of Directors at the beginning of January, who informed her about the current situation at CS and discussed with her, among other things, the measures and enforcement procedures taken by FINMA to date.[1377]

The new head of the FDF first spoke informally with the Chairman of the CS Board of Directors on 11 January on the fringes of a meeting of the most important players in the financial center. She was the impression by CS management that although the situation was difficult, CS had it under control and did not require state aid.[1378] No official inaugural visit took place with either the Chairman of the Board of Directors or the CEO of CS, as the Head of the FDF stated that she did not receive an appointment with either of them. In contrast, an inaugural visit to UBS took place quickly during the same period.[1379]

Formalization of the four scenarios in the AF

The AF met for the first time in the new year on January 6, 2023. The members of the AF were not directly affected by the change at the head of the FDF, apart from the fact that SIF and the FFA had a new superior. At this meeting, the members of the AF discussed the takeover of the Credit Suisse dossier by the new head of the . The main aim of the meeting was to prepare the topics be dealt with at the first meeting of the SC under the leadership of the new FDF head, which was scheduled for the following week. For example, the head of FINMA's Banking division informed the members about developments in the "Como" project. This was the name given to the scenario of the takeover of CS by UBS. The AF came to the conclusion that four scenarios would emerge from the discussions: A) CS manages to emerge from the crisis on its own, B) takeover, C) restructuring and D) bankruptcy with triggering of the emergency plan. This was followed by a discussion on the liquidity requirements in the event of a merger with UBS. The FFA asked whether it would be possible to the ELA potential in this case. The SNB answered the affirmative, provided that UBS itself would draw ELA and then lend the liquidity to CS. It referred to FINMA's reservations in this regard.[1380] Among other things, the potential amount of ELA and the benefits of this instrument were discussed quite controversially. The Director of FINMA stated that CS had indicated to him that it would rather fall below certain liquidity requirements than make use of ELA.[1381] The tone between some representatives of FINMA and the SNB became harsher: the former accused the latter of not doing enough to increase the capacity of ELA, but without substantiating this accusation.[1382] The persons concerned then apologized.[1383]

[1376] Minutes of the PUK meeting of 24.1.2023; e-mail from the State Secretary for International Financial Matters to the Head of the FDF dated 9.1.2023, 1.46 p.m.
[1377] Minutes of the PUK meeting of 1.11.2023
[1378] Minutes of the PUK meeting of 11.10.2023, p. 53 f.; Minutes of the PUK meeting of 8.11.2023, p. 82
[1379] Minutes of the PUK meeting of 8.11.2023, p. 82
[1380] Transcription of the AF meeting of 6.1.2023, p. 7 and 14
[1381] Transcription of the AF meeting of 6.1.2023, p. 4 f.
[1382] Transcription of the AF meeting of 6.1.2023, p. 20 ff.
[1383] Transcription of the AF meeting of 6.1.2023, p. 29

The State Secretary for International Financial Matters emphasized the desire of the new head of the FDF to conduct an analysis of the economic consequences of the various scenarios in order justify the intervention of the state and the use of public funds, but also the application of emergency law.[1384] The AF pointed out that it was necessary to clarify whether FINMA could act in place of COMCO and that *in-principle approval* should be obtained from foreign regulators (Fed, PRA, Asian regulators) in order to pave the way for a possible merger of CS with UBS.[1385] The AF agreed that it necessary to prepare the scenario of a TPO for the systemically important Swiss unit of CS in the event of the bank's bankruptcy in greater depth and more quickly. At the suggestion of the Director of the FFA, a working group headed by the SIF was set up to deal specifically with the TPO.[1386]

Oral information from the Federal Council on the scenarios on January 11, 2023

With the change of department in the FDF and the intensification of crisis preparations, the frequency with which the CS dossier discussed in the Federal Council changed from January 2023. At the first meeting of the new year, on 11 January, the new head of the FDF informed the full Federal Council verbally about the current situation and promised to provide regular updates on the bank's situation.[1387] The Federal Council was also informed that the FC had completed the preparatory work for communication in the event of an emergency.[1388]

Continuation of the discussions in AF and LG

Following the Federal Council meeting on January 11, the LG met for the first time in its new composition in the evening, with Federal Councillor Karin Keller-Sutter as head of the FDF. The individual scenarios were presented and discussed. Each scenario was assigned a letter: A) The bank manages its own; B) Takeover of the bank; C) Restructuring with bail-in and PLB; D) Break-up and emergency plan (for a comprehensive description of these scenarios, see Box 11 in section 6.3.3.1). In the further discussion in the LG, the Head of the FDF pointed out how important a solid basis for decision-making was for the authorities to intervene. It was essential to show why intervention was unavoidable and what damage (to the economy or reputation) could be avoided as a result. The authorities (FINMA, SNB, SIF, FFA) were given several tasks for each of the scenarios: Among other things, it was decided to draw up a concept,
"how and to what extent the existing volume of ELA can be significantly increased in a domestic sale scenario, including any necessary legal adjustments by emergency law".[1389]

The SNB proposed a combination of statutory lien and bankruptcy privilege to the AF (January 24) and the LG (January 26). The SNB stated that it could not take any further measures to increase ELA loans within the existing private law framework. However, increases under emergency law were worth considering. In order to maximize their effectiveness, however, the upstreaming potential must also be increased through internal, secured financing transactions between the Swiss subsidiary and the parent bank.[1390] At the AF meeting on 24 January, the SNB emphasized that it had taken various measures in the past to increase the ELA potential and that the bank was prepared for necessary

1384 Transcription of the AF meeting of 6.1.2023, p. 10 f.
1385 Transcription of the AF meeting of 6.1.2023, p. 9
1386 Transcription of the AF meeting of 6.1.2023, p. 24-26
1387 Minutes of the PUK meeting of 8.11.2023
1388 Excerpt from the minutes of the Federal Council meeting of 11.1.2023
1389 Minutes of the LG meeting on 6.1.2023
1390 ELA extension by means of emergency law. Presentation AF, Powerpoint presentation of the SNB
from 24.1.2023

work had been indicated. However, CS had not prepared itself accordingly.[1391] The SNB came to the conclusion that the prepared ELA would not be sufficient if confidence in the bank could not be restored. Accompanying measures were therefore needed to address the cause of the outflows. A high ELA - without accompanying measures - could even lead to a downgrading of the bank by the rating agencies, because a significant portion of the assets would be tied up for the SNB and would no longer be available to cover the unsecured debt.[1392] For the first time, concrete proposals on ELA+ were formulated. It was planned to update the scenarios at the next meeting of the SC, as the Head of the FDF wanted to keep the Federal Council up to date on the various options.

At the meeting on January 24, the AF also took up the issue of possible liquidity inflows from the Swiss subsidiary of the CS Group (Credit Suisse (Schweiz) AG) to the parent company (Credit Suisse AG) in the context of a possible ELA withdrawal by the bank (see Box 16 in section 7.2.2.2). A representative of the SNB explained that the Swiss subsidiary could most of the ELA because it was in a position to offer the necessary collateral. However, other units of the CS Group were also reliant on liquidity. In this context, the AF noted that the Swiss subsidiary would not be able to pass on the liquidity received to other units without restriction due to the applicable intercompany limits. These limits resulted from the emergency plan.[1393] The head of FINMA's Banking division explained that the balancing of interests between the protection of systemically important functions on the one hand and the distribution of liquidity within the CS Group on the other was delicate.[1394] FINMA and the SNB then drew up an internal interpretation, which they wanted to present to the AF.[1395]

The SNB therefore presented an overview of the four scenarios being considered at that time at the LG meeting on January 26, 2023 and explained their advantages and disadvantages in a written document (Table 15). In order to assess the options available to the Swiss authorities, various objectives were identified: Continuation of the bank's systemically important functions, minimization of financial risks for the Confederation, preservation of competition and diversity of offerings in the Swiss banking system, avoidance of an exacerbation of the TBTF problem in Switzerland, preservation of the reputation and importance of the Swiss financial centre, preservation of jobs and tax revenues, avoidance of problems in the international financial system due to a Swiss bank.

The SC came to the conclusion that the "Credit Suisse makes it on its own" scenario would be the best solution, but that the other scenarios would have to be developed further.[1396] According to the information provided by the PUKneither the AF nor the SC discussed FINMA's internal interpretation of upstreaming.

[1391] Written answers to the PUK of 22.1.2024; transcription of the AF meeting of 24.1.2023, p. 9

[1392] Transcription of the AF meeting of 24.1.2023, p. 9 ff.; ELA extension by means of emergency law, Powerpoint presentation of the SNB, AF of 24.1.2023

[1393] Transcription of the AF meeting of 24.1.2023, p. 11

[1394] Transcription of the AF meeting of 24.1.2023, p. 15

[1395] Transcription of the AF meeting of 7.2.2023, p. 16

[1396] Minutes of the LG meeting on 26.1.2023; B2 crisis: overview of the pre- and post-parti possible measures, PowerPoint presentation LG from 26.1.2023

Table 15: Advantages and disadvantages of the various scenarios (as at 26.1.2023)

Scenario	Advantages	Disadvantages
A: ELA or ELA+ with the bank's own strengthening of financial power	Possible restoration of confidence in CS State support is limited to liquidity assistance (complies with TBTF rules) Minor loss of importance and reputation for the Swiss financial center Avoidance of negative effects on the competitive situation and the Swiss economy	If implementation is unsuccessful and the scenario is adhered to for too long, preconditions for alternative measures (e.g. takeover or restructuring) become worse and worse Application of ELA+ requires emergency law and is associated with financial risks for the SNB
B: Takeover by UBS or major foreign bank	Restoring confidence in CS without state solvency aid Attractive approach from the partner bank's perspective in view of CS's very low market valuation	Risk of infection of the partner bank In the event of a takeover by UBS: exacerbation of the TBTF problem, deterioration of the competitive situation and reduction in the diversity of offerings for the economy Swiss jobs are being lost Long period of uncertainty from announcement to completion of the transaction, unsuitable as an emergency measure in the event of acute destabilization of CS Complex negotiations with foreign authorities, particularly in the case of crossborder takeovers A purchase cannot enforced, weak negotiating position of the authorities ELA+ based on emergency law could be required
C: Restructuring with bail-in and PLB	Complies with TBTF dispositive and avoids state solvency aid Restoring confidence in CS New capital creates the conditions for reforms Strengthening the credibility of TBTF regulation Low risk for systemically important functions	A bail-in at a major bank has never been carried out anywhere in the world and represents a drastic intervention Possible spillovers to the financial markets or UBS cannot be ruled out Downsizing CS: fewer jobs and tax revenues, less competition and reduced variety of offerings Stigmatization of CS is likely

Scenario	Advantages	Disadvantages
D: Triggering the emergency plan with PLB and TPO of the Swiss unit	Applicable in an emergency, continuation of system-relevant functions in Switzerland A TPO provides an effective fallback to build confidence	Uncertainty regarding the financial delegation's decision Dramatic event for the Swiss financial center Implementation risks for the emergency plan despite preparation Risk of failure of systemically important functions State takeover by TPO by emergency law contradicts the principles of TBTF regulation; federal government exposes itself to financial and operational risks Possible lawsuits against the Swiss unit in the course of the liquidation of the parent bank Burdens future cooperation with foreign authorities Deterioration of the competitive situation and reduced supply for the (especially in the investment banking sector) Sharp reduction in jobs and tax revenues

Source: B2 crisis: Overview of the advantages and disadvantages of possible measures, PowerPoint presentation LG from 26.01.2023

At this meeting, the SC also discussed the SNB's preparations to increase the ELA amount by emergency law (ELA+). FINMA also dealt with the regulatory simplifications that would be necessary for the "Como" project, i.e. the takeover of CS by UBS. The authorities present were instructed to continue the preparations for ELA+ and the "Como" project.[1397]

Parallel to the discussions in the AF and the LG, the Director of FINMA and President Alain Berset held a meeting on January 24, 2023.[1398] President Alain Berset stated that although he had addressed the CS issue, he had not received any indications of particular problems in this meeting; rather, he had the impression that the worst was over.[1399]

6.4.3 Deepening of the possible scenarios by the authorities (February 2023)

In February 2023, the authorities the preparatory work for the individual scenarios. At the beginning of the month, the Federal Council was informed of the relevant considerations for the first time by means of written documents.

6.4.3.1 First written information to the Federal Council on possible scenarios

In January, in consultation with the LG and despite certain concerns about the risk of a leak, the head of the FDF decided to inform the Federal Council about draft scenarios for dealing with CS.[1400] After the discussion of the scenarios had been announced verbally at the Federal Council meeting on January 25, it took place the following week.[1401] The meeting documents for the attention of the Federal Council were discussed within the LG and supplemented with the help of feedback from the SNB and FINMA.[1402]

On February 1, the head of the FDF first informed the Federal Council verbally about the development of CS's liquidity and capital resources to date. The Federal Council then discussed the four possible scenarios.[1403] For this discussion, it received a written basis for the first time, which was handed out at the beginning of the meeting and then withdrawn again. The following scenarios were presented:

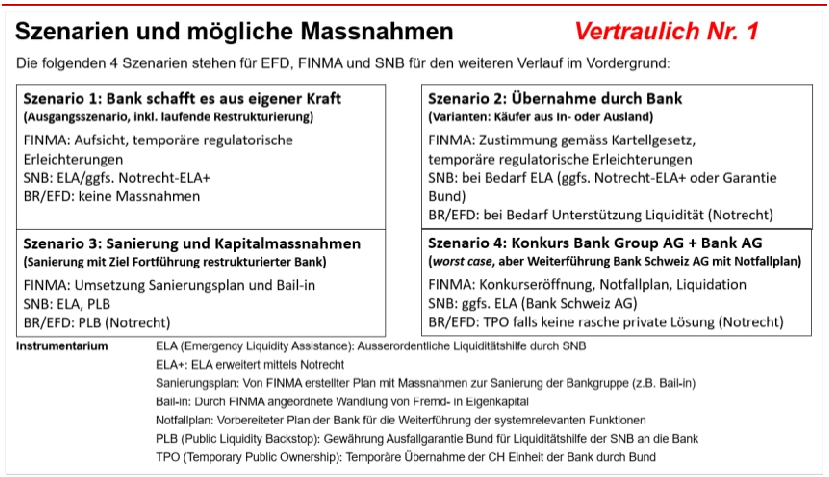
A. The bank manages on its own, using the leeway that the authorities can grant. This scenario was described as the only one without serious problems. ELA, which has already been prepared by the SNB, was mentioned as a possible government measure. An expansion of ELA, possibly with emergency powers from the Federal Council, was examined.
B. A sale of CS to a domestic or foreign bank. With regard to this scenario, it was noted that a timely takeover could prevent a restructuring or bankruptcy, but would also have negative consequences such as job cuts in Switzerland or the loss of systemically important functions to a foreign bank. Competition law issues still had to be clarified in this scenario. The head of the FDF referred to FINMA's special powers. ELA or ELA extended by emergency law was also expected in this scenario. The Head of the FDF stated that no specific prospective buyer was known, as an exploration would only be possible in the event of a definitive decision for this scenario.

1397 Minutes of the LG meeting on 26.1.2023
1398 Chronology of FINMA from 19.9.2023
1399 Minutes of the PUK meeting of 8.11.2023
1400 Minutes of the PUK meeting of 8.11.2023, p. 74 ff.
1401 Minutes of the Federal Council meeting of 25.1.2023; minutes of the PUK meeting of 8.11.2023
1402 Minutes of the LG meeting of 26.1.2023, p. 3
1403 Minutes of the Federal Council meeting of 1.2.2023

C. Restructuring with *bail-in* and PLB. This restructuring scenario corresponded to the TBTF dispositive, but had never before been tested worldwide for a global systemically important banking group, which is why there were fears of reputational damage for the financial center. The plan was to supplement the restructuring carried out by FINMA with an emergency PLB that had already been largely prepared if ELA was not sufficient.

D. Bankruptcy of Group AG and Bank AG (continuation of the Swiss unit). In this scenario, it was planned to separate Schweizer AG from the Group with the emergency plan in order to continue systemically important functions. This scenario was also part of the TBTF plan, but was considered by the authorities to be a worst-case scenario with major damage for the financial center. It could not be ruled out that a TPO would be necessary during the implementation of the bankruptcy and the emergency plan by FINMA if the search for a buyer for the Swiss unit took too long. However, the TPO had not yet been prepared. Although such a TPO had not previously been envisaged in principle, the FDF examined an emergency law option for this purpose.[1404]

Figure 10: One-pager with overview of the scenarios for the attention of the Federal Council



Szenarien und mögliche Massnahmen *Vertraulich Nr. 1*

Die folgenden 4 Szenarien stehen für EFD, FINMA und SNB für den weiteren Verlauf im Vordergrund:

Szenario 1: Bank schafft es aus eigener Kraft
(Ausgangsszenario, inkl. laufende Restrukturierung)
FINMA: Aufsicht, temporäre regulatorische Erleichterungen
SNB: ELA/ggfs. Notrecht-ELA+
BR/EFD: keine Massnahmen

Szenario 2: Übernahme durch Bank
(Varianten: Käufer aus In- oder Ausland)
FINMA: Zustimmung gemäss Kartellgesetz, temporäre regulatorische Erleichterungen
SNB: bei Bedarf ELA (ggfs. Notrecht-ELA+ oder Garantie Bund)
BR/EFD: bei Bedarf Unterstützung Liquidität (Notrecht)

Szenario 3: Sanierung und Kapitalmassnahmen
(Sanierung mit Ziel Fortführung restrukturierter Bank)
FINMA: Umsetzung Sanierungsplan und Bail-in
SNB: ELA, PLB
BR/EFD: PLB (Notrecht)

Szenario 4: Konkurs Bank Group AG + Bank AG
(*worst case*, aber Weiterführung Bank Schweiz AG mit Notfallplan)
FINMA: Konkurseröffnung, Notfallplan, Liquidation
SNB: ggfs. ELA (Bank Schweiz AG)
BR/EFD: TPO falls keine rasche private Lösung (Notrecht)

Instrumentarium
ELA (Emergency Liquidity Assistance): Ausserordentliche Liquiditätshilfe durch SNB
ELA+: ELA erweitert mittels Notrecht
Sanierungsplan: Von FINMA erstellter Plan mit Massnahmen zur Sanierung der Bankgruppe (z.B. Bail-in)
Bail-in: Durch FINMA angeordnete Wandlung von Fremd- in Eigenkapital
Notfallplan: Vorbereiteter Plan der Bank für die Weiterführung der systemrelevanten Funktionen
PLB (Public Liquidity Backstop): Gewährung Ausfallgarantie Bund für Liquiditätshilfe der SNB an die Bank
TPO (Temporary Public Ownership): Temporäre Übernahme der CH Einheit der Bank durch Bund

Source: Credit Suisse BR slide dated 1.2.2023, FDF PowerPoint presentation dated 1.2.2023

During this presentation, it was pointed out to the Federal Council that the use of emergency law could possibly become necessary in all four scenarios.[1405] After discussing the scenarios, the Federal Council did not adopt a mandate to any of the options presented in more detail, and the written document distributed was collected again.

At the same meeting, the Federal Chancellery informed the Federal Council that the preparatory work for crisis communication begun after the meeting on 2 November 2022 had been completed.[1406] The communication plans for the two scenarios "Introduction of a PLB" and "Liquidation of the bank" as well as the corresponding documents were for the case of need. However, the work for the preparation of the other scenarios had to be continued.[1407]

[1404] SIF speaking note for the Federal Council meeting of February 1, 2023 dated 27.1.2023; minutes of the Federal Council meeting of 1.2.2023
[1405] Minutes of the PUK meeting of 29.11.2023, p. 46
[1406] Minutes of the PUK meeting of 17.1.2024

[1407] Written answers to the PUK dated 12.4.2024

At the aforementioned meeting, the head of the FDF also informed the Federal Council that meetings of the Federal Council's Finance Committee would have to be dispensed with in the event of decisions to be taken at short notice. According to statements made several members of the Federal Council, there was a consensus that the Finance Committee could not serve as a short-term steering body in the event of a crisis, as in the opinion of those involved, the ongoing work was within the remit of the LG and in a crisis it is preferable to inform the full Federal Council directly.[1408]

Updating the risk reporting and further information to the Federal Council

At its meeting on February 15, the Federal Council addressed the issue of the possible insolvency of a systemically important financial institution at a higher level, specifically as part of the annual risk report. The GSK proposed to the Federal Council that the probability of insolvency of a systemically important financial institution be increased from "rare" to "possible" (see section 5.7.1.2). The Federal Council took note this change. However, to the best of the PUK's knowledge, it can be assumed that this adjustment was not the subject of explicit discussions in the Federal Council.

One week later, at the meeting on February 22, the head of the FDF again informed the Federal Council verbally about the situation at CS.[1409] However, at this meeting there was still no immediate need for urgent action.[1410] A further briefing for the members of the Federal Council would have been scheduled for March 29 or March 30.
April 5, 2023.[1411] The Federal Council should then have been informed of its role with the help of scripts on the processes involved in the scenarios.[1412] However, as a result of the events that unfolded from mid-March onwards, the Federal Council met almost daily from March 15, 2023 (see section 7).

Development of information for the Federal Council as a whole

The information on CS continued to be communicated verbally to the entire Federal Council. The only written document was withdrawn after the end of the meeting.[1413] The avoidance of leaks was given high priority in the perception of various Federal Council members consulted, even under the new head of the FDF.[1414] However, the first-time use of written documents on February 1, 2023 was viewed positively. These documents provided a basis for discussion and the basis for adopting the framework for future discussions on the scenarios.[1415] In addition, communication no longer took place only in crisis situations, but regularly on the current status.[1416] In any case, the minutes of the Federal Council meetings no longer contain any criticism that the FDF should provide more written information, as was still the case in November 2022.

[1408] Minutes of the PUK meeting of 8.11.2023; Minutes of the PUK meeting of 29.11.2023; Minutes of the LG meeting of 16.2.2023
[1409] Excerpt from the minutes of the Federal Council meeting of 22.2.2023
[1410] Minutes of the PUK meeting of 29.11.2023, p. 45 f.
[1411] Minutes of the LG meeting of 16.2.2023, p. 2
[1412] Transcription of the AF meeting of 14.2.2023, p. 19 f.
[1413] Minutes of the PUK meeting of 21.2.2022, p. 44; Minutes of the PUK meeting of 29.11.2023, p. 63
[1414] Minutes of the PUK meeting of 29.11.2023; minutes of the PUK meeting of 21.2.2024; minutes of the meeting of 14.2.2024, p. 83
[1415] Minutes of the PUK meeting of 8.11.2023; minutes of the PUK meeting of 14.2.2024, S. 83
[1416] Minutes of the PUK meeting of 17.1.2024

6.4.3.2 Further development of the scenarios in the Financial Crises Committee and the Steering Committee

Quantitative analyses of the consequences of a CS bankruptcy

After the Federal Council discussed the scenarios, the authorities continued the corresponding preparatory work. On February 2, 2023, the SNB presented to the AF the analyses of the economic consequences of a bankruptcy of CS without state intervention. For the first time, quantitative estimates of the impact of an interruption to the bank's systemically important functions were available. The economic damage would amount to more than 100% of Swiss GDP.[1417] This presentation came to the conclusion that the "restructuring and bail-in" scenario was the best solution.[1418]

However, the AF did not consider this conclusion to be sufficiently substantiated and instructed the working group to refine the analysis and to examine not only the costs of a disorderly bankruptcy of CS, but also - for comparison purposes - the costs of the scenarios under consideration.[1419] At the following meeting, which took place on February 7, the SNB again presented the "ELA+" concept (sometimes also referred to as "ELA NR" for "ELA *emergency law*"). According to the SNB's estimates, the volume of additional loans under ELA+ amounted to a maximum of CHF 30 billion.[1420] A discussion ensued about the connection between ELA+ and the PLB, and the SIF and the FFA demanded to be included in the SNB's deliberations on this instrument.[1421]

One week later, on February 14, the AF met again. After the status report on the situation of CS, the SIF presented the status of the preparations for the PLB and the script, in which the steps and tasks of the authorities in the introduction of the PLB were defined.[1422] The authorities discussed in particular who is responsible for a PLB application. They were of the opinion that the responsibility should not be left to the bank alone, but that the authorities also have a role to play in the actual use of this instrument.[1423]

A further meeting of the SC took place on February 16, at which the head of the FDF informed those present about the Federal Council's discussion of the scenarios. The next steps were determined, namely refining the scripts for the individual scenarios and contacting CS regarding the ELA+ so that the bank could prepare for any use of this instrument.[1424] The next meeting of the LG was planned for the end of March or beginning of April.

[1417] Conséquences économiques d'une défaillance désordonnée de Credit Suisse, Powerpoint presentation of the AF of 2.2.2023
[1418] Conséquences économiques d'une défaillance désordonnée de Credit Suisse, Powerpoint presentation of the AF of 2.2.2023, p. 6
[1419] Transcription of the AF meeting of 2.2.2023, p. 7-11
[1420] Transcription of the AF meeting of 7.2.2023, p. 8
[1421] Transcription of the AF meeting of 7.2.2023, p. 10-12
[1422] Transcription of the AF meeting on February 14, 2023, p. 6 ff.
[1423] Transcription of the AF meeting of 14.2.2023, p. 8-13
[1424] Minutes of the LG meeting of 16.2.2023

Macroeconomic analyses of the costs and benefits of the individual scenarios

The next meeting of the AF took place on February 22.[1425] At this meeting, the people present discussed the scripts "Activation of the PLB" and "Activation of the PLB".
"Takeover by a bank", which were prepared by the SIF and in which the steps, deadlines and responsibilities for the two scenarios were listed.[1426] At that time, the "Takeover by a bank" scenario envisaged that this takeover would be initiated by CS without time pressure and that the implementation of such a takeover would take several months, which the members of the AF criticized. The SIF was therefore instructed to revise this script and focus on an emergency situation.[1427] The status of preparations for ELA+ was also discussed. There two workstreams: the first involved clarifications with the bank regarding the assets that could be taken over with a statutory lien. The second dealt with the legal basis, i.e. the questions of whether it is fundamentally permissible to give the SNB a statutory lien and whether the introduction of ELA+ by means of emergency law is permissible and appropriate. It was criticized that the FDF and the SNB had not consulted enough in this regard. It was decided that the work should run in parallel and that the SNB and the FFA should exchange information closely.[1428]

At this AF meeting, the Vice Chairman of the SNB announced that he and the Chairman of the SNB had spoken on the phone with the Chairman of the Board of Directors and the CEO of CS on February 17. They had explained to CS that ELA+ could be introduced by means of emergency legislation and would function on the basis of a statutory pledge. However, they had deliberately omitted the requirement for a bankruptcy privilege. The bank had reacted positively to this proposal.[1429] The Vice Chairman of the SNB further explained to the AF that FINMA and the SNB had subsequently sent CS a comprehensive questionnaire on the available collateral that would be eligible for the statutory lien under ELA+.[1430]

On the same day as the meeting, i.e. February 22, the Federal Council was again informed verbally by the Head of the FDF about the latest developments in connection with CS.[1431] According to the minutes, no discussion took place.

On February 28, the analysis of the economic costs of the individual scenarios was discussed again in the AF as planned.[1432] In the analyses of the working group, which included employees of the SNB, FINMA, SIF and the FFA, a distinction was made between two situations:[1433]

1. Increased stress, but no clear signs of a need for remediation

In this situation, the scenarios of restructuring the bank (with ELA and ELA+), merging with another bank or being taken over by another bank or restructuring with bail-in and PLB were available. In the opinion of the working group, the risk of the authorities' inaction having serious consequences in such a situation was moderate. According to the working group's analyses, the scenarios were ranked according to their benefits follows: Takeover

1425 The Director of FINMA, who usually chairs the meetings of the AF, was absent for reasons. The meeting was chaired by the State Secretary for Financial Matters. This was also the for the meeting on 28.2.2023.
1426 "Script activation PLB (under emergency law). Last update 22.2.2023"; "scenario takeover by bank. Draft / last update 20.2.2023"
1427 Transcription of the AF meeting of 22.2.2023, p. 9-12
1428 Transcription of the AF meeting of 22.2.2023, p. 15 ff.
1429 Transcription of the AF meeting of 22.2.2023, p. 14
1430 Transcription of the AF meeting of 22.2.2023, p. 14
1431 Excerpt from the minutes of the Federal Council meeting of 22.2.2023
1432 Transcription of the AF meeting of 28.2.2023, p. 6 ff.
1433 Analysis of the economic costs/benefits of possible measures, Power-point presentation of the AF of 28.2.2023. See also the report commissioned by the PUK.
the expert reports of the BSS (2024) and the KOF (2024) (section 1.4.3.2).

by a foreign bank, restructuring with ELA and ELA+, restructuring with bail-in and PLB, takeover by a domestic bank.[1434]

2. Escalation of the situation, clear signs of a need for restructuring

In an acute crisis, the scenarios of merger/takeover, restructuring with bail-in and PLB or triggering an emergency plan were available. For such a situation, the risk associated with the inaction of the authorities was assessed differently: it was considered very likely that the worst-case scenario would occur if the authorities failed to act, namely the disorderly bankruptcy of CS, the costs of which were now estimated at 150% of GDP. In this case, the ranking of scenarios as follows: Restructuring with bail-in and PLB, emergency plan for the Swiss unit and TPO, takeover by UBS.[1435]

On the basis of these analyses, which were highly appreciated by the members of the AF, the committee discussed the relevance of the key statements. In particular, it questioned its current strategy - which consisted of not taking any measures for the time being and preparing a takeover by UBS rather than by a foreign bank - as this strategy was not in line with the analyses.[1436] In the view of those present, the purpose of the analyses should be to provide a direction. However, the authorities' options should not be restricted by setting a strict ranking. Furthermore, the members of the AF were not in as to whether Situation 1 already occurred: the representatives of the SIF and the FFA were of the opinion that this situation (increased stress but no clear signs of a need for restructuring) had already been reached and that the authorities should therefore take action. The of the SNB did not take such a categorical view. According to the Vice-Chairman of the SNB, it was first necessary to develop a common understanding of what Situation 1 means on the basis of concrete indicators (*key performance indicators, KPIs*, see section 7.2.1) and to define values which, if reached, would lead to a reassessment of the situation. Ultimately, this approach was chosen.[1437] The State Secretary for International Financial Matters also out that the SNB had interpreted the task somewhat differently. The head of the FDF - and the entire Federal Council - had been keen to rationalize the decision thanks to the macroeconomic analysis and to be able to show specifically how high the costs of the individual measures were.[1438]

The AF ultimately decided to simplify this presentation so that it could be presented to the SC at one of the next meetings and to retain the ranking of the scenarios without being too rigid.[1439] The discussion of the revised version in the AF was scheduled for March 14.

Following this meeting of the AF, FINMA, in consultation with SIF, requested CS to submit a bi-weekly *update* with *key performance indicators* on the bank's situation. This bi-weekly update was submitted from the beginning of March 2023. It should enable the authorities to continuously assess the bank's viability and thus serve as an important basis for deciding when it is necessary for the authorities to intervene.[1440]

1434 Analysis of the economic costs/benefits of possible measures, PowerPoint presentation by the AF dated 28.2.2023. The calculation method is described in the expert reports commissioned by the PUK from the BSS (section 1.4.3.2) and the KOF (section 1.4.3.2).

1435 Analysis of the economic costs/benefits of possible measures, Power-
The calculation method is described in the expert reports commissioned by the PUK from the BSS (section 1.4.3.2) and the KOF (section 1.4.3.2).

1436 Transcription of the AF meeting of 28.2.2023, p. 11 ff.

1437 Transcription of the AF meeting of 28.2.2023, p. 11-18, p. 27

1438 Transcription of the AF meeting of 28.2.2023, p. 18

1439 Transcription of the AF meeting of 28.2.2023, p. 25 f.

1440 Minutes of the LG meeting of 1.3.2023; transcription of the AF meeting of 28.2.2023

At the LG meeting on March 1, 2023, the question of when the right time is for the authorities to intervene was also . The LG came to the conclusion that there was no clear answer to this question. The members to monitor the situation closely in order to be able to intervene if necessary.[1441] This topic was discussed again at the LG meeting on March 9 and the authorities came to the same conclusion.[1442]

Box 14: Macroeconomic analyses of the scenarios

Possible ways out of the crisis according to the authorities

The authorities defined two theoretical situations as to how CS's situation could develop. **Situation 1** was defined as "increased stress, but no clear signs of a need for restructuring", **situation 2** as "escalation, clear signs of a need for restructuring". For each of the two situations mentioned, the authorities compared four scenarios (or options) as to how the situation at CS could be stabilized.

- Option A assumed that CS would a way out of the crisis, at best with the support of the SNB through ELA (or ELA+; this variant was called Option A+).
- Option B was the takeover of CS by another, foreign or domestic, bank.
- Option C provided for the restructuring of CS in accordance with FINMA's restructuring plan.
- Option D assumed bankruptcy in principle, whereby the system-relevant functions would continue and a distinction was made as to whether state aid would be applied (D1) or not (D2).[1443]

The worst-case scenario (sometimes referred to as Option E) was that CS would go into insolvency in a disorderly manner and the bank's systemically important functions would be interrupted.

Calculation of total costs using two models

The authorities two models to calculate the costs and chances of success of the various options. Model 1 was presented at the AF meeting on
28 February 2023, Model 2 at the AF meeting on 14 March 2023. Both models were prepared by working groups of the AF. The assumptions of the two models and those relating to the cost blocks are summarized below before the assessments of the commissioned experts are explained.

Model 1: Calculation of the net benefit of a measure

Model 1 essentially corresponds to a cost-benefit calculation, according to which the option with the highest net benefit (i.e. its benefit minus its cost) is the best option. The costs of an option were compared with the estimated economic

1441 Minutes of the LG meeting on March 1, 2023
1442 Minutes of the LG meeting on 9.3.2023
1443 KOF Swiss Economic Institute (2024): Evaluation of the analyses for the alternative measures
ssessments on the emergency merger of Credit Suisse with UBS. Report dated 21.5.2024 on behalf of
of the PUK, p. 7

economic impact of the measure. In simplified terms, the benefits of an option were compared with the occurrence of the worst-case scenario.[1444] This model was discussed in the AF on February 28.

Model 2: Calculation of the probability of success of sequences of measures

Model 2 analyzed which measures could still be implemented if the first selected option failed.[1445] For example, after option A, B, C and D could still be implemented before the worst-case scenario occurred, according to the logic of model 2. The costs were calculated by adding up the costs of all measures in a sequence, weighted according to their chances of success or failure.[1446] This model was prepared with a view to the AF meeting on 14 March (see section 7.1.2).

Five cost blocks per scenario

Each of the four scenarios and the worst-case scenario included costs for the Swiss economy. The costs were presented as a percentage of Swiss GDP in 2022.[1447] The authorities considered five cost blocks: Jobs/taxes; reputational damage for the Swiss financial center; exacerbation of the TBTF problem; monetary losses for the Confederation/the SNB; deterioration in the competitive situation.

Sequence of options per situation

Below is a brief description of which option, according to the authorities' calculations, had the highest net benefit (model 1) and the lowest costs (model 2) and therefore represented the best option for overcoming the CS crisis.

In **situation 1** ("increased stress, but no clear signs of a need for restructuring"), all four options had a positive net benefit according to model 1. From a macroeconomic perspective, it was therefore worth taking government measures to stabilize CS even in a situation without a clear need for restructuring. However, the net benefits were at a low level; they amounted to between 1 and 3 % of GDP. The merger with a foreign bank, Option B , had the highest estimated net benefit of 3% and was therefore the preferred option. Option B Foreign was also the best option according to Model 2 because the expected total costs were the lowest here. The merger with a domestic bank, Option B Domestic, was the last option to be chosen according to Model 1 and the second-best option according to Model 2.[1448]

In **situation 2** ("Escalation, clear signs of a need for restructuring"), options A and B Foreign were no longer listed, but only options B Domestic, C and D. In this situation 2, option C, restructuring of CS, was to be preferred according to model 1 and option B domestic according to model 2.

[1444] To calculate the benefit, the probability of the worst-case scenario occurring and the costs it would incur were first estimated. In situation 1, the probability of occurrence of the worst-case scenario was estimated at 5 %, in situation 2 at 60 %. The worst-case scenario was multiplied by the chances of success of the measure, i.e. weighted. For further information, see BSS Volkswirtschaftliche Beratung (2024): Evaluation of the analyses for the emergency merger CS- UBS. Report of 31.5.2024 on behalf of the PUK, p. 9; Expert report KOF (2024), p. 12

[1445] BSS expert report (2024), p. 12; KOF expert report (2024), p. 13 f.

[1446] KOF Expert Report (2024), p. 14

[1447] Swiss GDP amounted to around CHF 780 billion in 2022. (Source: KOF Expert Report [2024], p. 10)

[1448] KOF Expert Report (2024), p. 13; BSS Expert Report (2024), p. 14

Discussions on the TPO in the AF of March 7, 2023

The TPO working group set up on January 6, 2023 drew up a short report by February 24 and presented it to the AF on March 7. This short report continued to focus on the variant of a TPO for the systemically important Swiss entity.[1449] Specifically, various sub-variants were presented and the authorities to think through the possible applications and combinations of various crisis instruments in connection with a TPO as impartially as possible. At the same time, the participants in the AF also expressed that the scenario of a TPO of the Swiss subsidiary following the bankruptcy of the parent company or group is now rather unlikely.[1450]

When the AF discussed the interim results of the TPO working group at its meeting on March 7, 2023, the SNB also the possibility of a TPO for the entire group. The FFA assessed the political feasibility of this possibility in light of the parliamentary debate on the partial revision of the Postal Organization Act (21.048 "Postal Organization Act (POG). Partial revision"), but nevertheless advocated in-depth clarifications in this direction. The AF decided that the TPO working group should continue to focus on the option of a TPO for the Swiss unit in the event of bankruptcy of the parent company or the Group. The possibility of a TPO for the entire group should be clarified separately. Before the regulatory implementation worked out, this scenario must first be added to the economic cost-benefit analysis that the working group was preparing for various scenarios.[1451]

These clarifications no longer appear to have been carried out before the CS crisis became acute. In the acute crisis from March 15, 2023 and in particular on the weekend of March 18/19, 2023, the scenario of a TPO of the entire banking group prior to resolution or with the aim that resolution would not be necessary at all came to the fore (see section 7.2.5).

At the same AF meeting, the authorities also discussed the option of the Confederation investing a few billion francs in CS in order to build confidence in the markets, in the interests of a thorough examination of the TPO issue. This option was already briefly under discussion in the fall of 2022 (see Box 7 in section 5.2.5.6). The AF decided to resume the clarifications on this option.[1452] These clarifications no longer appear to have been carried out before the CS crisis became acute.

At its meeting on March 7, 2023, the AF also decided to submit various questions to the FOJ regarding the application of emergency law in the implementation of ELA+, a PLB or a TPO. However, the FOJ was not consulted again until the evening of March 15, 2023 (see section 7.2.1). The mandate planned by the AF for the FOJ was ultimately not issued. This was because events came thick and fast before the specific questions to the FOJ could be consolidated within the AF. However, on the evening of March 17, 2023, the FFA provided the FOJ with the draft of the request for an expert opinion on a TPO (including the previous approaches for consideration) that it had prepared and that was no longer consolidated in the AF.[1453]

Continuation of work on the PLB from the beginning of 2023

At the same time, clarifications on the introduction of a PLB also place at the beginning of 2023. The PLB working group continued to work on preparing the consultation draft, which the FDF was to complete by mid-2023 in accordance with the Federal Council's mandate of March 11, 2022. This work incorporated the information that the FOJ

1449 Transcription of the AF meeting of 7.3.2023
1450 Transcription of the AF meeting of 7.3.2023
1451 Transcription of the AF meeting of 7.3.2023
1452 Transcription of the AF meeting of 7.3.2023
1453 Written answers to the PUK dated 23.5.2024

at the end of November 2022 on the possible introduction of a PLB under emergency law. In its preliminary consultation with the SIB on January 18, 2023, the SIF raised the question of the extent to which it would be possible to restrict the granting of a PLB to systemically important functions of the Swiss entities.[1454] In addition, at its meeting on February 23, 2023, the PLB working group considered which entity of a G-SIB should be granted the liquidity assistance loan in the form of a PLB in order to limit the risk of loss when granting the Confederation's default guarantee.[1455]

6.4.4 Public communication by the main players in the second phase

The authorities did not officially communicate about the situation at CS during the entire second phase between fall 2022 and mid-March 2023. The first media releases were made during the acute crisis.[1456] In the background, the Federal Chancellery a communication concept in the fall. In addition, some exponents made selective public statements during this phase. The preparations of the Federal Chancellery and the communication of individual exponents are below on the basis of a media analysis carried out by the Parliamentary Library on behalf of the PUK.

Public statements by representatives of the authorities

The public statements by representatives of the authorities focus on the last quarter of 2022 and spring 2023 (for communication during the acute crisis, see section 7.2.6).

According to the Parliamentary Library's analysis, an assessment of the situation at CS by a representative of the authorities was first reported in the media on October 1, 2022. "Schweiz am Wochenende" picked up on a presentation by the then FINMA Director at the Europa Institute at the University of Zurich, in which he discussed the high cadence of negative economic news, which could mean greater uncertainty and therefore higher risks, not least for the banks. The Director of FINMA did not name any names. According to "Schweiz am Wochenende"hardly anyone in the room "doubted that he also had Credit Suisse in mind with his remarks".[1457]

At the beginning of October, representatives of the SNB were approached twice about CS. On
On October 6, 2022, "finews.ch" that the SNB was closely monitoring the situation at CS. Andréa Maechler, a member of the SNB's Governing Board at the time, had said this to the Reuters news agency on Wednesday.[1458] The following day, the Chairman of the SNB's Governing Board commented on "Bilanz Businesstalk" that the SNB was not the regulator and pointed out that CS would make its new plans public at the end of October.[1459]

Subsequently, at the end of October, in the wake of CS's strategy announcement, the Vice-Chairman of the Governing Board of the SNB was published in "Finanz und Wirtschaft".

[1454] Public Liquidity Backstop: Pre-consultation of the systemically important banks (SIBs). Regulatory concept and questions, Supplement to the pre-consultation of the SIBs of 18.1.2024, p. 6
[1455] Supplement to PLB template - 2- Granting of default guarantee primarily to parent, for the meeting of 23.2.2023 of the PLB working group
[1456] "SNB and FINMA comment on uncertainties in the market", press release of the SNB and FINMA of 15.3.2023; "Safeguarding financial market stability: The Federal Council welcomes and supports the takeover of Credit Suisse by UBS", Federal Council press release of 19.3.2023
[1457] The trembling on the financial markets is becoming more threatening. In: Switzerland at the weekend, 01.10.2022
[1458] The SNB is keeping an eye on Credit Suisse. In: Finews, 06.10.2022
[1459] SNB Chairman Thomas Jordan on payment transactions: blackouts may occur. In: Bilanz, 07.10.2022

The SNB welcomes the recently announced steps for the strategic transformation of Credit Suisse. The new orientation of the business model will lead to a reduction in risks. At the same time, Credit Suisse is strengthening its capital base. "[1460]

The next public statements followed in December, when the then Head of the FDF and the Chairman of the SNB said that CS now needed time. According to former Federal Councillor Maurer's statement to the PUK, he and the Chairman of the SNB had agreed to work towards calming things down in public. The aim was to radiate security so that CS could carry out its transformation with the necessary calm.[1461]

In an article in the "NZZ" newspaper on the key interest rate hike in mid-December, the SNB Chairman described the reorientation of CS from a financial stability perspective as pleasing, particularly the significant reduction in investment banking. The SNB sees that CS is pushing ahead with the change and has already taken important measures. When asked, the SNB Vice-Chairman added that "in an emergency, the facility for additional liquidity would be available, but banks can only draw on it against collateral and only as long as they are solvent, at a slightly higher interest rate. "[1462] In addition, the then Head of the FDF emphasized in an interview with Swiss television SRF on 13 December 2022 that he was of the opinion that "we are now actually hearing good news from CS." CS should simply be left alone for a year or two.[1463] This statement was also picked up by other media. At the end of December, the then Head of the FDF once again pointed out that CS had "carried out a transparent and honest analysis and decided on measures: Risks are being reduced, costs are being cut and capital has been increased. This deserves trust and needs some time for implementation. "[1464]

According to research by the Parliamentary Library, no further articles containing statements by representatives of the authorities on the situation at CS appeared at the beginning of 2023.

Communication concept of the FC and the FDF

As explained above, the Federal Council instructed the FC at its meeting on November 2, 2022 to draw up a communication concept together with the FDF with a view to the extraordinary meeting on November 4. The Federal Council's communication officer immediately tackled this task and sent an initial draft of the communication concept to the FDF with the task of preparing the communication.[1465]

Despite the cancellation of the meeting on November 4, the Federal Chancellery decided to continue the preparatory work already begun for crisis communication on the introduction of the PLB in order to be prepared in the event of a renewed deterioration in the situation. A coordination meeting was held on November 3, which was attended by the Federal Chancellery and the communications officers of FINMA, the SNB, SIF and the FDF.[1466] CS was also informed of the planned communication and instructed to prepare its own communication. All of the offices involved (Federal Council, SNB, FINMA, CS) were to submit the drafts of the media releases and the speech notes to the federal government (FC/FDF),

[1460] The risk of inflation is still high. In: Finance and Economy 29.10.2022
[1461] Minutes of the PUK meeting of 8.11.2023; minutes of the PUK meeting of 22.5.2024
[1462] The SNB raises the key interest rate to 1.0 percent and welcomes the realignment of Credit Suisse. In: NZZ, 15.12.2022
[1463] Federal Councillor Maurer, what would you have done differently in hindsight? Interview. In: Radio and Television, 13.12.2022
[1464] In between, you just have to let it rip. Interview. In: NZZ, 31.12.2022
[1465] Written answers to the PUK dated 12.4.2024
[1466] Minutes of the PUK meeting of 17.1.2024

so that the latter could coordinate them and ensure uniform communication.[1467]

The communication plan, which was sent to the then Federal Council Speaker on November 3, 2022, out measures and objectives, the main messages, guidelines for action and the timetable. The aim was to clarify the decisions, reassure the markets and show how the PLB differs from a bailout. The main messages were set out as follows: CS was well capitalized and would be restructured, but current international market developments could lead to liquidity problems. An internationally accepted standard instrument (PLB) exists to secure liquidity, which will now be introduced immediately in Switzerland to provide security for CS and Switzerland as a financial center. As the guarantee is now necessary, it is being introduced by emergency law.[1468]

On November 8, the FDF sent a new communication plan to the Federal Council spokesperson at the time. This stipulated active communication in the event of the introduction and activation of the PLB by emergency law. The main messages of the Federal Council largely corresponded to those of the concept of 3 November: according to the new concept, the primary would also have been to the decisions and measures, to calm the markets and stabilize the situation, and to reassure the foreign authorities. In addition, the risks for taxpayers were to be actively addressed and protective measures highlighted. According to this communication plan, the authorities should prepare for the question of whether the activation of the PLB would justify an order to write down AT1 bonds. The associated communication challenges should be addressed.[1469]

According to the Vice-Chancellor responsible for communication at the time, cooperation on this communication concept proved difficult at the beginning. Among other things, it was not clear who in the FDF was responsible for this or who had the necessary information. However, cooperation improved over time. As a result, various meetings were held between the Vice-Chancellor and the FDF communication officers.[1470]

On December 1, 2022, the Vice Chancellor responsible for communication at the time informed the Head of the FDF that all preparations communicating any decision by the Federal Council on December 2 had been commissioned and would be prepared in good time.[1471]

As the Federal Council did not make a decision to activate the PLB on December 2, there was no need for public communication by the federal government. However, the communication concept developed was for the further work that built on it. The communication concept also took into account the risk of possible leaks and contained appropriate language rules for such a case.

7 Phase 3: Acute crisis in March 2023

The following chapter describes the precipitating events from mid-March 2023 and the authorities' management of the acute crisis. After a description of the relevant context, including the regional banking crisis in the USA (see section 7.1), the management of the various federal authorities in the crisis context of the days from March 15 to 19, 2023 is described (see sections 7.2.2 to 7.2.6).

[1467] E-mail from the then Vice-Chancellor and Federal Council Spokesman to the State Secretary for International Financial Matters and the Head of Communication of the FDF dated 2.11.2022
[1468] Communication dispositive of 3.11.2022, draft of the FDF (SIF/EFV) to the FCh
[1469] Communication dispositive of 8.11.2022, draft from the FDF to the FCh
[1470] Written answers to the PUK dated 12.4.2024
[1471] Email from the then Vice-Chancellor and Federal Council Spokesman to the then Head the FDF dated 1.12.2022

7.1 Effects of the regional banking crisis and escalation of the CS crisis as a result of the delayed annual report at the beginning of March 2023

The factors that led to CS's situation coming to a head in March 2023 are outlined below. To this endsection 7.1.1 first describes the regional banking crisis in the US, the delayed publication of the CS annual report and the much-noticed communication by Saudi National Bank. This is followed in section 7.1.2 by a description of the reaction to the first signs of crisis in the first two weeks of March, in particular the delayed publication of the 2022 annual report.

7.1.1 Regional banking crisis in the USA, developments at CS

In early March 2023, a regional banking crisis broke out in the USA. The Californian Silicon Valley Bank (SVB), which mainly had tech start-ups as customers, was the first financial institution to get into acute economic difficulties. On March 8, 2023, SVB announced that it intended to restructure its balance sheet by selling certain collateral thus increasing its capital.[1472] At the time, there was considerable uncertainty in the technology sector as to whether the sector's profitability and growth would decline. Customers and clients with uninsured investments in particular therefore saw the SVB's announcement as sign that the bank in a delicate situation. As a result, deposits of 40 billion US dollars were withdrawn on March 9. As further outflows were expected the following day, for which the bank lacked the liquidity or collateral, the California Department of Financial Protection and Innovation closed SVB on the morning of March 10, 2023.[1473]

The closure of the SVB also led to accentuated uncertainty among investors in Signature Bank of New York (SBNY). This bank also had a large amount of uninsured funds and was active in a sector - the crypto sector - that was also fraught with uncertainty.[1474] Between Friday, March 10, and Sunday afternoon, March 12, the outgoing transfers amounted to USD 7.9 billion. As the bank lacked liquidity as a result, the SBNY was also closed on March 13, 2023, three days after the SVB.[1475]

Finally, the Californian First Republic Bank (FRP) was the third financial institution to experience significant cash outflows from March 2023. In contrast to the two aforementioned institutions, it was able to cover these until the end of April 2023 before it also had to be closed due to a lack of liquidity. With estimated costs of USD 13 billion, this was the second-largest bank collapse in US history.[1476]

The developments in the US described above led to an increase in general uncertainty on the financial markets. The turmoil in the US regional banking sector led to share prices plummeting at a large number of banks.

Confidence in CS continues to wane due to SEC comments and other events

Almost at the same time as the events at SVB, the crisis of confidence at CS was also accentuated by various factors. Firstly, the bank announced on March 9, 2023

[1472] Fed (2023): Review of the Federal Reserve's Supervision and Regulation of Silicon Bank, Washington D.C., p. i
[1473] Fed (2023): Review of the Federal Reserve's Supervision and Regulation of Silicon Bank, Washington D.C., p. 24
[1474] FDIC (2023): FDIC's Supervision of Signature Bank, p. 2
[1475] FDIC (2023): FDIC's Supervision of Signature Bank, p. 15 f.
[1476] FDIC (2023): FDIC's Supervision of First Republic Bank, p. 2

announced that it would not publish its 2022 annual report until later. The reason for this was a call from the US SEC on the evening of 8 March, which pointed out material weaknesses in the audit and control of consolidated cash flow statements in 2019 and 2020.[1477] CS decided to briefly postpone the publication of the 2022 annual report in order to better understand the SEC's comments (see section 7.1.2).[1478] Secondly, the CS share price temporarily by 15% to an all-time record low of CHF 2.21 on March 13, 2023 as a result of the regional banking crisis in the USA.[1479] CS shares fell much more sharply than those of other banks, even though the regional banking crisis had no *direct* financial impact on CS as it no direct exposure (i.e. risk of loss).[1480] Thirdly, the crisis of confidence at CS worsened further on March 15, 2023, when the Chairman of Saudi National Bank stated that further investments in CS were ruled out. Saudi National Bank justified its decision with the fact that its stake in CS would ultimately exceed 10 % after an increase and that different regulatory guidelines would therefore apply.[1481] On the same day, CS's share price fell by 30 % and the outflow of deposits increased sharply again. While "only" CHF 2.7 billion flowed out on March 14, this figure had already risen to CHF 13.2 billion by March 15.[1482] This strong outflow of funds was also reflected in the minimum liquidity ratio, which was still 131% at the CS parent company on March 14 and only 108% on March 15 (see Figure 11). In other words, CS's ability to cover its short-term cash flows fell by over twenty percentage points overnight.

On the night of Thursday, March 16, CS informed the SNB that it had applied for liquidity assistance.[1483] This was granted on March 16, as can be seen directly from the steep rise in the minimum liquidity ratio (further information on March 16 can be found in section 7.2.2).

[1477] The SEC is said to have already questions about this issue with CS in July 2022. Source: Credit Suisse, SEC letters show months-long reporting errors debate. In: Reuters, 11.4.2023; e-mail from the State Secretary for International Financial Matters to the Head of the FDF dated 14.3.2023

[1478] "Credit Suisse announces technical delay of publication of 2022 Annual Report", Me- Credit Suisse press release dated 9.3.2023, https://www.ubs.com/global/en.html> About us> Media> Releases> Credit Suisse, Part of UBS group (as at: 21.11.2024)

[1479] CS share in free fall - Credit Suisse share briefly plummets by 15 percent. In: SRF, 13.3.2023, https://www.srf.ch/news/wirtschaft/cs-aktie-im-freien-fall-aktie-der-credit-suisse-short-term-reduction-by-15-percent (as at: 12.6.2024)

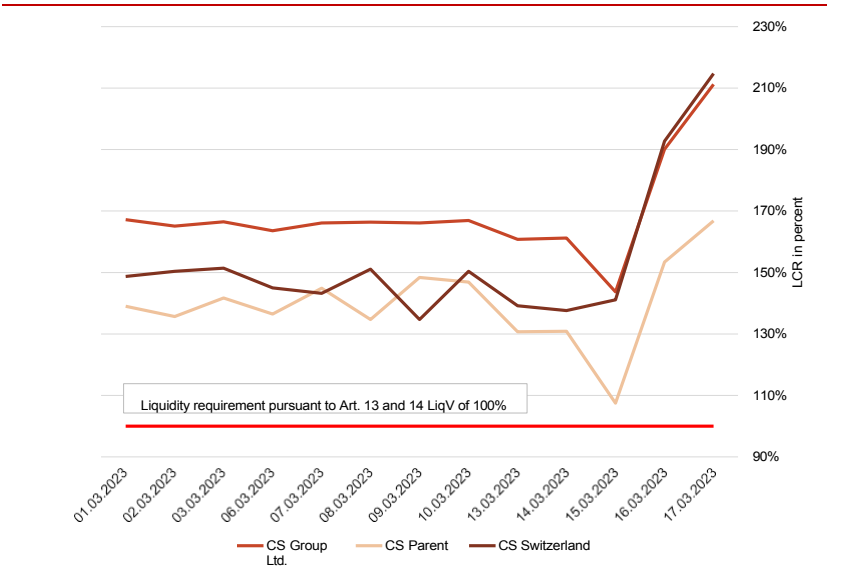
[1480] Transcription of the AF meeting of 14.3.2023, p. 9 f.

[1481] Credit Suisse's biggest backer says can't put up more cash; share down by a fifth. In: Reuters, 15.3.2024, https://www.reuters.com/business/finance/credit-suisses-saudi-backer-happy-with-transformation-plan-doesnt-think-extra-2023-03-15/ (Stand: 5.6.2024)

[1482] Expert report Hau/Rochet (2024), p. 25 f.

[1483] Credit Suisse Group takes decisive measures to strengthen its liquidity with foresight and launches public tender offers for debt instruments", Credit Suisse media release dated 16.3.2023, https://www.ubs.com/global/en.html > About us > Media > Releases > Credit Suisse, Part of UBS group (as of 21.11.2024)

Figure 11: Minimum liquidity ratio of the three most important CS units, 1st - 3rd quarter
March 17, 2023 (LCR in %)



Source: This chart is based on the figures to FINMA by CS. CS provided FINMA with the figures shown on a monthly basis. The liquidity requirement of 100% shown in red, which CS had to comply with, comes from FINMA's public communication and applied to all banking institutions in Switzerland.[1484]

7.1.2 Reaction of the authorities to the delayed publication CS's annual report

On March 9, 2023, the day on which CS announced the postponement of the publication of the annual report (see section 7.1.1), the LG a previously scheduled meeting. The members of the LG were informed by FINMA of the postponement of publication. FINMA emphasized that the SEC had not directly the figures published by CS in its comments, but had classified the control environment as inadequate and that the situation was very delicate.[1485]

Short-term reprioritization at the AF meeting on 14 March 2023: Crisis management instead of scenario assessment

The CS crisis was also the focus of the AF meeting on March 14. The scenarios should have been discussed in depth at this meeting. However, in view of the latest developments, which were considered to be a priority, this discussion did not place. The fact that the SEC had identified material deficiencies in CS's annual report, which led to the postponement of publication, was not discussed.

[1484] For details of the regulation, see FINMA: What capital and liquidity requirements must institutions meet?, 17.6.2022, https://www.finma.ch/de/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/key-metrics-chart-pack-2021.pdf?sc_lang=en&hash=B165AAA8F2364D7633AF34F0A2AC79A9 (as at 8.7.2024)

[1485] Minutes of the LG meeting of 9.3.2023, p. 2

was considered by the authorities to be a far-reaching and considerable restriction on the part of the SEC, which had not occurred in this form a long time - if not ever before.[1486]

The people present also discussed the measures that CS had taken to prevent such a situation from happening again. They were of the opinion that these were described very laconically by the bank. CS's annual report merely stated that those responsible in the group were in the process of drawing up a remediation plan to rectify the material shortcomings.[1487] The FINMA representatives stated that they would be following this issue closely, as this misconduct was one of a long list of failings on the part of the bank.[1488]

At AF meeting on 14 March, the authorities were also astonished that CS had involved FINMA and PwC, the bank's audit firm, far too late, namely in January 2023, even though the points highlighted by the SEC already been discussed within CS since July 2022. They also complained that they had not been informed earlier by the SEC.[1489] The authorities were of the opinion that the postponement of the publication of CS's annual report had further destabilized the markets and emphasized that further liquidity outflows were to be expected in the coming days. The situation must therefore be monitored closely.[1490]

1486 Transcription of the AF meeting of 14.3.2023, p. 1-4
1487 CS (2023): Annual Report 2022 Credit Suisse (Switzerland) Ltd, p. 10
1488 Transcription of the AF meeting of 14.3.2023, p. 4
1489 Transcription of the AF meeting of 14.3.2023, p. 6
1490 Transcription of the AF meeting of 14.3.2023, p. 3; email from the State Secretary for Inter-
national financial issues to the Head of the FDF dated 14.3.2023

Box 15: Latest estimates of the economic costs of the scenarios - as at March 14, 2023

In view of the meeting on March 14, the authorities carried analyses of the economic costs of the individual scenarios, which had been revised since the last discussion on February 28 (see section 6.4.3.2).[1491]

These documents contain a table that can be used to calculate the costs of the scenarios according to various parameters. In particular, it was possible to differentiate between (1) a tense situation with no clear signs of a need for renovation and (2) a very tense situation with a clear need for renovation (see section 6.4.3.2). On the other hand, the table shows which fallback scenarios are available if the first measure taken not sufficient. According to the estimates in the documents available to the PUK, the scenario that was most favorable in terms of the costs weighted by the probability of success and the available fallback scenario differed depending on the situation:

- Situation 1: Takeover by a foreign bank; then takeover UBS; then "Credit Suisse makes it on its own".

- Situation 2: Takeover by UBS; then restructuring and bail-in; then bankruptcy of CS with triggering of the emergency plan and with TPO or PLB; then bankruptcy of CS with triggering of the emergency plan, but without TPO or PLB; then disorderly bankruptcy of CS (worst case).[1492]

These estimates should not be used as a basis for the calculation of the "mechanical" tool for selecting the measures to be taken. It was also not a document to be jointly adopted in the preferences of the authorities were to be set out. The purpose of these analyses was rather 1) to serve as a basis for discussing the scenarios available in the various situations and making decisions in this regard, 2) to serve as a basis for discussing the dependencies between the various scenarios and their sequence (which scenarios are still possible and which are no longer?) and 3) to justify the decisions taken by creating transparency regarding the assumed costs.[1493]

Need to clarify UBS's interest in a takeover

At the meeting on March 14, the AF also spoke out in favor of officially contacting UBS to clarify whether the bank interested in taking over CS. The members of the AF did not yet know the bank's position on this matter.[1494] It was decided to convene a meeting of the SC as soon as possible in order to reach a decision as quickly as possible.[1495] This meeting was scheduled for the next day, March 15.

Furthermore, the members of the AF discussed a new, alternative crisis measure to restore market confidence in CS, specifically a guarantee of deposits at CS by the Confederation.[1496] An in-depth discussion of the topic was planned, but the corresponding work could not be completed in time in view of the events that unfolded the next day.

1491 AF: Information paper on economic costs dated 14.3.2023; AF: Explanatory notes on economic effects dated 14.3.2023
1492 AF: Information paper on economic costs dated 14.3.2023
1493 AF: Explanatory notes on the economic impact of 14.3.2023
1494 Transcription of the AF meeting of 14.3.2023, p. 20/21
1495 Transcription of the AF meeting of 14.3.2023, p. 24
1496 Transcription of the AF meeting on March 14, 2023

7.2 Overcoming the acute crisis - preparing the emergency merger of the March 19, 2023

The developments described above a turning point in the CS crisis. The crisis entered its acute phase, which lasted from March 15 to 19, 2023. The events of these five days up to the announcement of the merger of CS with UBS are described in the following subchapters (see sections 7.2.1 to 7.2.5), broken down by day. Section 7.2.6 is dedicated to the public communication of the authorities during this phase.

7.2.1 Start of the acute crisis phase and initial response by the authorities on March 15, 2023

At the beginning of the chapters on the five days of the acute crisis, the key events are presented in a table to make it easier to gain an overview of the various developments. The key milestones are highlighted in bold. A more detailed chronology can be found in Appendix 4 of the report.

Table 16: Chronology of events on Wednesday, March 15, 2023

Time	*Event*	*Actors involved*
11.30 a.m.	Telephone conversation between the SNB Chairman and representatives of CS, Management Report of the Bank	SNB, CS
12.00 p.m.	**Meeting of the LG; decision to contact UBS and CS to prepare the merger**	**EFD, SIF, EFV, FINMA, SNB**
13.00-1.30 p.m.	Telephone conversations at working level between FINMA and CS on the restructuring plan	FINMA, CS
14.00-2.30 p.m.	Conference Call Core College Liquidity and Funding Interim Update: Liquidity and Funding Situation; Market and Customer Reactions to the Statements of the Chairman of Saudi National Bank	CS, FINMA, Fed, PRA, FDIC, SNB
16.00 hrs	**Meeting between the authorities and UBS at FINMA's premises in Zurich. UBS submits an initial list of demands to the authorities.**	**EFD, SIF, FINMA, SNB, UBS**
5.30 p.m.	**Video conference between the authorities and CS**	**EFD, FINMA, SNB, CS**
17.30-6.45 p.m.	Conference Call Core College Liquidity and Funding Update: Liquidity and Funding Situation; Market and Client Reactions to the Statements of the Chairman of Saudi National Bank	CS, FINMA, Fed, PRA, FDIC, SNB
6.00 p.m.	Meeting of the Board of Directors	UBS
After 7.00 p.m.	Telephone conversations between the SIF and the US Deputy Secretary of the Treasury, the Director General of the French Ministry of Economy and Finance and the State Secretary of the German Federal Chancellery	SIF

From 20.00 Clock	Several telephone conversations at working level on the renewed bank run at CS, the dangerously dwindling liquidity, CS's forthcoming request to the SNB for ELA, the restructuring of the bank and the new bank. development plan	FINMA, CS

Time	*Event*	*Actors involved*
8.30 p.m.	Publication of a joint press release by the SNB and FINMA	SNB, FINMA
9 p.m.	Formal application to the SNB for ELA in the amount of CHF 38.440 billion	SNB, CS
Total liquidity outflow at CS on March 15, 2023: CHF 13.2 billion		

Meeting of the LG and immediate measures by the authorities

The statements made by the Chairman of Saudi National Bank (see section 7.1.1) prompted the authorities to swift action. From late morning of Wednesday, 15 March, several working-level contacts took place between representatives of FINMA and the SNB and CS to discuss the implications of the statements made by the Chairman of Saudi National Bank and - in the early afternoon - CS's recovery plan.[1497] FINMA required CS to finalize the recovery plan for the following day (see section 7.2.2.6).

The LG met at 12.00 noon. At this meeting, which already been scheduled the day before due to the unfavorable development of the situation, the tone changed considerably: the authorities spoke of a dramatic deterioration in the situation and feared that CS could trigger an international financial crisis. There was therefore an urgent need for action. The following four scenarios were mentioned as possible solutions: Sale to UBS ("Como" project), expansion of liquidity assistance by the SNB, nationalization of CS (TPO) or bankruptcy.

The members of the LG had not yet decided on one of the scenarios. All scenarios continued to be prepared so that the measure that would ultimately be chosen could be implemented by Sunday evening at the latest in order to calm the markets on Monday.[1498] However, according to the minutes of this meeting, the restructuring option was considered to be highly risky by the entire LG.[1499]

The LG then decided to contact UBS and CS in order to prepare for a possible merger. On the same day, the SNB and FINMA published a joint press release on the market uncertainties and the situation at CS.[1500]

On Wednesday, March 15, a crisis room was set up at the Bernerhof, the headquarters of the FDF. The various met there, namely the FDF, the FFA, the SIF, FINMA, the SNB, the FC, in some cases the FOJ (see below) and occasionally the representatives of CS and UBS. The local proximity between the individual players served to ensure closer coordination and helped to speed up the decision-making process, in particular by shortening the consultation periods.[1501]

1497 Written answers to the PUK dated 17.5.2024
1498 Minutes of the LG meeting on 15.3.2023
1499 Minutes of the LG meeting of 15.3.2023, p. 2
1500 Minutes of the LG meeting of 15.3.2023, p. 2
1501 Minutes of the PUK meeting of 17.1.2024, p. 35, p. 48 f.; Minutes of the PUK meeting dated 21.2.2024, p. 55

Contact with the banks: Meeting with UBS in Zurich

Following the meeting of the LG and the resolutions passed, high-level meetings between the authorities and the two banks were organized on the same day.

At 4 p.m., a face-to-face meeting was held in Zurich between the Head of the FDF, the State Secretary for International Financial Matters, the Chairman of the Board of Directors, the Director and the Head of Banking Supervision at FINMA, the Chairman of the SNB and representatives of UBS.

The head of the department chaired this meeting and informed UBS that, according to her current assessment, CS would no longer viable[1502] from next Monday and that the authorities therefore saw an urgent need for action. A merger or takeover was the preferred solution. In this context, UBS was asked whether it could imagine a takeover of CS. The Chairman of the Board of Directors of UBS answered this question in the affirmative on the basis of previous internal discussions of the UBS Board of Directors. However, the condition was that UBS would be able to fulfill its fiduciary duties towards its shareholders and stakeholders and not get into a crisis itself.

At this meeting, the Chairman of the UBS Board of Directors presented the authorities with a one-pager containing UBS's key demands for a takeover of CS (see Table 17 below). The authorities informed UBS that contact with CS was expected to be established quickly and that CS had prepared a virtual data room.[1503] According to the Chairman of the Board of Directors of UBS, the bank only gained effective access to this data room on Thursday, March 16.[1504]

The Chairman of the Board of Directors informed the UBS Board of Directors a little later, at 6 p.m., about the conduct and progress of this meeting. He took opportunity to point out that the negotiations had not yet begun, but that the bank was well prepared thanks to the work carried out in recent months.[1505] Some of the persons heard by the PUK had the same impression.[1506]

Table 17: UBS list of requirements (draft), as at March 15, 2023

Transaction / financial aspects	No premium or no exchange ratio based on a discount to the closing market price (or, depending on timing / transaction structure, possible adjustment due to negative information / findings from due diligence)
Restructuring/Governance	No conditions for the integration concept, nor any restrictions regarding the future of the Swiss unit, the branch network, personnel optimization and market presence
	No requirements for the governance structure and the appointment of persons
	Legal structure: no flat holding structure (with WMI as part of Schweizer AG)
Capital requirements	Waiver of Swiss Finish requirements for a period of ten years (both at Group level and at the level of the Swiss unit), i.e. retention of the current UBS requirements without any increase due to size and/or additional buffers. CS requirements

[1502] The term "*viable*" is in English, see minutes of the UBS Board of Directors meeting of 15.3.2023, minutes of the PUK meeting of 14.2.2024, p. 35.
[1503] Minutes of the PUK meeting of 11.10.2023, p. 63; minutes of the PUK meeting of 29.11.2023, p. 9; minutes of the PUK meeting of 14.2.2024, p. 34 ff.; minutes of the LG meeting of 15.3.2023; minutes of the UBS Board of Directors meeting of 15.3.2023; written answers to the PUK of 23.4.2024, 25.4.2024 and 1.5.2024
[1504] Minutes of the PUK meeting of 14.2.2024, p. 36
[1505] Minutes of the UBS Board of Directors meeting of 15.3.2023
[1506] Minutes of the PUK meeting of 14.2.2024, p. 66; written answers to the PUK of 23.4.2024

	Full recognition of "badwill" without usage restrictions
	Permission to continue share buybacks as long as the CET1 requirement is met
	Risk-weighted assets (RWA) for operational risks are to be in line with the reduction in assets, including divestments / exits from business activities and natural disposals; calculation of risk-weighted assets for operational risks based on UBS's internal model and history, no passing on of non-relevant idiosyncratic operational losses of CS to UBS
	Flexibility in the deadlines for the implementation of new regulations, i.e. TBTF Liquidity Regulation, Basel III final / Funda- mental Review of the Trading Book (FRTB), for the merged bank
	No additional capital requirements at the level of the individual legal entities (e.g. Switzerland, USA, UK); support of the capital plan by the regulatory authorities; permission to repatriate excess capital from local business activities where appropriate
	Preservation of vested rights for capital regulations / capital exemption of the CS Group (including the regulatory filter for participations)
	Unrestricted access to unsecured central bank liquidity instruments from the announcement and up to and including the end of the integration period, including access to liquidity instruments in the US
Transparency / due diligence	The SNB, FINMA and the FDF share all relevant information and their detailed assessment of the situation, i.e. they are transparent about any problems/concerns that the authorities may be aware of.
	Access to the management and external/internal audit of CS
	Agreement on due diligence before and after the announcement, including the consequences of discovering hidden liabilities
Foreign regulatory authorities	Preliminary agreement between FINMA, the SNB, the FDF and other key regulators, in particular the Fed, the PRA, the Financial Conduct Authority (FCA) and the European Central Bank (ECB), on the timely approval of the transaction without material conditions (e.g. no increase in local capital requirements, support for the repatriation of excess capital, no material surcharges and no restrictions on business activities)
	Legal structure: no change of legal form in the United Kingdom (retention of the current UBS solution, i.e. a branch of UBS AG)
Communication	FINMA, the SNB and the FDF issue joint/separate statement(s) in which they state that UBS was approached and that there were no convincing alternatives other than liquidation.
	UBS must be able to communicate the risk mitigation measures in detail.
	FINMA, the SNB and the FDF must attend the media conference on the day of the announcement.

Rating agencies	Authorization to contact rating agencies
Competition Authority (WEKO) and other license decisions	Binding commitment that the competition law reviews and decisions will be carried out in a fast-track procedure; if necessary, through the intervention of FINMA
	Agreement on the introduction of restrictions on strategic decisions CS prior to the Extraordinary General Meetings and prior to completion of the transaction
Guarantees / spin-offs / effects on net asset value measurement	Protection against the effects of the acquisition, which may lead to impairments of carrying amounts, consider amortization
	State guarantee in the form of a special purpose vehicle (SPV) to limit balance sheet risks for certain portfolios (especially non-core portfolios and investment banking portfolios); quantum to be determined as part of due diligence prior to pre-announcement
	Guarantee to cover mark-to-model valuations

Source: "DRAFT conditions for initial discussion", UBS, 15.3.2023

Contact with the banks: video conference with CS

Following the meeting with UBS, a video conference[1507] was held with CS at 5.30 p.m. - as decided by the SC - in which the FDF Chairman, the Chairman of the Board of Directors and the Director of FINMA as well as the Chairman and Vice-Chairman of the SNB took part on behalf of the authorities. At this meeting, CS asked the authorities to measures on the same day, such as providing ELA, to a *downgrade* of the bank's rating. The bank also pointed out that a bail-in would have devastating consequences for the financial markets.

The authorities continued to find CS confident in this exchange. The bank's representatives had shown a great lack of judgment. The authorities had therefore clearly communicated to CS that the sale of the bank to UBS was the envisaged solution and that CS had to prepare accordingly.[1508] According to CS officials, the focus was clearly on an agreement with UBS and not with another third party. CS had received a corresponding mandate from the FDF.[1509] Nevertheless, other possible partners, namely Morgan Stanley and Saudi National Bank, were mentioned at this meeting.[1510]

Parallel international contacts from the afternoon

Due to the extremely critical situation, FINMA and the SNB intensified their international contacts. From the early afternoon, discussions were held with the Fed, the PRA and the FDIC in particular at an operational and strategic level.

[1507] This meeting took online, as the Chairman of the Board of Directors and the CEO of Credit Suisse were traveling abroad.

[1508] Minutes of the PUK meeting of 11.10.2023, p. 55-63; minutes of the PUK meeting of 29.11.2023, p. 9; written responses to the PUK of 23.4.2024, 25.4.2024 and 1.5.2024

[1509] "The subsequent order for the emergency merger with UBS came [...] from the FDF.", minutes of the PUK meeting of 31.1.2024, p. 61. See also minutes of the PUK meeting of 31.1.2024, p. 7

[1510] According to representatives of the SNB, BlackRock was also mentioned. However, according to their own statements, other members of the authorities only found out about this on March 18 (see section 7.2.4.1).
Written responses to the PUK dated 12.5.2024 and 10.6.2024

took place. At 6.30 pm, the Director of FINMA, the Head of FINMA's Banking Division and representatives of the Fed and the PRA held a telephone conversation. The Fed and PRA were informed of CS's poor situation and the bank's intention to make use of ELA. The Director of FINMA pointed out that all options were still open and that the authorities were prepared to provide more liquidity as part of these measures. The upcoming communication from the SNB and FINMA was also addressed.[1511]

After 7 p.m., the SIF had telephone contact with the US Deputy Minister of Finance, the Director General of the French Ministry of Economy and Finance and the State Secretary of the German Federal Chancellery.[1512]

Decision to organize an urgent meeting of the Federal Council

On 15 March, the Head of the FDF also contacted the Federal Chancellor to ask him to organize an extraordinary meeting of the Federal Council for the following day, Thursday 16 March.[1513] The Chancellor then called the President of the Confederation to inform him of the situation. Later - on her way back from Zurich - the Head of the FDF also contacted the President of the Confederation by telephone.[1514]

The then Vice-Chancellor and Federal Council Spokesman then informed the Federal Council via Threema that the situation at CS had developed further due to various press articles published that afternoon and that a press release from FINMA and the SNB was planned. He also explained that the FDF was taking the lead and that the Federal Council would be kept up to date.[1515] Shortly after 7 p.m., he announced that the Federal Councillors had now received the email with the media releases. At around 9 p.m., the Vice-Chancellor responsible for Federal Council business at the time also announced to the members of the Federal Council via Threema that an extraordinary Federal Council meeting on CS would take place the next day from 1.15 p.m., that a secretly classified Federal Council motion would be distributed at 8.30 a.m. and that the co-reporting procedure would last until 11 a.m. The members of the Federal Council received no further information on March 15.

Joint press release by FINMA and the SNB

As agreed in the LG, the SNB and FINMA published a joint press release that same evening at 8.30 p.m. (see section 7.2.6). In this press release, they assured that the problems of certain banking institutions in the US did not pose a direct risk of contagion for the Swiss financial market, that CS met the capital and liquidity requirements and that the SNB would provide CS with liquidity if necessary.[1516]

Involvement of the FOJ in emergency law issues from March 15

On March 15, the FOJ was called in again for the first time since the meeting of the Federal Council's Financial Affairs Committee on November 22, 2022. Two FOJ employees were on site at the Bernerhof from 9 p.m. to support the drafting of the emergency ordinance.

[1511] Email exchange between FINMA employees "Africa documentation during Como Weekend" dated 19.4.2023
[1512] Chronology of the FDF of 26.6.2023
[1513] Minutes of the PUK meeting of 21.2.2024, p. 61
[1514] Minutes of the PUK meeting of 8.11.2023, p. 57; Minutes of the PUK meeting of 11.10.2023, p. 55
[1515] Threema message from the then Vice-Chancellor and Federal Council Spokesperson to the Federal Council College dated 15.3.2023 at 18:37
[1516] "SNB and FINMA comment on uncertainties in the market", press release by the SNB and FINMA dated 15.3.2023

According to the explanations given by the Director of the FOJ to the PUK, such a detachment of employees on site was not in line with the FOJ's practice. The FOJ generally tries to avoid the direct involvement of FOJ specialists in ongoing projects in order to maintain the necessary distance and outside perspective for the assessment of the regulatory projects proposed by the specialist offices. However, as the Director of the FOJ explained at his hearing, in this exceptional situation and in view of the urgency of the matter, the FOJ it more appropriate to be on site in order to be able to make any contribution at all.[1517] While the usual time limit for a consultation with an office is three weeks,[1518] the FOJ often only 60 to 90 minutes to provide its assessment in the phase from 15 to 19 March 2023.[1519]

According to the Director of the FOJ, the only subject of the discussions on March 15 was the provision CS with liquidity through ELA+ and a PLB; the discussions did not (yet) concern the liquidation of CS or a takeover by UBS.[1520]

According to the FOJ, the following requirements for the application of emergency law were indisputably met at the time of its intervention: Endangerment of the protected interests of economic stability and the stability of the financial market as well as factual and temporal urgency. However, the question of whether a wait-and-see approach and restructuring in accordance with the TBTF regulation would not be more suitable than a liquidity injection by means of ELA+ and PLB in order to avert the danger (subsidiarity requirement) remained open. The FOJ focused its analyses mainly on assessing the following questions: Can the SNB be granted a bankruptcy privilege under emergency law that impairs the position of other third-party creditors in bankruptcy? What would be the consequences if Parliament were to reject the bankruptcy privilege in a subsequent transfer decree under Article 7d RVOG? The FOJ answered the question of the admissibility of a bankruptcy privilege in the affirmative due to the alternative scenario of a bankruptcy of CS, in which the other third-class creditors would possibly come away empty-handed. With regard to the legal force of the contracts based on emergency law, the opinion that the contracts would remain valid prevailed as early as March 15, according to the Director of the FOJ.[1521] (For the involvement of the FOJ on March 17 and March 18, 2023, see section 7.2.3.9 and section 7.2.4.7 respectively).

Application for ELA in the night from March 15 to 16

As the liquidity situation continued to deteriorate, the CS Group submitted an official request for extraordinary liquidity assistance (ELA) for CS (Schweiz) AG to the SNB at around 9 p.m. on Wednesday night. The liquidity requirement was estimated at 29 billion Swiss francs, 8 billion US dollars and 2 billion euros, resulting in a total amount 38.440 billion Swiss francs.[1522] Credit Suisse also applied for 10 billion Swiss francs as a liquidity-shortage financing facility. The authorities dealt with the application the following day (see section 7.2.2.5).

According to several people consulted by the PUK, it was already clear at the time that this liquidity assistance would not be sufficient. CS had not prepared itself well enough and was therefore unable to exploit the ELA potential (see section 5.5.3).[1523]

Preparatory work for communication with the authorities

From March 15, 2023, the authorities prepared a crisis communication, although no decision had yet been taken on a solution. This aspect is dealt with in section 7.2.6.

[1517] Minutes of the PUK meeting of 24.1.2024, p. 66 and 69 f.
[1518] In practice, this deadline is not respected in many cases, but is at least set at one week in the rule. Statement by the then Federal Chancellor dated 2.8.2024 as part of the administrative consultation
[1519] Minutes of the PUK meeting of 24.1.2024, p. 68
[1520] Minutes of the PUK meeting of 24.1.2024, p. 66
[1521] Minutes of the PUK meeting of 24.1.2024, p. 66 f.
[1522] CS: Formal Request to SNB for a covered loan in accordance with the MoU, 15.3.2023
[1523] Written answers to the PUK of 22.1.2024, 26.3.2024, 8.4.2024; transcription of the LG meeting of 24.1.2023

7.2.2 First extraordinary meeting of the Federal Council on March 16 to set the course for additional liquidity assistance loans and federal default guarantees

The following table shows the various events on the second day of the acute crisis, which are then described in detail. The key milestones are highlighted in bold.

Table 18: Chronology of events on Thursday, March 16, 2023

Time	*Event*	*Actors involved*
From midnight	Start of high-level meetings between FINMA and UBS on the merger	FINMA, UBS
1.45 a.m.	**CS media release on ELA reference**	**CS**
7.45 a.m.	Extraordinary meeting of the FINMA Board of Directors	FINMA
9 o'clock	AF meeting	EFD, SNB, FINMA
10 a.m.	Orientation of the President of FinDel	EFD, FinDel
11.30 a.m.	Meeting of the LG	EFD, SNB, FINMA
1.15 p.m.	**First part of the extraordinary Federal Council meeting on the emergency ordinance and solution options**	**Federal Council**
2 p.m.	**The SNB grants CS ELA amounting to CHF 38 billion and liquidity-shortage financing facilities of around CHF 10 billion**	**SNB**
14.45-3.30 p.m. and 20.00-20.30 hrs	Conference call Core College	FINMA, SNB, Fed, PRA
5.15 p.m.	**Second part of the extraordinary Federal Council meeting: The Federal Council adopts the emergency ordinance on the introduction of the PLB and ELA+**	**Federal Council**
8 p.m.	Entry into force of the emergency ordinance of the Federal Council	Federal Council
20.30-21.00 hrs	Conference call FINMA-CS Switzerland	FINMA, CS
Throughout the day	Telephone calls between the federal authorities and foreign authorities	EFD, EDI, SNB, FINMA
Late in the evening	Transmission of the revised UBS receivables schedule	EFD, SNB, FINMA
Total liquidity loss of CS on March 16, 2023: between CHF 14 and 17 billion		

The individual developments are presented in chronological order below. However, developments that are directly related in terms of content are dealt with in the same section, in particular the international contacts and the authorities' negotiations with the banks.

7.2.2.1 CS's first application for liquidity assistance and new claims by UBS

CS media release on its ELA application the evening before

CS informed the public in a press release at 1.45 a.m. that it had applied to the SNB for ELA of around CHF 38 billion and a CHF 10 billion liquidity-shortage financing facility (see section 7.2.1). In the same press release, it announced its intention to carry out debt buybacks amounting to CHF 3 billion.[1524]

Telephone conference between the authorities and CS in the early morning

Against the backdrop of the steadily deteriorating situation at CS, the Head of the FDF announced by telephone to the Chairman of the Board of Directors and the CEO of CS in the early morning of March 16, in the presence of the State Secretary for International Financial Matters, the Chairman of the SNB, the Chairman of the Board of Directors and the CEO of FINMA, that a solution with UBS had to be worked out by Sunday. To this end, CS would have to provide all the necessary information. The CS representatives assured the authorities that this would be done.[1525]

Revised UBS list of demands

At an unknown time, in any case late on Thursday evening, UBS submitted its revised claims to the authorities.

These are shown below, with the changes compared to the list of requirements dated March 15, 2023 printed in italics.

Table 19: UBS list of requirements (draft), as at March 16, 2023

Transaction / financial aspects	No premium or no exchange ratio based on a discount to the closing market price (or, depending on timing / transaction structure, possible adjustment due to negative information / findings from due diligence) *We are still examining whether an "option structure" would be conceivable: In our base case scenario for the merger, we would additionally protect our shareholders from negative developments and previously undisclosed or unknown liabilities and further losses through a structure in which part of the price for the merger is only paid if there are no negative surprises. We have developed a so-called "option structure" for this, which is essentially a "debtor warrant" in the form of a call option with an exercise price that increases if negative developments are identified (which means that equity is built up again in the combined company, which should be very favorable overall). This means that Cedar [Credit Suisse] shareholders will receive Ulmus [UBS] shares and such a "debtor warrant" which would be paid out in Ulmus [UBS] shares if there are no negative surprises.* *Protective measures to safeguard the business between the announcement and the Extraordinary General Meeting are required.* *necessary.*

[1524] "Credit Suisse Group takes decisive measures to strengthen its liquidity with foresight and launches public tender offers for debt instruments" CS media release dated 16.3.2023, https://www.ubs.com/global/en.html> About us> Media> Releases > Credit Suisse, Part of UBS group (as of 21.11.2024)

[1525] Written answers to the PUK of 17.5.2024; transcription of the AF meeting of 16.3.2023, p. 11

Restructuring/Governance	No conditions for the integration concept, nor any restrictions regarding the future of the Swiss unit, the branch network, personnel optimization and market presence
	No requirements for the governance structure and the appointment of persons
	Legal structure: *Confirmation that the legal structure is supported with an intermediate parent company (whereby WMI remains part of the Swiss AG)*
Capital requirements	Waiver of Swiss Finish requirements for a period of ten years (both at Group level and at the level of the Swiss unit), i.e. retention of the current UBS requirements without any increase due to the size and/or additional buffer requirements of CS
	Full recognition of "badwill", *which is credited to CET1*, without restriction on use *for share buy-backs*
	Permission to continue share buybacks as long as the CET1 requirement is met during *the interim and target phases*
	Risk-weighted assets (RWA) for operational risks are to be in line with the reduction in assets, including disposals / exits from business activities and natural disposals; calculation of risk-weighted assets for operational risks based on UBS's internal model and history, no passing on of non-relevant idiosyncratic operational losses of Credit Suisse to UBS
	Flexibility in the deadlines for the implementation of new regulations, i.e. TBTF Liquidity Regulation, Basel III final / FRTB, for the merged bank*, including waiver of lead times in other jurisdictions and support in material matters related to Basel III final (e.g. unrated counterparties)*
	No additional capital requirements at the level of the individual legal entities (e.g. Switzerland, USA, UK); support of the capital plan by the regulatory authorities; permission to repatriate excess capital from local business activities where appropriate
	Preservation of vested rights for capital regulations / capital exemption of the CS Group (including the regulatory filter for participations) *for a longer period of time*
	Access to *collateralized* liquidity instruments from the central bank from the announcement and up to and including the end of the integration period; *in the event of additional liquidity requirements at AG level, temporary option to use the ELA even if the Group's internal TLAC exposure increases*
Transparency / due diligence	The SNB, FINMA and the FDF share all relevant information and their detailed assessment of the situation, i.e. they are transparent about any problems/concerns that the authorities may be aware of.
	Access to the management and external/internal audit of CS
	Agreement on due diligence before and after the announcement, including the consequences of finding hidden liabilities

Foreign regulatory authorities	Preliminary agreement between FINMA, the SNB, the FDF and other key regulators, in particular the Fed, the PRA, the FCA and the ECB, on the timely approval of the transaction without material conditions (e.g. no increase in local capital requirements, support for the repatriation of excess capital, no material and no restrictions on business activities) Legal structure: no change of legal form in the United Kingdom (retention of the current UBS solution, i.e. a branch of UBS AG)
Communication	FINMA, the SNB and the FDF issue joint/separate statement(s) stating that UBS has been requested *by the regulatory authorities to contribute to the stabilization of the financial market; final wording to be agreed with the authorities.* UBS must be able to communicate the risk mitigation measures in detail. FINMA, the SNB and the FDF must attend the media conference on the day of the announcement.
Competition Authority (WEKO) and other license decisions	Binding commitment that the competition law reviews and decisions will be carried out in a fast-track procedure; if necessary, through the intervention of FINMA Agreement on the introduction of restrictions on strategic decisions at CS prior to the Extraordinary General Meetings and prior to completion of the transaction
Guarantees / spin-offs / effects on net asset value measurement	Protection against the effects of the acquisition, which may lead to impairments of carrying amounts, consider *AT1 amortization* *Support from the supervisory authority for SPV structures to limit balance sheet risks for certain portfolios* (in particular non-core portfolios and investment banking portfolios); quantum to be determined as part of due diligence prior to pre-announcement *Further details are to be determined as the due diligence process progresses.* Guarantee to cover mark-to-model valuations

Source: "DRAFT conditions for initial discussion", UBS, 16.3.2023

The hearings of the PUK and the analyzed administrative documents show that the main changes compared to the claims on the previous day were as follows: For the first time, UBS's list of claims mentioned the write-down of AT1 bonds ("*protection against impact of purchase accounting which might lead to potential valuation write-downs, considering an ATI write-down; support from the regulator for SPV structure involving an ATI write-down to limit downside balance sheet risks for defined portfolios";* see Box 19 in section 7.2.3.7).[1526] Accordingly, UBS feared that it would have *to* make extensive write-downs due to the merger.

[1526] Minutes of the PUK meeting of 24.4.2024, p. 66 f., 70

The CS Group must make extensive valuation adjustments (e.g. on IT/software no longer required in the future as a result of the merger or on certain assets) to the book values of the CS Group and form provisions (e.g. for legal cases).[1527]

In response to the revised list of demands, the Chairman of the SNB contacted the Chairman of the Board of Directors of UBS and that he felt that UBS's demands went too far. When asked by the Chairman of the SNB, the Chairman of the Board of Directors of UBS explained that the new list of claims had been drawn up without his knowledge and that UBS would "offer the prospect of a better solution" (see Box 21 in section 7.2.4.6).[1528]

7.2.2.2 Extraordinary meeting of the FINMA Board of Directors on the critical situation at CS

FINMA's Board of Directors held an extraordinary meeting from 7.45 a.m., which was also attended as usual by members of FINMA's crisis unit.[1529] It was informed that CS had applied to the SNB for around CHF 39 billion in the form of ELA. The Executive Board requested that the necessary solvency confirmation be issued on the basis of the key figures that CS had provided to the SNB for obtaining ELA. The Board of Directors unanimously approved this request.[1530]

The Board of Directors also discussed the possible liquidity inflows from the Swiss subsidiary (Credit Suisse (Schweiz) AG) to the parent bank (Credit Suisse AG): according to the contingency plan, the parent bank's net debt to Credit Suisse (Schweiz) AG could not exceed CHF 10 billion. The Board of Directors determined that compliance with this limit was essential for compliance with the contingency plan and was therefore non-negotiable.[1531]

[1527] In retrospect, this has been confirmed: Specifically, the merger resulted in adjustments to the valuation of assets and liabilities of USD - 14.7 billion, additional provisions for potential outflows from litigation as well as regulatory or similar matters of USD - 4.5 billion, value on intangible assets of USD -0.9 billion and fair value on non-financial assets and liabilities of USD - 0.6 billion.
USD. In addition, there were valuation adjustments of USD - 4.1 billion as a result of the change in accounting standards from US GAAP to IFRS. Overall, the merger resulted in net value adjustments in equity under commercial law of USD - 24.8 billion in the second quarter of 2023. This does not take into account restructuring and other follow-up costs of the merger as well as ongoing operational losses of CS units (UBS presentation on the financial results for the second quarter of 31 August 2023, p. 18; UBS quarterly report for the second quarter of 2023 dated 31 August 2023, p. 4 ff., 69 ff.; UBS Annual Report 2023; FINMA statement dated 9 August 2024 as part of the administrative consultation)

[1528] Minutes of the PUK meeting of 29.11.2023, p. 13

[1529] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 16.3.2023, p. 1

[1530] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 16.3.2023, p. 1

[1531] Minutes of the extraordinary meeting of the FINMA Board of Directors on 16.3.2023

Box 16: The problems of ring fencing and upstreaming

The discussions between the authorities and Credit Suisse (Switzerland) Ltd. highlighted a liquidity allocation problem within the CS Group that the authorities had already recognized in October 2022 (see section 6.3.3.1):

The units of an international banking group are each in different countries. Each country has its own regulatory, company law and tax restrictions on the transfer of liquidity.[1532] These transfer restrictions limit in particular the scope of cash inflows from the subsidiaries to the parent company (*upstreaming*) or via the parent company to other subsidiaries (*cross-streaming*). Even if the amount of liquidity available in the entire group is appropriate, it may be the case that the liquidity cannot be transferred to those group entities where it is needed.

In the case of CS, the parent company (Credit Suisse AG) was immediately affected by the crisis in October 2022 and March 2023.[1533] In addition, foreign units of the CS Group required liquidity (see section 7.2.3.5). Due to regulatory restrictions (particularly in connection with emergency planning), the parent company was unable to transfer unlimited liquidity from other subsidiaries (particularly the Swiss unit) to these units (see section 7.2.3.6).

Ring fencing

The term "ring fencing" refers to higher regulatory requirements or cash outflow restrictions imposed by foreign authorities on the foreign subsidiary or branch of a Swiss bank.[1534]

In the case of CS, the Swiss authorities have been concerned since fall 2022 that foreign supervisory authorities - particularly those in the United Kingdom and the USA - could impose such increased requirements and restrictions on the outflow of funds (see section 6.3.3.1). According to information from FINMA, such ring fencing did in fact occur:

Following rumors in the social media at the beginning of October 2022 (see section 6.1.2), the Fed and the PRA imposed increased liquidity requirements on CS at the end of 2022 for the period up to March 2023 in the form of notification or approval obligations.[1535] Furthermore, the Fed increased the liquidity requirements on the weekend of
On March 18 and 19, 2023, the Fed increased its previous expectations of liquidity holdings of USD 18 billion (see section 7.2.2.8) by USD 8 billion. Substantial parts of the ELA withdrawal were therefore placed with the Fed (see section 7.2.2.8).[1536]

[1532] Banking Stability Expert Group (2023): Need for reform after the demise of Credit Suisse, 1.9.2023, p. 49

[1533] FINMA (2023): Lessons learned from the CS crisis, p. 59 ff.

[1534] Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 133)

[1535] Letter from FINMA to the PUK of 1.7.2024, p. 2. The Fed CS on 9.10.2022 that it was to be notified immediately if the cash holdings fell below USD 18 billion at the end of a working day or below USD 7 billion during the day. Although it was a notification requirement, this requirement had a similar effect to a minimum requirement, according to FINMA. The PRA informed CS on 3.11.2022 that all liquidity transfers from the United to the Group could no longer be carried out on the same day, but only after review by the PRA on the following day.

[1536] Letter from FINMA to the PUK dated 1.7.2024, p. 2. According to the statements made by the new main shareholder of CS on 15.3.2023, FINMA stated that the Department had made efforts to
of Financial Services in New York to impose comprehensive ring-fencing measures on the CS AG branch in New York. As these measures would have made liquidity management in US dollars much more difficult for the entire CS Group, the Fed intervened. As a resultthe two US agreed on the joint approach described above.

Upstreaming

Various transfer restrictions also apply between a systemically important subsidiary and the parent company, both of which are domiciled in Switzerland. The Swiss subsidiary of a group performs the systemically important functions for Switzerland so that these can be continued in the event of an emergency independently of the liquidation of the entire group (see section 5.3.1.4 above). As part of the requirements of the Swiss emergency plan, the Swiss subsidiary cannot therefore shift liquidity to the parent company at will, but must itself have sufficient loss-absorbing capital and liquidity. The maximum possible scope of the *upstream* is therefore limited.[1537]

In this context, the Board of Directors of the Swiss subsidiary (Credit Suisse (Schweiz) AG) issued an internal guideline to limit upstreaming to the parent company. This included, on the one hand, ensuring the offsetting of upstreaming and downstreaming and, on the other, a maximum net exposure. This served to protect the feasibility of the Swiss emergency plan.[1538]

In the case of CS, the granting of liquidity assistance by the SNB helped to solve these two problems: the SNB granted corresponding extraordinary liquidity assistance (ELA) to the entity that was able to provide collateral. In this specific case, this was the Swiss subsidiary (Credit Suisse (Schweiz) AG) (see section 7.2.3.5).

However, due to the restrictions on *upstreaming*, it was only able to pass on limited liquidity to the parent company, which itself was unable to obtain ELA due to a lack of collateral. This problem ultimately solved by the SNB's additional liquidity assistance (ELA+). The granting of liquidity with the ELA+ instrument, which was introduced on March 16 via emergency law, did not any collateral. Liquidity could therefore be granted directly to the parent bank, whereas liquidity could only be granted with ELA via the Swiss unit (see section 7.2.4).[1539]

For information on the problems of *ring fencing* and *upstreaming*, please refer in particular to the report of the "Banking Stability" expert group dated September 1, 2023.

7.2.2.3 First direct contact between UBS and CS without result

According to the information available to the PUK, the Chairmen of the Boards of Directors of CS and UBS first spoke on the phone on Thursday, March 16, 2023, at 8.15 a.m. with each other.[1540] During this conversation, the Chairman of the Board of Directors of UBS merely informed the Chairman of the Board of Directors of CS that UBS had been *asked* by the authorities *to* take action ("*asked [...] to step in*").[1541]

[1537] Banking Stability Expert Group (2023): Need for reform after the demise of Credit Suisse, 1.9.2023, p. 49
[1538] Written response to the PUK of 1.6.2024, p. 3; FINMA statement of 9.8.2024 as part of the administrative consultation
[1539] Banking Stability Expert Group (2023): Need for reform after the demise of Credit Suisse, 1.9.2023, p. 50
[1540] Letter from UBS to PUK dated 15.3.2024, Annex 2
[1541] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG on March 16, 2023, p. 2 f.

Following this meeting, the Chairman of the Board of Directors of CS sent the Chairman of the Board of Directors of UBS a letter by e-mail in which he asked for clarification on various questions. Among other things, he wanted to know whether the Chairman of the Board of Directors of UBS had already discussed the purchase of CS with FINMA and whether an agreement had already been reached with FINMA. He also asked whether the UBS Board of Directors been informed about the planned transaction. He also asked questions about the structure of the merger (merger or public tender offer/takeover; obstacles under competition law), the purchase price for CS shareholders and the support required from Swiss and foreign authorities. He specified that FINMA and the Federal Council intended to announce the merger on Sunday evening. He then held out the prospect of granting UBS access to CS's virtual data room as soon as it had signed a non-disclosure agreement.[1542]

The Chairman of the Board of Directors of UBS testified before the PUK that he considered this letter to be inappropriate. He had subsequently called the Chairman of the SNB and explained UBS could not work on such a basis. was annoyed that UBS had not yet been given access to the CS data and suspected that CS was deliberately delaying the work.[1543]

According to persons consulted, there were no further significant interactions between CS and UBS on that day, which is why the State Secretary for International Financial Matters convened a joint meeting the next day (see section 7.2.3.3).[1544]

7.2.2.4 Setting the course: discussion in the Financial Crises Committee on possible coercive measures against CS and the demands of UBS

In preparation for the LG meeting taking place on the same day, the members of the AF discussed the status of preparations for the emergency ordinance at their morning meeting, which began at 9 a.m.. The documents for the corresponding Federal Council business had been signed by the Head of the FDF and were now ready for the Federal Council meeting to be held later.[1545]

Furthermore, the Director of the FFA informed the participants about the upcoming meeting with the President of the FinDel, at which, among other things, the meeting of the FinDel and a hearing of CS would be discussed. In this context, the AF participants expressed their concern that CS would gloss over its situation at the hearing before the FinDel and make it appear that it did not need the support of the federal authorities or UBS. They even feared that CS might say that it had been put under pressure by the authorities.[1546]

At the aforementioned meeting, the head of SIF's Financial System and Markets division also asked the FINMA representatives attending whether they could *instruct* CS *to merge* with *UBS* as part of protective measures in application Article 25 of the Banking Act. The head of FINMA's Recovery and Resolution division replied that they would have to restructure CS if they assumed it had reached the *point of non-viability*. However, this was not yet the case.[1547]

1542 Letter from CS to UBS dated 16.3.2023
1543 Minutes of the PUK meeting of 14.2.2024, p. 36
1544 Minutes of the PUK meeting of 31.1.2024, p. 7, 15
1545 Transcription of the AF meeting of 16.3.2023, p. 1 f.
1546 Against this backdrop, they even considered asking CS and UBS for their respective sales. Board of Directors, which would show that a merger of the two companies was a decision made by the Board of Directors and not the authorities. Transcription of the AF meeting of 16.3.2023, p. 2, 4 f., 8. The PUK has no evidence that the authorities have actually made such a request to CS.
1547 Transcription of the AF meeting of 16.3.2023, p. 8 ff.

Advice on UBS's initial claims

The AF also discussed *UBS's initial demands*, which it had communicated the previous day. The following four demands were discussed in depth:

1. *Transaction structure*: UBS requested assurances from the authorities that it would not have to pay a premium based on the closing market price. The Director and the Head of FINMA's Banking Division noted that the authorities should under no circumstances interfere with the pricing. Pricing (especially in the case of a public tender offer) is also governed by statutory limits, from which the authorities cannot grant any exceptions.[1548]
2. *Capital adequacy requirements*: The Head of the Banks division commented on UBS's demands in connection with capital adequacy requirements. With regard to UBS's demand for a standstill and a subsequent phased build-up of regulatory requirements, which would become more stringent as a result of the merger with CS, the AF came to the conclusion that a two-year period would probably be necessary. "Standstill" could be offered.[1549]
3. *Continuation of regulatory relief:* According to the AF participants, the regulatory relief granted to CS by FINMA over the years could be taken over by UBS in the event of a merger, but would have to be discontinued after a certain period of time.[1550]
4. *State guarantees in the form of a special purpose vehicle:* The AF participants determined that UBS's far-reaching demand for a state guarantee in the form of a *special purpose vehicle* to limit the risks of certain portfolios could not be implemented without emergency legislation.[1551]

In conclusion, the representatives the authorities agreed to clarify any outstanding issues with UBS by the end of the day and to ask UBS by when they could expect a commitment in principle from them regarding the merger with CS. FINMA was to lead these technical discussions with UBS, and the SNB and SIF were also to be present.[1552]

FINMA also argued that the Fed and the PRA had not yet been informed about the possible merger of CS and UBS. However, this information would have to be provided soon, as UBS would require the necessary commitments from foreign regulators as a condition for a merger.[1553] The AF agreed on who should contact which foreign authorities in order to announce the possible merger of CS and UBS to them for the first time.[1554]

Advice on appropriate communication

The AF also devoted an important part of the meeting to public communication on the various developments. For example, the State Secretary for International Financial Matters reported on the international feedback she had received on the media release from the SNB and FINMA: the media release had had a calming effect on the German, French and US authorities.

1548 Transcription of the AF meeting of 16.3.2023, p. 17 f.
1549 Transcription of the AF meeting of 16.3.2023, p. 21 f.
1550 Transcription of the AF meeting of 16.3.2023, p. 34
1551 Transcription of the AF meeting of 16.3.2023, p. 11
1552 Transcription of the AF meeting of 16.3.2023, p. 32
1553 Transcription of the AF meeting of 16.3.2023, p. 12
1554 Transcription of the AF meeting of 16.3.2023, p. 37

The AF also considered the timing of a possible public communication by the authorities. The members of the AF agreed that the decisions of the Federal Council and the FinDel must be available before the creation of the new ELA+ instrument can be communicated. However, they generally questioned the appropriateness of isolated communication on the granting of ELA+. The market could ask itself why the recently announced ELA+ was not sufficient and therefore react negatively. They came to the conclusion that a communication about the merger together with all the measures taken by the authorities was preferable to a communication about ELA+ alone.[1555]

In this context, the AF also discussed the legal force of the emergency ordinance on the introduction of the ELA+ instrument. The Director of the FFA and the Head of the Financial System and Financial Markets Division of the SIF confirmed that the SNB was able to provide ELA+ to CS despite the pending publication of the emergency ordinance.[1556]

The AF also discussed the CS media release on the ELA application published in the early hours of the morning. The Vice-Chairman of the SNB and the Director of FINMA explained that CS had originally planned a very far-reaching communication. However, they had for a correction at short notice. The naming of a specific amount in the press release was an initiative by CS to reassure the market. CS had received various inquiries about the amount beforehand. The mention of a specific figure in CS's press release came as a surprise to the Director of FINMA and the Vice-Chairman of the SNB, as CS had not very proactive with regard to ELA to date. It is possible that the market the ELA amount referred to to be insufficient. participants in the AF also criticized the fact that CS wanted to use part of the ELA to repay certain senior bonds.[1557] CS also wanted to announce the later repurchase of part of the AT1 bonds in the amount of USD 2 billion, but FINMA did not allow this.[1558] This showed that CS had not understood the seriousness of the situation. The Director of FINMA had explained to CS the planned measures were not an optimal use of liquidity. At the AF meeting, he stated that there was no legal instrument to prevent CS from using the liquidity and that CS's behavior was very problematic.[1559]

Finally, the AF discussed the fact that the media had reported on the extraordinary Federal Council meeting taking place later that day. The participants noted this leak with regret.[1560]

7.2.2.5 Granting of ELA to CS

The SNB Governing Board decided at 10 a.m. to approve CS's request for ELA.[1561] In addition to the approximately CHF 38 billion that SNB granted CS (Switzerland) Ltd. as ELA, it paid it around CHF 10 billion

[1555] Transcription of the AF meeting of 16.3.2023, p. 2
[1556] Transcription of the AF meeting of 16.3.2023, p. 3
[1557] The PUK assumes that the participants in the AF meeting were not referring to the AT1 bonds. Nevertheless, it should be noted that the Vice Chairman of the SNB testified before the PUK that CS had also intended to announce a buyback of the oldest AT1 bonds as of July 2023 at around this time in order to reassure the markets and strengthen confidence in the bank (minutes of the PUK meeting of 1.11.2023, p. 25).
[1558] FINMA statement of 9.8.2024 as part of the administrative consultation
[1559] Transcription of the AF meeting of 16.3.2023, p. 17
[1560] Transcription of the AF meeting of 16.3.2023, p. 38 f.
[1561] Transcription of the AF meeting of 16.3.2023, p. 14

as a bottleneck financing facility (totaling around 50 billion Swiss francs).[1562] Some of these amounts were paid out in US dollars and euros.[1563]

Box 17: The ELA amount and the question of the necessity of ELA+

In times of crisis, the SNB assumes the role of lender of last resort. This means that it grants loans to banks of systemic importance if they have too little liquidity and are unable to obtain liquidity on the market themselves (so-called ELA; see sections 3.3 and 5.5.3).

In principle, the bank concerned decides how much liquidity it needs and how high its request to the SNB will be. The NBA presupposes that the bank concerned is not overindebted and can provide sufficient collateral to the SNB in return for the loan. According to the legal basis, it is up to the SNB to define which collateral must be provided for an ELA withdrawal (see section 5.5.3). Mortgage loans to households and companies in Switzerland represent the largest share of collateral potentially eligible for ELA.[1564] Depending on the systemically important bank, they account for 85% to 95% of the domestic credit volume. The SNB also accepts bonds and shares. In particular, the banks can transfer foreign collateralized loans in securitized form to the SNB.[1565] Securities and collateralized loans make up the majority of the balance sheet of the parent companies of CS and UBS.[1566] The SNB values the available collateral carefully and applies *haircuts*.[1567]

In addition, CS, like UBS, had access to the facilities of foreign central banks.[1568] Possible access was mentioned in the funding-in-resolution plans of FINMA and CS, but not quantified, although FINMA had attested to CS's improved preparation in this regard.[1569] For a bank to be able to use collateral with a central bank, it must make arrangements. The SNB does not exercise banking supervision (see section 3.3) and cannot oblige a bank to increase its collateral (see section 5.5.3).

From the perspective of a resolution (and therefore from the perspective of a restructuring), the ELA is an extraordinary liquidity support that used in the going concern, i.e. before a restructuring is initiated. A resolution or restructuring is then initiated if the situation deteriorates further after an ELA drawdown. ELA helps the bank bridge the gap until a weekend so that a coherent, internationally coordinated package of measures can be issued outside of banking days. The achievement of a weekend

[1562] ELA application dated 15.3.2023; SNB (2024): 116th Annual Report of the Swiss National Bank.
nalbank 2023, p. 108; transcription of the AF meeting of 16.3.2023, p. 15; according to this SNB annual report, the ELA amounted to CHF 38 billion, while according to the minutes of the FINMA Board of Directors it was CHF 39 billion.

[1563] SNB (2024): 116th Annual Report of the Swiss National Bank 2023, p. 108

[1564] Minutes of the PUK meeting of 1.5.2024, p. 55

[1565] SNB: "Topic dossier 'The role of the SNB as lender of last resort'", 2024, https://www.snb.ch/de > Media > Topic dossiers > Other topics (as at: 25.11.2024)

[1566] SNB (2024): 116th Annual Report of the Swiss National Bank 2023, p. 109

[1567] According to the information provided by the PUK, CS was obliged under an MoU to provide the SNB with a quarterly list, based on the SNB's submissions, of those mortgages that were eligible for pledging and freely available and could therefore serve as collateral for extraordinary liquidity assistance ("ELA MoU", undated, points 3.1 and 3.2; ELA request from CS to the SNB dated 15.3.2023).

[1568] SNB (2024): 116th Annual Report of the Swiss National Bank 2023, p. 109

[1569] Credit Suisse 2022 Resolution Funding Plan Contribution of 16.12.2022; FINMA Draft Plan of 12.11.2019; Resolvability assessment of CS by FINMA of 17.5.2022; Statement of the SNB of 31.7.2024 in the context of the administrative consultation

is necessary for a globally active bank like CS. Only in this way can capital measures be implemented in a legally secure and coordinated manner (recognition by other authorities, closed markets worldwide). The aim is to prevent solvent banks from becoming insolvent simply because their illiquid assets cannot be liquidated in time or only at high cost.[1570]

In this case, various units of the CS Group were affected by a liquidity crisis and were therefore reliant on ELA. At the same time, it was primarily the Swiss subsidiary that was in a position to provide the corresponding collateral. The reason for this was that the CS parent company had not prepared the securitization of Lombard loans for a legally valid provision of collateral (see section 6.2.2) and had already tied up the ELA-eligible securities in other financial market transactions.[1571] The CS parent company was also unable to provide any significant collateral from the foreign central banks, although the majority of its loans were booked with the foreign subsidiaries and branches.[1572] Although CS's balance sheet to CHF 800 billion in October 2022 and CHF 600 billion in March 2023,[1573] on 16 March it applied for liquidity assistance facilities of around CHF 50 billion (of which around CHF 40 billion in the form of ELA).

The majority of this amount was paid out to the Swiss subsidiary that provided the collateral.[1574] Due to the restrictions on *upstreaming* (see Box 16 in section 7.2.2.2), this liquidity could not be distributed at will within the Group according to the needs of the individual Group units.[1575]

In order to provide the other affected units of the CS Group with sufficient liquidity until the weekend, ELA+ was also introduced via emergency law (see section 7.2.3.5). In contrast to ELA, the granting of ELA+ was not tied to the provision of sufficient collateral. This allowed the SNB to grant liquidity to the parent company, which could also transfer it to the foreign subsidiaries.

According to a representative of the SNB, it was not realistic to expect that CS would have been able to save itself from the crisis with the ELA granted on Thursday alone. This was because the ELA did not solve the underlying problem of the crisis of confidence.[1576] Testimony was given before the PUK that without ELA on Thursday and ELA+ on Friday, CS might become insolvent as early as Friday, March 17.[1577] Because CS had not prepared any material liquidity assistance with the foreign central banks, the SNB had to provide the entire ELA+ in foreign currencies. As a precautionary measure, the SNB had converted part of its own foreign currency reserves into liquidity and prepared its own access to the Fed's repo facility (see section 7.2.3.5).[1578]

[1570] FINMA statement of 9.8.2024 as part of the administrative consultation
[1571] Minutes of the PUK meeting of 29.11.2023, p. 2; SNB (2024): 116th Annual Report Swiss National Bank 2023, p. 110
[1572] Minutes of the PUK meeting of 29.11.2023, p. 2; Written response to the PUK of 26.3.2024, p. 6; Accountability report of the SNB 2023, p. 110
[1573] Minutes of the PUK meeting of 1.5.2024, p. 45
[1574] "Banking Stability" group of experts (2023): Need for reform after the demise of Credit Suisse, 1.9.2023, p. 49
[1575] FINMA representatives informed the AF on October 5 and 15, 2022 that an up-streaming of a large amount from the Swiss subsidiary to the Group is possible (transcription of the AF meeting of 5.10.2022, p. 9 and 13 and of 15.10.2022, p. 3). On 24.1.2023 in the AF, the SNB pointed out the need to increase this potential through internal, secured financing transactions between the subsidiary and the parent bank (SNB presentation in the AF of 24.1.2023, p. 5).
[1576] Minutes of the PUK meeting of 1.11.2023, p. 24
[1577] Minutes of the PUK meeting of 1.11.2023, p. 57;
[1578] Written reply to the PUK dated 26.3.2024, p. 9; SNB (2024): 116th Annual Report Swiss National Bank 2023, p. 108

Nevertheless, certain persons heard by the PUK criticized the scope of ELA on 16 March. While representatives of the SNB emphasized how flexible the SNB had been in granting ELA and later ELA+, representatives of the SIF, the FFA and FINMA were critical in this regard, even during the crisis (see section 6.4.2).[1579] According to them, the role of the lender of last resort was to accept as much collateral as possible so that it could perform its task.

The SNB countered this by stating that the range of eligible collateral was not limited. It was documented that CS had not exhausted the SNB's potential with its preparations (see section 5.5.3). The SNB itself requested CS in the fall of 2022 to obtain further collateral for ELA. In the case of the Lombard loans, the CS parent company failed to include transfer clauses. The bank was also not in a position to pledge any further assets of significant value as legally transferable collateral (see section 6.2.2).

Furthermore, the SNB cannot oblige any bank to increase its collateral for ELA or to prepare for the legal provision of collateral (see section 5.5.3.).[1580] The SNB referred to the Banking Ordinance with regard to FINMA's supervisory tasks in the area of liquidity provision. Every systemically important bank must draw up a stabilization plan that provides for measures to safeguard liquidity in a crisis. CS's plan had been approved by FINMA. In addition, FINMA must prepare a funding-in-resolution plan. According to FSB guidelines, this includes a quantification of central bank facilities. Finally, FINMA must assess annually how a bank would cover its liquidity requirements in a restructuring and whether it guarantees the management of the available collateral.[1581]

The introduction of ELA+ was also controversially discussed by the representatives of the authorities (see section 7.2.3). The Director of the FFA told the PUK that it was necessary to examine whether the SNB's role as *lender of last resort* went far enough and whether the SNB interpreted the criterion of sufficient collateral broadly enough. In their opinion, the amount of extraordinary liquidity assistance provided by the SNB is too small. In addition, the liquidity provided could not used within the Group where it most urgently needed.[1582] The Chairwoman of the Board of Directors and the former Director of FINMA were of the opinion that the available collateral been defined too low by the SNB in relation to CS's balance sheet.[1583] In additionthe *haircuts* applied by the SNB were too high.[1584] In contrast, the Chairman of the SNB was of the opinion that the SNB had defined the necessary collateral broadly.[1585]

With regard to ELA+, the SNB out that it had discussed an expansion of the ELA potential within the framework of emergency law in the SC on 11 January 2023. It had also submitted a concept proposal for ELA+ to the AF on January 24, 2023 (see section 6.4.2).[1586]

1579 Internal FDF document "230316 Q&A FinDel ", p. 2
1580 Minutes of the PUK meeting of 29.11.2023, p. 20
1581 Cf. art. 64 and 65a BankO; SNB (2024): 116th Annual Report of the Swiss National Bank, nal Bank 2023, p. 109; SNB (2024): Financial Stability Report 2024, English version, p. 46- 48. FSB (2018): Funding Strategy Elements of an Implementable Resolution Plan, pp. 15-16
1582 Minutes of the PUK meeting of 1.5.2024, p. 45
1583 Letter to the PUK dated 25.6.2024, p. 8
1584 Letter to the PUK dated 25.6.2024, p. 8
1585 Minutes of the PUK meeting of 29.11.2023, p. 13
1586 Written response to the PUK dated 19.2.2024, p. 5

First orientation of the President of FinDel

Also at around 10 a.m., the Head of the FDF and the Director of the FFA met with the then President of the FinDel. The aim of this meeting was to provide the President of the FinDel with an initial briefing on the situation and to prepare for a FinDel meeting, which was expected to take place on Sunday, March 19.[1587] According to the President of the FinDel, she was informed verbally about the situation at CS, the measures taken by the authorities to date and the further possible interventions by the Federal Council. She was also about reactions from abroad and various discussions held by the head of the FDF. The President of the FinDel considered the information provided to her at this meeting to be comprehensive.[1588]

7.2.2.6 Further crisis meeting of the steering committee at the Bernerhof

As scheduled on the previous day, the authorities met again on March 16, 2023 at 11.30 a.m. as part of the LG. At this meeting, the Chairman of the SNB informed the participants that FINMA had confirmed CS's solvency and that the SNB had accordingly approved CS's ELA application from the previous night.[1589]

For his part, the Director of FINMA reported that the communication from the SNB and FINMA on March 15 had had a positive impact on the value of CS shares. However, volatility remained high due to the existing uncertainty. The previous day's outflows at CS were also discussed: CHF 4.5 billion in Wealth Management and CHF 6.5 billion at Credit Suisse (Switzerland) Ltd.[1590]

This was followed by a meeting to prepare the negotiations on the basis of UBS's list of demands. The Director of FINMA highlighted three problematic demands:

- the granting of liquidity to UBS without the provision of corresponding collateral;
- the granting of a guarantee by the federal government in favor of UBS;
- the granting of long-term relief from capital and liquidity requirements by FINMA.

The Chairman of the SNB added that the SNB could not provide UBS with liquidity assistance without corresponding collateral. The participants agreed that UBS could have no interest in making unfulfillable demands - after all, it did not want the impression to arise that it had failed to find a solution. In response to the SNB Chairman's comment that it would be helpful for the negotiations if there another interested party in addition to UBS, the FINMA Director pointed out that time was extremely short.[1591]

The Director of FINMA finally informed the participants that the option of a restructuring in accordance with the Banking Act had been prepared. The bank had been instructed the previous day to draft a restructuring plan that could be approved by the end of today. FINMA is preparing a corresponding restructuring order at full speed.[1592]

[1587] Transcription of the AF meeting of 16.3.2023, p. 2
[1588] Written response from the President of FinDel of 2023 dated 4.8.2024.
[1589] Minutes of the LG meeting of 16.3.2023, p. 1
[1590] Minutes of the LG meeting of 16.3.2023, p. 2
[1591] Minutes of the LG meeting of 16.3.2023, p. 2
[1592] FINMA had already been preparing the restructuring order and the restructuring plan since October 2022 (transcription of the AF meeting of 15.10.2022, p. 16). the beginning of November, drafts of the restructuring plan and the restructuring order were available, which, according to the Director of FINMA, could be finalized within a week (of the AF meeting of 4.11.2023, p. 8 f.); minutes of the LG meeting of 16.3.2023, p. 3

The head of the FDF stated that it was impossible start the next week without a solution. In this sense, the FFA should prepare a new option as a potential alternative to the option of merging CS with UBS: the nationalization of the entire CS Group.[1593] According to a person heard by the PUK, this was the first time that the authorities had discussed the state takeover of the entire CS. It was a breach of the dam to propose such a solution, as it would have been questionable from a regulatory perspective to protect not only the systemically relevant parts, but the entire institution. Therefore, the step towards this solution not an easy one.[1594] The LG subsequently decided to prepare a proposal for the nationalization option (TPO) of the CS Group, to initiate an on-call service by the Federal Council and a Federal Council meeting on Sundays and not to make any concessions in the negotiations with UBS that would have required emergency law.[1595]

7.2.2.7 Adoption of the emergency ordinance on the introduction of ELA+ and PLB by the Federal Council

The extraordinary meeting of the Federal Council convened the previous day took place at 1.15 p.m. after the meeting of the LG. Due to the ongoing spring session of Parliament, this meeting was interrupted so that the Head of the FDJP could take part in a Council debate. The meeting resumed at 5.15 p.m.[1596]

The organization of the extraordinary Federal Council meeting had been challenging due to the parliamentary session. Due to the participation of various Federal Councillors in the Council debates, it had been difficult to them with the necessary information in advance.[1597] For example, the Head of the DDPS pointed out at the aforementioned meeting that she had been unable to take note of the documents for this meeting due to her presence in Parliament.[1598]

At this meeting, a written proposal was submitted to the Federal Council for the first time in the context of the CS crisis.[1599] The proposal included the expansion of the existing ELA and the immediate entry into force of an instrument of state liquidity protection based on Articles 184 para. 3 and 185 para. 3 of the Federal Constitution. This instrument (i.e. the PLB) was to "activated" immediately by the Federal Council in order to enable liquidity assistance loans with a federal default guarantee to CS. The proposal also stipulated that the Federal Council should apply to the FinDel for the CHF 100 billion commitment credit required to provide the default guarantee by way of an emergency procedure so that the Confederation could provide the SNB with the guarantee required for the liquidity assistance loans to CS.[1600]

1593 Minutes of the LG meeting on March 16, 2023, p. 3
1594 Minutes of the PUK meeting of 1.5.2024, p. 60
1595 Minutes of the LG meeting on March 16, 2023, p. 3
1596 Written answers to the PUK dated 6.2.2024, p. 9
1597 Minutes of the PUK meeting of 8.11.2023, p. 61; Minutes of the PUK meeting of 21.2.2024, S. 45
1598 Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 1 f.
1599 Minutes of the PUK meeting of 14.2.2024, p. 84
1600 Draft proposal of the FDF to the Federal Council for the adoption of an emergency ordinance on additional liquidity assistance loans and the granting of federal default guarantees for liquidity assistance loans of the Swiss National Bank to systemically important banks dated 16.3.2023, p. 2. The proposal was accompanied by six annexes: the draft ordinance, explanatory notes on the same, a draft letter from the Federal Council to the FinDel, a draft Federal Council decision on the commitment credit, a guarantee agreement and a draft Federal Council decision on the commitment credit.

draft contract and a draft loan agreement.

Explanations by the Head of the FDF on the development of the CS situation

In the presence of the Chairman of the SNB, the Chairwoman of the Board of Directors and the Director of FINMA[1601] , the Head of the FDF informed the full Federal Council about the current situation at CS and explained in particular that the FDF, FINMA and the SNB estimated that the bank would not survive the following Monday.[1602] She also explained that the rating agencies would downgrade CS to "*non-invest*" in the near future.[1603] The joint media release issued by FINMA and the SNB the previous evening had temporarily defused the situation somewhat.[1604] However, it was imperative that the authorities find and communicate a solution by Sunday evening.[1605] The Federal Council learned for the first time that CS and UBS were currently talks about a possible merger. At the Federal Council meeting, it was explained that the decision to be taken now serves to ensure the survival of CS until the weekend or until a solution is found.[1606] In this context, the Federal Council discussed, among other things, the risks for the Confederation, the consequences of a bankruptcy of CS and the consequences of a possible merger between CS and UBS. According to the representatives of the SNB and FINMA, two solution scenarios should be considered in addition to restructuring: the merger of CS and UBS on the one hand and the temporary nationalization of CS on the other.[1607]

The Head of DETEC first asked whether the Federal Council should introduce the ELA+ and the PLB even if there was no concrete solution yet. He was then persuaded that these instruments were needed for any solution - even if CS were to be nationalized. Nevertheless, he demanded that a balance sheet of CS be presented to the Federal Council so that it see where the bank's potentially realizable assets lay. This should enable the Federal Council to calculate the risks.[1608]

Questioning co-report of the FDHA

The FDHA was the only department to a questioning co-report on the FDF proposal. According to the co-report, the FDHA would have liked the FDF to have submitted various options to the Federal Council for discussion in writing last year in view of the imbalance that CS has been in for several months. In particular, the FDHA wanted to know what the possible alternatives were to providing CS with guarantees until a possible takeover by UBS. It also enquired about the consequences that could be expected at national and international level if the Federal Council did not decide on these guarantees. Due to the short deadline, the FDHA did not expect a written response in advance of the meeting.[1609]

The then Vice-Chancellor attributed the lack of further co-reports to the "very short deadline", among other things. The handling of the co-reporting procedure more time for classified documents. The other departments' decision not to submit a co-report could therefore "not be interpreted as a 'declaration of agreement'".[1610]

1601 Minutes of the PUK meeting of 11.10.2023, p. 60
1602 Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
1603 Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
1604 Written answers to the PUK dated 6.2.2024, p. 4
1605 Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
1606 Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
1607 Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
1608 Minutes of the PUK meeting of 29.11.2023, p. 19 f.; minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
1609 Questioning co-report on the request of the FDF dated 16.3.2023
1610 Written answers to the PUK dated 29.2.2024

Decision on the introduction of the emergency regulation

The Federal Council then adopted the emergency ordinance on the introduction of the ELA+ and the PLB as well as the elements of passive crisis communication prepared by the Federal Chancellery, which subsequently forwarded to the departments.[1611] The ELA+ only included the bankruptcy privilege, but no longer the previously envisaged statutory lien. A right of lien, which would also have had a potential cross-border effect, would required extensive preparatory work in any case. It therefore stood in the way of a prompt introduction of ELA+ by emergency law.[1612] The SNB had examined whether its claims would be sufficiently covered by the substance of CS due to the currency ELA+ through the bankruptcy privilege.[1613] This condition was met, even assuming possible ring fencing by the foreign authorities. The SNB based this assessment on its own calculations and on the expert opinion of Oliver Wyman.[1614]

The emergency decree came into at 8 p.m., but was not published until March 19.[1615]

Box 18: The legally binding nature of an emergency ordinance prior to its publication

The Official Compilation of Federal Legislation (OC) is a chronological compilation of federal enactments, international treaties and decisions under international law, treaties between the Confederation and the cantons and between cantons. Publication in the AS triggers the so-called fiction of knowledge. This means that the addressees must accept the law published therein. Legally binding status describes the situation in which a legal norm obliges or entitles the person subject to the law. This state of affairs occurs from the time of publication, which, along with entry into force, is the prerequisite for legal force. The legally binding nature therefore represents the essential effect or consequence of publication.[1616]

As a rule, enactments requiring publication must be published in the AS at least five days before they enter into force (Art. 7 para. 1 PublA). In the case of urgency, publication on the day of entry into force is sufficient if the enactment is to be prevented from being undermined by last-minute private dispositions (Art. 7 para. 3 PublA, urgent publication).[1617]

In this case, the Federal Council adopted the emergency ordinance by means of which the ELA+ and the PLB were introduced on March 16, 2023. The emergency ordinance was not published in the AS until March 19, 2023 in consultation with the [FC1618].

The FOJ only learned on March 19 that the Federal Council had decided on March 16 not to publish the emergency ordinance immediately. Although the publication of a legal act is essential for the FOJ, the Director of the FOJ was able to understand that publication might have partially or completely thwarted efforts to find an orderly solution to the problem (see section 6.3.4.3).[1619]

[1611] Minutes of the extraordinary Federal Council meeting of 16.3.2023, p. 2
[1612] Written answers to the PUK dated 4.3.2024
[1613] Minutes of the PUK meeting of 24.1.2024, p. 25
[1614] Written response to the PUK dated 26.3.2024, p. 12
[1615] Hearing minutes of the subcommittees EJPD/BK of the GPK-N/S of the FOJ of 24.4.2023
[1616] Publication of laws. Legally binding nature of the consolidated version, assessment Report of the Federal Council in fulfillment of postulate 14.3319 Schneider Schüttel of May 7, 2014, points 2.1.2. and 2.2.2.
[1617] Tschannen, Pierre (2021): Constitutional Law of the Swiss Confederation, 5th ed. Berne, p. 409
[1618] Statement by the FFA dated 5.8.2024 as part of the administrative consultation; e-mail from the then Vice-Chancellor to the PUK dated 7.10.2024
[1619] Minutes of the PUK meeting of 24.1.2024, p. 74

Exclusion of access under the BGÖ to the work of the authorities in the context of the CS dossier

An important aspect of the Emergency Ordinance was the fact that the Federal Council excluded access under the FIAA to information and data relating to the work of the authorities in the CS dossier in Article 6 paragraph 3 of the Emergency Ordinance of March 16, 2023. This exclusion is a special provision within the meaning of Article 4 letter a FIAA. The explanatory notes cited the sensitivity of the data due to CS's business secrecy as the reason for this extraordinary restriction of the public's information rights: "If the SIB concerned had to fear that the administrative units would have to grant access to the information and documents made available, this could lead to it not providing this information, providing it incompletely or providing it with a long delay. "[1620]

According to the statements made by the Director of the FOJ, however, the FDF put forward an additional argument to the FOJ during the crisis days: There was a risk of receiving a large number of public requests, which would lead to a considerable commitment of resources. The resources tied up in this way would no longer been available for crisis management.[1621] The Director of the FFA confirmed that there had been concerns that the processing of FOIA applications during the crisis phase could lead to a lack of resources for operational crisis work. The FFA had also approved the exclusion despite the need for transparency in accordance with the rule of law, as financial stability had to be ensured. According to the Director of the FFA, the temporary exclusion of the FSC was intended to create legal certainty and clarity. Precisely because emergency law is limited in time, the interest in transparency was not abolished, but in fact only postponed. The aim was to avoid jeopardizing the flow of information between the banks and the authorities due to the principle of publicity. In addition, there was legal uncertainty, as both FINMA and the SNB are not subject to the DDO and it was therefore unclear whether bank documents forwarded by FINMA and the SNB to the federal government were subject to the DDO or not. If there a difference of opinion between the administrative authority and the applicant in the case of FOIA applications, the Federal Data Protection and Information Commissioner (FDPIC) must also issue a recommendation, which can lead to legal proceedings. This circumstance has also threatened the flow of information.[1622]

7.2.2.8 Technical discussions between the authorities and CS and UBS

Following the meetings between the FDF, FINMA and UBS, at which the latter communicated its willingness to take over the company in principle, various discussions took place at a technical level over the course of March 16.

FINMA UBS by telephone on the night of March 16 and initiated talks on the merger with CS. This was a technical exchange on regulatory aspects of the conditions set by UBS, in which SIF and the SNB also participated.[1623]

[1620] Explanatory notes of the FDF dated March 16, 2023 in the version dated March 19, 2023 on the ordinance on additional liquidity assistance loans and the granting of federal default guarantees for liquidity assistance loans of the Swiss National Bank to systemically important banks, p. 12

[1621] Minutes of the PUK meeting of 24.1.2024, p. 67 and 74

[1622] Written answers to the PUK dated 4.3.2024

[1623] The topics of these discussions were the transaction structure, the organizational structure, capital requirements, due diligence, competition law, international supervisory authorities, the necessary financial guarantees, access to the SNB's facilities, the regulatory filter and public communication. Written answers to the PUK dated 17.5.2024

Following criticism from the Chairman of the Board of Directors of UBS, the Director of FINMA complained to the CEO of CS at around 11 a.m. that UBS did not yet access to the virtual data room. FINMA emphasized the urgency of this request. The CEO of CS promised to take care of this immediately.[1624]

Between 12.30 p.m. and 1 p.m., FINMA, the SNB, SIF and UBS held a technical exchange on the regulatory aspects of the conditions submitted by UBS. No decisions were taken.[1625]

At 6 p.m., FINMA and CS exchanged information at an operational level by telephone. The topics discussed were the status of the talks between UBS and CS, CS's liquidity situation and the status of preparations for a possible resolution.[1626]

At 8.30 p.m., the Chairman of the Board of Directors of the Swiss subsidiary of CS, CS (Switzerland) Ltd, expressed his reluctance to provide even more liquidity for the parent bank, CS Ltd, to the heads of the Banks and Recovery and Resolution divisions of FINMA. CS (Switzerland) Ltd. was itself affected by outflows and needed liquidity itself.[1627]

At around 10 p.m., CS's Treasury department informed the then head of supervision of the CS Group at FINMA that the Fed and the Bank of New York still expecting liquidity in the amount of USD 18 billion and that CS was now facing increased withdrawals, including in Swiss francs. CS had taken the view vis-à-vis FINMA that it could meet this demand from the US authorities.[1628]

An hour later, another telephone conversation took place between FINMA and CS. CS was granted an extension until 5 a.m. on Friday to finalize the restructuring plan.[1629]

7.2.2.9 Contacts of the federal authorities with foreign authorities

On March 16, the various representatives of the authorities held various discussions with foreign authorities. These are summarized below.

At 8.40 a.m., the Head of the FDF spoke on the phone with the then German Finance Minister and at 9.30 a.m. with the then French Finance Minister.[1630] According to the Federal Councillor, these discussions constructive. The two ministers had welcomed the communication from the SNB and FINMA the previous day. The French minister described the situation surrounding CS as a "serious event".[1631] The Federal Councillor later spoke on the phone with the then British Finance Minister (at 4.15 p.m.) and the US Treasury Secretary (at 7 p.m.). The Federal Councillor informed both of them about the liquidity assistance to the bank in the form of an ELA. She assured them that the authorities were following the situation closely and suggested that they remain in close contact. The notes for this conversation emphasized that the support of the British and US governments was very important.

1624 Written answers to the PUK dated 23.4.2024
1625 Written answers to the PUK dated 17.5.2024
1626 Written answers to the PUK dated 17.5.2024; Written answers to the PUK from 23.4.2024
1627 Written answers to the PUK dated 17.5.2024
1628 Written answers to the PUK dated 17.5.2024
1629 Written answers to the PUK dated 30.4.2024
1630 Chronology of the FDF of 26.6.2023
1631 Minutes of the LG meeting on March 16, 2023, p. 1

The Secretary of State for International Finance, meanwhile, was on the phone with the Director General of the UK Treasury.[1633]

On March 16, the then President of the Swiss Confederation was contacted by both the then British Prime Minister and the French President. Both expressed concern about the bank's situation. The then Federal President did not share any concrete information with his interlocutors. Both assured him of their full support.[1634]

For his part, the Chairman of the SNB exchanged with the President of the ECB. He also spoke on the phone with the Governor of the Bank of England.[1635] The Chairman and Vice-Chairman of the SNB also exchanged views with the Chairman and Vice-Chairman for Supervision of the Fed on the same day. However, the measures themselves were not discussed.[1636]

FINMA was also in contact with foreign supervisory authorities. At 2.45 p.m. FINMA and the Fed spoke on the phone, and the latter expressed its alarm at the situation at CS. Without an inflow of liquidity to the US subsidiary, a payment default could not be ruled out. It had demanded that the bank hold more liquidity buffers.[1637] Meanwhile, the British supervisory authority PRA confirmed to the Director of FINMA that it appeared feasible to reach the weekend.[1638] Later, at around 5 p.m., the Crisis Management Group held a meeting.[1639] The Director and the Head of FINMA's Recovery and Resolution division informed the participants that the authorities would have to take measures within days. FINMA was making progress in finalizing the resolution order. However, no decision had yet been taken on the applicable resolution scenario.[1640] Finally, at 8 p.m., the Core College discussed the situation at CS.[1641] The Director of FINMA informed the Fed and the PRA at this meeting that a solution was being sought with UBS.[1642]

7.2.2.10 Internal preparations at CS and UBS to overcome the crisis

The internal preparations made by CS and UBS on March 16 are summarized below.

Joint extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG

Due to the extraordinary situation, the Board of Directors of CS Group and CS AG held an extraordinary meeting at midday on March 16. At this meeting, the Chairman of the Board of Directors informed the Board of Directors of CS about the dramatically worsening situation and the contacts that had been made with the authorities. He

1632 FDF memo on telephone conversations with the British Chancellor of the Exchequer and the Treasury Secretary dated 16.3.2023
1633 FDF chronology dated 26.6.2023; e-mail from the State Secretary of the SIF to the Director General of Financial Services UK dated 16.3.2023
1634 Hearing minutes of the GPK-N/S of 15.5.2023; minutes of the PUK meeting of 8.11.2023, p. 59
1635 Minutes of the LG meeting of 16.3.2023, p. 1
1636 Written answers to the PUK dated 22.1.2024
1637 Email exchange between FINMA employees dated 19.4.2023 (18.55), p. 1
1638 Minutes of the LG meeting on March 16, 2023, p. 1
1639 FINMA (2023): Extended chronology from 26.09.2023, p. 30
1640 FINMA internal notes of 16.3.2023; FINMA statement of 9.8.2024 as part of the administrative consultation
1641 FINMA (2023): Extended chronology from 26.09.2023, p. 30
1642 Email exchange between FINMA employees dated 19.4.2023 (18.55), p. 2

announced that a "Plan B" would now be pursued on the basis of the preparatory work carried out last year, namely the sale of CS to UBS.[1643]

The CEO and other members of the CS Executive Board then reported on the joint press release issued by FINMA and the SNB the previous day. This had had an effect. However, it was regrettable that FINMA had only communicated publicly the day before, despite months of requests from CS. Before the PUK, it was stated that CS would have liked support from the authorities in its public communication. Specifically, after the announcement of its new strategy in October 2022, it wanted a statement from the authorities in which they assured the market that they would support CS by all means ("*whatever it takes*"). FINMA replied that this was not opportune (see section 6.4.4).[1644] The Board of Directors was also about the withdrawal of ELA from the SNB. This withdrawal averted an immediate liquidity bottleneck for CS. However, there were fears of a lower rating from the rating agencies. The rating agencies had announced that they would downgrade CS to "*non-invest*" on Monday.[1645]

In addition, the Board of Directors was informed by an external lawyer about its legal obligations and in particular its duty of care. The lawyer explained that the merger, as part of the bank's strategy, was the sole responsibility of the Board of Directors and that FINMA could only order the merger on the basis of Article 30 paragraph 2 of the Banking Act in the event of CS's insolvency. When asked by the Board of Directors, the lawyer confirmed that this would also apply if UBS agreed to a transaction at a very low price.[1646]

The management and external lawyers also the possible transaction structures: public takeover, merger or *asset deal*. The *as- set deal* was described as particularly challenging for CS, as it would be tantamount to a forced liquidation. However, it would be interesting for a buyer. It was therefore likely that the transaction with UBS would take the form of an *asset deal*, unless authorities strongly preferred a different form.[1647]

The Executive Board also informed the Board of Directors that the Bank of England was of the opinion that a solution had to be found by Sunday night. The Board of Directors shared this assessment and discussed the measures it had to take by Sunday night, including interactions with UBS. While UBS already been contacted, it was important, according to the CEO, to other solution options in addition to UBS. This was the duty of the Board of Directors and could also CS's rather weak position in a negotiation. The Board of Directors discussed the various candidates that the Executive Board had considered for a transaction.

After rejecting those candidates who were unlikely to be interested in CS or did not sufficient resources for such a short-term transaction, three possible candidates remained. The management was thus

[1643] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG on March 16, 2023, p. 1
[1644] Minutes of the PUK meeting of 31.1.2024, p. 11
[1645] Minutes of the PUK meeting of 11.10.2023, p. 59
[1646] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG on March 16, 2023, p. 1 ff.
[1647] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG of 16.3.2023, p. 2 ff. FINMA informed the PUK that the Transacti- The merger structure had been the subject of several discussions between the authorities and UBS. FINMA had preferred a merger for reasons of legal certainty and had stated this to UBS and the other authorities. However, it had not taken a decision on the transaction structure and was not aware of any decision by other authorities (FINMA letter to the PUK dated 24.7.2024, p. 2)

agreed to these options further.[1648] The PUK has not received any information on the three candidates mentioned.[1649]

The Board of Directors also discussed the fact that the shareholders had to approve a transaction with UBS and that the Board of Directors was particularly dependent on the consent of the three largest shareholders.[1650]

In the event that no mature transaction proposal could be communicated by Sunday evening, the management prepared an alternative media release with the aim of calming the markets.

In addition, the PUK was told that CS had held talks with the asset manager BlackRock in the course of March 16. BlackRock had provided the impetus for this. The CS Board of Directors had primarily entered into these discussions in order to fulfill its duty of care towards CS. BlackRock insisted on meeting with despite the tight time window for preparing a deal (see section 7.2.4.1).[1651] Finally, BlackRock withdrew after a leak occurred (see section 7.2.4.3).[1652]

Overall, the outflows at CS on Thursday, March 16, 2023, amounted to between CHF 14 and 17 billion, depending on the source, around half of which was at the Swiss subsidiary (Credit Suisse (Schweiz) AG).[1653] According to his statements to the PUK, it was clear to the Chairman of the Board of Directors of CS from this point on that CS would not recover on its own. He was very surprised to learn that CS's Swiss business had hit even harder by the banking storm than last fall. For him, this meant that even in the home market, hope had been lost that the bank would ever recover.[1654]

Internal preparations at UBS

UBS began its due diligence process regarding CS on Thursday,
March 16. To this end, it initially tried unsuccessfully to access CS's virtual data room.[1655] UBS only gained partial access to the data room during the course of Thursday and only gained full access on Friday.[1656] According to UBS, the data room played an important role in the assessment of a possible offer.[1657] From CS's perspective, however, the usefulness of the data room was limited. In the hectic rush of the critical week in March, UBS had to make assumptions about CS independently of the data in the virtual data room.[1658]

[1648] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG on March 16, 2023, p. 2 f.
[1649] In application of Art. 153 para. 2 ParlA, the PUK may request information from private individuals.
and receive documents if this is necessary for the exercise of overall supervision. In principle, these persons are entitled to the procedural status of a providing information. Persons providing information are not obliged to testify before the PUK (Art. 155 para. 4 ParlA). The interviews conducted on March 15 give rise to the suspicion that the other candidates could be Morgan Stanley and Saudi National Bank, among others (section 7.2.1).
[1650] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG of 16.3.2023, p. 3
[1651] Minutes of the PUK meeting of 31.1.2024, p. 62 f.
[1652] Written answers to the PUK dated 30.3.2024, p. 6
[1653] Minutes of the PUK meeting of 11.10.2023, p. 58; minutes of the PUK meeting of 31.1.2024, p. 55; FINMA ruling of 19.3.2023 in the matter of Credit Suisse Group AG, recital 6
[1654] Minutes of the PUK meeting of 31.1.2024, p. 20
[1655] Minutes of the PUK meeting of 31.1.2024, p. 15; Minutes of the PUK meeting of 24.4.2024, p. 64
[1656] Transcription of the AF meeting of 16.3.2023, p. 14; minutes of the PUK meeting of 31.1.2024, p. 61 ff.; minutes of the PUK meeting of 14.2.2024, p. 26 and 36
[1657] Minutes of the PUK meeting of 14.2.2024, p. 26
[1658] Minutes of the PUK meeting of 31.1.2024, p. 14

7.2.3 Implementation work on March 17 on the Federal Council's decisions of March 16 - Intensification of the situation at CS

The following table provides an overview of the most important events on the third day of the acute crisis. The main developments are in bold.

Table 20: Chronology of events on Friday, March 17, 2023

Time	*Event*	*Actors involved*
4.56 h	CS an approvable restructuring plan as requested by FINMA.	FINMA, CS
	The foreign authorities are informed about a possible merger between CS and UBS.	FINMA, EFD, SNB
7.00 a.m.	High-level meeting authorities with UBS	EFD, SNB, FINMA
7.30 a.m.	High-level meeting authorities with CS	EFD, SNB, FINMA
9.00 a.m.	Consultation of the Federal Council during the ordinary meeting	Federal Council
10.30 a.m.	**Meeting of the State Secretary for International Financial Matters with the Chairmen of the Boards of Directors and CEOs of the two major banks with the aim of facilitating negotiation talks**	**SIF, CS, UBS**
12.45 p.m.	**CS applies to the SNB for ELA+ in the amount of CHF 20 billion.**	**SNB, CS**
1.00 p.m.	Meeting of the authorities with UBS	EFD, SNB, FINMA, UBS
14.30-17.00 Clock	Meeting of the LG	EFD, SNB, FINMA
5.30 p.m.	FINMA talks with CS: CS explains that no bail-in is necessary.	FINMA, CS
In the course of the day	Separate telephone calls between the FDF, the SNB and FINMA and foreign authorities	EFD, SNB, FINMA
19.00 hrs	SIF and FINMA conference call with UBS	SIF, FINMA, UBS
8.45 p.m.	High-level exchange at Core College and CMG	FINMA
Total liquidity loss at CS on March 17, 2023: 10.1 billion francs		

The individual developments are presented in chronological order below. Developments that are directly related in terms of content are dealt with in the same section, specifically international contacts and the involvement of other federal agencies.

7.2.3.1 Continued preparation of the merger by the authorities and the banks

As instructed, CS submitted a revised draft of the restructuring plan to FINMA at 4.56 a.m., corrected with the latest figures and ready for approval.

FINMA suspended operational preparations for the implementation of the emergency plan from Friday morning, March 17, 2023, until Sunday, March 19. The reason for this was the

The Federal Council's decision the previous day to activate extraordinary liquidity assistance (as part of a PLB) by emergency law. As a result, there was no longer any significant obstacle to justifying the criterion of the likelihood of success of a restructuring in accordance with Article 28 of the Banking Act. Conversely, it was highly questionable whether a restructuring would have had any prospect of success without sufficient liquidity measures.[1659]

As on the previous day, the Head of the FDF, the State Secretary for International Financial Matters, the Director of the FFA, the Chair of the Board of Directors and the Director of FINMA as well as the Chairman and Vice-Chairman of the SNB spoke again on the phone at 7 a.m. with the Chairman of the Board of Directors and the CEO of UBS.[1660] UBS reported that it had gained a poor first impression of the negotiations. There were problems with access to the CS data room. CS was obstructing the negotiations and was looking for alternatives to the merger with UBS.

UBS also explained that its own shareholders had raised objections to the transaction. In this context, UBS considered entering into a so-called *asset deal* or *asset purchase* with CS instead of a merger. UBS also emphasized how important it was for the authorities to talk to the US and British supervisory authorities. It would only agree to the transaction with CS if it did not hinder its growth in these countries.[1661]

For their part, the authorities informed UBS about the newly introduced liquidity instruments (ELA+ and PLB). They emphasized that due to the uncertainty on the markets and the continuously deteriorating situation of CS, it was imperative to communicate on Sunday evening.[1662] no transaction between UBS and CS materialized, the authorities would have to call for the restructuring of CS.[1663] According to the minutes of the subsequent meeting of the UBS Board of Directors, the SNB and FINMA informed UBS at this meeting that, in their opinion, CS would no longer be viable on Monday.[1664] The Federal Councillor concluded by making it clear that everyone expected Switzerland to act.[1665]

This meeting was immediately followed a video conference between the same representatives of the authorities and the Chairman of the Board of Directors and the CEO of CS. The authorities emphasized that in view of the acute crisis situation, FINMA believed the only option was resolution or a merger with UBS.[1666] They reiterated that the transaction with UBS was their preferred solution option and emphasized the high time pressure. They pointed out to CS that the bank might no longer exist once the *point of non-viability* was reached and that the foreign authorities would take a similarly critical view of the situation.[1667]

[1659] Otherwise, the emergency plan would have to the fore. Due to the regarding the feasibility of a PLB by emergency law (political decision), FINMA not only prepared the preferred strategy of a restructuring including the use of the TLAC and support via PLB from the beginning of the acute crisis, but also the triggering of CS's emergency plan - which would have been a solution with far-reaching consequences for the Swiss financial centre; e-mail from a FINMA employee dated 17.3.2023 (9.30 a.m.); statement dated 5.8.2024 as part of the administrative consultation

[1660] FINMA (2023): Extended chronology dated 26.09.2023, p. 30; Letter from UBS to PUK dated 15.3.2024, Annex 3

[1661] Written answers to the PUK dated 12.5.2024

[1662] Written answers to the PUK dated 25.42024; minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG on 17.3.2023

[1663] Written answers to the PUK of 12.5.2024; minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG of 17.3.2023

[1664] Minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG on 17.3.2023

[1665] Written answers to the PUK of 1.5.2024 [1666]

Minutes of the PUK meeting of 31.1.2024, p. 7 [1667]

Written answers to the PUK of 12.5.2024

For its part, CS reported on the status of the negotiations: In their view, they had not yet properly begun and UBS had not yet been granted access to the data room.[1668] CS complained that UBS had not responded to their contact, had not signed the non-disclosure agreement with them and generally did not appear very cooperative. It asked the authorities for support in this regard and mentioned that it would also look for solutions other than the transaction with UBS. CS also suggested the rating agencies about the possible transaction so that they would refrain from a further *downgrade*.[1669]

7.2.3.2 Further Federal Council meeting on the situation of CS - examination of options

The Federal Council discussed the topic of CS again at its ordinary meeting on Friday, March 17, at 9 a.m.. The Federal Council had the emergency ordinance passed the previous evening as documentation. According to the information provided by the PUK, the Federal Council had no further documentation on the various options discussed at this meeting.

The FDF informed the Federal Council that CHF 10 billion had been withdrawn from CS the previous day and that the bank was aware of its situation.[1670] According to the minutes, the TPO scenario was discussed and it was noted that this solution did not seem very realistic, as it would require too much preparation time and involve enormous legal challenges. However, it is not clear from the minutes whether the comments on the TPO option came primarily from the head of the FDF or whether skepticism towards the TPO was generally shared. Members of the Federal Council out with concern that this scenario had been presented as an alternative the day before and no longer seemed realistic.[1671]

The Federal Council decided to have another solution worked out in addition to the merger with UBS. It is not clear from the minutes of the meeting which alternative solution this was. Testimony was given before the PUK that the Chairman and Vice Chairman of the SNB had given the impression in other discussions from that Friday that CS should be temporarily nationalized to ensure financial stability if the merger with UBS failed.[1672] Meanwhile, it was FINMA's view that CS should be restructured in this case.[1673] The Federal Council finally decided to hear the representatives of the authorities on the situation of CS and the possible solution on Sunday morning.[1674]

7.2.3.3 Discussion between the big banks at UBS in Zurich, accompanied by the State Secretary for International Financial Matters

As negotiations between UBS and CS been slow up to this point, the State Secretary for International Financial Matters arranged a meeting with the chairmen and CEOs of the two big banks at UBS

[1668] It is not clear from the documents analyzed why UBS should not have had access to the CS data room at this time.
Written answers to the PUK of 25.4.2024 [1669] Written answers to the PUK of 12.5.2024 [1670] Minutes of the Federal Council meeting of 17.3.2023, p. 1
[1671] Minutes of the Federal Council meeting of 17.3.2023, p. 1
[1672] Minutes of the PUK meeting of 1.11.2023, p. 62
[1673] Minutes of the PUK meeting of 1.11.2023, p. 62; Minutes of the PUK meeting of 1.5.2024, p. 46; Minutes of the PUK meeting of 15.5.2024, p. 70
[1674] Minutes of the Federal Council meeting of 17.3.2023, p. 2

in Zurich at 10.30 a.m. The Vice Chairman of UBS was also present. According to the information provided by the PUK, this was the only time that the top representatives of the two big banks met physically during these critical days in March until the press conference on Sunday.[1675]

The State Secretary's aim was to achieve professional cooperation. CS was to grant UBS access to the data room as soon as possible,[1676] and the two players were to intensify their direct contacts with each other.[1677] According to the bank representatives, the State Secretary clearly conveyed in this conversation that, from the authorities' perspective, the transaction between CS and UBS was preferable to a resolution.[1678] Referring to the extraordinary circumstances, she clearly stated that the scope for negotiation was limited. The aim was to have a solution by Sunday.[1679]

The purpose of this meeting before the PUK was presented differently by the banks: While representatives of UBS stated that it been convened due to the delaying tactics of CS,[1680] representatives of CS said that UBS should be encouraged at this meeting to enter into a stronger dialog with CS.[1681] According to their statements to the PUK, the Chairman of the Board of Directors and the CEO of CS had felt that they were mere recipients in the preparation of the transaction and the structuring.[1682] According to statements made by various representatives of the authorities before the PUK, a dialog between the big banks was almost impossible at that time.[1683] The conversation was sometimes perceived as surreal and the attitude of the bank representatives as less than serious.[1684]

Following this meeting, the CEOs of the two big banks discussed the possible transaction. They mainly discussed the structure of a possible merger, the priorities and the schedule for the following two days.[1685] This meeting, at which a rough timetable for the next steps was agreed, was said to have been productive.[1686]

7.2.3.4 Internal discussions at CS and UBS following the meeting with the State Secretary for International Financial Matters

Joint extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG

At an extraordinary meeting of the Board of Directors of CS Group AG and CS AG, the Chairman of the Board of Directors and the CEO of CS summarized the events since the previous day's Board meeting. In particular, the Chairman of the Board of Directors reported on the meeting with the State Secretary for International Financial Matters and the Chairman of the Board of Directors and the CEO of UBS. Since

1675 Minutes of the PUK meeting of 24.4.2024, p. 67
1676 Minutes of the PUK meeting of 24.4.2024, p. 67. Due to contradictory information, the PUK was unable to fully clarify whether UBS had gained access to the CS data room at this time.
1677 Written answers to the PUK dated 25.4.2024; Written answers to the PUK dated 5.5.2024
1678 Letter from UBS to PUK dated 15.3.2024, Annex 5
1679 Minutes of the PUK meeting of 31.1.2024, p. 63
1680 Minutes of the PUK meeting of 14.2.2024, p. 36
1681 Minutes of the PUK meeting of 31.1.2024, p. 7
1682 Minutes of the PUK meeting of 31.1.2024, p. 7, 68
1683 Minutes of the PUK meeting of 24.4.2024, p. 67
1684 Minutes of the PUK meeting of 24.4.2024, p. 67, 71
1685 Minutes of the PUK meeting of 31.1.2024, p. 63
1686 Minutes of the Extraordinary Meeting of the Board of Directors of Credit Suisse Group AG and
Credit Suisse AG of 17.3.2023, p. 1; Minutes of the Extraordinary Meeting of the Board of Directors
Meeting of UBS Group AG and UBS AG of 17.3.2023, p. 2

UBS appears to be more open to discussions following this meeting. However, direct contact between the banks remained extremely limited. He emphasized that the transaction with UBS was being pursued as a priority, but was not the only option. He also pointed out that there now around 72 hours left to find a solution - otherwise FINMA would announce the liquidation of the CS Group on Sunday evening. The authorities would see the sale to UBS as the only alternative to liquidation and would be prepared to provide the necessary support for the transaction. According to the Chairman of the Board of Directors, the State Secretary for International Financial Matters and the SNB understood how devastating the liquidation of CS would be for Switzerland and UBS, but FINMA did not necessarily.[1687]

The Board of Directors feared that it would be confronted with an unacceptable offer from UBS and would have no alternative but to wind up the bank. It then discussed the likelihood that CS shareholders would approve the sale to UBS. Without their approval, the transaction - even if it had already been announced - could not be carried out.[1688] Finally, the Board of Directors discussed the status of discussions with other potential negotiating partners, which were rather unsuccessful.[1689]

The CEO of CS informed the CS Board of Directors that he expected to receive UBS's final terms in writing on Saturday afternoon.[1690]

Joint extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG

During the extraordinary meeting of the Board of Directors, the Chairman of the Board of Directors and the Executive Board of the two UBS Group companies informed the Board of Directors about the developments concerning CS since the meeting with the authorities on Wednesday. UBS had identified the key risks at CS as part of initial clarifications. These key risks were located in the *Non Core Unit* (NCU)[1691] and their reduction was complex. The management explained that UBS would probably have no interest at all in certain CS business areas and would have to reduce them. In addition, CS has a significantly higher risk appetite in certain areas than UBS. The Chairman of the Board of Directors and the Executive Board also reported on the willingness of the federal authorities to support the transaction with CS.[1692]

The Board of Directors then discussed the consequences of UBS not agreeing to the transaction with CS. It considered that the Swiss financial system would suffer an extreme loss of credibility and that UBS would suffer major reputational damage and lose many . It therefore came to the conclusion that a merger with CS was clearly the preferred solution.[1693]

[1687] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG of March 17, 2023, p. 1 f.
[1688] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG on March 17, 2023, p. 1 f.
[1689] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG of 17.3.2023, p. 2
[1690] Minutes of the extraordinary meeting of the Board of Directors of Credit Suisse Group AG and Credit Suisse AG dated March 17, 2023, p. 2
[1691] Non-core business. This unit, set up by Credit Suisse as part of its new strategy announced in October 2023, served to accelerate the wind-up of non-strategic, low-return businesses and markets in order to free up capital.
[1692] Minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG of 17.3.2023, p. 2
[1693] Minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG of 17.3.2023, p. 2

The Board of Directors also discussed the structure of a possible transaction. It confirmed that an *asset deal* would be more interesting than a merger because the former would not require an Extraordinary General Meeting of UBS shareholders. The Board of Directors speculated that the CS shareholders would have a simpler choice to make than those of UBS. They would have to decide between the complete loss of value of their shares and the UBS offer. The authorities were currently clarifying the question of whether CS's AT1 bonds could be written off.[1694]

With regard to the demands made by UBS, the management stated that the federal authorities would take them into consideration, but that there was still work to be done. The federal authorities had contacted foreign supervisory authorities and in particular the British and US regulators. They would discuss UBSs concerns about not having to convert the UBS branch in the United Kingdom into a subsidiary and not subject to Fed requirements. The Board of Directors ultimately agreed that a material adverse change clause (MAC clause) should be part of the agreement with CS.[1695]

UBS representatives testified before the PUK CS was of no value to UBS on March 16 or 17 because it was not interested in the investment bank. It would have cost UBS too much to get rid of CS's investment banking business.[1696]

7.2.3.5 CS application for ELA+ in the amount of 20 billion Swiss francs

On Friday morning, things hectic because certain CS subsidiaries in Switzerland had become insolvent.[1697] The parent company (Credit Suisse AG) therefore requested liquidity assistance of CHF 20 billion from the SNB at 12.45 p.m. on March 17, 2023. One of the reasons given by CS for its request was that it had suffered further outflows in Wealth Management and Swiss Universal Bank and was struggling to hold liquidity in the right currencies. It could no longer meet the Fed's requirement to hold 18 billion US dollars (see section 7.2.2.8).[1698]

In contrast to the liquidity granted on the previous day (ELA), the Emergency Ordinance of March 16, 2023 enabled CS to draw liquidity under ELA+ without providing corresponding collateral.

A precondition for the granting of ELA+ was a solvency confirmation from FINMA, which FINMA immediately issued to the SNB. The SNB subsequently granted the request for ELA+.[1699] This liquidity assistance was intended to ensure CS's survival until the weekend (see Box 17 in section 7.2.2.5).[1700]

According to one person consulted, CS would have gone bankrupt on Friday if the Swiss authorities had not found a solution by Friday evening. Since, as described above, the ELA+ was not tied to the provision of collateral, granting it made it possible to inject liquidity into the foreign subsidiaries and thus avert the bankruptcy of CS.[1701]

On the same day, the SNB provided CS with liquidity in US dollars and euros.

[1694] Minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG of 17.3.2023, p. 5
[1695] Minutes of the extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG of 17.3.2023, p. 5
[1696] Minutes of the PUK meeting of 10.4.2024, p. 19
[1697] Minutes of the PUK meeting of 1.5.2024, p. 54
[1698] ELA application by CS to the SNB dated 17.3.2023, p. 2
[1699] FINMA (2023): Lessons learned from the CS crisis; minutes of the PUK meeting of 29.11.2023, p. 9
[1700] Minutes of the PUK meeting of 29.11.2023, p. 14
[1701] Minutes of the PUK meeting of 1.5.2024, p. 54

7.2.3.6 Advice on the alternative scenarios in the steering committee

The meeting of the SC of March 17, which began at 2.30 p.m., was reconstructed below on the basis of draft minutes (see section 13.1.1 on the problem of taking minutes). The Chairman of the SNB informed the participants about the liquidity supply of CS on this and the previous day. There had been individual problems with the distribution of currencies, which had since been resolved. According to the Chairman of the SNB, a lifting of the so-called upstreaming ban by FINMA would be the simplest solution to the problem of the parent bank's liquidity supply. However, FINMA was not prepared to lift this ban,[1702] as the emergency plan could then no longer be implemented. This had to be avoided during the acute crisis.[1703] CS Switzerland, which for reasons of emergency planning had members of the Board of Directors who were independent of the CS Group - including in particular the Chairman - also resisted the excessive transfer of liquidity to the parent bank in order to ensure the operation of systemically important functions.[1704] For this reason, liquidity of around 20 billion Swiss francs had already been made available in application of emergency law (ELA+). The credit framework and the implementation of the bankruptcy privilege would still show uncertainties in the implementation. The liquidity support had therefore been set up in the best possible way. The liquidity support granted in this way is sufficient for the moment, but CS's needs could increase exponentially.[1705]

The participants then discussed the risk of a downgrade of CS by the rating agencies, which would further worsen the situation.[1706]

The TPO was also discussed according to the draft minutes and the statements of a person heard by the PUK. The representatives of the SNB have preferred a TPO of the entire group rather than a liquidation of CS if the takeover by UBS did not materialize.[1707] The FFA Director acknowledged that a TPO of the entire group would bring certain advantages. However, this solution would be politically, legally and economically delicate. The head of the FDF and the entire Federal Council were against a TPO solution. Due to the uncertainty as to whether an agreement would be reached between UBS and CS, the LG decided to pursue the TPO solution as well as the restructuring solution for the time being.[1708]

According to the Vice-Chairman of the SNB, a dramatic implosion was underway that could affect the sales scenario and jeopardize financial stability. He was of the opinion that the *point of non-viability* been reached. The Head of the FDF stated that the measures to be taken this weekend would be decisive.

FINMA continues to finalize the draft restructuring order

In parallel with the preparations for the merger of CS with UBS, FINMA finalized draft restructuring order in these days of March, which it had been preparing since October 2022 (see section 7.2.2.6). On Friday, March 17, a draft translated into English was also available, which included the history of the CS crisis, the group structure of CS and the applicable capital and liquidity requirements.

1702 FINMA internal note on the LG of 17.3.2023
1703 FINMA statement of 9.8.2024 as part of the administrative consultation
1704 FINMA statement of 9.8.2024 as part of the administrative consultation; Written answers to the PUK dated 1.6.2024, p. 3; e-mail from an employee of the FINMA from 17.3.2023 (6.22 a.m.)
1705 FINMA internal note on the LG dated 17.3.2023, p. 1 f.
1706 FINMA internal note on the LG of 17.3.2023, p. 2
1707 Minutes of the PUK meeting of 15.5.2024, p. 70
1708 Minutes of the PUK meeting of 1.5.2024, p. 46

The draft of the restructuring order also shows that FINMA considered the restructuring to be feasible.[1711] The draft of the restructuring order also shows that FINMA considered the restructuring to be feasible.

7.2.3.7 Further preparations for the merger with the big banks

A technical telephone conversation between the authorities (FINMA, SNB, SIF) and UBS took place at around the same time as the Federal Council meeting. The conditions submitted by UBS were discussed from a regulatory perspective.[1712]

At 4 p.m., FINMA, SIF, the SNB and UBS held another telephone conversation at a technical level and discussed UBS's conditions from a regulatory perspective. No decisions were taken.[1713]

At 5.30 p.m., CS FINMA during a telephone conversation about the resolution that it was of the opinion that a *bail-in* was necessary or legally possible.[1714] The head of FINMA's Recovery and Resolution division pointed out to CS its legal obligation to cooperate in the preparation of the resolution, even if other possible solutions for its situation were being worked out at the same time.[1715]

Another meeting between the authorities and UBS took around an hour later. On the part of the authorities, the State Secretary for International Financial Matters, the Chairman of the SNB, the Director of FINMA and other representatives of the authorities took part. UBS was represented by various persons as well as its external advisors and lawyers, who presented their view of the structure of the transaction with CS.[1716] They also presented a revised list of conditions from UBS.[1717] This was described to the PUK as in part very extensive. It had caused a certain amount of irritation among the representatives of the authorities.[1718] In particular, UBS had described the merger solution envisaged by the authorities as risky and preferred a transaction structure in which UBS would acquire all CS subsidiaries (*asset deal*).[1719] An asset deal would not required a general meeting of the two companies, which still seemed necessary at that time in the case of a merger.[1720] This would have allowed UBS to leave the legal risks in the remaining CS. No resolutions were passed.[1721]

1709 FINMA's draft restructuring order in the CS case dated 17.3.2023. According to the draft restructuring , the following elements indicated that the conditions for restructuring had been met: CS was no longer able to finance itself on the market despite having received ELA, had suffered massive outflows and had the confidence of the markets (para. 55 et seq.). The parent company could therefore become insolvent in the foreseeable future and ultimately go bankrupt (para. 57). The holding company could also be by this (margin no. 58 et seq.). In addition, the restructuring was proportionate (margin no. 60 ff.).

1710 FINMA's draft restructuring order in the CS case dated 17.3.2023. In addition to the bail-in, the restructuring order also provided for the full implementation of the restructuring measures. write-down of the AT1 bonds (para. 73 et seq.). FINMA's draft restructuring order

1711 in the CS case dated 17.3.2023, margin no. 82 et seq.

1712 Written answers to the PUK dated 17.5.2024

1713 Written answers to the PUK dated 17.5.2024

1714 FINMA (2023): Extended chronology of 26.09.2023, p. 30

1715 Written answers to the PUK dated 9.4.2024

1716 FINMA (2023): Extended chronology of 26.09.2023, p. 30; Written answers to the PUK from 12.5.2024

1717 Written answers to the PUK dated 25.4.2024

1718 Written answers to the PUK dated 23.4.2024

1719 Written answers to the PUK dated 12.5.2024

1720 Statement of 31.7.2024 as part of the administrative consultation

1721 Written answers to the PUK dated 12.5.2024

Box 19: Arrangement for the write-down of AT1 bonds in the acute crisis in March 2023

AT1 bonds are part of the additional core capital of a systemically important bank and fulfill the function of absorbing losses in a crisis situation and enabling the continuation of business activities. In return for the possible occurrence of the risk of a total loss of these instruments, investors receive an attractive interest rate. The repayment of AT1 bonds is only possible with the approval of FINMA.[1722] In accordance with Article 29 CAO, the AT1 bonds are written off in full at the *point of non-viability (PONV*, see section 7.2.4.4) by means of a full debt reduction or conversion to restructure the bank. This must be provided for in the terms of issue of the AT1 bonds or the articles of association.[1723] The conversion or debt reduction must take place at the latest before the public sector assistance is utilized or at the time when FINMA orders this to avoid insolvency.[1724] In the case of public sector assistance, the conversion takes effect for investors before the assistance is utilized so that the capital injected by the public sector is not diluted by the conversion. This is in line with the Basel standard.[1725]

The write-down of CS's AT1 bonds led to a loss of claims by the AT1 bond . This served to strengthen the bank's CET1 capital.[1726] The bond conditions defined the cases in which the could lose their claims. According to the relevant prospectus, the AT1 bonds could be written down in two scenarios: in the event of a *contingency event* or a so-called *viability event*.[1727]

After FINMA had requested CS to write off the AT1 instruments on the afternoon of March 19, 2023, it formally instructed CS at 10.01 p.m. by means of a ruling to carry out the write-off. FINMA based its decision on the Banking Act and the Federal Council's emergency ordinance. The Banking Act allows FINMA to issue specific instructions to the governing bodies of a bank at the time of imminent insolvency (Art. 26 para. 1 let. a). The Emergency Ordinance clarified as an additional legal basis that FINMA could specifically instruct the write-off of AT1 instruments (Art. 5a NVO). Following the formal instruction to write-off by FINMA, the write-off was carried out by CS based on the contractual terms of the AT1 instruments. The contractual

[1722] Bingert, Philipp / Heinemann, Bernhard (2013): Commentary on Art. 4. In: Watter, Rolf / Vogt, Nedim Peter / Bauer, Thomas / Winzeler, Christoph (eds.): Basler Kommentar Bankengesetz. 2nd ed. Basel: Helbing & Lichtenhahn, para. 32

[1723] FINMA Circular 2013/1 "Eligible capital - banks", margin no. 79

[1724] Art. 29 para. 2 CAO

[1725] Final elements of the reforms to raise the quality of regulatory capital issued by the Basel Committee dated 13.1.2011

[1726] Bolton, Patrick / Jiang, Wei / Kartasheva, Anastasia (2023): The Credit Suisse CoCo Wipeout: Facts, Misperceptions, and Lessons for Financial Regulation. In: Swiss Finance
Institute Research Paper No. 23-32 dated 12.5.2023, p. 10, https://www.sfi.ch/en/publications/n-23-32-the-credit-suisse-coco-wipeout-facts-misperceptions-and-lessons-for-financial-regulation (as at: 26.9.2024)

[1727] Bolton, Patrick / Jiang, Wei / Kartasheva, Anastasia (2023): The Credit Suisse CoCo Wipeout: Facts, Misperceptions, and Lessons for Financial Regulation. In: Swiss Finance Institute Research Paper No. 23-32 of 12.5.2023, p. 10, https://www.sfi.ch/en/publications/n-23-32-the-credit-suisse-coco-wipeout-facts-misperceptions-and-lessons-for-financial-regulation (as at: 26.9.2024)

The terms of AT1 bonds stipulate that they will be written off by a bank if it is rescued with the help of state funds.[1728]

As described in section 6.3.3.1, the authorities had already addressed issues relating to the possible ordering of the write-down of AT1 bonds under various scenarios in October 2022. The write-down had already addressed in the AF of 19 and the LG of 21 October 2022. UBS now also the write-off of AT1 bonds in its revised list of claims from the late evening of March 16. FINMA and the FDF specified the instruction to write off the AT1 instruments on Friday, 17 March, and discussed the measure with UBS on the one hand and the LG on the other. According to statements made by its representatives to the PUK, CS only found out on Sunday morning,
March 19, of the planned order to write off the AT1 bonds.[1729]

In its ruling of 19 March, FINMA instructed CS (specifically Credit Suisse Group AG) to write off all AT1 instruments and to the creditors concerned immediately. In response to CS's request for reconsideration of the employee participation programs replicated in the AT1 instruments, FINMA confirmed its initial ruling of 19 March 2023 in its ruling of 22 March 2023.[1730] It based its decision on both the PLB Emergency Ordinance (as amended on 19 March 2023) and the Banking Act as well as the terms and conditions of the bonds in question.[1731]

Article 5a of the Emergency Ordinance, which was inserted on March 19, 2023 and repealed on September 15, 2023, provided that FINMA could instruct CS to write off additional core capital at the time of the liquidity assistance loan with default guarantee (PLB). The fact that the Emergency Ordinance specifically provided for the write-down of AT1 bonds is due to the efforts of the federal authorities to create an additional, "clearer legal basis" for FINMA to instruct the write-down. The provision in Article 5a of the Emergency Ordinance on the write-down of additional core capital was also emphasized in the ordinance for reasons of transparency.[1732]

At the time of publication of this report, the legality of the order to write off the AT1 bonds was being reviewed by the Federal Administrative Court (see section 8).

7.2.3.8 Contacts of the federal authorities with foreign authorities

Various contacts between the FDF, the SNB and FINMA and representatives of foreign authorities also took place during the course of March 17.

The head of the FDF again telephoned the British Finance Minister (at 3 p.m.) and the US Treasury Secretary (at 3.30 p.m.).[1733] According to the information note for this conversation, the Federal Councillor was instructed to inform her counterparts that the Federal Council had decided to

1728 "FINMA informs on basis for write-down of AT1 capital instruments", FINMA media release dated 23.3.2023. The instruction to write down was given against the background that the aim of each of the options available on 19 March 2023 had to be to restore confidence and stop the bank run immediately. This objective would have been jeopardized if UBS had not been sufficiently or less strongly than before from the perspective of the financial markets after the completion of the transaction (FINMA statement of 9.8.2024 as part of the administrative consultation)

1729 The above information is based on a source or sources available to the PUK, but not specifically because of overriding public or private interests.
conflict with private interests.

1730 FINMA ruling of 22.3.2023 in the matter of Credit Suisse AG

1731 FINMA ruling of 19.3.2023 in the matter of Credit Suisse AG

1732 Information note from the FDF dated 18.3.2023, p. 2.

1733 Chronology of the FDF of 26.6.2023

and would make a decision over the weekend. She was also to inform them that UBS had undertaken to examine the state-supported takeover of CS. It also emphasized that the support of the US and UK authorities was necessary.[1734]

FINMA and the Fed exchanged views at 2.15 pm. The Head of the Banks division informed the US authority about the status of preparations for a solution with UBS. For its part, the Fed informed FINMA about CS's increasing payment difficulties in the USA. CS counterparties were withdrawing from certain transactions or demanding the provision of more collateral.[1735] The situation was particularly serious in the area of foreign currencies. For example, payments must be made in Swedish krona by Monday morning, which must be available at all costs, otherwise there will be a "*missed payment*". Overall, nervousness in the market is very high.[1736]

At around , FINMA contacted the Crisis Management Group and the Core College.[1737] The participants (employees of FINMA, SNB, Fed, PRA, FDIC and CS) discussed, among other things, the use of ELA and ELA+. The Swiss unit, Credit Suisse (Schweiz) AG, supported the parent bank, Credit Suisse AG, as far as it was able, making full use of its upstreaming options.[1738] ELA+ could also be lent directly to the parent bank, which alleviated the problems (see Box 16 in section 7.2.2.2).

The CMG explained that the Swiss authorities were planning to merge CS with UBS as a going concern as Plan A. A restructuring including bail-in and PLB is being prepared as Plan B in order to stabilize the situation of CS. The restructuring plan was announced to be sent out in English in the coming hours and was sent out early on March 18, 2023.[1739]

Shortly before 9pm, FINMA and the PRA spoke again on the phone. The PRA assured them of its support should CS and UBS join forces. UBS should contact them quickly to discuss the process. The PRA also confirmed that, in the event of a merger between CS and UBS, it would not require UBS's UK branch to be converted into a subsidiary.[1740]

7.2.3.9 Involvement of other federal agencies in crisis management on March 17

From the perspective of the PCU, the question also arose as to the extent to which, in addition to the directly involved authorities, other federal agencies that were also thematically affected were also involved. Apart from the involvement of the FOJ, which was also mentioned in chapters 7.2.1 and

[1734] FDF memo on telephone conversations with the British Chancellor of the Exchequer and the Treasury Secretary dated 17.3.2023

[1735] In fact, shortly before 3 p.m., CS received a message from Euroclear Bank that, with immediate effect, CS would no longer act as "Cash Correspondent" for the Swiss franc. would apply. From now on, money transfers would have to go through UBS (e-mail exchange between CS employees dated March 17, 2023 [3.05 p.m.]).

[1736] Email exchange between FINMA employees dated 19.4.2023 (18.55), p. 1 f.; according to the FINMA report, CS lost access to the foreign currency market on this day (FINMA [2023]: Lessons learned from the crisis, p. 69).

[1737] FINMA (2023): Extended chronology of 26.09.2023, p. 30. The PUK goes back to Based on the information received, it is assumed that the discussions with the CMG at 8 p.m. and those with the Core College at 8.45 p.m. were the same in terms of content.

[1738] Email from a FINMA employee to the then Director of FINMA and other persons dated 17.3.2023 (21.26). According to the information provided by the PUK, the Swiss unit to the parent company almost CHF 20 billion (e-mail exchange from FINMA employees dated 17.3.2023 [12.28 p.m.]).

[1739] FINMA statement of 9.8.2024 as part of the administrative consultation

[1740] Email exchange between FINMA employees dated 19.4.2023 (18.55), p. 2

7.2.2.7, the PUK was interested in the involvement of SECO, the federal government's competence center for all economic issues.

Federal Office of Justice

On March 7, the AF decided to commission the FOJ to carry out an analysis of emergency law, including in connection with the TPO (see section 6.4.3.2). On March 17 at 6 p.m., the Director of the FOJ heard about the possibility of a TPO for the first time from the Deputy Director of the FFA. During this conversation, the Deputy Director of the FFA stated that the Vice Chairman of the SNB would prefer a nationalization of CS to a merger with another bank or a liquidation.[1741] The Deputy Director of the FFA informed the Director of the FOJ about the ongoing work on an ordinance for the TPO. The two interlocutors also discussed the size of the bank after a merger, the conditions of UBS and the responsibility of FINMA, which was the leading authority in this merger.[1742] (For the involvement of the FOJ on March 15, 2023, see section 7.2.1, for the involvement of the FOJ on March 18, 2023, see section 7.2.4.7).

SECO

In the wake of the massive difficulties at CS that became public on March 15 and 16, 2023, the head of the Economic Policy Directorate at SECO commissioned an analysis of the financial market turmoil on March 16, 2023, which dealt, among other things, with the development of the stock markets, the development of bank securities, the yields on ten-year government bonds and the interest rate differential on ten-year government bonds from the beginning of 2023 to March 17, 2023.[1743] At that time, SECO did not yet have any direct information on how serious CS's situation was and what measures were being examined by the authorities.[1744] The Deputy Director of SECO therefore contacted the Vice-Chairman of the SNB. The topic of the conversation was the economic aspects of the CS crisis.[1745] The SNB then sent the Deputy Director of SECO a PowerPoint presentation in which the SNB assessed the impact of the scenarios and quantified the economic costs. The Deputy Director of SECO promised the Vice-Chairman of the SNB that this document would not be passed on, not even to other persons within SECO.[1746]

The Deputy Director of SECO subsequently informed the Director of SECO and the Head of the EAER that information was available that SECO could use if necessary. He also provided them with SECO's internal analysis.[1747]

For her part, the Director of the FFA informed the Deputy Director of SECO about the solution scenarios on Friday morning after she had unable to reach the State Secretary of SECO.[1748] The Economic Policy Directorate prepared further analyses of the crisis situation and also assessed the economic impact of the scenarios. However, as SECO only had rudimentary information available, this assessment was limited to

1741 The PUK has further indications from hearings that suggest that the Chairman of the SNB long considered temporary nationalization be the more suitable solution for ensuring financial stability. Minutes of the PUK meeting of 1.11.2023, p. 36
1742 Written answers to the PUK dated 24.5.2024
1743 Written answers to the PUK dated 23.4.2024, Annex 2
1744 Minutes of the PUK meeting of 1.5.2024, p. 14
1745 Written answers to the PUK dated 12.5.2024, p. 1
1746 Minutes of the PUK meeting of 1.5.2024, p. 22, 29
1747 Minutes of the PUK meeting of 1.5.2024, p. 22, 29
1748 Minutes of the PUK meeting of 1.5.2024, p. 51

The analysis was based on known macroeconomic data and information and remained general.[1749] Both the naming of the scenarios and the assessment of the economic consequences differed from the SNB's analyses.[1750]

WEKO

Finally, the then Director of FINMA the Director of the COMCO Secretariat by telephone at around 8.30 pm. He informed him that a takeover of CS was being negotiated and that FINMA responsible for approving it.[1751] According to an e-mail from FINMA to SIF, COMCO had refused to issue a statement on the merger between CS and UBS by Sunday in application of Article 10 paragraph 3 of the Cartel Act because the deadline was too tight. A consultation would probably take several weeks.[1752]

7.2.4 Intensive continuation of negotiations and preparation of possible alternatives on March 18

The following table shows the individual events on the third day of the acute crisis. These are described in the following sub-chapters. The key milestones are highlighted in bold.

Table 21: Chronology of events on Saturday, March 18, 2023

Time	*Event*	*Actors involved*
8.00 a.m.	Conference call LG with UBS	EFD, FINMA, SNB, SIF, EFV, UBS
9.00-9.30 o'clock, 10.15-10.45 a.m., from 11.00 a.m.	Internal meeting of the LG (two interruptions)	EFD, FINMA, SNB, SIF, EFV
9.30-10.15 o'clock, 10.45-11.00 a.m.	Conference call LG with CS, CS brings up Black Rock as a possible takeover partner	EFD, FINMA, SNB, SIF, EFV, CS
11.00 a.m.	Separate telephone calls between the Head of the FDF and the President of the SNB and members of the management of BlackRock	FDF, SNB
12.15 p.m.	Letter from FINMA to CS regarding submission of an approvable restructuring plan	FINMA
Saturday afternoon	FINMA's Chairman of the Board of Directors contacts Sergio Ermotti for potential restructuring	FINMA
12.30-14.15 Clock	Extraordinary meeting of the Board of Directors of CS Group AG	CS
14.00-15.30 clock	Extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG	UBS
14.40-15.30 clock	**Extraordinary meeting of the FINMA Board of Directors. At the request of the Executive Board, the FINMA Board of Directors approves the position**	**FINMA**

[1749] Minutes of the PUK meeting of 1.5.2024, p. 31
[1750] Minutes of the PUK meeting of 1.5.2024, p. 22 ff.; Financial market turbulence, SECO factsheet of 17.3.2023
[1751] COMCO opinion of 25.9.2023 pursuant to Article 10 para. 3 CartA and recommendation

pursuant to Article 45 para. 2 CartA, point 27
[1752] E-mail from FINMA to the SIF dated 18.3.2023 (9.23 a.m.)

Time	*Event*	*Actors involved*
	of FINMA on the key points of the transition including the order to write off the AT1 bonds.	
3.00 p.m.	High-level exchange Core College	FINMA, Fed
3.30 p.m.	High-level exchange authorities with the CEO and the Chairman of the Board of Directors of UBS	EFD, SNB, FINMA, UBS
17.00-18.40 clock	**Extraordinary Federal Council meeting, information note FDF**	**Federal Council, FDF**
17.15-18.00 clock	Extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG	UBS
18.00-19.45 Clock	Extraordinary meeting of the Board of Directors of Credit Suisse Group AG	CS
6.15 p.m.	Letter from CS to FINMA with adapted restructuring plan in approvable quality	CS
6.45 p.m.	High-level exchange authorities with the CEO and the Chairman of the Board of Directors of UBS	SNB, FINMA, SIF, EFV, UBS
7.00 p.m.	Telephone conversation between the Head of the FDF and the Saudi Minister of Finance Mohammed Al Jadaan	EVS
Between 8.00 and 20.30 hrs	Negotiations with UBS on the purchase price and the loss guarantee. Preliminary agreement between the authorities and UBS in the evening on a purchase price of CHF 1 billion and a *second loss protection* of CHF 5 billion.	EFD, SNB, FINMA, UBS
20.10 hrs	**Agreement between FDF and UBS**	**FDF, UBS**
20.30-21.15 Clock	Extraordinary meeting of the Board of Directors of UBS Group and UBS AG. The UBS Board of Directors is fundamentally committed to the merger with CS.	UBS
After 21.00	Telephone call between the Chairman of the UBS Board of Directors and the Chairman of the CS Board of Directors. UBS informs CS of the purchase price of CHF 1 billion.	CS, UBS
9.15 p.m.	Information of the FinDel President by the FFA Director	EVS
Between 9 and 9 pm	Work on the emergency ordinance and the TPO	FOJ, FFA, SIF with the involvement of the SNB and FINMA
In the course of the day	Separate telephone calls by the SNB Chairman with A. Bailey (BoE), C. Lagarde (ECB), F. Villeroy de Galhau (Banque de France), J. Powell (Fed)	SNB

The individual developments are presented in chronological order below. Where appropriate, related events have been dealt with in the same section, in particular the international contacts and the authorities' negotiations with the banks.

7.2.4.1 Discussions between the Steering Committee and the banks and clarifications regarding the possibility of a sale to BlackRock

On the morning of March 18, 2023, the LG discussed the status of negotiations on a merger of CS and UBS at a meeting that was interrupted by several separate video calls with the two banks.

At 8.00 a.m., an initial meeting of the LG took place with the CEO, the Chairman of the Board of Directors and other members of the Board of Directors of UBS. UBS had addressed those positions of CS that did not fit into UBS's strategy and were expected to cause operating costs over many years.[1753] The bank had also referred to the resistance of its investors to the merger and thus justified the need for a guarantee. The UBS representatives had demanded a guarantee from the Confederation for the losses of the *Non Core Unit*, but were not sure about the form this would take. The write-off of the AT1 bonds had combined with the federal guarantee in these considerations. This would have increased UBS's loss absorption capacity to a double-digit billion amount, which was categorically rejected by the authorities.[1754]

Furthermore, UBS had discussed the status of the due diligence review with the authorities, which had not revealed any "showstoppers" up to that point, but significant risks and a large need for write-downs. UBS pointed out the major risks in the period between the announcement of the merger and its completion and noted that it also require liquidity support.[1755] Subsequently, FINMA also exchanged information with UBS about the contact with the US and UK regulators, from whose side, according to UBS, there were no delays.[1756]

Following the exchange with UBS, the LG agreed that the merger of CS with UBS remained the preferred option, as it offered the lowest risk of destabilizing the national and international financial system. In the opinion of the authorities, the PLB by emergency law was also a necessary element in this scenario.[1757]

Exchange between the LG and CS - BlackRock as a new option

Shortly afterwards, from 9.30 a.m. to 10.15 a.m. and again at 10.45 a.m., the Regional Court held analogous discussions with the CEO and the Chairman of the Board of Directors of CS. According to the authorities, the CS Chairman of the Board of Directors brought up the option of a participation by the American investment company BlackRock as an alternative to a merger for the first time and unexpectedly for them[1758].[1759] BlackRock contacted CS and expressed serious interest despite CS's indication that only a full takeover before Sunday would be an option. CS had wanted to consider this option, as it had a responsibility to its shareholders to find the solution with the best possible conditions from its point of view.[1760]

[1753] FINMA internal note on the LG dated 18.3.2023, p. 2
[1754] Statement of 31.7.2024 as part of the administrative consultation; minutes of the PUK meeting of 24.4.2024, p. 67 f.
[1755] Written answers to the PUK dated 12.5.2024
[1756] Written answers to the PUK dated 12.5.2024; Written answers to the PUK dated 17.5.2024
[1757] FINMA internal note on the LG dated 18.3.2023, p. 2
[1758] Minutes of the PUK meeting of 11.10.2023, p. 64; minutes of the PUK meeting of 24.4.2024, p. 69. The SNB Chairman testified that CS had already mentioned BlackRock to the authorities as a possible buyer on March 15, 2023 (see section 7.2.1).
[1759] FINMA internal memo on the LG dated 18.3.2023, p. 2; Written answers to the PUK dated 4.2.2024, p. 4
[1760] Minutes of the PUK meeting of 31.1.2024, p. 62f.

According to the head of the FDF, CS had informed the authorities that it did not require any state aid due to the ongoing discussions with BlackRock.[1761] According to the members of the SC, the Chairman of the CS Board of Directors had not answered when he had informed the bank's Board of Directors about the BlackRock option, despite repeated requests from the Chairman of the FINMA Board of Directors.[1762] The Chairwoman of FINMA's Board of Directors the PUK that she had acted in consultation with the Director of FINMA and had wanted to use this question, among other , to establish the facts for a possible withdrawal of the guarantee. The CS Board of Directors FINMA should have been informed at the same time during such discussions.[1763]

As CS had not prepared any documents, it was given a deadline of 12.00 noon to prepare sufficient documentation on this option. Without written documentation, the authorities were unable to assess the feasibility of the proposal. From the LG's point of view, the proposal, if found to be feasible, should be examined in more detail immediately, as it would have brought significant advantages over the merger with UBS. Among other things, the gone concern of CS could have been avoided and the TBTF problem would not have exacerbated.[1764] BlackRock had held a due diligence meeting on legal issues on March 17 and 18. This meeting was attended by a high-ranking team on site and thus signaled material interest.[1765] CS had also given BlackRock access to the data room and the BlackRock team had spoken to various people from different business areas.[1766]

In the subsequent meeting at 11.00 a.m., the SC quickly came to the conclusion that an investment by BlackRock was not a valid option.[1767] The contacts between the head of the FDF and the president of the SNB with two members of the management of BlackRock also contributed to this conclusion. While one person had stated that he was not aware of the negotiations with CS, the other had made it clear to the authorities that BlackRock would not be joining CS.[1768] The BlackRock representative had told the SNB President that BlackRock could not and would not conduct negotiations if they were known to the public (see section 7.2.4.3 on the information leak). In addition, BlackRock had not wanted to take over CS's banking license, as the company would otherwise been supervised as a bank.[1769] This decision by BlackRock was confirmed to the FDF Chairman, the SNB President and the FINMA Chairman of the Board of Directors by the CS Chairman of the Board of Directors shortly afterwards at the CS Board Directors meeting (see below).[1770]

After the option with BlackRock was dropped, the LG agreed that a solution had to be found and communicated over the course of the weekend in order to avoid CS defaulting on Monday. The authorities therefore decided to focus again on finalizing the three remaining[1771] feasible alternatives.[1772]

1761 Minutes of the PUK meeting of 11.10.2023, p. 64
1762 Minutes of the PUK meeting of 1.11.2023, p. 12
1763 Minutes of the PUK meeting of 1.11.2023, p. 12
1764 FINMA internal note on the LG of 18.3.2023, p. 2
1765 Written answers to the PUK dated 30.3.2024
1766 Minutes of the PUK meeting of 31.1.2024, p. 62f.
1767 FINMA internal note on the LG of 18.3.2023, p. 3
1768 Minutes of the PUK meeting of 11.10.2023, p. 14; Minutes of the PUK meeting of 29.11.2023, S. 4
1769 Written answers to the PUK dated 10.6.2024, p. 2
1770 Minutes of the first extraordinary meeting of the CS Board of Directors on 18.3.2023, p. 2
1771 Merger CS/UBS; reorganization of CS according to TBTF; TPO of the Group
1772 FINMA internal note on the LG of 18.3.2023, p. 3

Contacting Sergio Ermotti in the event of a restructuring

As an agreement between the banks on a takeover was still not foreseeable during the course of Saturday morning, the fallback solutions of a TPO or a restructuring were still on the table.[1773] As on the previous day, there were still disagreements between the individual authorities regarding the ranking of the alternatives (see section 7.2.3.6). While the TPO was preferable to a restructuring in the SNB's assessment, FINMA strongly in favor of a restructuring.[1774] Within the FDF, there were major reservations about a TPO and the head of the FDF had repeatedly spoken out against it.[1775] Preparations for both alternative solutions were therefore pushed ahead in parallel.

As part of this preparatory work, the Chairwoman of FINMA's Board of Directors informed the SNB President and the Head of the FDF on Saturday about the search for a Chairman of the Board of Directors for the restructured bank. The search process had been initiated on Thursday with the help of an executive search company and had ultimately resulted in Sergio Ermotti as one of the favored candidates. FINMA contacted him on Saturday.[1776] According to the SNB Chairman, he assumed that this contact request was made in connection with the TPO scenario.[1777] The State Secretary for International Financial Matters was of the same opinion.[1778] However, the Chair of the FINMA Board of Directors the PUK that she had been looking for a CEO and a Chairman of the Board of Directors in the event of a restructuring, not for a TPO. The search had been part of the preparations for a restructuring in order to ensure governance. In consultation with the FINMA Director, it had been decided that she and her Vice-Chairman would be responsible for the search for a Chairman of the Board of Directors of the restructured bank.[1779] In direct contact with Sergio Ermotti, she had focused the restructuring, but had communicated transparently that all options were still open. In the end, Sergio Ermotti had made himself available for all options if he was needed.[1780]

Sergio Ermotti told the PUK that he was first contacted by the Chairman of the Board of Directors of FINMA on Saturday afternoon and informed about the desolate state of CS. She had mentioned three possible options that the authorities were pursuing: a sale of CS, a liquidation or state intervention. He had been asked whether he would make himself available as Chairman of the Board of Directors in the event of such an alternative rescue of CS. He had shown a willingness to talk in principle, but had asked for a few hours to think it over. His commitment to the Chairman of the Board of Directors and the Director of FINMA was on Saturday evening. Two further brief contacts had taken place on Sunday morning before he had been informed of the agreement with UBS at around 3 p.m. and had therefore considered himself relieved of his responsibility.[1781]

[1773] Minutes of the PUK meeting of 29.11.2023, p. 4
[1774] Minutes of the PUK meeting of 15.5.2024, p. 42; Written answers to the PUK of 8.7.2024; Minutes of the PUK meeting of 15.5.2024, p. 30 f. and p. 42
[1775] Minutes of the PUK meeting of 24.4.2024, p. 74; Minutes of the PUK meeting of 1.5.2024, p. 46
[1776] FINMA statement of 9.8.2024 as part of the administrative consultation
[1777] Minutes of the PUK meeting of 29.11.2023, p. 4; Minutes of the PUK meeting of 15.5.2024, p. 71
[1778] Minutes of the PUK meeting of 24.4.2024, p. 74
[1779] Minutes of the PUK meeting of 15.5.2024, p. 41 ff.
[1780] Minutes of the PUK meeting of 15.5.2024, p. 42
[1781] Minutes of the PUK meeting of 31.1.2024, p. 2

7.2.4.2 Continuation of negotiations between the banks with the involvement of the authorities

According to its Group General Counsel, CS received the first draft of the merger agreement from UBS around midday on Saturday.[1782] According to the State Secretary for International Financial Matters, this draft was also sent to the authorities, but they did not comment on its content.[1783] The draft contained references to a possible write-down of the AT1 instruments, but without any further context. However, the two banks apparently did not negotiate the AT1 write-downs, as there was hardly any actual dialog between the deal teams, according to CS's Group General Counsel.[1784]

According to the Chairman of the Board of Directors of CS, he was not informed about the structure of the merger and the merger agreement. He did not know until Saturday evening whether a merger or a takeover was planned.[1785] According to the statements made by the Group General Counsel of CS to the PUK, there were no "typical" contract negotiations between the banks. Rather, the negotiations had largely taken place via correspondence, individual telephone calls with the authorities and the exchange of mark-ups of the merger agreement, which were not discussed in detail.[1786] CS had only been informed about various fundamental aspects of the transaction, such as the restriction of shareholder rights or the purchase price, at a very late stage. For example, the bank was only effectively informed on Sunday that the AT1 bonds were to be written off.[1787]

According to the CS General Counsel, CS raised certain outstanding material points in a letter to UBS and the authorities. However, UBS had shown little willingness to negotiate overall due to the time pressure. As key points of the merger agreement (e.. the purchase price or the write-off of the AT1 bonds) not been clarified in some cases, the CS Board of Directors lacked the factual basis for exercising its duty of care.[1788]

UBS had carried out extensive technical investigations at CS. Among other things, its representatives and external advisors commissioned by UBS had held various expert discussions with CS managers from various business areas on March 17 and 18 in order to identify problem cases within the company.[1789] At midday on Saturday, the CEO of UBS informed the State Secretary for International Financial Matters of the interim status of the due diligence review. Up to this point, UBS had not identified any fundamental "showstoppers" at CS that could not be eliminated by support or partial guarantees from the SNB or the Confederation.[1790]

This was followed by a technical exchange between FINMA, SIF, the SNB and UBS 1.45 pm. According to the representatives of the authorities
-There were discussions on regulatory aspects of the list of conditions submitted by UBS. However, no resolutions passed.[1791]

1782 Written answers to the PUK dated 20.5.2024, p. 1
1783 Minutes of the PUK meeting of 24.4.2024, p. 69
1784 Written answers to the PUK dated 30.3.2024, p. 5 and 20.5.2024, p. 1
1785 Minutes of the PUK meeting of 31.1.2024, p. 15
1786 Written answers to the PUK dated 30.3.2024, p. 5
1787 Written answers to the PUK dated 30.3.2024, p. 5 and 20.5.2024, p. 1 ff.
1788 Written answers to the PUK dated 20.5.2024, p. 3
1789 Written answers to the PUK dated 30.3.2024, p. 5
1790 Minutes of the PUK meeting of 10.4.2024, p. 21; Written answers to the PUK from 5.5.2024
1791 Written answers to the PUK dated 17.5.2024

7.2.4.3 Internal bank consultations on further action and intervention by the authorities

Extraordinary meeting of the Board of Directors of Credit Suisse Group AG on the UBS draft agreement

At its meeting, which began at 12.30 p.m., the CS Board of Directors and the Executive Board, which was also present, discussed the UBS draft agreement. The Chairman of the Board of Directors promised that the draft would be analyzed after the meeting and discussed in detail at the second meeting of the CS Board of Directors. In an initial reaction, the members of the Board of Directors already criticized the MAC clause contained therein and also the fact that the draft required a shareholder vote.[1792]

With regard to the alternative solutions, the Chairman of the Board of Directors stated that BlackRock had distanced itself from an investment after intensive and constructive discussions in the course of the last hour.[1793] The Board of Directors regretted this development and suspected that an information leak[1794] may have contributed to this decision.[1795]

The second part of the meeting was attended by the Head of the FDF, the Chairman of the SNB and the Chair of the FINMA Board of Directors. In view of the failed BlackRock investment, the Head of the FDF urged a merger with UBS. She gave an overview of her contacts with foreign authorities and explained that agreements were in place with the Fed and other important regulators to simplify the merger. The Chairman of the SNB and the Chairwoman of the FINMA Board of Directors also CS to a solution, as the PONV imminent, which would make resolution necessary. The authorities also informed CS that the federal emergency ordinance provided for a decision on the merger by the Board of Directors that no involvement of the shareholders was necessary.[1796]

The Board of Directors discussed this exception in the absence of the authorities. It interpreted the situation as FINMA wanting to hand over responsibility to the bank. The Chairman of the Board of Directors then demanded that additional information be obtained on the emergency ordinance and the handling of shareholders' rights.[1797]

The external legal advisors who attended the meeting subsequently informed the CS Board of Directors its obligations towards the company, creditors and as well as any liability issues. The Board of Directors was advised to decide whether CS could remain independent or whether a merger with UBS would be preferable. The Chairman of the CS Board of Directors asked whether the Board of Directors could avoid a vote and whether FINMA could then order a merger as part of a restructuring plan. The legal experts replied that an abstention by the CS Board of Directors would be tantamount to a decision against a merger. It was then decided to hold further talks with UBS and to discuss the draft merger agreement with the entire Board of Directors later that afternoon.[1798]

[1792] Minutes of the first extraordinary meeting of the CS Board of Directors on 18.3.2023 [1793] Minutes of the first extraordinary meeting of the CS Board of Directors on 18.3.2023 [1794] BlackRock's Hildebrand Taking Part in UBS, Credit Suisse Talks. In: Bloomberg, 18.3.2023, https://www.bloomberg.com/news/articles/2023-03-18/blackrock-s-hildebrand-taking-part-in-ubs-credit-suisse-talks (as at: 25.6.2024)

[1795] Minutes of the first extraordinary meeting of the CS Board of Directors of 18.3.2023, p. 2; Written answers to the PUK of 30.3.2024, p. 6

[1796] Minutes of the first extraordinary meeting of the CS Board of Directors of 18.3.2023, p. 2

[1797] Minutes of the first extraordinary meeting of the CS Board of Directors of 18.3.2023, p. 2

[1798] Minutes of the first extraordinary meeting of the CS Board of Directors of 18.3.2023, p. 2 f.

Extraordinary meeting of the Board of Directors of UBS Group AG and UBS AG on the framework conditions of the merger

At the first extraordinary meeting of the day, the Chairman of the Board of Directors of UBS informed the Board of Directors and the Executive Board that UBS would have to commit in principle to a merger with CS within the next few hours, otherwise an alternative solution would be implemented. UBS had to communicate this decision in principle to the authorities in a telephone call following the meeting of the Board of Directors.[1799]

The members of the Executive Board reported on the results of the due diligence to date, which had been positive overall and had not revealed any "showstoppers". However, according to those involved, this assessment was based on the expectation that the federal government would share in the risks of the assets in CS's non-core unit portfolio. In several business areas, it became apparent that CS's risk appetite was too high by UBS standards and would have to be reduced after the takeover.[1800]

The Board of Directors also discussed the question of whether the takeover by UBS in with the SNB's liquidity assistance could stop the outflows at CS or whether there was a contagion risk for UBS and the MAC clawback should be extended accordingly. However, the Chairman of the UBS Board of Directors expected that the SNB would do everything it could to stabilize UBS, provided it previously agreed to the takeover conditions.[1801] The CEO stated that the identified financial risks for UBS would be largely offset by the expected write-down of the AT1 bonds. However, the costs of reducing the NCU portfolio remained an open point, which UBS wanted to resolve in the further rounds of negotiations through additional collateral from the Swiss Confederation.[1802] From UBS's perspective, the future business activities in the USA and the UK another essential prerequisite for the merger. The British regulators had already confirmed to UBS that the branch there could be continued. The Board of Directors did not expect any restrictions on business growth from the US authorities as a result of the merger.[1803]

Following the meeting of the UBS Board of Directors, representatives of the authorities (including the Head of the FDF, the Chairman of the Board of Directors and the Director of FINMA as well as the Chairman of the SNB) held a further video conference with the Chairman of the Board of Directors and the CEO of UBS at 3.30 pm. During this meeting, the bank drew a positive conclusion about the due diligence carried out up to that point. It had mentioned synergies in the area of wealth management and with the Swiss unit of CS. However, the NCU had been identified as the main problem, as it was expected to have high operating costs due to the IT systems and long terms.[1804] UBS had therefore stated that CS was of little value to it, particularly due to the expected cost problems in investment banking. It therefore needed a support mechanism from the authorities in relation to the potential losses.[1805]

The PUK has various details of the demands made by UBS in relation to the NCU. Among other things, the bank had proposed that the Confederation bear the operating costs of the NCU for 10 to 15 years, which it had estimated at around CHF 2.5 billion per year.[1806] Another proposal had been made by UBS.

[1799] Minutes of the first extraordinary meeting of the UBS Board of Directors on 18.3.2023, p. 1
[1800] Minutes of the first extraordinary meeting of the UBS Board of Directors on 18.3.2023, p. 2 f.
[1801] Minutes of the first extraordinary meeting of the UBS Board of Directors of 18.3.2023, p. 4 [1802] Minutes of the first extraordinary meeting of the UBS Board of Directors of 18.3.2023, p. 5 [1803] Written answers to the PUK of 11.4.2024, p. 8; minutes of the first extraordinary meeting of the UBS Board of Directors of 18.3.2023, p. 5
UBS Annual General Meeting of the Board of Directors of 18.3.2023, p. 5
[1804] Written answers to the PUK of 12.5.2024 [1805] Minutes of the PUK meeting of 10.4.2024, p. 21 ff. [1806] Written answers to the PUK of 25.4.2024

The SNB's proposal was that the SNB should buy the NCU, but that UBS would bear the first CHF 5 billion of the losses itself.[1807] According to the Chairman of the SNB, however, this would have contradicted all regulatory principles.[1808] According to UBS, the options for hedging the NCU portfolio were not discussed at the level of the Chairman of the Board of Directors, but at working level.[1809] According to the information available to the PUK, no decision was taken on the guarantee structure.

7.2.4.4 Adoption of the FINMA negotiating mandate

At the extraordinary meeting of the FINMA Board of Directors at 2.40 p.m., the Chair of the Board of Directors announced that the SNB had asked FINMA for an opinion on the CS Group's application for ELA+ of March 17, 2023. As CS's solvency had not changed compared to the positive solvency confirmation issued by the Board of Directors on 16 March 2023 and there was great urgency, she had issued the new confirmation by means of a presidential decision together with the FINMA Director.[1810] FINMA expected the liquidity PONV of Parent Bank at the beginning of the coming week if no solution was found over the weekend. The PONV of CS Switzerland could also not be ruled out in view of the increased outflows.

Box 20: Point of Non-Viability (PONV)

The point of non-viability (PONV) refers to the point at which a bank or financial group is threatened with insolvency or inability to pay and triggers capital measures, among other things. This includes the write-down of certain capital instruments as a contribution to restructuring[1811] (see Box 19 in section 7.2.3.7).[1812]

The PONV is reached if there is a risk of insolvency within the meaning of Article 25 of the Banking Act. FINMA can order protective measures, restructuring proceedings or a bankruptcy liquidation of the bank if there are reasonable grounds for concern that the bank is over-indebted, has serious liquidity problems or the bank does not meet its capital adequacy requirements within a deadline set by FINMA.[1813] This optional provision gives FINMA discretionary powers.[1814] The legal term "serious liquidity problems" in Article 25 paragraph 1 of the Banking Act, for example, refers to a situation in which "a bank is unable to obtain liquid funds at market conditions and it must be assumed that the available liquidity will no longer cover the obligations that are due or will soon fall due. "[1815] Accordingly, the bank in question does not yet to be insolvent and may still be able to meet the regulatory liquidity requirements when the liquidity PONV is reached.[1816]

Great importance was attached to identifying the PONV in March 2023, partly because this had a significant impact on the authorities' further course of action. FINMA was responsible for determining the liquidity PONV, using both CS's liquidity and the SNB's available emergency liquidity as a basis for its assessment. In addition to the regulatory requirements reported by the bank

1807 Written answers to the PUK dated 12.5.2024
1808 Minutes of the PUK meeting of 15.5.2024, p. 68
1809 Statement of 31.7.2024 as part of the administrative consultation
1810 Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 2
1811 Art. 29 CAO
1812 FINMA Circular 2013/1 "Eligible capital - banks" margin no. 79
1813 FINMA (2023): Lessons learned from the CS crisis, p. 84; Art. 25 BankA
1814 Message on the amendment of the Federal Act on Banks and Savings Banks of 20.11.2002, (BBl **2002** 8060, here 8069)
1815 Message on the amendment of the Federal Act on Banks and Savings Banks of 20.11.2002, (BBl **2002** 8060, here 8079); Bingert, Philipp / Heinemann, Bernhard (2013): Commentary on Art. 4. In: Watter, Rolf / Vogt, Nedim Peter / Bauer, Thomas / Winzeler, Christoph (eds.): Basler Kommentar Bankengesetz. Basel. Helbing & Lichtenhahn, Margin no. 21-23
1816 Letter from FINMA to the PUK dated 5.7.2024, p. 1

FINMA also took other indicators into account in its assessment, such as the bank's situation on the financial and capital markets, the fungibility of liquidity in foreign Group companies, the realizability of prime liquid assets not held in cash the knowledge gained from daily meetings with the bank's management and treasury department representatives. According to the Head of Recovery and Resolution to the FINMA Board of Directors in November 2022, Swiss supervisory law does not provide a clear trigger for the liquidity PONV. FINMA would have to justify when it would be triggered based on qualitative and quantitative criteria (liquidity level, trend and speed of outflows). At least in the case of a restructuring, this is done by the FINMA crisis unit submitting a request for a liquidity PONV to the Board of Directors. The Chairwoman of FINMA's Board of Directors explained to the PUK that the PONV is a technical criterion that is determined by the Executive Board and that its determination as a technical element the responsibility of the Executive Board. There is therefore no separate request to the Board of Directors. The approaching PONV and its achievement were the subject of various discussions between the authorities during the acute crisis in March 2023.[1817]

At the AF meeting on 14 March, the Vice Chairman of the SNB questioned whether CS would be able to stabilize on its own and called for further considerations. In the ELA proposal of March 15, 2023 and also in the proposals of 17 and 19 March 2023 on ELA+, CS declared to the SNB and FINMA that it not in a position to raise sufficient liquidity on the money or capital market or elsewhere to cover the necessary liquidity requirements at the respective times.[1818]

At the AF meeting on March 16, the authorities discussed whether FINMA could order CS merge with UBS as part of the protective measures under Article 25 paragraph 1 letter a of the Banking Act (see section 7.2.2.4). The FINMA Director countered this hypothetical consideration by stating that the liquidity PONV had not yet been reached in view of the ELA granted and the initial situation.[1819]

On March 18, 2023, the Chair of the FDF, the Chair of the SNB and the Chair of the FINMA Board of Directors the meeting of the CS Board of Directors. The Chair of FINMA's Board of Directors pointed out to the CS Board of Directors that FINMA was assuming that CS was rapidly approaching the PONV. FINMA would then have no choice but to trigger the resolution.[1820]

FINMA's Executive Board its Board of Directors on March 18 that, according to the current status, the liquidity PONV would have to be discussed at the beginning of the coming week if no solution emerged over the weekend. This was also in connection with the increased outflows at CS Switzerland, which increased the probability of a PONV at CS Switzerland.[1821]

On the morning of March 19, FINMA finally informed the Chairman of the Board of Directors of CS in a telephone meeting, which was also attended by those responsible at SIF, that CS's liquidity PONV had been reached (see section 7.2.5.1). The corresponding statement by the FINMA Director was contradicted by the

[1817] The above information is based on a source or sources that are available to the PUK but are not specifically named because they conflict with overriding public or private interests.

[1818] The above information is based on a source or sources that are available to the PUK but are not specifically named because they conflict with overriding public or private interests.

[1819] The preceding information is based on a source or sources that the PUK, but are not specifically named because they conflict with overriding public or private interests.

[1820] Minutes of the first extraordinary meeting of the Board of Directors of CS on 18.3.2023, S. 2

[1821] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 3

The other participants in the meeting did not object. On the contrary, the FINMA Director stated that the write-down of the AT1 bonds would be ordered, which by definition was only possible at the liquidity PONV. The Chairman of FINMA's Board of Directors the PUK that the Executive Board had determined CS's liquidity PONV on Sunday, March 19, due to the high probability of imminent insolvency. FINMA confirmed to the PUK that it was clear at that time that CS was in a situation that threatened its existence and that there was a risk of imminent insolvency. The reasons for reaching the PONV included the following:

- the bank's inability to obtain liquidity at market conditions as a result of the threat of further downgrades of ratings by rating agencies, the high credit spread and the rapidly falling share price;
- the drastic deposit outflows at CS AG and CS Schweiz AG, particularly between March 15 and 17, 2023, which led to a rapid depletion of the ELA facility and the partial withdrawal of ELA+;
- the behavior of professional counterparties in swap transactions and foreign exchange trading as well as that of central counterparties in settlement and clearing activities that restricted or terminated their business activities with CS;
- the concerns of foreign regulators and the impending tightening of their liquidity requirements (see Box 16 in section 7.2.2.2);
- other elements, such as falling below the Resolution Liquidity Execution Need (the estimated liquidity required to implement the bank's resolution plan).

However, FINMA was already concerned before the weekend that a liquidity PONV could occur. It therefore worked together and in coordination with the international authorities to ensure that it was operationally possible to activate the prepared resolution measures on Sunday (see section 7.2.3.8).[1822]

The Director and the Chairwoman of FINMA's Board of Directors informed the Board of Directors about the authorities' ongoing work on the sale scenario on the basis of a benchmark paper.[1823] A sale was seen by the authorities as the most suitable solution for overcoming the crisis of confidence and, according to FINMA, enjoyed strong backing from key foreign jurisdictions such as the USA, the UK and the eurozone.[1824]

Nevertheless, as long as the merger was not secured, FINMA wanted to keep all options open.[1825] It therefore the restructuring in parallel with the work on takeover. FINMA had informed the CMG authorities on the morning of
18 March the English translations of the restructuring plan and the restructuring order, which they needed for their recognition procedures. In doing so, it pointed out that the preferred option of a takeover not become less likely, that no decision had yet been made in favor of restructuring and that

[1822] The above information is based on a source or sources that are available to the PUK but are not specifically named because they conflict with overriding public or private interests.
[1823] Proposal of the MB to the Board of Directors: "Approval of the key figures for the takeover of Credit Suisse Group AG by UBS Group AG", March 19, 2023.
[1824] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 2 ff.
[1825] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 2

In addition, the CMG authorities confirmed verbally to FINMA on Saturday evening that they saw no obstacles in their jurisdictions to the implementation of a possible restructuring.[1827]

At the same time, FINMA requested that CS submit an approvable restructuring plan at midday on Saturday. The restructuring plan adapted by CS was submitted to FINMA at 6.15 p.m. on the same day.[1828] According to FINMA, the restructuring order including the restructuring plan and the decree appointing the restructuring officer(s) were ready for signature and internationally coordinated on Sunday, March 19. The PUK has drafts of these documents in German and English.[1829]

Discussion of the management's benchmark paper

In the further course of the Board of Directors meeting, the Board of Directors and the members of the Executive Board present discussed the sale scenario. As this was a transaction of major significance, the Board of Directors had to make a decision on it.[1830] For this reason, the Executive Board had summarized the key figures of the transaction, the conditions of UBS and the most important "stumbling blocks" in a so-called benchmark paper.[1831] This paper was submitted to the Board of Directors as a proposal and was to serve as a negotiating mandate for the Director.[1832]

In its application, the Executive Board mapped the eight types of claims of UBS (see section 7.2.1).[1833] It also submitted to the Board of Directors, for information purposes, UBS's paper on the various transaction options, which it had sent to the FDF, FINMA and the SNB, even though it had no connection with a decision to be taken by FINMA. In its application, FINMA's Executive Board made an assessment of the feasibility of the individual requests, insofar as they fell within FINMA's remit (see diagram below). According to the Executive Board, the write-down of the AT1 bonds was compensation for the capital shortfall that would otherwise occur. Although their write-off was not included in the attached list of claims, it was mentioned in the UBS paper on the transaction options.

Based on its analysis, FINMA's Executive Board identified the following potential "stumbling blocks":

- the level of future capital requirements;
- the write-down of existing AT1 instruments as a safety buffer or to cushion expected losses;
- the approval of foreign authorities, particularly in the USA and UK, whereby the legal structure in the respective jurisdictions could prove to be a critical element;
- Issues of eligibility/use of bail-in debt and interlinkages in the case of the "purchase of subsidiaries" transaction.

1826 Email from FINMA to the CMG authorities dated 18.3.2023, 7.51 a.m.
1827 FINMA (2023): Lessons learned from the CS crisis, p. 78
1828 FINMA (2023): Extended chronology of 26.09.2023, p. 31
1829 FINMA (2023): Lessons learned from the CS crisis, p. 78
1830 Minutes of the PUK meeting of 27.3.2024, p. 54
1831 Motion of the MB for the attention of the Board of Directors: "Approval of the key figures of the
Acquisition of Credit Suisse Group AG by UBS Group AG", March 19, 2023.
1832 Minutes of the extraordinary meeting of the FINMA Board of Directors of 18.3.2023, p. 1 et seq.; minutes of the PUK meeting of 27.3.2024, p. 33 et seq.; minutes of the PUK meeting of 15.5.2024, p. 29
1833 FINMA Executive Board proposal on the key figures for the takeover of CS by UBS dated 18.3.2023

Table 22: UBS's claims and FINMA's assessment thereof - excerpt from the benchmark paper dated March 18, 2023 for the attention of FINMA's Board of Directors

Condition	*Contents*	*FINMA's position*
1. transactional terms	[Reference to UBS's schedule of claims, see table]. belle 17]	Okay. These are mainly issues relating to stock corporation and company law that are outside FINMA's sphere of influence. The only basic requirement the complete assumption of all risks of the entire CS.
2. restructuring/governanc e	Retention of the current group structure including the parent bank. Demand for a guarantee that the merger will not be used to implement a flat holding structure. is determined.	
3. capital requirements	Temporary waiver for 10 years to enforce the sub- stantially higher capital requirements. Flexibility with regard to the implementation deadlines for new regulations. In the event of an additional liquidity requirement at parent company level: possibility of a temporary increase in the limit for intragroup exposure.	Softening requirements is generally out of the question for FINMA and the SNB. Standstill (2 years) and subsequent phase-in (5 years) instead of the required suspension for 10 years. Weakening Emergency plan is out of the question. Concessions generally only to the usual extent.
4. transparency due diligence	UBS wants full access to CS documents and personnel.	Ok, is already guaranteed.
5. international supervisory authorities	Approval in principle from the Fed, PRA and ECB; commitment to implement regulatory approval as quickly as possible; agreement from the PRA to retain the existing legal structure.	Ok, this is largely at the discretion of the foreign authorities. In principle already approved by Fed and PRA
6. communication	Communication coordinated with the authorities, including a joint press conference; clarification that UBS was contacted and that, apart from a resolution, there are no credible al- luminations. alternatives existed.	Okay. But it must be clear that the transaction was not ordered by the authorities.

Condition	*Contents*	*FINMA's position*
7. competition and antitrust law	Request for commitment to swift treatment by the Swiss Competition Commission.	WEKO is not in a position to take a position at short notice. FINMA must decide without the opinion of COMCO. Due to the high legal risks, FINMA is working to ensure that the merger is approved under the emergency ordinance.[1834]

UBS's claims also dealt with the aspects of any guarantees to cushion possible losses (liquidity, default guarantees) and any order to write down the AT1 instruments under the heading "guarantees/carve-out".

In its deliberations on the Executive Board's proposal, the Board of Directors sought confirmation that the merger of CS with UBS would not lead to undercapitalization of the bank. UBS should also not be granted any relief on the capital requirements, except during a transitional phase[1835] in which UBS should have time to fully meet the new requirements.[1836]

The write-down of the AT1 bonds was described to the Board of Directors as a "necessary, non-negotiable part and therefore a cornerstone of the deal for UBS". The sale would also require liquidity via PLB, which would be to state support and lead to the AT1 write-down. The AT1 bonds would not only have to be written down in the event of a sale, but also in the event of a restructuring, a TPO or the triggering of the emergency plan. The committee discussed the possible effects on the AT1 markets, with the director noting that these would probably become more volatile due to the write-downs, even if the investors were aware of the write-down risk(1837).

In FINMA's view, the TBTF problem remained more acute, even though UBS had incentives to shrink due to the progressive capital requirements and had itself stated that it would reduce its balance sheet and risk-weighted assets faster than CS had planned in accordance with its strategy of October 2022. UBS had also stated that investment banking should not be larger than a third of the bank in terms of risk.[1838]

With regard to the question of what role COMCO should play in the run-up to the merger, the Board of Directors was informed that it would not provide an assessment in the time available. This should follow the approval of the merger by FINMA, whereby FINMA considers the legal risk of this approach to be

[1834] This aspect was not included in the Federal Council Ordinance. Ordinance on Additional Liquidity Support Loans and the Granting of Federal Default Guarantees for Liquidity Support Loans from the Swiss National Bank to Systemically Important Banks of 16.3.2023 and its amendments of 19.3.2023

[1835] The transition phase consists of two years of standstill and five years of phase-in. until UBS had to meet the new requirements in full. The new capital requirement does not have to be built up during the standstill, as this only happens during the phase-in.

[1836] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 2 f.

[1837] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 3

[1838] Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 3

According to the FINMA Director, the Board of Directors therefore decided to apply Article 10 of the Cartel Act,[1840] according to which FINMA could approve the merger instead of COMCO.[1841]

The Board of Directors also noted that the authorities were able to reduce a large part of UBS's claims in its interest and that a general meeting of UBS can be circumvented through the use of emergency law. The Executive Board also informed the Board of Directors about the authorities' planned public communication on Sunday evening. In conclusion, the Director added that a bail-in should be avoided in view of CS's international ties and the banking crisis in the USA. According to the FINMA Director, UBS also had no interest in a bail-in at CS, as this could have a negative impact on the entire Swiss financial center. After a detailed discussion, the Board of Directors decided to approve the key figures presented for the takeover and thus also the write-off of the AT1 bonds.[1842]

7.2.4.5 Extraordinary meeting of the Federal Council on the current situation with renewed focus on the merger and alternative scenarios

At the request of the head of the FDF, a further extraordinary Federal Council meeting was held on the evening of 18 March. The members of the Federal Council were of the meeting at 9.17 a.m. on the morning of 18 March 2023 by the then Vice-Chancellor.[1843] Although the Head of the FDF did not believe there were any immediate decisions to be made, she felt it was important for the Federal Council to be able to closely monitor developments.[1844]

At this extraordinary meeting, the Head of the FDF informed the Federal Council about the situation and the status of work at CS by means of an information note. At the beginning of the meeting, the Federal Council also held an exchange of views with the Chairman and Vice-Chairman of the SNB, the Chairman of the Board of Directors and the Director of FINMA, the State Secretary for International Financial Matters and the Director of the FFA. The Federal Council was informed that no agreement had yet been reached between UBS and CS and that the authorities had lost a few hours with the "pseudo solution" of a BlackRock participation. There was talk of a poker game between the two parties.[1845]

The FDF's information note stated that the communication from the SNB and FINMA on March 15, 2023 (see section 7.2.1) had bought some time, but that without countermeasures, CS's insolvency was from the following Monday. As a takeover by UBS had already been leaked to the media, it was all the more important to present a solution before Monday, as otherwise CS's situation would worsen again on Monday.[1846]

1839 Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 4
1840 Art. 10 para. 3 KG
1841 Minutes of the PUK meeting of 27.3.2024, p. 51
1842 Minutes of the extraordinary meeting of the Board of Directors of FINMA on 18.3.2023, p. 2 f.
1843 Message from the then Vice-Chancellor to the members of the Federal Council via Threema, 18.3.2023 at 9.17 a.m.
1844 Minutes of the PUK meeting of 11.10.2023, p. 55; Minutes of the PUK meeting of 8.11.2023, p. 60
1845 Minutes of the extraordinary Federal Council meeting of 18.3.2023
1846 Information note from the FDF "Credit Suisse: Current situation and status of work" of 18.3.2023, p. 1 f.

In the context of the ongoing negotiations, the Federal Council was informed about UBS's guarantee requirements, some of which had no legal basis and were therefore unacceptable.[1847] was also a discussion about the actual value of CS. It was noted that there was likely to be a large discrepancy between CS's own assessment, the current market value and the value expected on Monday.[1848]

With a view to the possible merger, the FDF also informed the Federal Council in the aforementioned information note that individual adjustments to the March 16, [1849], would have to be carried out.

- the creation of a clearer legal basis for the amortization of AT1 instruments[1850]
- the merger between UBS and CS should be possible with the approval of FINMA, but without resolutions by the banks' general meetings;
- the extension of the SNB's extraordinary liquidity assistance to UBS (i.e. CHF 50 billion each should be available for CS and UBS);
- the restrictions imposed on CS regarding distributions (e.g. dividends) should be lifted after the merger has been completed.

However, according to the FDF's assessment, a decision in the sale scenario did not seem likely until the night of March 18 to 19. For this reason, the Federal Council committee discussed the various alternative scenarios on the basis of a brief overview of the impact on market confidence, the financial risks for the economy and the Confederation, and the legal to be adapted. However, the economic costs of the individual scenarios were not quantified.[1851] In this context, the question was apparently also raised as to whether a solution comparable to the one found in 2008 with regard to UBS could be found. It was explained that the current situation cannot compared with that of 2008, which is why the solution adopted at that time is not up for discussion.[1852]

Finally, the Federal Council minutes show that the scenario of a TPO of the entire group still in preparation in the event of a disagreement between the two banks. In this , FINMA would have had to appoint a new CEO and Board of Directors of CS, among other things. The Federal Council was informed that various people, including Sergio Ermotti, had been contacted by the Chair of the FINMA Board of Directors with a view to taking over the CEO position.[1853] However, the Chair of the FINMA Board of Directors told the PUK that she had never been instructed to look for a Chairman of the Board of Directors or a CEO for a TPO.[1854]

[1847] Information note from the FDF "Credit Suisse: Current situation and status of work" dated 18.3.2023, p. 2
[1848] Minutes of the extraordinary Federal Council meeting of 18.3.2023
[1849] See also the amendment of March 19, 2023 to the Ordinance on Additional Liquidity Assistance Loans and the Granting of Federal Default Guarantees for Liquidity Assistance Loans from the Swiss National Bank to Systemically Important Banks (RO **2023** 136)
[1850] The purpose of the amendment to the Emergency Ordinance was to extend FINMA's authority to
to the bank to write off the AT1 instruments. However, this authority already arises from the Banking Act. The write-down of AT1 instruments must then be carried out by the bank itself. According to FINMA, the idea came from the SIF and was considered helpful by FINMA (FINMA of 9.8.2024 as part of the administrative consultation).
[1851] Information note from the FDF "Credit Suisse: Current situation and status of work" dated 18.3.2023, p. 4 ff.
[1852] Minutes of the extraordinary Federal Council meeting of 18.3.2023
[1853] Minutes of the extraordinary Federal Council meeting of 18.3.2023
[1854] Minutes of the PUK meeting of 15.5.2024, p. 41 ff.

7.2.4.6 Extraordinary meetings of the Boards of Directors of UBS and CS and initial agreement with the authorities

Intensification of negotiations and second extraordinary meeting of the UBS Board of Directors

After UBS had gained insight into the emergency ordinance on Saturday, it sent an e-mail to the Head of Legal and Risk Management at the FFA shortly before 5 p.m. requesting that certain provisions of the Merger Act be suspended.[1855] The Director of the FFA noted that these proposals were more far-reaching than the "discussed emergency revocation of the AGM approval". However, he promised to examine UBS's concerns and, as far as possible in terms of time, to take them into account.[1856] He confirmed to the PUK that the authorities were pursuing the goal of not allowing UBS to make any further requests for changes.[1857] In fact, only a few of UBS's concerns were implemented in the emergency ordinance, specifically the waiver of the approval of the general meeting and the waiver of an interim balance sheet, a merger report, a merger audit and the right of inspection of the shareholders of the companies involved in the merger.[1858]

The second extraordinary meeting of the UBS Board of Directors was held in two parts. In the first part of the meeting, the Chairman of the Board of Directors informed from
5.15 p.m. on the results of the negotiations with the authorities that had taken place in the meantime. The authorities had not indicated any willingness to cover the NCU's operating costs with a state loss guarantee. The Board of Directors decided unanimously to continue negotiations with the authorities and to obtain additional loss guarantees for the NCU portfolio - over and above the initial CHF 5 billion loss that the bank itself was to bear.[1859]

At 6 p.m., FINMA and the SNB spoke with UBS management about the handling of the NCU. UBS had shared their assessment of the financial risks of this unit. FINMA had considered various demands made by UBS to be excessive.[1860] However, once again no decisions had been taken.[1861]

At 6.45 pm, there was another exchange between the representatives of the authorities and UBS. The topic was the loss guarantee demanded by UBS. According to the authorities, UBS had proposed that it would bear the first CHF 5 billion and that the Confederation would have to assume the next CHF 10 billion. UBS also commented on the purchase price and stated that it could only pay CHF 4 billion if the accompanying measures discussed were implemented by the federal government. Otherwise, the purchase price would have to be lower.[1862]

1855 According to UBS, the following requirements under the Merger Act should be exempted: The obligation to prepare an interim balance sheet, a merger report and to have the merger agreement, merger report and merger balance sheet audited by an auditing expert; the granting of the shareholders' right of inspection; the securing of creditors' claims. Furthermore, in deviation from the Merger Act, the of the companies should not be entitled claim compensation and the notification to COMCO should be omitted. E-mail from UBS to the FFA dated 18.3.2023, 16.37

1856 E-mail from the FFA to UBS dated 18.3.2023, 17.21

1857 Written answers to the PUK dated 19.4.2024, p. 14 f.

1858 Written answers to the PUK dated 19.4.2024, p. 14, 18 f.

1859 Minutes of the second extraordinary meeting of the UBS Board of Directors on March 18, 2023, p. 1 f.

1860 Written answers to the PUK dated 17.5.2024

1861 Written answers to the PUK dated 17.5.2024

1862 Written answers to the PUK dated 25.4.2024; Written answers to the PUK of 12.5.2024; FINMA statement of 9.8.2024 in the context of the administrative review. consultation, p. 26 ff.

Before the UBS Board of Directors reconvened, the Chairman of the UBS Board of Directors held a further online meeting with the members of the AF at 8.00 pm. The bank had informed the authorities about the purchase price negotiations with CS. According to the SNB Chairman, the authorities informed UBS that its previous guarantee claims were too high and that the guarantee would have to be lower.[1863] In a Threema message at 8.10 p.m., the head of the FDF informed her Federal Council colleagues that an agreement had now been reached with UBS (quote: *"We have a deal with UBS! Now we still need CS.")*[1864]

The second, much shorter part of the UBS Board of Directors meeting began at 8.30 pm. Once again, the Chairman of the Board of Directors gave an overview of the two rounds of negotiations held with the authorities since the end of the last part of the meeting. He announced that the most recently discussed offer from UBS included a reduction in the purchase price from CHF 4 billion to CHF 1 billion and a government guarantee of CHF 5 billion for the NCU portfolio. However, UBS would have to bear the first CHF 7 billion of the losses itself. He announced that he and the CEO had committed UBS to the transaction in principle, subject to approval by the Federal Council, FinDel and CS.[1865]

Second Extraordinary Meeting of the Board of Directors of Credit Suisse Group AG

At 6 p.m., the Board of Directors of CS, the Executive Board and various external legal advisors met again for an extraordinary meeting to discuss in detail the draft merger agreement prepared by UBS. The members of the Board of Directors were concerned about the possibility that UBS's offer was too low and about the fact that UBS's draft did not any offers from third parties. CS also criticized the fact that the transaction security was too low. This was , among other things, to the planned - and in CS's opinion unacceptable - MAC clause. There was also concern that a scenario could arise in which an agreement was reached on the sale but it could not be carried out. Such a scenario could also have resulted in a liquidation, but would have been more negative for CS than an immediate liquidation. For this reason, too, great importance was attached to transaction security. This should be increased as far as possible. Finally, CS managers discussed the bank's internal and external communication strategy and the need for coordination with UBS in this regard.[1866]

Later that evening, at around 8.40 p.m., the head of the FDF informed the Federal Council as a whole that she had just telephoned the Chairman of the Board of Directors of CS and urged him on behalf of the Federal Council to accept UBS's offer in the interests of Switzerland. She had informed him that there was no suitable plan B and that "our country" was now at stake.[1867]

Information from the President of FinDel and the Federal Council

At 9 p.m., the head of the FDF informed the President of the FinDel of the current status of the situation.[1868] A little later, shortly after 10 p.m., the then Vice-Chancellor contacted the full Federal Council to inform it that the following morning at

[1863] Written answers to the PUK dated 25.4.2024
[1864] Threema message from the Head of the FDF to the Federal Council, March 18, 20:10
[1865] Minutes of the second extraordinary meeting of the UBS Board of Directors on 18.3.2023, S. 3
[1866] Minutes of the second extraordinary meeting of the CS Board of Directors on 18.3.2023, p. 2 f.
[1867] Threema message from the Head of the FDF to the full Federal Council, March 18, 8.40 p.m.
[1868] FDF chronology dated 26.6.2023. The President of the FinDel confirmed contact (written information from the President of the FinDel dated 4.8.2024).

7.30 a.m. in the Bernerhof, a secretly classified Federal Council motion would be distributed with a view to the Federal Council meeting at 8.30 a.m.[1869]

Contacts with foreign authorities to accompany the merger preparations

Throughout the dayFINMA, the Head of the FDF and the SNB President were also in contact with foreign authorities on technical and strategic matters. For example, FINMA the status of preparations with the Fed at 3 p.m. as part of the Core College. The Fed expressed concerns about a possible default if CS's liquidity is not significantly increased.[1870]

Meanwhile, the SNB Chairman held various briefings with representatives of foreign central banks on the status of the Swiss authorities' work. The PUK is aware of telephone conversations with the Governor of the Bank of England, the President of the European Central Bank, the President of the Fed and the Governor of the Banque de France. The contents of these conversations were not recorded.[1871]

At around 7 p.m., a telephone conversation also took place between Federal Councillor Karin Keller- Sutter and the Saudi Minister of Finance Mohammed Al-Jadaan.[1872] The latter stated that, as the representative of the bank's largest shareholder, Saudi National Bank, he had not been informed by CS about the use of state aid and the impending PONV.[1873]

Box [211874]: Negotiations between the banks and the authorities on the sale price

The determination of the purchase price of CHF 3 billion and, in particular, the reasons behind it were the subject of various media reports and public speculation. The PUK analyzed the documents available to it in detail and conducted numerous interviews on this topic. The written sources proved to be incomplete. The statements made at the hearings did not provide a consistent picture of who made which offer. It became clear that there was a direct correlation between the price offered by UBS and the guarantees offered by the federal government. The higher the guarantees from the Confederation, the higher the offer from UBS.

At his hearing before the PUK, the Chairman of the UBS Board of Directors explained that UBS originally been prepared to pay CHF 3 billion for CS. However, as the authorities did not want to implement the loss guarantee to the required extent, the Chairman of the SNB had instead submitted a purchase price offer of CHF 1 billion. This price was communicated to the Chairman of the Board of Directors of CS on Saturday evening, but did not agree to it. According to the SNB, however, UBS mentioned a maximum purchase price of CHF 4 billion in an exchange on Saturday evening at 6.45 pm. In this meeting, the bank stated that the lower the accompanying measures from the federal government, the lower the purchase price be. In the end, the authorities agreed with UBS on a loss guarantee of CHF 5 billion from the Confederation, which meant a purchase price of CHF 1 billion was on the table. From the authorities' point of view, this the status quo on Saturday evening, on the basis of which UBS was to an agreement with CS.

[1869] Threema communication from the then Vice-Chancellor to the Federal Council, 18.3.2023, 22:18
[1870] Email exchange between FINMA employees dated 19.4.2023, 18.55 hrs
[1871] Written answers to the PUK dated 6.10.2023, p. 2
[1872] Chronology of the FDF of 26.6.2023
[1873] Minutes of the PUK meeting of 11.10.2023, p. 63; Minutes of the PUK meeting of 22.5.2024, p. 63
[1874] The information in this box is based on a source or sources available to the PUK but not specifically because of overriding public or private interests.

At 8.30 p.m., the Chairman of the UBS Board of Directors gave an overview of the latest rounds of negotiations with the authorities at the meeting of the Board of Directors. He announced that the final offer included a reduction in the purchase price from CHF 4 billion to CHF 1 and a government loss guarantee for the NCU portfolio of CHF 5 billion. According to this offer, UBS would have had to bear the first CHF 7 billion of losses itself.

According to the information available to the PUK, the Chairman of the Board of Directors of UBS contacted the Chairman of the Board of Directors of CS by telephone after the end of the UBS Board of Directors meeting on Saturday evening and informed him of the offer of CHF 1 billion. The call was very short, as the Chairman of the CS Board of Directors was by no means in agreement with the offer. The Chairman of the CS Board of Directors told the PUK that he had not been provided with any documents beforehand and that he had not been clear whether it was a takeover or a merger. He had been informed that the takeover price amounted to CHF 1 billion. According to the Chairman of the CS Board of Directors, CS was not involved in the negotiations on the purchase price and was only able to express its dissatisfaction with the offer after this announcement by UBS. UBS also confirmed that it had not previously negotiated the price directly with CS.

In her hearing before the PUK, the State Secretary for International Financial Matters stated that she had received a call from the Chairman of the CS Board of Directors in the night from Saturday to Sunday (March 18 to 19) in which he had rejected the purchase price of CHF 1 billion. She referred him to UBS as the negotiating partner, but shortly afterwards received a formal letter from CS in the latter criticized the excessively low purchase price. CS described a purchase price of this amount as a cold expropriation in favor of UBS, which would lead to extraordinary profits for UBS amounting to CHF 30 billion. Among other , CS identified a reputational risk for the authorities and the financial center, especially as domestic and international shareholders would be harmed and legal action would be inevitable. Such a procedure is inconceivable under current law, as the consent of the shareholders would not be granted. The letter concluded by stating that a Federal Council ordinance would prevent a proper discussion on the transfer of value, as provided for in the Corporate Governance Act, and that this would undermine important shareholder protection provisions.

The purchase price was once again the subject of a telephone conversation between representatives of the authorities and the Chairman of the CS Board of Directors in the early morning of 19 March 2023. the Chairman of the CS Board of Directors once again criticized the excessively low price of CHF 1 billion, the State Secretary first defended this by referring to the guarantees provided by the Swiss Confederation and then made an offer of CHF 2 billion. Finally, she asked the Chairman of the CS Board of Directors for feedback within one hour (see section 7.2.5.1).

According to statements made by the Chairman of the UBS Board of Directors to the PUK, he did not negotiate the price with CS, but with the authorities. UBS had been asked by the authorities on Sunday whether it could also pay CHF 3 billion. Over the course of Sunday afternoon, UBS increased its purchase offer to three billion francs after the federal government had increased its guarantee from 5 to 9 billion francs. An agreement was finally reached on this basis.

asked about their role in negotiating the purchase price, the head of the FDF and various other representatives of the authorities stated that the authorities had not conducted the negotiations or the purchase price. However, both the Federal Council minutes and the correspondence show that the authorities played a steering role in that they negotiated with UBS in particular about possible risk guarantees, which, together with other framework conditions, had a direct impact on the purchase price offered by UBS.

7.2.4.7 Involvement of the FOJ in the preparation of the emergency merger, the TPO and the order to write off the AT1 bonds

The FOJ was also consulted on March 18, 2023 and on the variant of a TPO for the entire CS Group.[1875] According to the Director of the FOJ, this work was a major challenge for the FOJ not only because of the time pressure, but also because this instrument had not previously been part of the Swiss crisis infrastructure. The deliberations on the TPO a "greenfield site "[1876] in the Swiss legal system.

The FOJ had not been included by the SIF and the FFA when they were already examining the option of a TPO from January 2023 as part of the development of the break-up and emergency plan scenario. This scenario was one of the four scenarios that the FDF had informed the Federal Council about in writing on February 1, 2023.[1877] However, the TPO discussed during the crisis phase in March was not congruent with the variant discussed at the beginning of 2023 (for the variants of a TPO, see section 5.2.5.6). In addition, the AF decided on March 7, 2023 to involve the FOJ in the work on the TPO by commissioning an expert opinion (see section 6.4.3.2).

Three office consultations on the draft TPO emergency ordinance took place on the evening of March 18, 2023. The first lasted from 12.47 to 15.00, the second from 18.54 to 21.00 and the third from 22.08 to 23.30. The FFA invited the SNB, FINMA and the FOJ to attend. SIF and the GS-FDF were present in copy. As part of these consultations, the SNB explicitly retaining the option of a 100% discount on the transfer of the equity securities of CS Group AG from the previous owners to the Confederation.[1878] The FOJ provided input on the question of the contestability of a Federal Council order based on the possible TPO emergency ordinance ("transfer order"). However, in view of the novelty and complexity[1879] of the legal issues and the short deadlines, the FOJ was unable to provide any conclusive answers late in the evening of March 18.[1880] draft of the transfer order ultimately stated that any appeals would be deprived of suspensive effect.[1881]

On March 18, 2023, the FOJ not only on the variant of a TPO, but also dealt with other aspects of the emergency merger. Firstly, the FOJ dealt with the issue of an exemption from the Publication Act (see section 7.2.2.7). Secondly, the FOJ and the FFA were in close contact regarding the structure of the exemptions from merger law. Thirdly, on March 18, the FOJ for the guarantee of legal recourse for the affected Credit Suisse shareholders in the event of a merger. On 18 March 2023, the authorities considered not only restricting the right of the general meeting of shareholders to approve the merger (Art. 12 para. 2 Merger Act) in the event of a takeover of CS by UBS,[1882] but also excluding the shareholders' right to take legal action under Art. 105 Merger Act by means of emergency law. The FOJ took the

[1875] Draft proposal of the FDF to the Federal Council for the adoption of a TPO emergency ordinance of March 18/19, 2023 (undated), p. 4
[1876] Minutes of the PUK meeting of 24.1.2024, p. 78
[1877] Minutes of the PUK meeting of 24.1.2024, p. 29
[1878] E-mail from the SNB to the FFA dated 18.3.2023, 7.55 p.m.
[1879] The list of enactments that the Federal Council could have declared temporarily inapplicable in accordance with the draft TPO Emergency Ordinance demonstrates the complexity. These include the CC, CO, FusG, HRegV, KG, FIDLEG, BankG, FINIG, UEV, BEG, FinfraG and FinfraV; see Annex 1 of the draft of 18/19.3.2023 (undated) of the Ordinance on the Temporary Takeover of an Internationally Active Systemically Relevant Swiss Financial Group by the Federal Government.
[1880] E-mail from the FOJ to the FFA dated 18.3.2024, 8.54 p.m.
[1881] Draft of 19.3.2023 of the transfer order pursuant to the Ordinance on the Takeover of a Swiss Bank of International Systemic Importance 2023, Point 9
[1882] Cf. Art. 10a of the amendment to the Emergency Ordinance of March 19, 2023

Legal Service of the FFA for the guarantee of legal recourse under Article 29a of the Federal Constitution, so that the Federal Council ultimately refrained from an emergency suspension of Article 105 of the Merger Act.[1883] In addition, the FOJ was informed on
March 18, 2023 also mentions the write-down of AT1 bonds. The FOJ's involvement in this issue was superficial. In particular, the precise conditions for a write-down provided for in the terms of issue were not known.[1884]

7.2.5 Agreement between the banks and end of the acute crisis - Federal Council package of measures on Sunday, March 19

The timeline of the last day of the CS acute crisis is summarized in the table below.

Table 23: Chronology of events on Sunday, March 19, 2023

Time	*Event*	*Actors involved*
6.45 a.m.	Conference call between SIF, FINMA and CS on the agreement	SIF, FINMA, CS
7.00 a.m.	Meeting LG	EFD, FINMA, SNB, SIF, EFV
8.30-11.25 clock	**Extraordinary Federal Council meeting with the SNB, FINMA and first the Chairman of the Board of Directors and the CEO of CS and then the Chairman of the Board of Directors and the CEO of UBS**	**Federal Council, SNB, FINMA, CS, UBS**
10.45 a.m.	Extraordinary meeting of FinDel (debates)	FinDel, EFV, CS, UBS
From 12.50 Clock	Two extraordinary meetings of the FINMA Board of Directors	FINMA
From 14.30 Clock		
2.30 p.m.	Meeting of the UBS Board of Directors and the UBS Group Executive Board	UBS
15.00-16.45 Clock	**Extraordinary Federal Council meeting with the SNB and FINMA**	**Federal Council, SNB, FINMA**
15.**30-16**.40 clock and from 5.05 pm	FinDel meeting and discussion with FFA Director	FinDel, EFV
17.00 hrs	Telephone call SIF with Deputy US Treasury Secretary Adeyemo (several in the following days)	SIF
5.47 pm	FinDel approval of the credit decision	FinDel
6.10 p.m.	**CS's second application to the SNB for ELA+ in the amount of CHF 30 billion**	**CS, SNB**
7.00 p.m.	**FINMA decision to approve the merger**	**FINMA**
7.30 p.m.	Media conference of the federal authorities accompanied by the CS and UBS management (announcement of the takeover of CS by UBS)	EFD, SNB, FINMA, CS, UBS

[1883] Minutes of the PUK meeting of 24.1.2024, p. 67. For the involvement of the FOJ on

March 15, 2023, see section 7.2.1, for the involvement of the FOJ on March 17, 2023, see section 7.2.3.9.

[1884] Minutes of the PUK meeting of 24.1.2024, p. 67

Time	*Event*	*Actors involved*
20.30 hrs	CS application for PLB for the attention of the SNB and for solvency confirmation for the attention of FINMA	CS, SNB, FINMA
22.00 hrs	**FINMA ruling: Write-down of the AT1 bonds of CS**	**FINMA**
	SNB provides liquidity assistance for the takeover of CS by UBS	**SNB**
10.30 p.m.	High-level exchange CMG	FINMA, SNB, Fed, PRA

The key milestones are explained below in chronological order where appropriate.

7.2.5.1 Continuation of negotiations between banks and authorities

Negotiations between the authorities and the banks continued in the early morning of March 19, 2023.

A telephone meeting took place at 6.45 a.m. between the Chairman of the Board of Directors of CS and those responsible at SIF and FINMA.[1885] As can be seen from the brief minutes, the Director of FINMA informed the Chairman of the Board of Directors of CS in no uncertain terms that the liquidity PONV had been reached and that the value of the shares had therefore fallen to zero: "Axel, in plain language: we are at Liq-PONV of the bank. [...] The value of the CS share is zero." The Chairman of the Board of Directors was not surprised by either piece of information (answer according to the minutes: "Yes, of course."). The FINMA Director went on to explain that the AT1 bonds would be written off and that the price CHF 1 billion meant that the compensation for shareholders higher than zero. In response to the hesitant reaction of the Chairman of the CS Board of Directors, the Head of FINMA's Banking division explained that the alternative resolution, with the corresponding risks for the national and international financial markets. The State Secretary for International Financial Matters added that the Confederation was taking a risk of CHF 5 billion, which was not insignificant.

Finally, she submitted the following price offer to the Chairman of the CS Board of Directors: "Final proposal for shareholder compensation, 2 billion instead of 1 billion." According to the minutes, she also gave CS a deadline of one hour to respond.[1886] This information is not consistent with the statements made by the State Secretary for International Financial Matters to the PUK, according to which she was not involved in the price negotiations (see Box 21 in section 7.2.4.6).[1887]

Immediately afterwards, the LG met for a briefing at 7 o'clock. As this was not recorded in the minutes, the information is based on hearings. One topic was the MAC clause.[1888]

A little later, at 8.45 a.m., representatives of FINMA, the SNB and SIF exchanged views with the Chairman of the Board of Directors and the CEO of UBS on

[1885] SIF: State Secretary and Head of the Financial Markets and Financial Systems Division; FINMA: Director, Head of the Banks Division, Head of the Enforcement Division

[1886] Brief minutes of the telephone meeting, prepared by a FINMA employee, sent by e-mail to the other representatives of the authorities immediately after the meeting, on 19.3.2023 at 7.10 a.m.; e-mail exchange between FINMA employees dated 17.10.2022, 9.10 p.m.

[1887] Minutes of the PUK meeting of 24.4.2024, p. 70 f.

[1888] Written answers to the PUK dated 18.4.2023

the outstanding issues, in particular the MAC clause. The FDF's aim had been to convey the key points for CS in order to support UBS. UBS had taken the position that a clause of this type was standard in such contracts and had also raised the issue of the guarantee in connection with the price.[1889] The price could also be higher depending on the structure of the guarantee.[1890] In addition, UBS had demanded that FINMA remove some CS executives and force others to stay.[1891]

Proposal for debtor warrants and alternative structure by CS

The next documented contact between CS and the authorities is an e-mail message from the Legal Counsel at 9.45 a.m. in which he criticized the fact that UBS had not included the previous points of criticism in its new draft agreement. In addition, the price was still too low and the withdrawal clause was even broader than in the first version.[1892]

As compensation for the profit that UBS would gain due to the *low price*CS proposed that each CS receive a supplementary payment certificate (a so-called debtor warrant) in addition to the UBS shares. As an alternative to the *exclusion clause*, CS proposed a
"alternative structure", in which the Confederation contributes equity to CS and it with liquidity. From CS's point of view, the Confederation's participation could have restored confidence. Part of this solution would also involved writing off the AT1 bonds. CS would also have undertaken to sell or significantly downsize various divisions (e.g. the investment banking division).[1893] This offer did not convince the authorities - they rejected it outright.[1894]

7.2.5.2 Further extraordinary meeting of the Federal Council in light of the pending agreement between the banks - examination of a forced merger

The Federal Council convened from 8.30 a.m. for another extraordinary meeting, which was also in a second part by the heads of CS, UBS, the SNB and FINMA. The meeting documentation included the draft revision of the Emergency Ordinance and the technical appendices thereto[1895] as well as a letter from CS (see below).

The content of the meeting was, on the one hand, an update on the latest developments and, on the other, a discussion of the next steps. In particular, the Federal Council proposal explained the adjustments to the emergency ordinance that were necessary to prevent a takeover of Credit Suisse by UBS to avert a default.

[1889] Written answers to the PUK dated 18.4.2023; Written answers to the PUK dated 22.1.2024
[1890] Internal memo from the FDF dated June 2023
[1891] Written answers to the PUK dated 18.4.2023; Written answers to the PUK dated 22.1.2024
[1892] Email from the Legal Counsel of CS to the State Secretary for International Financial Matters, 19.3.2023
[1893] Email from the Legal Counsel of CS to the State Secretary for International Financial Matters, 19.3.2023
[1894] Internal memo from the FDF dated June 2023
[1895] Specifically, these were: Federal Council proposal; amendment to the Ordinance on Additional Liquidity Assistance Loans and the Granting of Default Guarantees by the Confederation for Liquidity Assistance Loans by the Swiss National Bank to Systemically Important Banks; of a guarantee by the Confederation to UBS to cover losses on the assets of the acquired bank to be liquidated: approval and entry into force based on Article 184 paragraph 3 and Article 185 paragraph 3 of the Federal Constitution; updated communication concept (as at 18 March, 9.45 p.m.); updated media release; statements by the President of the Confederation and the Head of the FDF.3, 9.45 p.m.); updated media release; speech notes by the President of the Swiss Confederation and the Head of the FDF.

Credit Suisse.[1896] In addition to the granting of additional liquidity assistance based on emergency law, this included in particular the creation of a "clear legal basis" so that FINMA could apply the granting of liquidity assistance loans as state aid to trigger the write-down of Credit Suisse's additional Tier 1 capital (AT1).[1897]

According to the minutes of the meeting, the Federal Council was informed that the authorities had reached an agreement with UBS and, in particular, that UBS's demand for a guarantee of CHF 20 billion was off the table. It was also clear to the Federal Council at this point that UBS would not be prepared to merge without risk protection from the Confederation.[1898]

As CS still did not agree to the purchase agreement, the Federal Council discussed increasing the purchase price, which still CHF 1 billion, and increasing the federal guarantee, which had been set at CHF 5 billion at the time.[1899] The Federal Council had a letter from CS to the State Secretary for International Financial Matters in the meeting documentation, in which the UBS offer of CHF 1 billion was sharply criticized (see Box 21 in section 7.2.4.6).

At this meeting, the Federal Council also discussed the possibility of forcing CS to accept the agreement ("accord") by means of an additional article in the emergency ordinance (Art. 14b). The Federal Council suggested that a merger forced by the authorities might CS's preferred option, as it would not have to assume any responsibility.[1900] At the same time, the Federal Council noted that forcing a merger with UBS could only be a solution in an extreme emergency.

Hearing of the CS representatives

The Federal Council then the Chairman of the Board of Directors and the CEO of CS from 9.30 a.m., who reiterated their criticism of the withdrawal clause and the price, which they felt was too low. The price of CHF 1 billion was also problematic for shareholders, who would certainly seek legal action. The CS representatives considered a TPO to be a viable alternative.[1901] According to a FINMA representative present at the meeting, the impression arose that CS trying to shift its legal risks to the Confederation. In return, the Federal Council clearly presented restructuring as an alternative.[1902]

Obviously, the statements made by CS management caused irritation among the Federal Council. The minutes record that in the subsequent discussion, the Federal Council noted a loss of reality on the part of representatives and regretted "a certain arrogance in their argumentation".[1903]

As the uncertainties surrounding the deal between UBS and CS persisted, FINMA provided four copies of the restructuring documents ready for signature. These included a restructuring plan, a restructuring decree, a decree

1896 Federal Council proposal of March 19, 2023
1897 Federal Council proposal of March 19, 2023
1898 Internal memo from the FDF dated June 2023
1899 Minutes of the extraordinary Federal Council meeting of 19.3.2023
1900 The statements in the minutes of the CS Board of Directors of March 18 confirm this Hypothesis: The day before, the Board of Directors had actually discussed whether it would not be advantageous
would be detrimental if the authorities were to force the sale, as they would then have to bear the associated costs.
risks would have to bear.
1901 Minutes of the extraordinary Federal Council meeting of 19.3.2023
1902 Written answers to the PUK dated 1.5.2024
1903 Minutes of the meeting of the Federal Council on 19.3.2023

for the appointment of a restructuring officer, a proposal to the Board of Directors and a media release.[1904]

Hearing of the UBS representatives

The Federal Council subsequently held talks with UBS. The Federal Council expressed its expectation that a solution would be found in the next few hours. UBS explained the results of the quickly conducted *due diligence review*. The takeover was associated with risks that were considered problematic. The issue of the withdrawal clause was also raised.[1905]

Finally, the importance of joint communication in the event that a solution is found was emphasized. The meeting closed shortly before midday, as the President of the Swiss Confederation and the Head of the FDF were expected at the meeting of the FinDel.

Following the Federal Council meeting, the State Secretary for International Financial Matters moderated the negotiations on the possible abolition of the MAC clause with a high-ranking representative of UBS, who still in the Bernerhof. These were quickly concluded: UBS had agreed to an adjustment of the MAC clause on condition that the federal guarantee was increased by CHF 2 billion.[1906]

Continued preparation of a TPO

It is not clear from the minutes of the Federal Council to what extent it the possible alternative of a TPO of the entire CS Group at the aforementioned meeting. The PUK has a draft proposal from the Federal Council that would have regulated the state takeover of CS. This was justified in the draft on the grounds that an agreement between the two major banks had not yet been reached. The only possible alternatives were a state takeover, restructuring or the bankruptcy of CS. The FDF considered the latter two options to be worse overall. It also stated that the option of a state takeover would have the least negative consequences for the Swiss economy and probably also for the global financial system. A takeover by the Confederation would also require the liquidity measures that would be necessary in the case of a takeover by UBS in order to ensure the continuation of CS's business activities.[1907] The application listed the following three conditions for a TPO:

1. The failure of market-based solutions or the inability to implement them in time due to the urgency;
2. the lack of a valid alternative to avert significant damage to the Swiss economy and the Swiss financial system;
3. the suitability and necessity of the TPO solution to ensure the continuation of the business activities of the internationally active systemically important financial group.

The application was created and updated during the course of the day. The exact time is unknown and could not determined by the PUK. In any case, the explanatory notes were also prepared. The preparations were therefore well advanced.

1904 Opinion of 5.6.2024 as part of the administrative consultation
1905 Minutes of the extraordinary Federal Council meeting of 19.3.2023
1906 Minutes of the PUK meeting of 24.4.2024, p. 84
1907 Draft for Federal Council proposal regarding the ordinance on the temporary takeover of a
of an internationally active, systemically important Swiss financial group by the federal government.
including explanations

7.2.5.3 Meeting of the FinDel on Sunday, March 19, 2023, 10.45 a.m.

The granting of extraordinary loans is subject to approval by FinDel (see box 22 below). In view of the guarantees that the Federal Council wanted to issue to support the merger, it therefore had to involve FinDel.

Box 22: The FinDel as a body for the approval of urgent loans

The Finance Delegation is a committee of the two Finance Committees. It was created in 1902 and has its own legal basis in Article 51 ParlG. The main task of the FinDel is to provide concurrent financial supervision. Another important task is to approve urgent loans for Parliament in accordance with Articles 28 and 34 FHG. This is an extraordinary but statutory procedure for the approval of loans by Parliament [1908].

Commitment credits were granted for the CS emergency merger. A *commitment credit* "sets the maximum amount up to which the Federal Council can enter into financial obligations for a specific purpose" [1909]. If the councils approve a commitment credit, the administration may, for example, conclude contracts with third parties or issue guarantees.

Budgetary authority and credit approval procedure: ordinary and urgent credit procedure

Parliament has budgetary sovereignty.[1910] This means that every expenditure made by the Federal Council and the administration must be approved by Parliament. Parliament approves expenditure with the budget for the next financial year and with two supplements to the budget already approved for the current year.[1911]

The federal government's financial budget law provides for an ordinary and - unlike in many cantons - an urgent credit procedure (see below for more details). In the *ordinary procedure*, the Federal Council submits a proposal to Parliament via the dispatch on the budget or a supplement. The procedure provides for a detailed discussion, two rounds of amendments and a decision by the Councils on the proposals of a possible conciliation conference. The *urgent credit procedure* is used in cases where it is not possible to wait for "ordinary" approval as part of the budget or a supplement. According to Article 28 paragraph 1 FHG, the Federal Council may authorize the commencement or continuation of a project before the necessary commitment credit has been approved if the execution of a project cannot be delayed. It must obtain the approval of the Finance Delegation in advance.[1912]

[1908] The first urgent loan with a volume of over CHF 1 billion was the loan for Swissair in 2001. This was followed by the loan for UBS in 2008, the coronavirus loans in the years 2020 to 2022, the Axpo loan 2022 and then the two loans for the CS emergency merger in 2023. See Koller, Stefan (2024): Art. 51, N 29a and 30. In: Caroni, Andrea / Graf, Martin (eds.), Kommentar zum Parlamentsgesetz, 2nd edition, Basel: Helbing & Lichtenhahn

[1909] Art. 21 para. 2 Federal Act of 7.10.2005 on the Federal Budget (Financial Budget Act, FHG; SR **611.0**)

[1910] Art. 167 BV. Cf. on the financial powers of the Federal Assembly, on expenditure authorization and on the budget instead of many Stauffer, Thomas (2023): Art. 167. in: Ehren- zeller, Bernhard / Egli, Patricia / Hettich, Peter / Hongler, Peter / Schindler, Benjamin / Schmid, Stefan G. / Schweizer, Rainer J. (eds.): St. Galler Kommentar zur Bundesver- fassung. 4th edition. Dike Verlag: Zurich/St. Gallen.

[1911] Supplement I to the current budget is discussed in the summer session, the Budget for the following year and Supplement II to the budget for the current year in the winter session. See Art. 25 para. 1 ParlA.

[1912] See section 2.2 of the FinDel's principles of action dated November 28, 2023; on the credit law basis for supplementary credits, Message on Supplement II to the Estimate 2024 of 20.9.2024, p. 32 f.

The prerequisite for an urgent credit procedure is that waiting for an ordinary approval would lead to financial damage.[1913] The administration must prove this urgency when submitting the application to the Federal Council. It must be a matter of urgency in terms of time. Factual importance or political desirability is not sufficient.[1914] If the Federal Council comes to the conclusion that the loan is also urgent from its point of view, it approves the loan and submits an application to the FinDel.

Advice on an urgent loan by FinDel

For FinDel, urgency is a prerequisite for taking actionwhich it always examines in depth first. If the urgency criterion is fulfilled for FinDel, it examines the legality, necessity, unforeseeability, the amount of the loan, compensation options, the effects in the event of a rejection of the application and the precedent effect of the delegation's decision.

The FinDel decides on the loan for Parliament. As soon as the FinDel has approved the loan and forwarded its decision to the Federal Council, the Federal Council may enter into the financial commitment. Article 28 paragraph 2 of the Financial Budget Act stipulates that the Federal Council must submit the urgent commitment to the Federal Assembly for subsequent approval.

If the urgent commitment exceeds CHF 500 million and the convening of an extraordinary session is requested for its subsequent approval within one week of approval by the FinDel, this will take place in the third calendar week following the submission of the request.[1915] The convening of an extraordinary session was requested, and the extraordinary session took place on April 11/12, 2023 (see the explanations under section 8.5)

Preliminary information from FinDel

The President of the FinDel was first informed on Wednesday evening, March 15, 2023, that the Federal Council was preparing a financially effective transaction. On Thursday morning, March 16, and on the evening of March 18 (see section 7.2.4.6), it was of the current situation by the Head of the FDF. In consultation with the Head of the FDF, it the meeting of the FinDel for Sunday, March 19 at 10.45 a.m.. The date was chosen for two reasons: On the one hand, the FinDel absolutely had to make a decision before the stock exchanges in Asia would open. On the other hand, the FinDel could not meet earlier because the negotiations still ongoing.[1916] In addition, the Federal Council met beforehand (see section 7.2.5.2).

Preparation for the meeting of the FinDel on March 19

Preparations for the meeting on Sunday, March 19, began as soon as it was known that the FinDel would have to approve an urgent loan. The Federal Chancellery was in contact with the secretariat of the FinDel with regard the transmission of secret documents and communicationThere was also intensive coordination with the GS-FDF. The plan was for the documents and the Federal Council's request to be sent as soon as possible after its meeting. The

[1913] See Art. 24 and 25 and 27 para. 3 of the Financial Budget Ordinance (FHV; SR 611.01), which explicitly this for budget credits. However, this also applies to commitment credits.

[1914] Stauffer, Thomas (2023): Art. 167 N23 In: Ehrenzeller, Bernhard / Egli, Patricia / Hettich, Peter / Hongler, Peter / Schindler, Benjamin / Schmid, Stefan G. / Schweizer, Rainer J. (ed.): St. Gallen Commentary on the Federal Constitution. 4th edition. Dike Verlag: Zurich/St. Gallen.

[1915] Art. 28 para. 3 FHG

[1916] Minutes of the FK-N of 30/31.3.2024, agenda item 6a, FinDel report, p. 1

The transmission of the documents scheduled for Thursday was delayed because the Federal Council met longer than planned.[1917] On Friday morning, the Federal Chancellery sent the FinDel Secretariat a copy of the secret Federal Council resolution containing the Federal Council's decisions of March 16, 2023 for each FinDel member.[1918] The members met immediately after the transmission of the documents in the utmost secrecy to study the secret Federal Council resolution.

Meeting on Sunday, March 19

The meeting began on Sunday at 10.45 a.m. with a further study of the files.[1919] FinDel then held a brief internal meeting at 11.15 a.m.. This was by a discussion from 11.45 a.m. to 12.30 p.m. with the President of the Swiss Confederation and the Head of the FDF, who explained the Federal Council's decisions in the secret Federal Council resolution of Thursday, March 16, 2023. The delegation then held discussions with the Chairman and Vice-Chairman of the SNB, the Chairwoman of the Board of Directors and the Director of FINMA, the Chairman of the Board of Directors, the CEO and the Global Head of Public Policy and Regulatory Foresight of CS and finally with the Vice-Chairman of the Board of Directors and the Chief Compliance and Governance Officer of UBS. During these discussions and the detailed question and answer sessions, FinDel gained an overview of the initial situation and the requirements for the commitment loans. The members focused on the following: the question of the inevitability of the chosen solution; the various levels of liquidity assistance (EFF, ELA, ELA+, PLB), their necessity and the SNB's scope for action; the federal guarantee and general legal risks for the Confederation; the question of alternative solutions in the event of the takeover failing; the deviation of the chosen solution from the TBTF legislation; shareholder rights.[1920]

At this meeting, the Director of the FFA stated, among other things, that the international pressure on the Swiss authorities not to wind up CS under TBTF regulation (restructuring or bankruptcy) was "incredibly high".[1921] The Head of the FDF pointed out to the FinDel that a takeover also the best solution from the point of view of the US authorities. They had not only accepted a takeover, but had actually pushed for one.[1922]

At her hearing before the PUK, the head of the FDF also stated that the authorities in the US and the UK had wanted to avoid a resolution because they feared the risk of CS infecting other financial institutions. However, the head of the FDF did not perceive this feedback as pressure. The President and Vice President of the SNB also confirmed that they were not aware of any direct pressure being exerted on their authorities by foreign authorities.[1923]

1917 Cf. e-mail from FinDel Secretary to FinDel members dated 17.3.2023, 16.37. The FFA Director informed the FinDel Secretariat that the Federal Council was meeting longer than .

1918 As the Federal Council resolution was classified as secret, it could only be studied on paper on site and could not be sent or taken home, for example.

1919 See also the report of the Finance Delegation to the Finance Committees of the Na- of the Federal Council and the Council of States on the overall supervision of federal finances in 2023 of 11.3.2024 (BBl **2024** 1663, p. 10)

1920 Minutes of the FinDel meeting of 19.3.2023

1921 Minutes of the FinDel meeting of 19.3.2023, p. 37

1922 Minutes of the FinDel meeting of 19.3.2023, p. 17 f.

1923 Minutes of the PUK meeting of 8.11.2023, p. 78; Minutes of the PUK meeting of 29.11.2023, p. 7, 20; written answers to the PUK dated 22.1.2024, p. 9

7.2.5.4 Preparation for the possible ordering of a compulsory merger by FINMA

The question of the extent to which CS could be forced to merge with UBS also occupied the FINMA Board of Directors from midday on March 19. It met twice on this issue (12.50 to 13.25 and 14.30 to 17.00). The meeting was chaired by the Vice-Chairman of FINMA's Board of Directors, as the Chairman and the Director were absorbed by the negotiations in Bern.

First meeting: initial information on the plan to force CS to merge

At the first meeting from 12.50 p.m., the Head of the Recovery and Resolution division explained that, due to the still outstanding agreement between the two big banks, the Federal Council's draft included an optional Article 14b that would authorize FINMA to force CS to merge with UBS. The Board of Directors discussed this option critically, especially as it was FINMA's actual role to ensure that other solution options (restructuring/bankruptcy) were available. It also questioned on what factual basis FINMA would be able to order a merger as an independent authority. In this regard, he stated that Article 14b was the minimum requirement for FINMA to be able to force CS to take over the company. By anchoring the right to issue instructions in the emergency ordinance, FINMA's authority in this regard would be more clearly and appropriately anchored than if it were based solely on the protective measures of the Banking Act. Nevertheless, the Board of Directors discussed the liability risks for FINMA and the members of the Board of Directors, which are regulated in the Financial Market Supervision Act (Art. 19 FINMASA).

Finally, the Head of Recovery and Resolution added that a no-deal scenario would very likely lead to a restructuring by FINMA in the near future. [1924] We are prepared for this. However, it is currently impossible for anyone to assess whether a restructuring would restore confidence to the same extent as a takeover and what impact the first-time restructuring of a G-SIB would have on the financial industry in Switzerland and globally.[1925]

Second meeting: Consultation on draft decree ordering the merger

At its second meeting, which started at 2.30 p.m., the Board of Directors discussed the draft ruling that the responsible division had prepared on the basis of Article 14b of the Emergency Ordinance. [1926] The Board of Directors was informed that the negotiations between CS and UBS were still ongoing and that the option of a forced merger only an extreme fallback scenario. With the prepared ruling, FINMA would have ordered the merger and withdrawn the suspensive effect of a possible appeal.

An alternative option would have been to remove the current bodies of CS and appoint new bodies that would support the merger. However, given the existing time pressure, replacing the governing bodies was not considered a realistic solution. Therefore, the decree ordering the merger was preferred as a fallback scenario.[1927] The Board of Directors emphasized that it could only agree to a decree if the sale price was known and fair. The division head clarified that FINMA would force CS to accept the result of the authorities' negotiations with the proposed order. However, this would not assess whether the result was fair. The order was only intended to enforce a negotiated result.

[1924] FINMA's draft restructuring order dated 17.3.2023 (see section 7.2.3.6) now provided on 19.3.2023 that the restructuring of CS would be opened with effect from 19.3.2023 at 8 p.m. (FINMA's draft restructuring order in the matter of CS dated 19.3.2023, section A.1.).
[1925] Minutes of the FINMA Board of Directors meeting of 19.3.2023, 12:50 to 13:25
[1926] FINMA ruling of March 19, 2023 (draft) in the matter of Credit Suisse Group AG regarding an order to implement a merger with UBS AG
[1927] Minutes of the FINMA Board of Directors meeting of 19.3.2023, 14:30 to 15:30

The Board of Directors subsequently stated the following conditions for approval of the compulsory injunction: The price had to be known and it had to be deemed appropriate by both parties. Finally, the Board of Directors agreed to submit the following wording to the Chairman of the Board of Directors as a precondition for a decree: "[...] *the Federal Council has received the offer from UBS Group AG, it agrees to it and the Federal Council, SNB and FINMA consider the offer to be appropriate in the given critical situation*."

At 4.45 p.m., the Board of Directors learned that an agreement had been reached (see section 7.2.5.5) and broke off its meeting.[1928]

7.2.5.5 Agreement between the banks and implementation of the agreed solution by the Federal Council and FinDel

At 3 p.m., the Federal Council met for the second part of its meeting and noted that the Chairman of the Board of Directors of CS had shown himself to much more open towards FinDel. The aim must now remain to conclude an agreement with UBS as quickly as possible.[1929]

The new compromise proposal was discussed, according to which an increase in the federal guarantee from CHF 5 billion to CHF 9 billion would enable UBS to increase the purchase price to CHF 3 billion. It was also noted that a price of CHF 3 billion would better compensate shareholders' rights, which already restricted by the agreement. The minutes of the Federal Council meeting show that the Federal Council also discussed the alternative of forcing CS to accept the aforementioned compromise proposal on the basis of Article 14b of the Emergency Ordinance in the event that the banks were unable to reach an agreement.[1930] For the government, a forced merger would have been only an ultima ratio, which was to be prevented for various reasons, in particular due to the high legal risks.[1931]

While the Federal Council was still discussing these issues, it received the information at around 4.45 p.m. that CS and UBS had reached agreement on the new terms.[1932]

Following the agreement, CS applied to the SNB for a further ELA+ of CHF 30 billion.[1933] The SNB also approved this application.[1934]

Key figures of the solution adopted

As part of the takeover, the Federal Council adopted the following package of measures under emergency law (Art. 184 para. 3 and Art. 185 para. 3 BV):

- Article 14a para. 1 of the Emergency Ordinance stipulated the generally formulated authority that the Confederation may grant a guarantee in favor of the acquiring bank (specifically: UBS) to cover losses on the assets of the bank to be acquired (specifically: CS).
- Paragraph 2 stipulated that the guarantee to cover losses should not exceed CHF 9 billion [(1935).]
- Paragraph 3 regulated the conditions for the payment of the guarantee: all assets to be liquidated had to be definitively realized (letter a), and the

1928 Minutes of the FINMA Board of Directors meeting of 19.3.2023, 14:30 to 15:30
1929 Minutes of the extraordinary Federal Council meeting of 19.3.2023
1930 Minutes of the extraordinary Federal Council meeting of 19.3.2023
1931 Internal memo from the FDF dated June 2023
1932 Minutes of the extraordinary Federal Council meeting of 19.3.2023, for information on for the agreement reached, see also the minutes of the PUK meeting of 11.10.2023, p. 3
1933 Application for ELA+ from CS to the SNB dated 19.3.2023, p. 2
1934 Chronology of the SNB/FINMA. See also "National Bank supports takeover of the Credit Suisse with extensive liquidity assistance", SNB press release of March 19, 2023.
1935 SR **952.3** Article 14a could be repealed following the termination of the guarantee agreement by UBS. Repealed by No. I of the Ordinance of 6.9.2023, with effect from 15. 9. 2023 (RO **2023** 495).

UBS had to bear the first definitive losses in the amount of CHF 5 billion (letter b).
- Paragraph 3 letter c provided for FINMA to monitor the requirements of paragraph 3 letters a and b and to confirm to the Confederation the definitive loss of CHF 5 billion incurred and the definitive loss to be covered by the guarantee.
- Finally, paragraph 4 stipulated that the details would be regulated in the guarantee agreement between the Confederation and the acquiring bank (UBS).

Article 14b on ordering a sale, which was discussed at the two Federal Council meetings on March 19, 2023, was ultimately not in the emergency ordinance. It is not clear from the Federal Council minutes when this decision was made.

Subsequently, at 10 p.m., FINMA ordered the AT1 bonds to be written off.[1936]

Table 24: Overview of the amounts paid by the SNB and the Confederation to CS and UBS

Measures	*Actors involved*	*Decision date*	*Legal basis*	*Amount*
ELA and bottleneck financing facility	SNB, CS	16.3.2023	NBG	Around 48 billion Swiss francs (in effective terms)
ELA+	SNB, CS/UBS	17.3.2023 and 19.3.2023 (Fixed of the amount on 19.3.2023)	Emergency law	100 billion Swiss francs (actual amount: 50 billion Swiss francs)[1937]
PLB	FDF, FinDel, SNB, CS	19.3.2023	Emergency law	100 billion Swiss francs (actually received: 70 billion Swiss francs)[1938]
Loss compensation guarantee	FDF, FinDel, UBS	19.3.2023	Emergency law	9 billion francs
257 billion francs made available, around 168 billion francs actually received				

Approval of the loans by FinDel

In order to implement the solution found, FinDel now needed to approve the CHF 100 billion commitment credit for the liquidity assistance. At the time of the agreement between the two banks, the FinDel was still in session. Between 3.30 p.m. and 4.40 p.m., it had the Director of the FFA explain the Federal Council's proposal in more detail and discussed the financial risks for the Confederation in particular.

[1936] FINMA ruling dated 19.3.2023 "Amortization of additional tier 1 capital ("AT1")"
[1937] The first application for ELA+ on 17.3.2023 amounted to CHF 20 billion. The second application for ELA+ on 19.3.2023 amounted to a total of CHF 30 billion, of which 20 billion in US dollars, 5 billion in Swiss francs and 5 billion in euros (application for ELA+ from CS to the SNB dated 19.3.2023, p. 3).
[1938] Divided into 45 billion US dollars, 20 billion Swiss francs and 5 billion euros (application by the PLB of CS to the SNB dated 19.3.2023, p. 3)

After the agreement was reached, the Federal Council submitted a request to the FinDel for approval of an urgent commitment credit in the amount of CHF 9 billion for loss protection by the Confederation in favor of UBS. The Federal Council explained that the Confederation was thus facilitating the takeover of CS by assuming possible losses from the sale of portfolios (in particular securities) that do not fit in with UBS's business. Due to the urgency of the matter, the Federal Council asked for a decision to be taken and notification to be given as quickly as possible by 6 p.m.[1939] The FinDel continued its meeting at 5.20 p.m. with the President of the Swiss Confederation, the Head of the FDF and the Director and Deputy Director of the FFA. The Federal Council's request for a guarantee CHF 9 billion was discussed (see above). The FinDel was already aware that a guarantee was being negotiated from the earlier discussion; what was not yet known was the solution that was then found.

The FinDel approved the urgent loans for financing and sent its approval of the two obligatory loans to the FDF and the Federal Chancellery at 5.47 pm.[1940] The Federal Council was informed immediately afterwards that the FinDel had approved the requested loans. The official letter approving the applications was sent to the FDF that same evening. Following the Federal Council's press conference, the FinDel also published a media release later that evening.[1941]

Information for Members of Parliament

The FinDel then sent a letter to the President of the National Council and the President of the Council of States with its resolutions so that the members of Parliament could request the convening of an extraordinary session, as provided for in Article 28 paragraph 3 FHG.[1942] The Council Presidencies forwarded the FinDel's letter with a letter of their own. This made it possible to request the convening of an extraordinary session [(1943).]

7.2.6 Communication during the acute crisis (March 15-19, 2023)

On the first day of the acute crisis, 15 March, the Steering Committee decided that the SNB and FINMA should publish a joint media release at 8.30 p.m. on the same day.[1944] This release emphasized the problems of certain banks in the US did not pose any risks for Swiss institutions and that CS met the regulatory requirements in terms of capital and liquidity[(1945).]

The FDF, which was aware of the planned press release by the SNB and FINMA, informed the Federal Council Spokesman of this.[1946] In consultation with the Head of the FDF, the then Federal Council Spokesman forwarded the press release to the members of the Federal Council prior to publication.[1947] The press release by the SNB and FINMA was neither discussed in advance in the Federal Council nor approved by it.

[1939] Letter from the Federal Council to the FinDel "New urgent commitment credit for the granting of a guarantee by the Confederation to UBS to cover losses on the assets of the acquired bank to be liquidated, 19.3.2023
[1940] Chronology of the FDF of 26.6.2023
[1941] "Finance delegation approves two urgent commitment credits totaling CHF 109 billion", press release from the FinDel dated 19.3.2023
[1942] Letter from FinDel to the President of the National Council and the President of the Council of States dated 19.3.2023
[1943] See Art. 3 para. 2 ParlA in conjunction with Art. 28 para. 3 FHG; letter from the Presidencies of the Councils to the members of the National Council and Council of States dated 20.3.2023
[1944] Minutes of the LG meeting of 15.3.2023
[1945] "FINMA and SNB comment on uncertainties in the market", press release by the SNB and FINMA dated 15.3.2023
[1946] Written answers to the PUK dated 12.4.2024
[1947] E-mail from the then Vice-Chancellor and Federal Council Spokesman to the members of the Federal Council dated 15.3.2023, 7.36 p.m.

and was also approved the following day at the Federal Council meeting of March 16 was not an issue.[1948] This communication led to a short-term rebound in the CS share price. The opening price on March 16 was significantly higher than the closing price on March 15. However, the effect was - the share price fell again in the course of the day.[1949]

Preparation of communication by the authorities during the crisis

Between March 15 and 19, 2023, around eight coordination meetings were between the communication officers of the FDF, SIF, the SNB and FINMA under the leadership of the Federal Council spokesperson. The personal assistant to the Head of the FDF also involved in this work. The communications officers of UBS and CS were also present at two meetings. The basis for this work was the communication concept drawn up by the FCh and FDF in November 2022 (see section 6.4.4), which was finalized on 1 December for a possible decision by the Federal Council. Accordingly, the information cascade was prepared and contacts with the partners could be established quickly. The basic content of the communication on the ELA, ELA+ and PLB financial instruments had already been prepared. The challenge in March was to prepare the joint communication on the specific decisions at a time when the negotiations were still underway and their outcome was still open. The Federal Council had to decide on the communication concept and content at this stage, although various elements were still open.[1950] The communication issues were discussed in the AF and the LG in preparation.[1951]

From the passive language regulation of March 16, 2023 to the press conference on March 19, 2023 at 7:30 p.m.

several online articles on CS appeared on March 15, 2023, the communication officers of the FCh and the FDF coordinated with the communication officers of all departments. The FDF took the lead for media inquiries in this regard.[1952]

The extraordinary Federal Council meeting of Thursday at can be viewed at on ,
16 March 2023 (afternoon), the Federal Council spokesperson and the responsible FDF press spokesperson met that morning to draw up a passive language regulation in the event that information should be leaked.[1953] Several exchanges place during the course of the day on the passive language regulation prepared by the FDF. In the request to the Federal Council, it was stated that communication on the business would only be appropriate once all components of the package were available and been adopted. The decisions of the Federal Council should therefore not communicated. The ordinance should also only published once the possible takeover has been communicated. The communication strategy was to be adapted on an ongoing basis.[1954] At its meeting on March 16, the Federal Council finally adopted a brief language regulation without any substantive information. It only stated that the Federal Council would seek information from FINMA and the

[1948] Minutes of the PUK meeting of 17.1.2024, p. 39; minutes of the Federal Council of 16.3.2023
[1949] Written answers to the PUK of 22.1.2024 [1950]
Minutes of the PUK meeting of 17.1.2024, p. 34 [1951]
Written answers to the PUK of 12.1.2024
[1952] E-mail from the then Vice-Chancellor and Federal Council Spokesman to the General Secretariats of all departments dated 15.3.2023, 6.06 p.m.
[1953] Written answers to the PUK dated 12.4.2024, Appendix Chronology " Communication CS-UBS "
[1954] Federal Council proposal FDF of 18.3.2023

SNB about the situation of CS, that no information was provided about the content of the meeting and that reference was made to the media release of FINMA and the SNB of
March 15.[1955]

At the same meeting, the Federal Council instructed the FDF, in cooperation with the FCh, to submit a report to the Federal Council by Sunday at the latest,
March 19, 2023, to submit a communication concept. This was to contain the procedure and content of the communication (media releases, fact sheets, speech notes, etc.).[1956] That same evening, a coordination meeting was under the leadership of the Federal Council spokesperson.[(1957)] at which the orders to prepare the necessary documents were issued.[(1958)] That evening, a first, as yet unconsolidated draft of a media release prepared by SIF was already available. From the outset the main scenario was "takeover of CS by UBS". Among other things, this draft stated that the Federal Council welcomed the planned takeover of CS by UBS and that the Confederation would provide a guarantee for liquidity assistance of CHF 100 billion from the SNB to CS.[1959]

The following day, the Federal Council Spokesperson instructed the FDF to refine the communication concept and add various details (translations, coordination of communication with the FinDel, procedure invitations to the media conference, setting of the media conference, etc.), which had to be taken into account for further planning. The advance information of the Council and party presidencies was also taken into account in the planning. At 4 p.m., a discussion place between those responsible for communications on the amended communications concept[1960], which the Federal Council spokesperson sent to the then Federal Chancellor and the then Vice-Chancellor and Head of the Federal Council Division at 7.45 p.m.[(1961).]

Work on the communication concept continued on Saturday, March 18, 2023. All documents (speaking notes for participants at the media conference, media releases, FAQs and fact sheets) were finalized with the messages in the event that the deal was concluded. The communication concept with a draft of the media release was distributed for the Federal Council meeting at 5 pm. In the FDF's information note of 18 March, reference was made to the importance of coordinated communication by the Federal Council - both in the event that the sale scenario can be realized and in alternative scenarios. Due to the situation of CS, the FDF assumed that the Federal Council would have to communicate on Sunday in any case[(1962).]

From the afternoon of March 18, the authorities' communication officers coordinated with those of UBS and CS.[1963] Coordinated public communication by the authorities, including a joint press conference by the authorities and the banks, was in UBS's interests from the outset.It had also done this in

[1955] E-mail from the then Vice-Chancellor and Federal Council Spokesman to the GS-EFD and the SIF dated 16.3.2023, 19.11 hrs
[1956] Federal Council resolution of 16.3.2023
[1957] Appendix Chronology " Communication CS-UBS " of the written answers to the PUK of 12.4.2024
[1958] Appendix Chronology " Communication CS-UBS " of the written answers to the PUK dated 12.4.2024,
[1959] Draft of the media release in an e-mail from the SIF to the then Vice-Chancellor and Federal Council Spokesman dated 16.3.2023, 20.07 hrs
[1960] This was classified as secret.
[1961] Email from the then Vice-Chancellor and Federal Council Spokesperson to the then Federal Chancellor and the then Vice-Chancellor and Head of the Federal Council Division dated 17.3.2023, 7.45 p.m.
[1962] Information note from the FDF dated 18.3.2023
[1963] Communication concept dated 18.3.2023

The banks' communication managers also took part in the coordination meeting at 8 p.m. for the first time (see section 7.2.1)All participants were in agreement with the communication concept. The participants in the meeting agreed that the media releases and the notes on the "deal" scenario should be available the following day - regardless of the status of the negotiations between the banks.[1965] After this meeting, the Federal Council spokesman informed the members of the Federal Council that all communications work had been coordinated with the information departments of the two banks, would continue to be coordinated the following day and that the procedure had been discussed together.[1966]

The finalized communication concept with the drafts of the media release and the speaking notes for the President of the Swiss Confederation and the Head of the FDF were distributed to the members of the Federal Council for the meeting on 19 March.[1967]

On Sunday, March 19, 2023, the communication managers met for a total of three coordination meetings. The FC informed the accredited media representatives by email at 3 p.m. that an important media conference would take place in the evening, without naming the topic.[1968] This procedure was chosen because the media representatives are not usually in Bern on Sundays and the SRG had to prepare the broadcast. After the takeover was confirmed shortly before 5 p.m., the documents were adapted accordingly. The updated speaking notes were distributed to the members of the Federal Council in view of the media conference at 7.30 pm. Half an hour after the FinDel's positive decision, the FC sent journalists the invitation for the planned media conference at 7.30 p.m.[(1969).]

Media conference on March 19, 2023

The media release[1970] was published in four languages at the same time as the media conference. FAQ, the *Ordinance on Additional Liquidity Support Loans and the Granting of Default Guarantees by the Confederation for Liquidity Support Loans by the SNB to Systemically Important Banks* and its amendments of March 19[1971] and the accompanying explanatory report were also published on March 16, 2023 the Federal Council.

According to the Federal Council spokesperson at the time, it was important to provide information as quickly as possible, specifically before the Asian stock exchanges opened. The main aim of the media conference was therefore to communicate the solution presented in a credible manner, calm the financial markets and prevent an international financial crisis.[1972] In the communication plan of November 2022, the Federal Council spokesperson already pointed out that the

1964 UBS: DRAFT conditions for initial discussion, 15.32023; FINMA BoD business: of the key figures for the takeover of Credit Suisse Group AG by UBS Group AG, 18.3.2023
1965 Written answers to the PUK dated 12.4.2024, Annex Chronology " Communication CS-UBS "
1966 Threema message from the then Vice-Chancellor and Federal Council Spokesman to the full Federal Council, 18.3.2023, 22:36
1967 Communication concept as at 18.3.2023 21.45; media release as at 19.3.2023 8 a.m.; press release by the President of the Confederation and the Head of the FDF as at 19.3.2023 6.20 a.m.
1968 E-mail from BK dated 19.3.2023, 3.03 p.m.
1969 E-mail from BK dated 19.3.2023, 6.28 p.m.
1970 "Safeguarding financial market stability: The Federal Council welcomes and supports the of Credit Suisse by UBS", Federal Council press release of 19.3.2023
1971 On Thursday, 16.3.2023, an emergency ordinance on ELA+ came into force. This ordinance was not published and nothing was communicated about it. Ordinance on additional liquidity assistance loans and the granting of default guarantees by the Swiss for liquidity assistance loans from the Swiss National Bank to systemically important banks of 16.3.2023 and its amendments of 19.3.2023
1972 Minutes of the PUK meeting of 17.1.2024, p. 35; Written answers to the PUK of 12.4.2024, Appendix Chronology " Communication CS-UBS "

cher points out that in such a transaction, "the statements at the media conference are judged to the decimal point" and the speaking notes must be formulated and coordinated accordingly [1973].

The media conference was attended by the President of the Swiss Confederation, the Head of the FDF, the Chairwoman of the FINMA Board of Directors, the Chairman of the SNB and the Chairmen of the Boards of Directors of UBS and CS. [1974] The President of the Swiss Confederation opened the media conference with a general briefing. He referred to the situation at CS in recent months. The turbulence on the financial markets had further destabilized CS. It was a top priority to guarantee the liquidity of a systemically important bank. The Federal Council had already taken decisions in this regard on Thursday. On Friday, it was clear that the outflow of liquidity was too great and that the loss of confidence could no longer be restored. For this reason, the Federal Council supported the takeover of CS by UBS. It was convinced that this was the best solution for restoring confidence in the financial market and minimizing the risks for Switzerland.

The Head of the FDF was then given the floor. She stated that the primary objective was to protect Switzerland's interests, contribute to stabilizing the international financial markets and protect the Swiss financial centre and economy. She explained the specific decisions taken by the Federal Council. She also communicated that these decisions were emergency legislation that would be superseded by ordinary law. The FinDel had agreed to the requested commitment credits (liquidity assistance and limited loss guarantee). The Federal Council regrets that CS was not in a position to overcome the difficulties on its own. The takeover of CS by UBS is intended restore confidence. The head of the department emphasized that the risks involved in this solution were significantly lower than in the other scenarios examined.

The Chairman of the SNB then explained the SNB's view and role in this step, specifically the need for liquidity assistance and, above all, the instruments that had been created (PLB). The Chair of FINMA's Board of Directors assessed the solution as a "good, stable and viable solution" to an acute problem. She assured that CS's banking business would continue to function without interruption. The solution presented, together with stabilizing measures by the federal government and the SNB to secure liquidity and the conversion of AT1 bonds into equity ordered by FINMA, will bring stability to the financial market. The Head of the FDF judged the solution to be correct in terms of regulatory policy. It was not a bail-out, but a commercial solution - i.e. the takeover of CS by UBS. This was followed by statements from the Chairmen of the Boards of Directors of UBS and CS.

Both the President of the Swiss Confederation and the Head of the FDF also conveyed the most important messages in English. This was deliberately included to reassure the foreign authorities and international players.[1975]

The communication was widely reported in the national and international media and led to a calming of the situation/on the financial markets (see section 8.1 ff)

[1973] Email from the then Vice-Chancellor and Federal Council Spokesperson to the State Secretary for International Financial Matters and the GS-EFD dated 2.11.2022, 18.51 hrs

[1974] President Alain Berset, Head of the FDHA, Federal Councillor Karin Keller-Sutter, Head the FDF, Marlene Amstad, Chairwoman of the Board of Directors of FINMA, Thomas Jordan, Chairman of the Board of Directors of the Swiss Financial Market Supervisory Authority.
Chairman of the Governing Board of the SNB, Colm Kelleher, Chairman of the Board of Directors of UBS Group, Axel Lehmann, Chairman of the Board of Directors of Credit Suisse; chaired by Vice-Chancellor André Simonazzi, Spokesman of the Federal Council

[1975] Federal Council media conference of 19.3.2023

Two days after the takeover decision, on March 21, 2023, the Federal Council issued a press release announcing the FDF's decision to temporarily suspend certain variable payments to CS employees. Article 10a of the Banking Act provides for this measure if a systemically important bank is granted direct or indirect state aid from federal funds.[1976]

8 Phase 4: Implementation of the emergency merger

Chapter 7 describes the events leading up to the emergency merger of CS with UBS on March 19, 2023, Chapter 8 briefly outline the measures for implementing the merger. This fourth and final phase was not the focus of the PUK's investigation, as FinDel had already dealt with the guarantee agreement between UBS and the Confederation.[1977]

Chapter 8.1 describes the reaction of the markets to the merger. In chapter 8.2 describes the finalization of the various agreements between the two banks and between UBS and the Swiss Confederation. The monitoring of the measures taken by the authorities is described in section 8.3. Section 8.4 provides a brief overview of the reports published by the authorities after the emergency merger and the expert reports that were commissioned. Chapter 8.5 deals with the discussion of the loans approved by FinDel in the Finance Committees and the Councils. Finally, chapter 8.6 contains a summary of the ongoing legal proceedings.

8.1 Short-term effects of the measures taken

When the stock exchanges opened on March 20, 2023, there was no stock market crash and financial market stability was maintained. The performance of UBS and CS shares and the impact on the AT1 market are briefly outlined below.

UBS and CS share price performance

Share prices stabilized from 20 March 2023 and recovered. The UBS share price developed positively. The closing price on
March 17, 2023 Fr. 18.36, then Fr. 19.11 on March 20, 2023. The share price subsequently slowly and reached Fr. 31.82 on June 3, 2024.[1978] The CS share price stood at Fr. 1.90 on March 17, 2023, fell to Fr. 0.69 on March 20, and then settled at Fr. 0.84 on March 21, 2023.[1979] The cost of credit default swaps also fell sharply.[1980]

Assessment of AT1 bonds and market development

Switzerland's action to stabilize the financial market was welcomed by the European banking supervisory authorities. In order to counter destabilization of the European banks, they also emphasized that the European banking

[1976] "Federal Council makes decisions on variable remuneration at Credit Suisse", Federal Council press release dated 21.3.2023

[1977] Report of the Finance Delegation to the Finance Committees of the National Council and the Council of States
of the Federal Council concerning the overall supervision of federal finances in 2023 of March 11, 2024, (BBl **2024** 1663, p. 10)

[1978] Finanzen.ch: UBS share, https://www.finanzen.ch/kurse/historisch/ubs/amex/17.3.2023_20.7.2024 (as at: 4.6.2024). Cf. also the comments on the development of UBS's business activities in the SNB's summary of the Financial Stability Report 2024, p. 3 f.

[1979] For more information on the performance of CS shares, see Hau/Rochet expert report (2024), p. 16 ff.

[1980] Cf. item 1: SNB, Financial stability Report 2024, Note of the SIF for FSB Plenary, p. 45 Chart 4.19

market was stable. The supervisory authorities also feared a certain destabilization of common capital instruments (e.g. bail-in bonds, AT1 bonds) due to the write-down of CS's AT1 bonds and felt compelled to communicate to the markets that the established European resolution framework would continue to apply. The European banking authorities wanted to prevent the AT1 bond market from suffering too much damage.[1981] Compared to the same period in the previous year, AT1 issues actually fell by 50 percent, both in of issue volume and the number of issues. Investors had not expected that the contractually agreed write-down options would actually be utilized (see section 8.4.6).

The market for AT1 bonds recovered again over the next few months. For example, UBS successfully placed four AT1 bonds worth billions on November 28, 20231982. In response to the fact that FINMA's instruction to CS to write off the AT1 bonds was very negatively received by shareholders, UBS updated the conditions for the four AT1 bonds issued. These are converted into equity when a so-called viability event occurs and are no longer fully amortized.[1983] Other banks also successfully placed AT1 bonds. For example, Deutsche Bank announced on June 3, 2024 that it had issued AT1 capital instruments in the amount of EUR 1.5 billion. These securities have an annual fixed interest coupon of 8.125% payable until April 30, 2030.[1984]

8.2 Contractual implementation of the merger from March 19, 2023

The following two sub-chapters explain which work can be carried out from the March 20, 2023 in order to fully prepare the merger agreement. In chapter **8.2.1** the contractual work between the two banks is described, in chapter **8.2.2** the procedure for concluding the guarantee agreement between UBS and the Swiss Confederation.

[1981] For the AT1 instruments, see section 4.2.2.3; 7.2.3.7 Box 19 "Order to off AT1 bonds in the acute crisis in March 2023; press release from the European Banking Authority dated 20.3.2023, https://www.eba.europa.eu/publica- tions-and-media/press-releases/srb-eba-and-ecb-banking-supervision-statement-an- nouncement-19

[1982] UBS places new AT1 bonds again for the first time - issue massively oversubscribed. In: Handelsblatt, 28.11.203, https://www.handelsblatt.com/finanzen/banken-versicherun-gen/banken-ubs-platziert-erstmals-wieder-neue-at1-anleihen-emission-massiv-ueueber-zeichnet/100000674.html (as at: 6.6.2024)

[1983] UBS provides capital for conversion of AT1 bonds. In: Finanz und Wirtschaft, 13.5.2024, www.fuw.ch/ubs-stellt-kapital-fuer-wandlung-von-at1-anleihen-bereit-125873768509 (as at 6.6.2024)

[1984] "Deutsche Bank successfully completes issue of AT1 capital instruments", Deutsche Bank media release dated 3.6.2024, https://www.db.com/> Medien> Nach- richten (as at: 22.11.2024)

8.2.1 Preparation of the closing by UBS

On the evening of March 19, 2023, UBS announced that it was prepared to take over CS as part of a merger (see section 7.2.5.5).[1985] The two banks signed a fully drafted merger agreement (known as the signing of the agreement) in [1986]. CS shareholders received 1 UBS share for 22.48 CS shares.

In the weeks that followed, preparations were made for the completion of the merger (the so-called clo- sing). The time-consuming work involved obtaining approvals from foreign authorities and preparing the prospectus required under US securities regulations (the so-called F4), which had to be prepared because the CS shares were listed in the form American Depository Receipts (ADR). The merger of the holding companies UBS Group AG and CS Group AG was completed on June 12, 2023. The formal completion of the takeover also eliminated the risk of the merger failing.[1987] On December 7, 2023, the Board of Directors of UBS Group AG the merger of UBS AG with CS AG.[1988] On May 31, 2024, UBS issued a media release announcing the completion of the merger between UBS AG and Credit Suisse AG.[1989] Finally, on July 1, 2024, UBS announced the completion of the merger between UBS Switzerland AG and Credit Suisse (Switzerland) AG. The latter was deleted from the Commercial Register of the Canton of Zurich and no longer exists as a separate legal entity. All rights and obligations have been transferred to UBS Switzerland AG.[1990]

Antitrust issues regarding the emergency merger

The merger also raised antitrust issues. On March 19, 2023, FINMA approved the emergency merger instead of COMCO in application of Article 10 paragraph 3 of the Cartel Act (see section 7.2.3.9). In the event such a merger, FINMA must subsequently invite COMCO to comment. However, FINMA can decide for itself how to deal with any concerns expressed.[1991]

COMCO submitted its opinion to FINMA on September 25, 2023. In it, it first examined whether competition would have deteriorated at least as much if CS had left the market as if UBS had merged

[1985] Cf. "UBS plans acquisition of Credit Suisse", UBS Group AG media release dated 19.3.2023, https://www.ubs.com/global/de/ > Global Issues > Media (as at 22.11.2024)

[1986] By signing, the parties to the purchase agreement undertake to transfer the ownership of the object of purchase. The day of completion and thus the transfer of of shares in a share deal or assets in an asset deal is called the closing. Weeks, if not several months, can pass between signing and closing. The reason for this is that, for practical reasons and/or due to the complexity of the transaction, completion not yet desired or possible and/or not yet legally permissible. (Source: Rödl & Partner (2020): M&A Vocabulary - Understanding Experts: "Signing and Closing", https://www.roedl.de/the-men/ma-dialog/2020-03/ma-vocabulary-experts-understanding (as of 6.6.2024)

[1987] Cf. note from EFD to BR dated 15.6.2023

[1988] "UBS AG and Credit Suisse AG conclude merger agreement", UBS Group AG media release dated 7.12.2023, https://www.ubs.com/global/de/ > Global Issues > Media. See also: UBS Group AG (2024): UBS Annual Report 2023, Part "Our Evolu- tion", https://secure.ubs.com/minisites/group-functions/investor-relations/annual-report/2023/digital-ar23-group/digital-ar23-group/index.html#sub_book_0 (as at: 26.6.2024)

[1989] "UBS merger of UBS AG and Credit Suisse AG", UBS AG media release dated 31.5.2024, https://www.ubs.com/global/de/ > Global Issues > Media (as at: 22.11.2024)

[1990] "UBS merger of UBS Switzerland AG and Credit Suisse (Schweiz) AG", UBS AG media release dated 1.7.2024, https://www.ubs.com/global/de/> Global Issues > Media (as at 22.11.2024)

[1991] Art. 10 para. 3 KG

and CS. If this were the case, the merger would be classified as unobjectionable.[1992] COMCO came to the conclusion that the necessary requirements not met. The merger was therefore to be examined in accordance with Article 10(1) CartA and the criteria of Article 10(2) and (4) CartA.[1993] This included an examination of whether the merger would lead to a dominant position that would eliminate effective competition and, if this was the case, whether these disadvantages were greater than the advantages in another market.[1994] COMCO found evidence in six markets that UBS had obtained a dominant position as a result of the merger with CS or that this position had been strengthened. COMCO therefore recommended not only a preliminary phase 1 investigation, but also an in-depth phase 2 investigation, in which the indications already identified and other areas could be examined more closely. [1995] No specific measures, conditions or requirements were formulated for the bank.

In its ruling of May 21, 2024, FINMA elaborated on the opinions of COMCO and UBS and explained its own view. It concluded that the merger had not eliminated competition in any market and that suitable alternatives to UBS's offer remained.[1996] The market clarifications carried out were comparable with previous phase 1 and 2 examinations, even if a "residual uncertainty" remained with regard to the assessment of the markets.[1997] FINMA compared the remaining uncertainty with the protection of creditors and considered the risks to higher than the returns: "A subsequent questioning of the merger through additional review activities could undermine the regained confidence of the markets in the successful implementation of the merger, unsettle numerous stakeholders and unintentionally jeopardize the success of the transaction and thus financial stability both nationally and internationally."[1998] FINMA therefore decided to conclude the merger control proceedings in relation to the merger between UBS Group AG and Credit Suisse Group AG in accordance with Article 10 para. 3 of the Swiss Merger Control Act (KG) without further examination and without imposing any conditions or requirements (see section 7.2.4.4 and section 14.2.3).[1999]

Box 23: Overview of the WEKO2000 test phases

In merger proceedings under antitrust law, there are two, maximum three phases to examine the consequences of the merger on competition.

Phase 0 is the informal preliminary phase prior to the actual procedure. No legal deadlines apply in this phase. The notifying companies submit a draft of the intended notification to COMCO, which is checked for completeness.

1992 COMCO opinion of 25.9.2023 pursuant to Article 10 para. 3 CartA and recommendation pursuant to Article 45 para. 2 CartA, point 150
1993 COMCO opinion of 25.9.2023 pursuant to Article 10 para. 3 CartA and recommendation pursuant to Article 45 para. 2 CartA, point 184
1994 COMCO opinion of 25.9.2023 pursuant to Article 10 para. 3 CartA and recommendation pursuant to Article 45 para. 2 CartA, point 190
1995 In the following markets, COMCO found indications of a justified or intensified Dominant market position of the merged UBS: funds and fund-like products; global custody; passive asset management; Swiss real estate asset class; fund management for single investor funds; corporate banking for large companies and with specific needs. COMCO Opinion p. 163 f.
1996 FINMA ruling in the matter of UBS Group AG dated 21.5.2024, point 254
1997 FINMA ruling in the matter of UBS Group AG dated 21.5.2024, point 276
1998 FINMA ruling in the matter of UBS Group AG dated 21.5.2024, point 276
1999 FINMA ruling of 21.5.2024, p. 66
2000 COMCO opinion of 25.9.2023 pursuant to Article 10 para. 3 KG and recommendation pursuant to Art. 45 para. 2 KG, para. 25 f.

Phase 1 is the preliminary examination pursuant to Article 32 paragraph 1 KG. COMCO must examine within one month whether the notified merger project is unobjectionable or requires an in-depth examination.

If the preliminary examination of phase 1 reveals indications that the merger creates or strengthens a dominant market position, phase 2 takes place with an in-depth examination in accordance with Article 33 KG. Phase 2 lasts a maximum of four months.

Further information can be found in the WEKO information sheet[2001], in the Cartel Act and in the WEKO statement on the merger of UBS and CS.[2002]

8.2.2 Termination of the guarantee agreement and the liquidity assistance loan in August 2023

Part of the overall solution of March 19, 2023 was a guarantee agreement[2003] between the Confederation and UBS to assume any losses incurred by UBS from the sale of certain CS assets that do not fit into UBS's core business and do not fit into the bank's business and risk profile (see sections 7.2.4.1 and 7.2.5).

Legal basis and negotiations between the Confederation and UBS

The legal basis was Article 14a of the Emergency Ordinance amended by the Federal Council on March 19, 2023 (*SR 952.3*, see section 7.2.5.5). Due to time constraints, the contract details could not negotiated and contractually agreed on March 19, 2023 (signing of the contract).[2004] The details of the contract were only negotiated between UBS Group AG and the Confederation after March 19, 2023. A high-level kick-off meeting was held on April 19, 2023, attended by representatives of UBS, the FFA and FINMA as well as the legal and economic advisors hired by the Confederation.[2005]

On the federal side, the FFA was in charge of the negotiations with external support. Various issues had to be clarified. There were points of discussion in particular regarding the scope (perimeter) of the guarantee. According to both sides, the negotiations were conducted in a professional, sometimes tough, but also fair, transparent and constructive manner.[2006] The negotiations were escalated to the level of the Chairman of the Board of Directors of UBS and the Head of the FDF.[2007] The differences of opinion were finally resolved and the guarantee agreement was signed by the FDF and UBS AG on June 9, 2023.

[2001] COMCO: Information sheet and form of the Competition Commission - Notification of a merger, 21.10.2014, https://www.weko.admin.ch/dam/weko/de/dokumente/2015/08/merkblatt_und_formularwiderspruchsverfahren.pdf.download.pdf/merkblatt_und_formularwiderspruchsverfahren.pdf (as of 26.6.2024)

[2002] COMCO opinion of 25.9.2023 pursuant to Article 10 para. 3 KG and recommendation pursuant to Article 45 para. 2 KG

[2003] Loss Protection Agreement dated June 9, 2023 between the Swiss Confederation and UBS Group AG regarding a loss protection guarantee in accordance with article 14a of the Federal Additional Liquidity Ordinance (Original in English)

[2004] See Rödl & Partner (2020): M&A Vocabulary - Understanding experts: "Signing and Closing", https://www.roedl.de/themen/ma-dialog/2020-03/ma-vocabulary-experten-verstehen (as at 6.6.2024).

[2005] See note from the FDF to the Federal Council dated 18.4.2023

[2006] FDF memo to the Federal Council dated 8.6.2023; UBS statement dated 22.10.2024 as part of the consultation; FFA statement dated 22.10.2024 as part of the administrative consultation

[2007] Minutes of the PUK meeting of 22.5.2024, p. 12

Scope of the guarantee

The guarantee agreement covered a specific portfolio of CS assets comprising around 3% of the total assets of the merged bank. The focus was on credit, derivatives, non-strategic and structured products from the non-core business (non-core unit) of CS. Only realized losses were covered. A net approach was applied, meaning that both losses and gains from the sale of assets were included in the calculation. The contract was to run until the final realization of the guaranteed portfolio. Only when the assets had finally been liquidated would UBS have been able to claim any losses in excess of CHF 5 billion from the Swiss Confederation.

The agreement made no mention of the Confederation's participation in losses that would have exceeded CHF 14 billion. The assumption of further losses by the Confederation would have a legal basis and the approval of Parliament for a corresponding commitment credit. The agreement stipulated that a separate organizational unit of UBS would manage the assets.[2008] UBS also had to undertake to keep its headquarters in Switzerland for the duration of the agreement. A relocation abroad would have that the Confederation could have terminated the guarantee unilaterally.[2009]

Termination of the guarantee agreement and federal fee income

On August 11, 2023, UBS Group AG voluntarily terminated the guarantee agreement with the Confederation comprehensively reviewing the designated portfolio and subjecting it to severe stress tests. It no longer considered the guarantee agreement to be necessary.[2010] This also meant that the financial risks of the Confederation under the agreement no longer applied.

UBS had to pay the Confederation the guarantee fees accrued under the contract. These consist of the following elements: an initial set-up fee of CHF 40 million, an annual maintenance fee of 0.4% on CHF 9 billion (CHF 36 million per year), to cover the Confederation's advisory costs, and an annual dawn portion fee of 0-4% on the amount of CHF 9 billion. to cover the Confederation's advisory costs, and an annual dawn portion fee of 0-4% on the CHF 9 billion amount, depending on the losses already realized and those still to be expected.[2011] The risk premium was deferred and would only have had to be paid by UBS if it had called on the guarantee. The greater the losses, the higher the risk premium would have been.[2012] UBS paid the Confederation a total of CHF 40 million for providing the guarantee agreement.[2013] The work of the Federal Council was accompanied by the FinDel on the part of Parliament, which was informed about the negotiations in 2023.[2014]

2008 "Confederation and UBS sign agreement on loss guarantee", press release of the Federal Council dated 9.6.2023

2009 FDF memo to the Federal Council dated 8.6.2023

2010 "UBS Group AG has voluntarily the guarantee agreement and public liquidity backstop; Credit Suisse AG has repaid the ELA+ loan in full", UBS media release dated 11.8.2023, https://www.ubs.com/global/de/ > Global Issues > Media (as at 22.11.2024); "CS/UBS: All federal guarantees terminated", Federal Council media release dated 11.8.2023

2011 "Confederation and UBS sign agreement on loss guarantee", press release of the Federal Council dated 9.6.2023 with attached fact sheet; "UBS and Swiss government Agree guarantee agreement", UBS media release dated 9.6.2023, https://www.ubs.com/global/de/> Global Issues> Media (as at 10.12.2024). The guarantee agreement is available on the Confederation's website.

2012 Note from the FDF to the Federal Council dated 8.6.2023

2013 Dispatch on the 2023 State Account of 27.3.2024, Volume 2B (BBl **2024** 830, p. 27)

2014 Report of the Finance Delegation to the Finance Committees of the National Council and the Council of States of the Council concerning the ultimate supervision of federal finances in 2023 of 11.3.2024 (BBl **2024** 1663, p. 10)

Termination of the liquidity assistance loan

On August 11, 2023, UBS also voluntarily terminated the liquidity assistance loan in favor of the SNB (PLB). This also eliminated these financial risks for the Confederation. By July 31, 2023, CS had recorded a commitment and risk premium of CHF 214 million, of which CHF 61 million went to the SNB and CHF 153 million to the Confederation.[2015]

8.3 Monitoring of the measures taken by the FDF and the Federal Council

The authorities (FDF, SNB, FINMA) continuously monitored developments after March 19, 2023 and closely followed the measures taken. For example, the FDF regularly informed the Federal Council about the current situation with information notes.[2016] The most important activities listed in the notes are presented below.

Monitoring the status of the merger negotiations and liquidity

The authorities prepared for a possible failure of the merger. In a note to the Federal Council dated April 25, 2023, the FDF issued a warning that it considered this possibility to be unlikely. FDF, FINMA and SNB up a comprehensive liquidity monitoring system for CS and UBS. They established that CS's liquidity situation had improved since the
19 March 2023 had stabilized.[2018]

On June 8, 2023, the FDF informed the Federal Council that the takeover of CS by UBS was planned for June 12, 2023 (see section 8.2.1). On the same day, the listing of Credit Suisse Group shares on the Swiss stock exchange SIX and the New York Stock Exchange (NYX) would be canceled. FINMA will leave the capital requirements for the combined bank at their current level until 2025 and then gradually increase them to the full requirements in line with the new size by 2030 [2019].

Preparatory actions in the event of claims for damages against the Swiss Confederation

The FDF regularly informs the Federal Council about developments in the complaints against the write-down of the AT1 bonds and possible claims for damages in the context of any investor-state arbitration proceedings (ISDS) against Switzerland (see section 8.4).[2020] Based on an earlier decision of principle from 2021, the Federal Council instructed SECO coordinate the work on any investor-state arbitration proceedings. To coordinate the various legal proceedings, the authorities set up a steering group with representatives from the FFA, SECO, GS-FDF and FINMA, which maintained a regular exchange in order to coordinate the overall strategy. The group is coordinated by the FDF Legal Service.[2021] The Federal Council is also regularly informed about the status of the appeals against the write-off of the AT1 loans before the Federal Administrative Court in St. Gallen.[2022]

2015 "UBS Group AG has voluntarily the guarantee agreement and public liquidity backstop; Credit Suisse AG has repaid the ELA+ loan in full", UBS media release dated 11.8.2023, https://www.ubs.com/global/de/ > Global Issues > Media (as at 22.11.2024)
2016 Notes from the FDF to the Federal Council dated 20.3.2023; 18.4.2023; 25.4.2023; 23.5.2023; 8.6.2023, 15.6.2023
2017 Note from the FDF to the Federal Council dated 25.4.2023, p. 3
2018 Note from the FDF to the Federal Council dated 25.4.2023, p. 2
2019 Note from the FDF to the Federal Council dated 8.6.2023, p. 1
2020 Notes from the FDF to the Federal Council dated 25.4.2023; 8.6.2023
2021 Note from the EAER to the Federal Council dated 14.6.2023
2022 Note from the FDF to the Federal Council dated 9.5.2023

Regular contact with foreign authorities - Attention in the foreign media

The Swiss authorities (FDF, SNB, FINMA) explained in the weeks following the
On March 19, 2023, they regularly informed their foreign partners (supervisory authorities, finance ministries, other government agencies) at bilateral or multilateral meetings of the reasons for the decision taken. They also provided information on the current implementation of the measures. If necessary, interventions were made with foreign authorities via the embassies to ensure that UBS quickly obtained the necessary approvals for the merger.(2023) After the formal completion of the takeover of CS by UBS on 12 June 2023, the need for interventions ceased. Contacts subsequently decreased.2024 The Federal Council was regularly informed by the FDF and in some cases also by the FDFA about the reactions of foreign authorities and the media.(2025) These increased sharply after March 19, 2023. After a weeks, the situation calmed down again and the number of reactions fell back to the level prior to March 19, 2023.

Amendment of the Banking Act to introduce a PLB

One key project was legislation on the introduction of a PLB, i.e. a state liquidity guarantee for systemically important banks. The Federal Council opened the consultation process on May 24, 2023 and adopted the dispatch "23.062 Banking Act. Amendment ('Public Liquidity Backstop')".2026 With this bill, the Federal Council intends to transpose individual provisions introduced in March 2023 with the emergency ordinance into ordinary law. One significant change compared to the proposal submitted for consultation is the introduction of a compensation The lead committee is the Committee for Economic Affairs and Taxation (WAK). The Council of States is the first council to discuss the bill. The WAK-S has accepted the bill,2027 but has not yet completed its detailed deliberations. The PUK the Federal Council's proposal as part of its deliberations on its recommendations. On
On August 27, 2024, the WAK-S decided to suspend the discussion of the bill until the report of the PUK is available.2028

Measures in the area of remuneration

The FDF and Federal Council took various measures in the area of remuneration. For example, on March 21, 2023, the Federal Council took note of the fact that the FDF had temporarily suspended certain variable remuneration to CS employees by means of a ruling. This concerned remuneration that had already been promised but deferred for the financial years up to 2022, e.. in the form of share entitlements. The Federal Council also instructed the FDF to propose further measures for variable remuneration for the financial years up to 2022 and the following financial years.2029 On
On April 18, 2023, the FDF replaced the superprovisional injunction with a permanent injunction(2030).

8.4 Overview of the reports published after the crisis

Chapter 8.4 briefly lists the most important reports that deal with the causes of the CS crisis and the lessons to be learned from it. There are two categories of reports. On the one hand, the authorities commented in their regular reports, and on the other hand, the FDF published reports in

2023 Note from the FDF to the Federal Council dated 18.4.2023, p. 4
2024 Note from the FDF to the Federal Council dated 15.6.2023
2025 Note from the FDF to the Federal Council dated 18.4.2023, p. 4
2026 Dispatch on the amendment of the Banking Act of 6.9.2023 (BBl **2023** 2165)
2027 "Start of consultations on the introduction of a public liquidity backstop", Medien-Communication from the WAK-S dated 17.10.2023
2028 "Public Liquidity Backstop. Suspension of the consultation", WAK-S media release dated 28.8.2024
2029 "Federal Council makes decisions on variable remuneration at Credit Suisse", Federal Council press release dated 21.3.2023
2030 Note from the FDF to the Federal Council dated 18.4.2023

commissioned. The reports are listed in the order in which they were published because earlier commissioned reports formed an important basis for later ones. The most important conclusions are here. The Federal Council's report pursuant to Article 52 of the Banking Act is presented in somewhat greater detail, as it contains the Federal Council's assessment and its proposals for the future. Various proposals for the adjustment of the too-big-to-fail regulation were included in the recommendations of the PUK and are dealt with there (see section 9.1.2).

Report of the Institute of Banking and Finance of the University of St. Gallen dated May 19, 2023

The FDF, represented by SIF, commissioned the Swiss Institute of Banking and Finance at the University of St. Gallen (HSG) to conduct a review of the takeover of CS by UBS in the light of TBTF legislation. The report analyses the directions for the further development of TBTF regulation and comments on the topics of the separation banking system, management-oriented and supervisory measures, insurance solutions (such as deposit protection), liquidity and capital adequacy as well as the nationalization option. In its conclusions, the report proposes three directions for the further development of TBTF regulation: Firstly, access to liquidity through the lender of last resort should be improved. Secondly, the capital requirements for TBTF banks should be increased, and thirdly, a nationalization option should be introduced as an alternative to resolution.[2031]

Swiss National Bank reports on financial market stability (June 2023 and 2024)

The Swiss National Bank analyzed the events surrounding CS in the Financial Stability Reports of 23 June 2023 and 20 June 2024. In the 2023 report[2032], the SNB provides a detailed chronology of events and on what it considers to be the main reasons for the CS crisis. In addition, the SNB publishes its initial conclusions from the crisis, e.g. with regard to capital and liquidity requirements.[2033] In the 2024 report, the SNB goes into more detail on the need for action resulting from the CS crisis and states that the CS crisis has revealed weaknesses in the regulatory framework. The SNB shares the view expressed in the report of the Federal Council pursuant to Article 52 of the Banking Act that there is a need for action in the areas of capital and liquidity requirements, early intervention and recovery and resolution planning. In the area of capital, the SNB is primarily concerned with eliminating weaknesses in the regulatory architecture and thus ensuring that the reported capital ratios the actual loss capacity of a bank. With regard to liquidity, the SNB supports a review of the Liquidity Coverage Requirement by the Basel Committee on Banking Supervision[2034].

Report of the "Banking Stability" expert group dated September 1, 2023

On 17 May 2023, the FDF set up the "Banking Stability" group of experts with the task of submitting strategic considerations independent of the authorities to the FDF by mid-August 2023 with regard to the stability of the financial center. The group of experts took into account the report by the Institute for Banking and Finance at the University of St. Gallen.[2035] It also assessed the too-big-to-fail regime and came to the following conclusion

2031 Need for reform in the regulation of "too big to fail" banks, report by the Institute of Banking and Finance at the University of St. Gallen, 19.5.2023 (on the FDF website: https://www.efd.admin.ch/de/gutachten-tbtf)
2032 SNB (2023): Financial Stability Report 2023
2033 SNB (2023): Financial Stability Report 2023, p. 39.
2034 For the proposals, see SNB (2024): Financial Stability Report 2024, p. 53 ff.; SNB (2024): Summary of the SNB Financial Stability Report 2024, p. 5 ff.
2035 Banking Stability Expert Group (2023): Need for reform after the demise of Cre- dit Suisse, Foreword

It concludes that important progress has been made compared to the situation before the global financial crisis of 2007/08 and that the stricter capital and liquidity requirements have proven to be useful. In its conclusions, the expert group states that Switzerland should firstly improve its crisis preparation and crisis management, secondly expand the supply of liquidity during the crisis, thirdly complete the range of banking supervision instruments and fourthly strengthen the quality and procurement of capital.

FINMA report "Lessons learned from the CS crisis" of December 19, 2023

On 19 December 2023, FINMA published the report "Lessons learned from the CS crisis".[2036] In this report, FINMA analyzes the development of CS from 2008 to 2023 in terms of strategy, business performance, management decisions, risk management and crisis preparation. It also describes the measures it has taken over the years. FINMA also draws various lessons in the report and recommends adjustments to the legal basis and further measures. For example, it calls for the introduction of a senior manager regime, the authority to fines and stricter corporate governance rules. In addition, FINMA also wants to adjust its supervisory approach in certain areas and examine the feasibility of stabilization measures more closely.

Report of the Federal Council pursuant to Article 52 of the Banking Act of April 10, 2024

As explained in section 5.2, Article 52 of the Banking Act stipulates that the Federal Council must regularly review the provisions of the Banking Act with regard to international comparability and the degree of implementation of the relevant international standards abroad and report on this the Federal Assembly. On April 10, 2024, the Federal Council published the "Report of the Federal Council on banking stability including evaluation in accordance with Article 52 of the Banking Act".[2037] A key component of the report is an analysis of the CS crisis. The Federal Council concludes that the existing too-big-to-fail regime must be further developed and strengthened. To this end, it 22 measures. The results of the PUK should also be taken into account when implementing these measures. The proposals on equity capital, liquidity, the introduction of a TPO and deposit protection are discussed in more detail below.

Capital adequacy: The Federal Council is proposing a series of measures. For SIBs, the capital backing for foreign participations - and thus for parent banks - within a financial group is to be strengthened. Furthermore, forward-looking elements are to be introduced for institution-specific Pillar 2 capital surcharges for SIBs (in particular based on stress tests; the appropriate form of disclosure of the results is to be examined). The regulatory requirements for the prudent valuation and recoverability of certain balance sheet items are also to be tightened. The proposed change for parent companies formally affects all systemically important banks (SIBs) in Switzerland, but it will only take effect for internationally active SIBs with complex structures and large foreign subsidiaries, specifically UBS. The Federal Council is refraining from a general increase in capital by means of a higher leverage ratio or higher progressive components in the leverage ratio and the RWA ratio.[2038]

Liquidity: For the Federal Council, more liquidity is needed at the banks themselves, more opportunities for the National Bank to provide liquidity and a state liquidity guarantee (PLB) to avert damage to the country in the worst-case scenario.

[2036] "FINMA publishes report and lessons learned on the Credit Suisse crisis", FINMA press release of 19.12.2023; FINMA (2023): Lessons learned from the CS crisis

[2037] "Banking stability: Federal Council wants to close gaps in too-big-to-fail regulation The FDF was explicitly instructed by the Federal Council to include external expert opinions in the work on the Federal Council's report on banking stability. These reports are available on the FDF website: https://www.efd.admin.ch/de/gutachten-tbtf.

[2038] FDF: Explanatory notes on the Federal Council's report of April 10, 2024, published on the FDF website: https://www.efd.admin.ch/de/eigenkapital-tbtf (as at 25.06.2024)

TPO: The Federal Council rejected one possible measure, the future introduction of a TPO into the Swiss legal system, for the following reasons:

- The TPO contradicts one of the objectives of the Swiss TBTF legislation, namely to avoid state aid (Art. 7 para. 2 BankA);
- A TPO is associated with considerable risks for the state and taxpayers;
- a TPO of the entire UBS Group is hardly possible, as the last remaining Swiss G-SIB is so large; and
- a TPO of "only" the Swiss unit of UBS would be difficult to implement due to the expectations of foreign authorities regarding the restructuring of the entire group[2039].

Deposit protection: The Federal Council's report of April 10, 2024 on banking stability was the first of these reports to the issue of deposit protection (see section 5.2.7). However, due to the legislator's negative stance in the past, the Federal Council refrains from taking measures in the area of deposit protection, although it itself is critical of various aspects of the current law.

8.5 Discussion of urgent loans in the finance committees and the councils

Chapter 8.5 describes the further course of the parliamentary process for an urgent credit procedure. First, the Federal Council's dispatch on Supplement Ia to the 2023 budget and the deliberations in the two finance committees are briefly described, followed by the special session on April 11/12, 2023 and the discussion on the non-approval of the urgent loans approved by FinDel.

The Federal Council must submit urgent commitments to the Federal Assembly for subsequent approval (see section 7.2.5.3).[2040] The Federal Council did this with the "*Dispatch on Supplement Ia to the 2023 budget of 29.3.2023 (23.007*)". Among other things, it explained the initial situation, described the package of measures, gave reasons for the two commitment credits and submitted two draft federal decrees, as envisaged for a supplement.[2041] With Federal Decree Ia, it requested approval for the granting of a federal default guarantee for the SNB's liquidity assistance loans to CS in the amount of CHF 100 billion (Art. 1) and approval for a federal guarantee for loss protection for systemically important banks in the amount of CHF 9 billion (Art. 2). In the draft of Federal Decree Ib, the Federal Council proposed, as provided for in the draft of such a federal decree, that no changes be made to the financial planning parameters, targets, metrics and target values and that no framework conditions for the use of the loan be laid down (Art. 1).[2042]

[2039] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 216 f.)
[2040] Art. 28 para. 2 FHG
[2041] If the Federal Council applies for supplements to the Rail Infrastructure Fund and the National Roads and Agglomeration Transport Fund, it submits further federal resolutions (see e.g. Dispatch on Supplement II to the 2023 budget of 15.9.2023, 23.042).
[2042] The planning parameters in Federal Decree Ib enable Parliament to set financial planning parameters as well as targets, metrics and target values for performance groups. pens. These are not mandatory because the Federal Council itself requests such planning sizes. For this reason, compliance with Federal Decree Ib is also not . In practice, the FCs regularly request planning figures for the budget and the addendum. This was also the case when discussing the commitment credit for the CS emergency merger with UBS (see the parliamentary group flag).

Reporting by FinDel in the FC and preliminary discussions in the finance committees

As per schedule, the Council of States was the first chamber to discuss the supplements to the 2023 budget. This marked the start of the preliminary discussion in the Council of States Finance Committee (FK-S). This met on March 23, 2023 according to the meeting schedule. The FK-S changed its agenda at short notice and was first informed by its representatives in the FinDel about the FinDel meeting on March 19, 2023. It then held a preliminary discussion on the dispatch on Supplement Ia (23.007) still to be adopted by the Federal Council at that time and a discussion with the Head of the FDF, the Director of the FFA, the Head of the Recovery and Resolution division of FINMA, the Director of COMCO and Professor Aymo Brunetti.[2043] The FC-S then held the actual preliminary discussion on the supplement at an extraordinary meeting on March 30, 2023 from 8.20 am to 11.30 am. It dealt with nine proposals[2044] and requested the Council of States to approve Federal Decree Ia by 11 votes to 0 (1 abstention) and unanimously approve Federal Decree Ib.[2045]

The National Council Finance Committee also met on March 30, 2023, but after the deliberations of the FK-S.[2046] The FK-N was first briefed by the Chair of the FinDel on the meeting of March 19, 2023. This was followed by a detailed general discussion, which was attended by the Head of the FDF, the Chairman of the SNB and the Chair of the FINMA Board of Directors. This was followed by a detailed discussion of the credit commitments. Fourteen motions were submitted on Federal Resolutions Ia and Ib, as well as various motions for committee initiatives.[2047] The FK-N requested the National Council to approve the two federal resolutions by 17 votes to 1 (4 abstentions).

Extraordinary session on April 11 and 12, 2023

The Council of States agreed with the proposals of its FC and approved the credit lines previously approved by the FinDel by 29 votes to 6 (7 abstentions). It unanimously approved Federal Decree Ib, which contained the framework conditions for the appropriation of funds requested by the FC (36 votes in favor, 6 abstentions). The National Council, on the other hand, Federal Decree Ia by 102 votes to 71 (8 abstentions).[2048] The FK-S then met to settle the first difference and asked the Council of States to maintain its approval of the credits. The Council of States followed this proposal for both federal resolutions with 29 votes in favor, 5 against and 7 abstentions. The FK-N then carried out the first debate on the differences and requested that the National Council approve the two credits. In the second deliberation, the National Council also rejected the subsequent approval by 103 votes to 73 (8 abstentions), making this the first time in the history of the FinDel that the National Council has approved the

[2043] Minutes of the meeting of the FK-S of 23.3.2023; "Credit Suisse case: Finance Committee addresses the issue and holds an initial discussion with the Federal Council, FINMA, COMCO and an expert", press release from the FK-S dated 24.3.2023

[2044] Two applications concerned the numerical part (Federal Decree Ia), five applications concerned the federal on planning parameters (Federal Decree Ib). In addition, one application each for a Commission postulate and a Commission motion.

[2045] "Credit Suisse case: Finance Commission requests that urgent credit commitment decided by the Finance Delegation be approved retrospectively", FK-S media of 30.3.2023

[2046] The meeting began at 11.55 a.m. and lasted until 6.40 p.m., interrupted by a 90-minute lunch break.

[2047] See the proposals of the Finance Committees to the Council of States and National Council in the Group flag published by FK secretariat in a short media release dated 3.4.2023: "Commitment credits in connection with the takeover of Credit Suisse by UBS: Publication of the Group flag", FK-S media release dated 3.4.2023

[2048] The rejection of Federal Decree Ia rendered Federal Decree Ib invalid, as no loan was approved for which framework conditions for the settlement could be agreed.

refused subsequent approval. Due to the National Council's rejection of the bill twice, the federal decree Ib on planning parameters was also not passed. The Councils therefore did not adopt any planning figures for the implementation of the credits. However, they did pass numerous motions from various committees.[2049]

Discussion of the consequences of non-approval - Examination of the applicable legal basis

Until the non-approval of the CS loans, all loans advanced by FinDel were subsequently approved by the councils. The possible effects of a refusal of retrospective approval were therefore little known in Parliament and among the public.[2050] Based on corresponding earlier working papers and the - limited - literature, it can be stated that prior to the emergency merger of CS with UBS, the interpretation of the consequences of non-approval of an urgent loan advanced by the FinDel was as follows: If the Federal Council can reverse the obligation (or the payment in the case of advance loans), it must do so. If this is not factually possible - e.g. because the payment has already been made or the contract has been concluded with a third party - the loan is canceled and the refusal has no legal effect in the external relationship. However, in the internal relationship between Parliament and the Federal Council, the refusal must be understood as a mandate from Parliament to the Federal Council to dissolve any legal ties for the future as far as possible. A paper by the Secretariat of the FC on the consequences of the CS case stated that, due to the contractual obligation entered into, non-approval of the loans would have no consequences in the external relationship.[2051] This legal opinion was then - after the special session of 11 and 12 November - revised by the Federal Council.
April 12, 2023 - was disputed by parts of the legal doctrine, which led to considerable uncertainties in the interpretation of the consequence of the non-approval by the National Council.[2052] The Federal Council took the position that the two credits were not
were made binding. However, he would take the National Council's negative stance into account in further negotiations.[2053]

[2049] The legal basis for the planning parameters for credit applications is Art. 25 para. 3 ParlG. However, the instrument of planning parameters is also used in other areas. The legal basis can be found in Art. 28 ParlA (fundamental decisions and planning). According to Art. 28 para. 2 ParlA, planning parameters are preliminary decisions that stipulate that certain objectives are to be pursued, principles and criteria are to be aimed for, principles and are to be observed or measures are to be planned. Planning parameters (like motions) are not legally binding for the Federal Council. However, they are politically binding. If the Federal Council from mandates or policy and planning resolutions, it must justify this in accordance with Art. 28 para. 4 ParlA (see on Art. 25: Koller, Stefan (2024): Art. 25, N. 41 f. In: Caroni, Andrea / Graf, Martin (eds.), Kommentar zum Parlamentsgesetz, 2nd edition, Basel: Helbing & Lichtenhahn and Graf, Martin (2024): Art. 28, N. 14 ff. In: Caroni, Andrea / Graf, Martin (eds.), Kommentar zum Par- lamentsgesetz, 2nd edition, Basel: Helbing & Lichtenhahn.

[2050] This interpretation of the law was expressed by the President of the FK-S on the occasion of the total revision of the
Financial Budget Act 2005 (AmtlBull StR **2005** 776). On this question, see Koller, Stefan (2024): Art. 21, N. 28 and 28a, as well as footnote 31 with further references. In: Caroni, Andrea / Graf, Martin (eds.), Kommentar zum Parlamentsgesetz, 2nd edition, Basel: Helbing & Lichtenhahn; also Mader, Luzius (2009): The erosion of budget law in times of crisis? The cases of Swissair and UBS. In: Yearbook of the Swiss. Association for Administrative Organization Law 2009, 107 ff.; Zihler, Florian (2023): Effects of the Decision of the Finance Delegation of the Federal Assembly in the Urgency Procedure. In: AJP 09/2023, p. 1067 ff.

[2051] Note from the Secretariat of the FC on the legal options available to the commissions and councils for the subsequent approval of urgent obligations of the FinDel in the "CS-UBS case" from 24.3.2023

[2052] Cf. inter alia Biaggini, Giovanni (2023): The CS takeover and the curse of emergency law. In: ZBl 6/2023, pp. 309-314; Gerber, Kaspar (2023): Urgent commitment credits for guarantees in favor of the Swiss National Bank (SNB) and UBS. The role of the Federal Assembly. In: Jusletter 8.5.2023

[2053] "Federal Council has exchanged views on the outcome of the extraordinary session", Federal Council media release of 19.4.2023

The National Council's Political Institutions Committee (SPK-N) is currently examining whether legislative changes are required in the area of the urgent credit procedure or in the composition of the FinDel.[2054] It unanimously approved parliamentary initiative 24.400 ("*Urgent credits. Effect of resolutions of the Federal Assembly"*). The SPK-S also unanimously approved this in the preliminary examination procedure.[2055] This allows the SPK-N to prepare a corresponding bill.

8.6 Ongoing legal proceedings in the context of the write-down of the AT1 bonds

After March 19, 2023, it quickly became apparent that Swiss authorities (federal government, FINMA) would be confronted with liability and compensation claims as a result of FINMA's order to write off the AT1 bonds. In Switzerland, complaints were filed against the write-off of the AT1 bonds. Abroad, lawsuits have been announced as part of the so-called investor-state arbitration agreements. UBS was also sued for the takeover price. The plaintiffs consider the exchange ratio of 22.48 CS shares for 1 UBS share to be unlawful.

The most important elements of the four procedures are briefly described below.

Complaints against the write-off of the AT1 bonds before the Federal Administrative Court - Civil action against the Swiss Confederation in New York

On March 19, 2023, as part of the measures for the merger between CS and UBS, FINMA ordered the write-down of AT1 bonds with a nominal value of CHF 16 billion. The market value was lower. With write-down subsequently carried out by CS, the owners of the AT1 bonds lost their investment. Soon afterwards, appeals were lodged with the Federal Administrative Court in St. Gallen against FINMA's order to write down the AT1 bonds. According to a press release from the Federal Administrative Court, a total of 250 appeals from around 2,500 complainants had been received in May 2023.[2056] The number increased over time. The current status is not known. Appeals are lodged against the legality of the write-off. In particular, it is argued that the write-off order was not proportionate. It is also argued that the write-off order is effectively tantamount to an indirect expropriation.[2057] A decision by the Federal Administrative Court is still pending. The court has not commented on a possible ruling date.[2058]

Some AT1 instruments were registered in the USA and were settled via the clearing system there. In June 2024, a civil action was filed against the Swiss Confederation at the United States District Court for the Southern District of New York. A group of creditors is demanding compensation of around CHF 80 million from Switzerland. According to press reports, the creditor group argues that FINMA's order to write off the AT1 bonds when CS collapsed in the spring of 2023 was unlawful and

2054 "Role of the Federal Assembly in the approval of urgent loans", SPK-N media of 2.2.2024
2055 "Effect of resolutions of the Federal Assembly on urgent loans", media release of the SPK-S of 10.4.2024. Cf. on the procedure and effect of a preliminary decision. Examination of a parliamentary initiative Art. 109 ParlG.
2056 "No appeal by Credit Suisse Group AG", media release of the Federal Administrative Court of 23.5.2023
2057 Cf. How CS investors are taking emergency law in their . In: Finews, 18.8.2023, https://www.finews.ch/news/banken/58846-cs-ubs-at1-beschwerde-bund-finma-notrecht-escalation-abroad (as at: 8.6.2024)
2058 "No appeal by Credit Suisse Group AG", media release of the Federal Administrative Court of 23.5.2023

Switzerland had thereby violated its property rights. This is an action that is independent of the Swiss proceedings.[2059]

Claims against Switzerland based on the investment protection agreements

Switzerland has concluded investment protection agreements (ISAs) with 111 countries. In addition, the free trade agreements with Japan, Singapore and South Korea also contain an investment protection chapter that largely to the content of an ISA. The Federal Council assumes in principle that the write-off of AT1 bonds could fall under an ISA. If this is the case and if investor-state arbitration proceedings were to be initiated, the parties to the dispute would have to appoint a three-member arbitration tribunal as a first step. If this tribunal accepts the claim, it would examine the compatibility of the write-down with the ISA. The assessment of whether the ISA has been violated is the final responsibility of the arbitration tribunal. If it comes to the conclusion that the ISA has been violated, it can award the investor damages. The proceedings are very complex and usually take several years. Lawsuits have already been announced by international law firms.[2060]

Lawsuits against UBS due to the share exchange ratio

CS shareholders have filed a lawsuit against the exchange ratio of CS shares with the Zurich Commercial Court. Many shareholders have joined forces because they want to obtain a higher takeover price from UBS. The Commercial Court has the more than thirty lawsuits into a single proceeding. The defendant is UBS, which submitted its dismissal response to the lawsuits to the court.[2061] On August 28, 2024, an application was submitted to the Commercial Court for a new neutral expert opinion regarding the method of calculating the exchange value between the two shares. The number of plaintiffs had increased to 3,000 by November 2024. [2062] The court's decision is not yet known.

[2059] Switzerland acts like an investment bank: US lawyers are now also taking the Swiss Confederation to court over the CS takeover, In: NZZ, 6.6.2024; CS-AT1 lawsuit in the USA: Switzerland receives postponement. In: Finews, 18.10.2024

[2060] Note from the EAER to the Federal Council dated 14.6.2023

[2061] Cf. UBS response to the lawsuit only surprises Legalpass on one point. In: Finews, 23.2.2024, https://www.finews.ch/news/banken/61525-legalpass-klage-ubs-cs (as at: 8.6.2024)

[2062] Cf. CS takeover: calls for new expert opinion grow louder. In: Finews, 10.9.2024, https://www.finews.ch/news/banken/64289-ubs-cs-klage-umtauschverhaeltnis-legalpass (as at: 18.11.2024)

Part III: Findings

Introduction to Part III

CS's business behavior and loss of confidence as causes of the decline

At the beginning of the second part of its investigation report, the PUK states that the cause of the CS crisis and the resulting merger with UBS can be traced back to CS's business conduct, a questionable risk culture in conjunction with inadequate risk management, particularly at management level, and governance. The combination of these factors caused an unstoppable loss of confidence on the markets in the fall of 2022, which ultimately led to the acute crisis in March 2023.

As described in the context chapters (see sections 5.1, 6.1) in the first part of the report, CS was the subject of negative headlines for years due to repeated scandals (remuneration top management, aiding and abetting tax fraud, shadowing scandal, credit transactions with state-owned companies from Mozambique, large losses through Greensill and Archegos, see section 5.1.2). Despite multiple strategy adjustments and numerous personnel changes at management level (see section 5.1.2), it continuously lost the confidence of the capital markets.[2063] While CS regularly reported negative performance figures from 2011 onwards, such as low net profit, and the poor economic development was also in the falling share price and deteriorating credit ratings, it simultaneously paid out variable remuneration in the billions (see section 5.1.2). This obvious discrepancy between the remuneration paid out and the bank's effective business performance does not appear comprehensible to the Commission. The fact that this development continued for over a decade without any drastic, effective intervention on the part of the shareholders or the Board of Directors , in the view of the PCC, a central problem of misguided incentives in CS's remuneration system. In this context, the question of the responsibility of the CS Board of Directors for the economic decline of the bank must also be raised. This topic is discussed in more detail in section 14.3.1.

At this point, the Commission would like to out once again that its investigation is limited to the management of the federal authorities (see section 1.3). The business conduct of the banks, on the other hand, could not be the subject of the investigation and was only taken into account to the extent necessary to assess the business conduct of the Swiss authorities.

Preliminary remarks on the assessment of the management of the authorities in the context of the CS emergency merger

In the following chapters, the PUK assesses the management of the authorities in the context of the CS emergency merger with regard to its legality, expediency and effectiveness.

The following substantive points should be in advance: *Firstly*, according to the doctrine on the law of supreme supervision, the assessment of the legality of the management of the federal authorities on the examination of processes, procedures, general responsibilities or organizational measures in connection with the principles of administrative activity.[2064] It follows that it not within the competence of the PCC to systematically examine individual measures taken by the federal authorities. Consequently, the PCC expresses *an overall* opinion on the management of the federal authorities.

[2063] Expert report Hau/Rochet (2024), p. 12

[2064] Sägesser Thomas (2024): Art. 26 N 36, in: Graf, Martin/Caroni, Andrea (eds.), Parlamentsrecht und Parlamentspraxis der Schweizerischen Bundesversammlung. Kommentar zum Parlamentsgesetz, 2nd, completely revised and updated ed. Basel: Helbing Lichtenhahn

Secondly, the PUK is investigating the management of the federal authorities over a relatively long period of more than seven years in order to be able to adequately classify the events of the crisis (see section 1.4.2). It should be emphasized that the PUK had to set priorities in implementing the broadly formulated investigation mandate in accordance with the Federal Decree of 8 June 2023 on the establishment of a PUK and makes no claim to completeness. In principle, the PUK investigated topics that are more closely related to the emergency merger in more detail than topics that appear relevant to the audit of the management of the federal authorities but played a subordinate role in crisis management.

Thirdly, it is important to out that the near-collapse of CS was due to the bank's management, which led to a crisis of confidence over the years. According to the prevailing expert opinions, this ultimately led to a liquidity crisis from October 2022. According to the expert commissioned by the PUK, however, it was also a capital crisis (see section 11.1.1.3).

Fourthly, it must also be taken into account that the PUK carries out an ex ante analysis when assessing the legality and appropriateness of a particular action: Its assessment is based on the effects recognizable at the time and the knowledge of the authorities at the time.

Fifthly, FINMA, the FAOA and the SNB are units of the decentralized federal administration that an area of autonomy defined by special legislation. Based on Prof. Uhlmann's report and Prof. Stöckli's presentation (see section 1.4.5), the PUK came to the conclusion that its recommendations should not be addressed directly to FINMA, the FAOA or the SNB, but to the Federal Council.

Structure of the findings

In the following, the PUK presents its findings in six thematic chapters. It begins with the question of how the federal authorities dealt with the TBTF legislation and the legislation on audit regulation between 2015 and 2022 and what further developments they initiated (Chapter 9). This is followed by the findings on risk management and early crisis detection by the Confederation (section 10). The PUK then assesses how FINMA, the FAOA and the SNB have carried out their supervisory activities in their respective areas of responsibility (section 11). The focus here is on FINMA's microprudential supervision (section 11.1). In chapter 12, the PUK shows how the federal authorities exercised supervision over FINMA, the FAOA and the SNB. The crisis management of the federal authorities and in particular the interaction between the individual players is the subject of Chapter 13. Finally, the Commission sets out its findings on various overarching issues (Chapter 14), namely the involvement of various specialist offices and the COMCO, the issue of shareholder rights, the structure of the guarantee criteria and the legal basis for a PUK.

The findings in chapters 9 to 14 were not formulated by the PUK with a view to the causal causes of the CS downfall, but (in accordance with its mandate from the Federal Assembly of June 8, 2023) in particular with regard to future crises, which could also be of a different nature.

Finally, the PUK makes an overall assessment in its concluding remarks in chapter 15.

9 Monitoring of too-big-to-fail legislation and revision regulation (phase 1)

9.1 Monitoring and further development of TBTF legislation in Switzerland from 2015-2022

The Commission has reviewed the monitoring and further development of the TBTF legislation in Switzerland in the years 2015 to 2022 in section 5.2. In the following, it sets out its findings on the management of the authorities in this context (section 9.1.1) and on the current TBTF legislation (section 9.1.2).

9.1.1 Evaluation of the monitoring and further development of the TBTF regulation 2015-2022

Monitoring the TBTF regulation 2015-2022

Article 52 of the Banking Act obliges the Federal Council to report to the Federal Assembly every two years since 2015 on the TBTF provisions of the Banking Act that came into force in March 2012 and to examine their comparability with foreign regulations and the degree of implementation of the corresponding international standards abroad. The Federal Council has fulfilled this obligation (see section 5.2). The 2023 report was delayed by one year due to the CS crisis.

In general, the Commission is of the opinion that the monitoring of TBTF regulation was carried out too summarily in the Federal Council's evaluation reports from 2015 to 2021. The Commission criticizes the following points in particular:

i. Lack of strategic examination of the further development of TBTF regulation: The Federal Council's 2015-2021 evaluation reports lack an overall strategic view of the (further development of) TBTF legislation in Switzerland.

   Specifically, the Federal Council's overall conclusion in the reports was limited to stating, in largely the same wording in each case, that Swiss TBTF regulation should be assessed positively overall and that a fundamental reorientation was not advisable. The focus in each case was on the legislative work currently pending. However, the evaluation reports were not taken as an opportunity to fundamentally evaluate the appropriateness of Swiss TBTF regulation and systematically determine the need for action.

ii. Lack of reference to the recommendations of previous reports: The Federal Council's evaluation reports made no reference to the previous reports and therefore provided no information on the status of implementation of previous recommendations. The Commission regrets that the Federal Council did not actually monitor the measures adopted in each case and developments in the individual areas of action, despite the FOJ pointing this out twice (see Chapters 5.2.3.3 and 5.2.4.3).

iii. Lack of external perspective: The basis for the Federal Council's first evaluation report in 2015 was the final report of the external expert committee from 2014. The Federal Council did not consult such an external perspective again until 2023 (after the merger of CS with UBS). The review of the further development of Swiss TBTF legislation from 2015 to 2022 in section 5.2 shows how politically controversial financial market regulation and the structure of financial market supervision were during the period under review. Against this backdrop in particular, the Commission considers it essential that the Federal Council regularly obtains the views of experts from outside the administration and integrates them into its strategic considerations and the report.

iv. Incomplete comparison of Swiss regulation with international standards: The reports lacked a systematic and up-to-date presentation of international standards and their further development. In addition, the reproduction of international standards and recommendations was not complete. For example, the PLB, whose introduction the FSB had already recommended in 2016, was only for the first time in a note in brackets in the 2019 report, without this instrument being in more detail.

The Commission therefore that the Federal Council carried out its reporting in accordance with Article 52 of the Banking Act on TBTF regulation in the years 2015 to 2021 in the sense of accountability, but to take an overall strategic view. This only changed with the CS crisis: in the Federal Council's report on banking stability of April 10, 2024, which included the fifth evaluation report pursuant to Article 52 of the Banking Act (the first after the emergency merger of CS with UBS), the Federal Council conducted a strategic analysis of the need for action in banking regulation for the first time. In doing so, it proposed a comprehensive package of measures. It also obtained an external view from outside the administration: Seven external expert opinions and the report of the "Banking Stability" expert group dated September 1, 2023 were included in the report. The Commission welcomes this new direction and calls the Federal Council to also carry out a comparable evaluation in future reports (see recommendation no. 1 at the end of section 9.1.2).

Further development of TBTF regulation in Switzerland 2015-2022

With regard to the further development of TBTF regulation in Switzerland in the years 2015 to 2022, the Commission comes to three overall conclusions.

Firstly, the Commission notes that Switzerland was one of the countries with the most advanced (or earliest implemented) TBTF regulation overall until around 2015. After that, a different trend set in (see sections 4.2.2 and 5.2): Out of consideration for the competitiveness of the Swiss big banks, the international standards were not to be implemented more quickly than in other financial centers.

The Federal Council's efforts not to pre-empt international regulation in favor of the competitiveness of the Swiss big banks were evident, for example, in the following areas: Introduction of going-concern and gone-concern requirements for G-SIBs (see section 5.2.3.1), introduction of the NSFR (see section 5.2.5.5), Federal Council Dispatch on Legislative Planning 2019-2023 (see section 5.2.7).

This approach was pursued despite the fact that the Swiss big banks were significantly larger than other financial institutions in terms of their ratio to GDP, which the responsible authorities were aware of. This situation became even more pronounced after the merger between CS and UBS: Following the integration of CS, UBS's assets amounted to around 180% of Swiss GDP at the end of 2023.[2065]) This situation will be discussed in the context of the PUK's findings on the existing TBTF regulation (see section 9.1.2).

Secondly, the PUK concludes that the Federal Council was too hesitant in introducing a PLB. The FSB recommended its introduction in 2016, and a PLB had already been introduced in the legal systems of important financial centres (see section 5.2.5.3) before the FDF carried out an initial analysis of the instrument. The SNB and FINMA in particular called for the introduction of a PLB from 2018 at the latest. The FFA, SIF and FDF were sceptical during these years, as they believed that a PLB would not have found a majority in Parliament at the time.[2066] At the end of 2019, the then Head of the FDF agreed to conduct an initial internal analysis of a PLB.

[2065] Report of the Federal Council on banking stability of 10.4.2024 (BBl **2024** 1023, p. 17 f.)

[2066] According to the Head of the FDF at the time, FINMA and the SNB also agreed with this argument in their assessment. According to him, the conclusion had been reached that a rejection in the Federal Council and in Parliament had to be avoided. by the former head of the FDF dated 28.10.2024.

PLB to be carried out. A corresponding working group was only set up in March 2020 (see section 5.2.5.3). The working group submitted its interim report to the AF in March 2021. It then took another year for the then head of the FDF to submit the key parameters of a PLB proposal to the Federal Council (see section 5.2.6.2).

The FDF's reluctance to introduce this instrument was the reason why the PLB had to be introduced as an emergency measure during the CS crisis. Assuming a majority in parliament, a PLB, as called for by the SNB and FINMA in 2018, could helped to prevent the *bank run* in 2022 and 2023 to the same extent thanks to its preventive effect (ex ante confidence among investors and clients) (see also section 13.1.4). In addition, a PLB already enshrined in law would have significantly increased the authorities' scope for action, especially from fall 2022, and improved the dynamics of events (see also the findings in section 13.1.4). However, it is not possible to assess what impact a PLB that was already enshrined in law at that time would have had on CS's business conduct.

Thirdly, the Commission notes that the Federal Council accommodated the big banks on various occasions in the further development of TBTF regulation in the years 2015 to 2022. It did so despite the fact that FINMA and the SNB in particular often jointly took the opposite position with regard to financial market stability (see sections 5.2.4.2, 5.2.5.5 and 5.2.6.3):[2067]

i. When introducing going-concern and gone-concern requirements for G-SIBs through the partial revision of the CAO in 2016, the Federal Council granted extended transitional periods after bilateral consultation between the GS-FDF and CS. Furthermore, contrary to the position of FINMA and the SNB, it included the lower surcharges advocated by the banks in the partially revised CAO. In addition, it refrained from imposing a more extensive quantitative disclosure requirement, as demanded by the FDJP (see section 5.2.3.1).

ii. The Federal Act on the Calculation of the Participation Deduction for Systemically Relevant Banks was introduced despite the FOJ's doubts about the constitutionality of the bill (see section 5.2.4.2).

iii. The introduction of the going concern requirements for the parent companies of the CS and UBS Group was delayed by one year due to opposition from the big banks (see section 5.2.5.1).

iv. When issuing the ordinance on the Financial Market Supervision Act, the Federal Council did not follow the position of the FOJ, according to which the Federal Council did not have a sufficient legal basis for issuing the planned ordinance (see section 5.2.5.2).

v. The introduction of the funding ratio (NSFR) did not take place until mid-2021 instead of 2018, partly due to pressure from the banks and contrary to the positions of the SNB and FINMA in particular (see section 5.2.5.5).

vi. When introducing a new liquidity concept in 2022, the Federal Council granted the banks long transitional periods despite FINMA's concerns and accommodated them with regard to disclosure obligations (see section 5.2.6.3).

vii. When replacing the rebate system with a new incentive system, the Federal Council decided not to publish the amount of certain capital surcharges due to criticism from the banks during the consultation process. In addition, the new system allows FINMA to demand surcharges on the basic requirements if it identifies obstacles to the banks' ability to restructure and liquidate. In the old system, on the other hand, banks had to justify their claim to the granting or retention of the discount and thus to falling below the actual requirements (see section 5.2.6.4).

[2067] However, in the joint discussions with the Head of the FDF, the SIF, the SNB, FINMA and the big banks, all agreed to the jointly developed solutions, according to the then Head of the FDF. Statement by the former Head of the FDF dated 28.10.2024.

Based on these findings, the PUK makes a corresponding recommendation to the Federal Council at the end of Chapter 9.1.2 (Recommendation 1).

9.1.2 Evaluation of the existing TBTF regulation

Initial situation

The TBTF regulation currently in force is largely the result of further developments in the years 2015 to 2022, which are presented in section 5.2 of this report. Following the CS crisis, the authorities and politicians drew initial lessons and identified the need for various adjustments to the TBTF regulation (for an overview of the most important publications following the CS crisis, see section 8.4). From the perspective of parliamentary oversight, this assessment of events and the current legal framework by the authorities concerned, namely the Federal Council, FINMA and the SNB, is to be welcomed. In line with its mandate, the Commission has limited its investigation and consequently its findings to the key aspects of current TBTF regulation in light of the CS crisis and to overarching statements on the direction Swiss TBTF regulation.

Findings on specific instruments of Swiss TBTF regulation

The PUK awarded an external mandate on the question of how Swiss financial market legislation should be assessed in an international comparison (see section 1.4.3.2). The Hungerbühler expert report identified two significant deviations of the current Swiss TBTF regulation from international standards: the lack of a PLB and the structure of deposit protection (see section 5.2.7). In addition, there is the TPO, which is not provided for in Swiss legislation (see section 8.4). The PUK notes the following on these three points:

Firstly, at the time of finalizing this report, Switzerland still does not have a PLB enshrined in law (see section 8.3). The Federal Council adopted a dispatch on the introduction of the PLB on September 6, 2023. At the time of publication of the PUK report, the bill was pending in parliament.[2068] Compared to the PLB as introduced by emergency ordinance during the CS crisis, the Federal Council's dispatch states that the PLB should be supplemented with a compensation lump sum that the systemically important banks must pay to the Confederation in advance. The purpose of this lump sum is to compensate the Confederation for the risk and to mitigate distortions of competition that may occur in the presence of a PLB in favor of the systemically important banks. In addition, if a bank obtains PLB loans, it should pay various premiums and interest for the services provided by the Confederation and the SNB. While the bank is receiving such loans, it should also be subject to a dividend ban and a ban on granting and repaying loans to the owners of the parent company and on repaying capital contributions.

If Switzerland had already had an explicit PLB enshrined in law in the fall of 2022, the authorities would have had additional room for maneuver at that time. This is because the risk of sending a damaging signal to the markets (see section 6.3.4) through the short-term emergency or accelerated ordinary introduction of a PLB in fall/winter 2022 could have been ruled out from the outset (see also the findings in section 13.1.4). This does not mean that in this hypothetical situation CS would actually have drawn PLB loans in the fall of 2022 and that such a drawdown would have stopped the liquidity outflows in the long term or that the events in March 2023 would have had a different outcome. However, a PLB that had already been introduced would undoubtedly have had a confidence-building effect. The Federal Council would also not have had to resort to emergency law to create the PLB during the crisis (see section 9.1.2). This is another reason why the PUK

[2068] According to the WAK-S media release, the bill has been suspended until the PUK is published: "Public Liquidity Backstop. Suspension of the consultation", WAK-S media release dated 28.8.2024.

convinced of the usefulness of the instrument of a PLB and is in favor of its rapid introduction.

Secondly, the PUK notes that Lea Hungerbühler's report found a deviation from international standards in key aspects of deposit protection (see section 5.2.6.5). The Federal Council's package of measures following the CS crisis, which it set out in its report on banking stability of
April 10, 2024, does not provide for any adjustments in the area of deposit protection. The Federal Council justifies this with the legislator's negative stance in the past.

An adjusted deposit guarantee would probably not have had a decisive influence on the management of the authorities during the CS crisis. As future crises do not necessarily develop in the same way as previous crises, the PUK would advocate that the Federal Council examines an adjustment to deposit protection and, if necessary, submits a corresponding proposal to the legislator.

Thirdly, the instrument of a TPO is neither explicitly included nor provided for in Swiss legislation, although the instrument has been discussed internationally since 2011 and several countries have already introduced it in 2016 (see section 5.2.2.1). The Federal Council is also of this fact. In its report on banking stability dated April 10, 2024, it rejected the introduction of a TPO because, in its view, it is an instrument that is alien to the system. The Commission notes that during the CS crisis, some authorities pursued the introduction of a TPO by emergency law as an option until the end and had prepared for it accordingly. The CS crisis suggests that the use of such an instrument could become necessary in a similarly structured crisis. If a TPO were available in ordinary legislation, such an application would have greater democratic legitimacy. The PUK therefore considers it sensible to examine the introduction of a TPO in ordinary legislation in depth, weighing up all the advantages and disadvantages. A corresponding proposal could, for example, consider various variants of a TPO (TPO for parts as well as for the entire [G-]SIB).

Findings on the orientation of Swiss TBTF regulation

Irrespective of the specifically applicable capital regulations and liquidity requirements, the examination of the CS crisis prompted the PUK to make a number of observations concerning the general orientation of Swiss TBTF regulation.

Firstly, the CS crisis has revealed a conflict of objectives between certain measures and TBTF legislation. The purpose of the TBTF legislation is to avoid state aid (see purpose article in Art. 7 para. 2 BankA). A PLB and in particular a TPO can contradict this statutory objective. This conflict of objectives can be using the example of a TPO: On the one hand, the explicit statutory regulation of a TPO would have to be advocated for reasons of democratic policy and the rule of law. In addition, explicit statutory regulation would force the stakeholders concerned (authorities, parliament and the economy) to deal specifically with the challengespractical implementation and effects of a TPO as part of the ordinary legislative process. On the other hand, as mentioned above, TBTF legislation is fundamentally aimed at avoiding state aid. In this respect, a TPO could possibly provide the wrong incentive.

The authorities repeatedly struggled with this conflict of objectives during the CS crisis when it came to the issues of PLB and TPO. It points to a question that is central for Switzerland because the banking sector so important for its financial stability and its economy. The question is: Can a major banking crisis realistically be overcome without state aid, or is state aid unavoidable, at least in certain scenarios, to avert major damage? If the latter is the case, the next regulatory question is to what extent and how the resulting distortions of competition should be compensated by the players concerned.

Secondly, the Commission notes that TBTF legislation is too focused on Switzerland, particularly with regard to emergency planning. A G-SIB operating out of Switzerland has strong international interdependencies. Swiss TBTF legislation has partially neglected this fact with regard to emergency planning. The focus of the emergency plan on the systemically important Swiss parts could have been a problem for the distribution of liquidity within the group in the event of an ELA reference (see section 6.4.2). In addition, the resolution of a G-SIB operating out of Switzerland would probably resulted in major distortions in foreign financial markets and serious consequences for international financial stability. This is because if the fall-back option (emergency plan) were to be applied, only the part that is systemically relevant for the Swiss financial center and the Swiss economy would be rescued. The Commission is therefore of the opinion that the planning for the resolution of a G-SIB operating internationally from Switzerland must take these international ties into account. If Switzerland wants to afford a G-SIB based here, it must assume responsibility accordingly. As the CS crisis has shown, this practical requirement: any management of a crisis at a G-SIB, such as that experienced CS, requires coordination with the foreign supervisory authorities. This is even more accentuated in the case of the *resolution of* a G-SIB. Otherwise, there is a risk that foreign authorities will impose restrictions on the outflow of funds for the foreign subsidiaries or branches of a Swiss G-SIB (ring fencing), which could nullify all the efforts of the Swiss authorities. Ring fencing was also an aggravating factor in the CS crisis, as explained in section 7.2.2.2.

Against the background of these two findings on the general direction of Swiss TBTF legislation, the PUK is submitting the following motion:

Motion no. 1: Adapt the objectives of the TBTF legislation

The Federal Council is instructed to submit a draft to the Federal Assembly for amendments to the purpose article of the TBTF regulation (Art. 7 para. 2 Banking Act) based on the findings of the CS crisis.

In addition to protecting the Swiss financial system, the objectives of the TBTF legislation should also include feasibility in international relations and the avoidance of triggering an international financial crisis.

Thirdly, the Commission has recognized from the CS crisis that the TBTF regulation is not designed for a crisis of confidence. The specific problem at CS was the enormous outflow of liquidity, which could or did occur very quickly in today's digital context. However, the cause was a growing crisis of confidence in the bank due to a number of incidents and years of continued mismanagement. As already mentioned, the Commission is in favor of the introduction of a PLB, which can create additional confidence among investors and customers. Furthermore, the Commission is opinion that the legislation focused too strongly on various key figures from which the crisis of confidence was not apparent, while other market indicators (e.g. share prices, credit ratings, CDS spreads) were or continue to be neglected. The Commission therefore welcomes the fact that in measure 22 of its report on banking stability dated April 10, 2024, the Federal Council intends, among other things, to examine the extent to which the mandatory consideration of comprehensive market indicators and qualitative indicators in the exercise of banking supervision should be prescribed by law.

Fourthly, the PUK believes that it is absolutely essential that the fact that the remaining G-SIBs are many times larger in relation to Swiss GDP than other financial institutions are in relation to the GDP of the respective country is adequately taken into account in the regulation. The PUK is of the opinion that mere compliance with international standards is not sufficient to adequately address the risks of any crises of the remaining G-SIBs for Swiss taxpayers.

be measured. If the remaining G-SIB has to meet higher requirements than its international competitors, it may have to expect higher costs in the short term, e.g. for building up the necessary capital resources. Nevertheless, the question arises as to whether it is not more costly for the financial center, the economy and society if additional state support becomes necessary for the remaining G-SIB in the event of a risk scenario. From the PUK's point of view, additional or stricter regulation does not guarantee that any crisis can be prevented or that state aid can be consistently avoided (see above). However, the question must be asked as to whether stricter regulation can reduce the amount of state aid in the event of a crisis.

The PUK is of the opinion that the TBTF legislation should be further developed and adapted to the comparatively significant size of the remaining Swiss G-SIBs. The international dependencies of G-SIBs must be taken into account. Measures must be examined as to how the institution could be wound up following a conversion of debt into equity (bail-in) ordered by FINMA as part of a restructuring procedure. Furthermore, cross-border live tests must be provided for in order to test the functionality of TBTF regulation under realistic conditions and with the involvement of the top management level.

Based on these considerations and the other findings in section 9.1, the PUK formulates the following recommendation to the Federal Council on the further development and monitoring of TBTF regulation:

Recommendation no. 1

The Federal Council is requested to take appropriate account of the international dependencies of SIBs and the comparatively significant size of the remaining Swiss G-SIBs in the future design of the TBTF regulation. More weight should be given to the interests of financial stability and the economy as a whole, as well as joint statements by the bodies responsible for financial stability.

The Commission also calls on the Federal Council to conduct a comprehensive strategic analysis of the further development of TBTF regulation in its evaluation reports in accordance with Article 52 of the Banking Act.

9.2 Legal regulation of the supervision of the auditing of systemically important banks

Since 2015, financial institutions in Switzerland have been subject to a dual supervisory system in which the banks themselves select and remunerate their audit firms. This system harbors the risk of conflicts of interest, as the audit firms could be influenced by the interests of their clients, which would compromise the objectivity and rigor of the audits. The IMF criticized this point in its evaluations. It pointed out the structural weaknesses in the current supervisory system, identified several areas in need of improvement and recommended, among other things, the direct mandating of audit firms by FINMA and the mandatory rotation of audit firms.

Following this IMF recommendation, FINMA initiated a fundamental review and identified optimization potential in various areas (see section 5.2.8). It ultimately opted for a package of optimization measures without a direct mandate, as it did not consider this to be politically feasible due to the high level of opposition. Alternatively, it opted for a cost reduction of around 30% in order to improve what it saw as an unfavorable cost-benefit ratio. The FAOA rejected this reduction as, in its opinion, it could impair the quality of the audits. The Commission is of the opinion that the assessment of the cost-benefit ratio is important, even if

cost reduction per se is not the central element that should be taken into account.

In the Commission's view, an examination of the current regulation of the supervisory system, including an examination of the direct mandate and the mandatory rotation of audit firms, would be appropriate with regard to the effectiveness of supervision. It should also be considered whether stricter rules would be useful, especially for SIBs and G-SIBs.

Postulate No. 1: Reduce conflicts of interest in the auditing of banks

The Commission instructs the Federal Council to review the current regulation of audit oversight for SIBs with a focus on reducing the risk of conflicts of interest and to evaluate appropriate measures, such as a direct mandate or mandatory rotation of audit firms.

The Commission notes that coordination between the FAOA and FINMA is inadequate in the event of a crisis (see section 5.4.3). This is partly due to the lack of a clear regulatory framework for the formal "crisis mode". This conclusion is based on several points. Firstly, although there were previously regular operational exchanges between the FAOA and FINMA on regulatory (RA) and financial audits (FA) and some of these meetings were documented, no formal and specifically structured documentation on interactions, particularly with regard to Credit Suisse situation, was found for the period after 2017. Secondly, despite some strategic meetings between 2015 and 2023 on general regulatory issues, there were no specific exchanges dedicated to the critical situation of CS, a lack of coordination in this important case. Finally, the lack of a formal and documented process after 2017 for the financial audits and exchanges on CS's situation a deficit in follow-up and information sharing in times of crisis. This gap led to a fragmentation of supervision during 's difficulties and impaired its effectiveness (see recommendation 8 in section 11.2.2).

10 Risk management and early crisis detection - before the crisis begins

10.1 Assessment of risk management by the Commission

Following the state rescue of UBS in 2008, the risk of imminent insolvency of systemically important financial institutions was included in risk reporting.

Management risk in the FDF

The Commission concludes that the management of the risk during the reporting period was appropriate and expedient. In particular, it considers it right that the responsibility of the risk owner was transferred from the then Head of Department to the State Secretary for International Financial Matters in 2018. This ensured better monitoring and management of the risk, especially as SIF was also responsible for the further development of TBTF regulation.

Since the beginning, the description of the risk has included a *credible worst-case scenario*, which is appropriate and comprehensible for the PUK. A possible worst-case scenario was calculated in the FDF on the basis of the state rescue of UBS. The impact assessment has been regularly revised and adjusted over the years by the responsible administrative unit. In the credible worst-case scenario, the FDF that the Confederation would be forced to support the affected bank with public funds in the event of an incident.

Classification of the risk

The FDF assessed *the impact* of the risk as *"very high"*, which corresponds to the highest level. This risk therefore constituted a Federal Council risk (see section 5.7). The dimension of the impact reflects the credible worst-case scenario.

view of the major economic and therefore primarily financial impact that the realization of the risk would entail, the classification of the impact and therefore the classification as a Federal Council risk was logical. The classification of the impact was not changed during the reporting period, which the Commission also considers to be appropriate.

However, the classification of the *probability of occurrence* varied over the reporting period. In the 2017 risk report, the probability of occurrence was downgraded from *"possible"* (every 3 to 10 years) to *"rare"* (every 10 to 50 years). This decision was based on the fact that the implementation of various measures was well advanced at the time and both the economic and political environment had stabilized. In retrospect this classification was too optimistic. In the 2022 risk report, which was prepared in February 2023, the SIF again set risk to "possible". The reason given for this change was the massive loss of confidence in CS. The SIF made it clear that "a solvency or liquidity crisis is still to be classified as rare when viewed over a longer period of time. "[2069] The SIF explained that this change was made "in the current environment and at least temporarily "[2070] . In doing so, the SIF is also likely to have conveyed to the Federal Council that the upgrade is only likely to be of a temporary nature.

The late upgrade from rare to possible may - in hindsight - accurately reflect the situation at the time. However, it should be noted that risk port- ing is not the appropriate instrument for mapping such a crisis. Among other things, risk management should ensure that crisis management can be activated in good time. This aspect must be taken into account when classifying and creating the graphical representation. From the moment a risk of this magnitude begins to materialize, it is no longer a question of risk management but of crisis management.

Assessment of the measures taken

A large part of the measures taken to mitigate the probability of occurrence or the impact of the risk consisted of the further development of TBTF legislation and its implementation by the systemically important banks. At this point, reference should be made to the explanations in section 9.1. It can be noted that new measures to minimize the risk were taken on an ongoing basis during the period under review.

It is to be welcomed that the active measures were assessed for the first time from the 2022 risk reporting. From the beginning of the acute crisis in mid-March 2023 at the latest, it became clear that the various measures were not sufficient and that CS was not in a solid enough position to save itself from the crisis. It also became clear that resolution in accordance with the TBTF legislation was associated with high risks (see sections 9.1.2 and 13.2.5). As the measures in the risk reporting largely reflect the further development of the TBTF, a detailed assessment of the measures is not provided here and reference is made instead to section 9.1. However, the PUK notes at this point that the assessment of the measures in the risk reporting described at the beginning was probably too positive in view of the emergency merger of CS with UBS.

[2069] Risk reporting 2022, insolvency of a systemically important financial institution.
[2070] Risk reporting 2022, insolvency of a systemically important financial institution.

Treatment of the risk by the GSK

The investigations of the PUK have shown that the GSK, which deals with risk reporting before the Federal Council takes note of it, has explicitly dealt with the risk of "insolvency of a systemically important financial institution" only once during the reporting period. The PUK does not consider this to be appropriate, as this is one of the greatest risks for the Swiss Confederation.

How the Federal Council and the Head of Department deal with the risk

The way in which the Federal Council and the head of department at the time dealt with the risk also needs to be addressed. With regard to the inclusion of risk management as a management tool at both departmental and Federal Council , as repeatedly called for by the CPC, the respective head of department a central function. Due to the restrictive information provided to the Federal Council about the situation at CS (see section 13.1.3), the Federal Council was unable to use risk management as a management tool in late summer and fall 2022. He cannot be blamed for this, as he lacked the necessary information. Whether the then head of department perceived risk management as a management tool in his department cannot be conclusively assessed here.

From the PUK's point of view, it is crucial that it possible for the respective risk owner to escalate specific cases to the Federal Council, as already called for in a GPK report from 20182071. The PUK is aware this undermines the departmental principle in certain cases. However, it is of the opinion that this option should be introduced for Federal Council risks in particular, which represent the greatest risks for the Confederation (see recommendation no. 2 below).

Transition from risk management to crisis management

The emergency merger of CS with UBS revealed various shortcomings in the Confederation's crisis management. For example, there is no mechanism to ensure the transition from risk management to crisis management. As soon as a risk begins to materialize, the managing bodies are no longer involved in risk management, but in crisis management. The graphical representation in risk reporting (classification of impact and probability of occurrence) does not allow a risk to be adequately represented when it materializes. The presentation is unsuitable for this purpose. In addition, it is not clear to the PUK what role the GSK has to play in the transition from risk management to crisis management. The role of the GSK needs to be clarified and, if necessary, strengthened.

Recommendation no. 2

The Federal Council is invited to examine in which constellations the introduction of a right of escalation to it is appropriate in the context of risk management and to take the necessary measures to introduce this right. Special consideration must be given to the Federal Council risks.

It is also called upon to ensure the transition between risk management and crisis management and to create an institutionalized body for this purpose. In particular, the Federal Council should examine how the role of the GSK can be strengthened in this area.

In conclusion, the PUK finds that the risk in this case was managed appropriately and expediently at State Secretariat level. However, good management of a risk and the various measures taken will remain ineffective if risk management is not extended to include crisis management in the sense of an overall concept.

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The PUK also sees a central need for adjustment in the area of early crisis detection. The interface between risk management and early crisis detection is discussed in the following chapter.

10.2 Evaluation of early crisis detection by the Commission

Early crisis detection is the responsibility of the Federal Chancellery at Federal Council level, which is why the role of the FC has also been analyzed by the . The PUK has come to the sobering conclusion that there is no actual early crisis detection system of the name. The PUK also notes that it has not received any documentation in this regard from the responsible FC.

In the opinion of the FC, early crisis detection primarily continuously analyzing the risks in risk reporting and examining whether the reporting is complete. In this respect, early crisis detection is part of risk management. In other words, this means once a risk has been identified, early crisis detection by the FC does not play an active role in relation to an individual risk. This was also the with the risk of the "insolvency of a systemically important financial institution". The statutory mandate to the FCh obliges the Federal Chancellor to advise and support the Federal Council in the timely identification and management crises (Art. 32 lit. g RVOG). As far as the PUK can see, there is no other body at Federal Council level that deals with the early detection of crises, which is why the cited article from the RVOG is even more important.

In the opinion of the FC, early crisis detection has no specific role to play, particularly when a risk that is recorded in risk reporting begins to materialize. This circumstance is unsatisfactory and should be questioned. According to the FFA's Federal Risk Management Manual, early crisis detection an observation horizon of several months to a maximum of one and a half years. Events or trends that could develop into a crisis within this period should be considered.[2072] If the FC's early crisis detection is limited to analyzing and, if necessary, supplementing risk reporting, this approach cannot the definition in the FFA's manual.

From the PUK's point of view, the instrument of early crisis detection is only useful if it can also be used to identify emerging crises, some of which have already been recorded in risk reporting for years. The realization of a risk can lead to a crisis for the Confederation, which must be managed by the Federal Council. The present situation is the best example of this. In other words, the PUK believes that the Federal Council's concept lacks an important dimension of early crisis detection: a mechanism that recognizes the occurrence of a risk that has already been identified and recorded.

It will be necessary to examine whether the right of escalation called for in section 10.1 should be embedded in the early detection of crises so that escalation to the Federal Chancellery is if necessary. The role of the Federal Chancellery and its powers must be strengthened in any case. From the PUK's point of view, the Federal Chancellery is the appropriate body for early crisis detection, as it is the Federal Council's staff unit on the one hand and heads the important GSK on the other. The instrument of early crisis detection can only be used appropriately and expediently if crises are recognized as early as possible and the right conclusions are drawn.

Postulate No. 2: Review early crisis detection and strengthen the role of the BK

The Federal Council is instructed to review the early detection of crises by the FCh and report on this. Early crisis detection and thus the role of the Federal Chancellery must be strengthened. In particular, the Federal Council should examine the introduction of an escalation option through hierarchically subordinate administrative units to the Federal Chancellery. The Federal Council should draw up a concept for this in its report.

[2072] FFA: Handbuch zum Risikomanagement Bund, p. 64

11 Financial market supervision

In this chapter, the PUK assesses the operational implementation of financial market supervision. In addition to FINMA and the SNB, the focus here is also on the FAOA.

11.1 Microprudential supervision by FINMA

FINMA's supervisory activities are of central importance in this study due to its role as a microprudential supervisory authority.

First, FINMA's general supervisory activities (ongoing supervision and enforcement activities) before the crisis (phase 1) are assessed (see section 11.1.1). The focus here is on the implementation and enforcement of FINMA's requirements vis-à-vis CS, the enforcement proceedings against the bank and the regulatory filter that FINMA granted CS. Subsequently, individual FINMA decisions during the crisis (phase 3) that had a particular impact and were of fundamental importance are examined separately (see section 11.1.2). Specifically, this concerns the order to write down the AT1 bonds and the determination of the achievement of the PONV on
March 19, 2023, after which the PUK will record further findings (see section 11.1.3).

11.1.1 Microprudential supervision of CS before the crisis

11.1.1.1 Ongoing supervision by FINMA

By way of introduction, the PUK notes that FINMA *made intensive* use of its supervisory instruments vis-à-vis CS (see section 5.3.1). The supervisory instruments included particular the annual assessment letters, on-site inspections, enforcement proceedings and various stress tests. FINMA was in *regular* contact with CS to ensure the implementation of regulatory requirements and the TBTF regime in particular: Along its internal processes for the supervision of the big banks, it held annual supervisory meetings with the Board of Directors and the Chairmen of the Risk and Audit Committee, met the Chairman of the big bank's Board of Directors every six months and held quarterly supervisory meetings with the CEO. From 2021, FINMA increased this frequency to *monthly* supervisory meetings with the Chairman of the Board of Directors due to the permanent deterioration of the situation at CS. From mid-August 2022, these meetings took place *weekly*.

Following the PUK's analysis, FINMA identified weaknesses *in CS's organization*, *capital and liquidity situation* and *emergency planning.* It addressed these using various instruments:

i. Influence on strategy, organization and management: FINMA discussed the bank's strategy, organization and management with CS in every assessment letter. As early as 2015, it claimed that CS should inform it proactively and transparently of significant developments that are of regulatory importance.

ii. FINMA also expressed doubts about CS's remuneration policy. It also identified weaknesses in the exercise of control functions and called for corresponding improvements. In addition, every year repeated its call for strong risk control and compliance assurance at CS, as risks were not systematically controlled at all levels and in all business units. Among other things, FINMA focused on gaps in the money laundering regulations and CS's decentralized risk control.

iii. Influence on CS's capital and liquidity situation: FINMA imposed additional capital requirements on CS over the years, for example when this seemed appropriate with regard to certain assets or business activities. It also demanded improvements in reporting on the capital and liquidity situation almost every year.

iv. At the same time, FINMA made use of its option to exemptions: Until the abolition of Article 125 CAO at the end of 2018, for which FINMA campaigned, it was obliged to grant relief if certain conditions were met. In particular, it imposed the regulatory applicable from 2019 in 2017. The circumstances under which it was granted and the effects of the filter are discussed separately in section 11.1.1.3.

v. Stabilization plan: FINMA approved CS's stabilization plan and deemed CS's Swiss contingency plans to be implementable as at the end of 2019. It also deemed CS's preparatory work for resolution to be sufficient at the end of 2022.

Lack of implementation of FINMA's instructions

FINMA had to repeat certain demands for years without CS making significant progress. In particular, it regularly called on CS to clearly define the respective areas of responsibility of managers, to improve the "tone at the top" and the capital situation of the parent bank, and to provide qualitative data. FINMA also criticized the fact that CS did not build up its own funds from the income from its business activities, but rather from capital increases, among other things. In this context, it also criticized the dividend distribution to shareholders.

FINMA also criticized the variable remuneration policy for senior at CS (see section 5.3.1.3).[2073] According to an expert opinion commissioned FINMA, under the current legal situation it cannot be accused of failing to make use of the available scope for action in the area of remuneration systems in its most recent supervisory practice.[2074] The PUK agrees with the conclusions of this opinion. For the Commission, the question arises as to the effectiveness of the instruments available to FINMA in this regard. There is currently no explicit legal basis for guidelines on the remuneration system of financial institutions.[2075]

The PUK believes it is important for systemically important banks to pursue a remuneration system in future that does not create false incentives. In particular, variable remuneration (performance bonuses) should not be paid out if the business is not successful. The PUK supports the measures adopted by the Federal Council in its report.[2076]

[2073] Specifically, FINMA instructed CS in connection with the "Archegos" enforcement proceedings to include bonus allocation criteria in the remuneration system that take risk appetite into account. In addition, a control function should assess and record the risks taken before determining bonuses for employees with particular risk exposure. Langhart/Hirschle investigation report (2024), Item 406.

[2074] The above information is based on a source or sources that are available to the PUK but are not specifically named because they conflict with overriding public or private interests.

[2075] FINMA has set out its supervisory practice with regard to variable remuneration in its Circular 2010/1. However, this circular is not generally binding. Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 266).

[2076] Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 269): Sharpening and specifying the requirements for corporate governance, introducing a responsibility regime, strengthening the legal basis for the requirements for remuneration systems of SIBs and possibly other banks.

Postulate No. 3: Avoid false incentives in the remuneration and distributions of SIBs

The Federal Council is instructed to examine what measures are required to ensure that the remuneration systems and distributions of SIBs do not create false incentives. In particular, so-called variable remuneration (performance bonuses) should not be paid if the business is not successful.

Form of FINMA's instructions

The Commission also notes that FINMA regularly communicated its expectations to CS in writing, namely in the form of assessment letters. However, in the Commission's view, it rarely resorted to formal rulings. For the purpose of better enforceability, but also for the legal protection of the supervised G-SIBs, the PUK considers it appropriate for FINMA to issue the measures it requires in the form of formal rulings if it recognizes that the implementation of the measures by a supervised institution is repeatedly unsatisfactory (see motion no. 3 at the end of section 11.1.2).

FINMA's human resources

The PUK's investigation also revealed that FINMA's human resources should be reviewed: Firstly, the Hungerbühler expert report on the regulation and supervision of the financial markets and the TBTF regulation points out that the staff resources for the supervision of G-SIBs considered to be too low. Secondly, FINMA's current staffing have a negative impact on how FINMA is perceived by the institutions it supervises (see section 5.3.4). Some of the persons heard by the PUK were critical of FINMA's ability to assert itself. In particular, FINMA is less established than both the SNB and foreign supervisory authorities. In this context, it was pointed out that the employment conditions of FINMA employees were not attractive enough in comparison (see section 5.3.4).

11.1.1.2 Enforcement proceedings against CS and its executive bodies

As explained in section 5.3.2, the PUK commissioned an external investigation report for the purpose of investigating and assessing FINMA's enforcement proceedings against CS.

By way of introduction, the PUK points out that, as an exception to the principle according to which it assesses FINMA's conduct of business in general, it has decided on the cases of
"Petrobras/FIFA/PDVSA" and "Enforcement Petrobras/FIFA/PDVSA" for two specific reasons:

Firstly, the findings from the points of criticism expressed have a general scope. They relate to FINMA's ability to enforce against the financial institutions it supervises, the conduct of enforcement proceedings against individuals and FINMA's ability to communicate publicly about individual proceedings.

Secondly, the investigators' criticism of FINMA's enforcement proceedings focused on the two cases mentioned. The criticism was clear. Accordingly, the PUK considers it appropriate to examine these cases in detail.

Unless otherwise stated, the following explanations relate to the enforcement proceedings against the bank. The PUK's findings on the enforcement proceedings against individuals who worked for CS are set out in a separate section below.

Initiation and implementation of enforcement proceedings

FINMA conducted a total of eleven enforcement proceedings against CS between 2015 and 2022. No other SIB was confronted with anywhere near the same number of enforcement proceedings in the same period. The PUK therefore concludes that these proceedings played an exceptionally *important role* in FINMA's oversight of CS.

FINMA has an established process that clearly structures and documents its enforcement activities. It appointed auditors and investigators in nine out of eleven enforcement proceedings. The PUK and its investigators concluded that FINMA initiated enforcement proceedings against CS in *a timely manner* in the majority of the cases investigated. In individual cases, however, FINMA was late in initiating proceedings.[2077] In addition, in some cases it did not investigators.[2078] In 25 preliminary investigation proceedings, FINMA refrained from initiating enforcement proceedings for various reasons (see section 5.3.2.2). In line with the assessment of its investigators, the PUK considers it appropriate not to open enforcement proceedings in these cases. The Commission notes that the enforcement proceedings against CS mainly concerned breaches of supervisory duties in connection with an appropriate administrative organization, risk management, AMLA due diligence obligations and the guarantee of irreproachable business conduct.

Completion of enforcement proceedings and implementation and enforcement of final orders

At the conclusion of its enforcement proceedings, FINMA ordered various measures against CS (see section 5.3.2.3). The PC agrees with its investigators that FINMA exhausted its powers to take measures in most cases, subject to the following findings, and that it pursued and, where necessary, ensured the implementation of its orders against CS.[2079] However, the PC regrets that FINMA reconsidered the original order to strengthen the board of directors in the "Petrobras/FIFA/PDVSA" case. In view of the numerous enforcement proceedings against CS and FINMA's repeated criticism that CS did not have an appropriate organization, the PUK believes that strengthening the CS board of directors would not only have been desirable from today's perspective, but could have been recognized as appropriate by FINMA at the time.[2080]

The PUK also finds it incomprehensible that FINMA did not enforce its legally binding ruling of 3 September 2018 in the "Petrobas/FIFA/PDVSA" case until April 2022, even though it had already learned on 11 February 2020 that CS had not yet fully remedied the deficiencies identified. It did not follow through on its threat to take further supervisory measures expressed in the 2019 assessment letter.[2081] The PUK considers FINMA's delay in enforcing its ruling in the "Petrob ras/FIFA/PDVSA" case and in initiating further enforcement proceedings to determine responsibilities at CS to be a failure to make it very clear to the bank's management that such serious breaches of the

2077 Langhart/Hirschle investigation report (2024), para. 316 f. ("Observation cases"). The investigators expressed the same criticism in the case of "Enforcement of petroleum ras/FIFA/PDVSA" (Langhart/Hirschle investigative report [2024], para. 357 et seq.), is dealt with separately below.

2078 Langhart/Hirschle investigation report (2024), point 316 f. ("Observation cases")
2079 Langhart/Hirschle investigation report (2024), point 413 ff.
2080 See Langhart/Hirschle investigation report (2024), point 213 ff.
2081 Langhart/Hirschle investigation report (2024), no. 357

supervisory law cannot tolerated.[2082] This would have been appropriate in view of the "worst balance sheet in terms of supervisory law" (see section 5.3.1.1), which was sharply criticized in the 2020 Assessment Letter.[2083]

FINMA does not share the investigators' criticism: CS had implemented the Single Client View (SCV) to a certain extent on time and thus met the regulatory requirements. Ex post, FINMA found that the requirements for a more extensive SCV too high. FINMA's reconsideration of 1 April 2022 did not focus on comprehensive enforcement, but rather on specifying the requirements for the SCV.

The PUK takes note of this opinion. Nevertheless, it is of the opinion that the requirements for the SCV should have been clear to CS. The failure to implement them and FINMA's associated reaction are not entirely comprehensible to the PUK.[2084]

Enforcement proceedings against individuals

FINMA conducted eight enforcement proceedings against CS employees and management members during the period under investigation by the PUK. At the end of the three cases concluded to date, it did not disqualify any person working at CS and did not impose a professional ban, although it had repeatedly found that CS had serious supervisory deficiencies (see section 5.3.2.2).

According to FINMA, the reason for writing off the three cases in question was that in two cases the persons concerned had agreed to definitively renounce any future management activities at supervised institutions after the relevant enforcement proceedings had been opened. In another case, the person concerned resigned from his position of guarantee at CS after FINMA had opened enforcement proceedings to review his guarantee in relation to this position. While the PUK does not pronounce itself on the collection and assessment of the evidence base of an individual case, the decision not to take measures that could have a deterrent effect is questionable. If there are doubts about the responsibilities of a natural person, the PUK believes that FINMA should initiate formal proceedings for reasons of preventive effect, even if the chances of success appear low. As an independent supervisory authority, FINMA should not shy away from costly investigations or court proceedings, provided there is a reasonable likelihood of success in court.

FINMA has refrained from opening or continuing proceedings if the special preventive purpose of proceedings had already been fulfilled for other reasons. These include cases in which the person concerned was too old to

[2082] In their investigation report, the investigators emphasize FINMA's finding in the 2018 ruling there were serious deficiencies in virtually all areas of the bank's money laundering system. Due to the severity of the breaches identified over a long period of time, FINMA stated that it was for CS to rectify the identified weaknesses "as quickly as possible". CS had still not complied with the licensing requirements under the Banking Act within the set deadline at all locations or in all business units (Langhart/Hirschle investigation report [2024], para. 357).

[2083] According to the investigators' analysis, FINMA would have been obliged to enforce its legally binding ruling of September 3, 2018 earlier. The fact that it did so The investigators consider the fact that FINMA did not do so to be unlawful (Langhart/Hirschle investigation [2024], para. 359). While the PUK agrees this assessment, it does not focus on the (un)lawfulness of an individual act or by FINMA. The Langhart/Hirschle investigation report also shows that FINMA acted lawfully in all other cases. With an investigation period of seven years and numerous enforcement cases, this is a positive finding.

[2084] See also the Langhart/Hirschle investigation report (2024), para. 370 et seq.

to exercise a management function; cases in which the person concerned had left the country without any indication of returning; and cases in which the person concerned a so-called waiver. In view of the obvious inability and unwillingness of CS as an institution to an appropriate risk culture, FINMA should have made even more consistent efforts to punish individual misconduct. In the opinion of the PUK, this would have sent a strong signal to CS managers and employees.

The PUK also notes that FINMA refrained from opening enforcement proceedings against a person in various cases because, in its opinion, the deficiencies identified could not be attributed to a specific guarantor. However, the bank's risk culture, which repeatedly led to violations of supervisory law, is ultimately the responsibility of the Executive Board and the Board of Directors. The investigators of the PUK also expressed reservations: In one case, they criticized the fact that FINMA had not exerted sufficient influence on its own investigators to establish the personal reproachability of individuals at CS.[2085] Furthermore, as part of the enforcement of the legally binding order in the "Petrobras/FIFA/PDVSA" case, it would have been appropriate to open additional enforcement proceedings to clarify responsibility for the incomplete implementation of the legally binding FINMA order.[2086] Overall, the PUK has the impression that FINMA did not exhaust the means at its disposal in all cases to clarify the personal responsibility of those responsible for management at CS.

Public communication

According to the PUK's analysis, FINMA reported publicly seven times on the initiation or conclusion of specific enforcement proceedings against CS.[2087] FINMA also provided the public with general information on its enforcement activities as part of its reporting (see section 5.3.2.4).

In contrast to the current legal situation in other countries[2088] , FINMA may only report publicly on specific enforcement proceedings in exceptional cases in accordance with Article 22 paragraph 2 FINMASA. It must be able to demonstrate that there is a special supervisory need to do so.[2089] FINMA has a certain amount of discretion in assessing what constitutes an exception.[2090]

In this regard, the investigators of the PUK criticize in their report that although FINMA publicly reported on the conclusion of the proceedings in the "Petrobras/FIFA/PDVSA" case, it did not subsequently inform the public about the non-implementation of FINMA's final ruling by CS. As a result, the media release on the conclusion of the proceedings gave market participants the erroneous impression that the orderly situation had been restored. The PUK agrees with this assessment: The incomplete information on these enforcement proceedings does not comply with the objectives of the Financial Market Supervision Act pursuant to Art. 4 FINMASA (creditor protection, investor protection, protection of the functioning of the market, strengthening the reputation, competitiveness and future viability of the Swiss financial center).

2085 Langhart/Hirschle investigation report (2024), no. 274
2086 Langhart/Hirschle investigation report (2024), point 5
2087 FINMA compilation for the attention of the PUK dated 8.8.2023
2088 In the EU, for example, the principle of information applies. Cf. Amez-Droz, Laura (2024): Financial market enforcement and communication: On communication behavior of FINMA with regard to individual enforcement proceedings. In: SZW. Schulthess Legal Medien AG, p. 201
2089 Langhart/Hirschle investigation report (2024), para. 66 f.
2090 See also Rayroux, François / du Pasquier, Shelby (2019): Art. 22FINMAG para. 1 and 22, in: Watter, Rolf / Bahar, Rashid (eds.): Basler Kommentar zum Finanzmarktaufsichtsgesetz setz und zum Finanzmarktinfrastrukturgesetz, 3rd ed. Basel: Helbing Lichtenhahn,

As far as the current legal regulation is concerned, the PUK found that Switzerland is an exception compared to many other countries with the principle that communication about individual enforcement proceedings can and should only take place in exceptional cases. The PUK's investigation revealed that the provision of information to market participants was a recurring theme (e.g. in connection with the regulatory filter and the AT1 instruments). The PUK therefore raises the overarching question of whether FINMA should be enabled to publicly about individual enforcement proceedings more frequently in future by amending Article 22 paragraph 2 FINMASA (see recommendation no. 3 below).

Conclusions on the enforcement proceedings against CS

In general, the PUK finds that despite the numerous enforcement proceedings, FINMA has not succeeded in ensuring that CS's business practices comply with supervisory law in the long term. According to Article 31 FINMASA, the purpose of enforcement proceedings is to restore compliance with the law. As mentioned above, the PUK is of the opinion that the enforcement proceedings against CS were largely appropriate. However, in the case of such large gaps in the organization and the lack of will on the part of the responsible body of the bank (Board of Directors) to close these gaps, the instrument of enforcement proceedings reaches its limits.

Overall, the PCC finds it incomprehensible that no causal responsibility for the misconduct in question could be established despite the numerous failings of the institution and the corresponding admonitions by FINMA in the course of ongoing supervision and enforcement proceedings. The PUK shares the view of the Federal Council and FINMA that the culture is particularly shaped by the individuals at the highest management level.[2091] For the Commission, it is crucial that the question of individual responsibility is also the focus of the enforcement proceedings. It supports the introduction of a senior manager regime for SIBs in particular2092 and welcomes the fact that the Federal Council intends to implement the accountability regime.[2093] The PUK also notes that FINMA's Board of Directors was only informed about completed proceedings. In view of the high significance of the enforcement proceedings against CS (see above) and FINMA's repeated findings that CS was in breach of the regulatory requirement of an appropriate organization, the PUK raises the question of whether certain enforcement proceedings should not be treated as transactions of major significance within the meaning of Article 9 paragraph 1 letter b FINMASA.

Under current law, FINMA broad discretion in assessing what constitutes a large-scale transaction within the meaning of this provision. Accordingly, the Federal Council should examine whether a possible amendment or even the repeal of Article 9 paragraph 1 letter b FINMASA is appropriate. Please refer to section 11.1.3 for the corresponding postulate of the PUK.

[2091] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 256)

[2092] Cf. also Po. Andrey "Lean tools to make the highest financial market executives more " of 18.6.2021 (21.3893), Mo. WAK-S "Strengthening the supervision of systemically important banks by expanding FINMA's supervisory and sanction instruments" of 9.11.2023 (23.4336), Mo. Burgherr "Increasing the responsibility of top management at systemically important banks" of 11.4.2024 (23.3462), Ip. Glättli "In connection with the CS debacle, make senior financial market executives more accountable for mismanagement" of 17.3.2023 (23.3417)

[2093] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 258 f.)

Recommendation no. 3

The Federal Council is requested to create the necessary conditions for FINMA to effectively enforce and implement its enforcement proceedings. In particular, it should be examined whether Article 22 paragraph 2 FIN- MAG should be amended to allow FINMA to communicate in principle about individual enforcement proceedings relating to systemically important banks. In particular, the legal situation abroad with regard to public communication by supervisory authorities should be taken into account.

11.1.1.3 Regulatory filter

In the course of the PUK's investigation, the question arose as to the capitalization of CS and thus in particular the effects of the regulatory filter. The regulatory filter is a relief granted in 2017 that allowed the parent company of CS to count the difference between the collective valuation and the individual valuation of the participations towards its own funds (see section 5.3.3.1). An external analysis commissioned by the PUK came to the conclusion that the regulatory filter accounted for up to half of CS AG's own funds in 2022 and that without the regulatory filter, the CS parent company would have been slightly undercapitalized from 2021 and clearly undercapitalized from 2022 (see section 5.3.3.3).[2094] For the PUK, this indicates that the filter had a significant impact on the regulatory capital situation of the CS parent company.

The granting of the filter in 2017 and its follow-up thus raise various questions, which are answered below. Firstly, from the perspective of the PUK, it had to be clarified whether the order based on a sufficient legal basis and was therefore lawful. Secondly, fundamental questions arose regarding the circumstances under which the regulatory filter was granted. Thirdly, the Commission investigated whether the filter was appropriate in the sense that it brought advantages for financial stability compared to the previously applicable system.

The PUK therefore requested numerous documents relating to granting of the regulatory filter and, due to the technical complexity of the issue, entrusted an external expert with the economic analysis.[2095] The PUK also commissioned a legal opinion to clarify the legality of the granting of the filter and other related issues.[2096]

Introduction of the regulatory filter in 2017 - question of legality

FINMA introduced the regulatory filter in 2017. CS had already benefited from relief granted by FINMA at the time on the basis of a legal obligation: specifically, from 2013 until the deletion of Article 125 CAO in 2018, FINMA obliged to grant certain relief to CS's parent company, provided the prescribed conditions were met (see section 5.3.3.1). When granting the regulatory filter in 2017, FINMA relied on Article 4 paragraph 3 of the Banking Act. This article stipulates that FINMA may grant exemptions from the minimum capital and liquidity requirements in special cases.

[2094] FINMA emphasized to the PUK that the value of the filter was given, which is why it could be included in regulatory capital. For this reason, according to FINMA, there was no undercapitalization (FINMA statement of 25.10.2024 as part of the administrative consultation).
[2095] Birchler expert report (2024)
[2096] Legal opinion Zellweger-Gutknecht (2024)

The PUK nevertheless had questions regarding the legality of the 2017 TBTF ruling. The 2017 ruling definitively replaced the full deduction of participations required under the law in force at the time with the risk weighting of these participations.[2097] This regime was only introduced for all banks two years later by amending the relevant ordinance.[2098]

The legal opinion prepared on behalf of the PUK concludes that Article 4 paragraph 3 of the Banking Act was a sufficient legal basis to make the transition from the participation deduction with mandatory simplifications to a risk weighting (regime change).[2099] However, according to the opinion, it would have been correct to base the 2017 ruling on Article 4 paragraph 2 sentence 3 of the Banking Act in conjunction with Article 125 CAO. However, this does not change the legality of the decision, as FINMA did not exceed its discretionary powers. The tightening of the rules through the introduction of a disclosure obligation and the time limit can be based directly on Article 4 para. 3 Banking Act and are therefore also lawful.[2100] Nevertheless, the Commission recognizes a very extensive interpretation of Article 4 para. 3 Banking Act overall. This interpretation is based above all on current practice and culture within the framework set by the Federal Council and Parliament, as there is hardly any literature or case law on the subject.[2101]

In connection with the introduction of the regulatory filter, the Committee also questions the extent to which the regime change was at all suitable for FINMA's objective of increased transparency (by publishing meaningful figures on reported equity)[2102] , despite the established legality. The parent company of CS reported the amount of

[2097] In fact, according to the Zellweger-Gutknecht legal opinion, the regime change already took place with the introduction of the TBTF Decree 2013, as only one tenth of the participations were subject to the deduction regime with the relief granted. The 2017 TBTF ruling merely adjusted the existing regime. The participation deduction was now also abolished for this tenth (Zellweger-Gutknecht legal opinion (2024), p. 16 ff.). FINMA argued before the PUK that the new regime was more stringent than the participation deduction because the participation deduction pursuant to Art. 125 CAO was subject to mandatory under certain conditions. In contrast, the regulation introduced in 2017 with pure risk weighting did not provide for any mandatory relief. This argument is not comprehensible to the PUK: FINMA granted the regulatory filter - which in the PUK's view represents a massive relief in connection with the accounting rules, cf. below - by means of the same ruling.

[2098] The full participation deduction was regulated in Art. 32 let. j CAO. The FINMA argued before the PUK that this provision was not relevant due to Art. 148i CAO. Art. 148i CAO basically provides that rulings on the treatment of participations issued by FINMA prior to the amendment of the CAO take precedence over Art. 32 let. j CAO. However, Art. 148i CAO came into force around two years after FINMA issued its ruling. The legal opinion came to the conclusion that Art. 148i CAO had a purely declaratory effect. For example, the provision would have no curative effect in the event of an unlawful ruling. The introduction of the should be interpreted to mean that the Federal Council had approved the continued validity of FINMA's orders (Zellweger-Gutknecht legal opinion [2024], p. 4 and 30).

[2099] Legal opinion Zellweger-Gutknecht (2024), p. 4 and 13 ff.

[2100] Legal opinion Zellweger-Gutknecht (2024), p. 21 ff.

[2101] Legal opinion Zellweger-Gutknecht (2024), p. 4, 7 ff. and 23

[2102] According to the explanatory report, the appropriateness of the deduction regime and the risk weighting was called into question because the capital figures disclosed by the banks at the time did not allow any meaningful conclusions to be drawn about the size of the equity holdings and the new equity holdings increased the proportion of risk-weighted equity holdings (FDF explanatory notes on the amendment to the Capital Adequacy Ordinance of 21.11.2018, p. 9). FINMA testified before the PUK that it had a solution that would sustainably strengthen the capital situation at the big banks and improve the transparency of the capital situation for third parties (FINMA letter to the PUK dated 14.6.2024, p. 2).

filter in a report separate from the annual report (Regulatory Disclosures) is hardly recognizable to outsiders (without graphical representation, title).[2103] No further investigation was carried out into whether FINMA could have granted less extensive relief under the then applicable regime of the participation deduction, which would have made the abolition of Article 125 CAO - and thus the introduction of the regulatory filter - unnecessary.

Circumstances of granting the regulatory filter

As to the reasons for the introduction of the regulatory filter, FINMA explained to the PUK that Article 125 CAO, which was introduced in 2013, represented an unacceptable and non-transparent capital relief for the big banks and that it had therefore advocated its abolition.[2104] It argued that the Federal Council had only wanted to amend the article in question with the agreement of the big banks and that it therefore had to grant the regulatory filter. CS had made its acceptance of the abolition of Article 125 CAO dependent on the effects of the accounting change (switch from portfolio valuation to individual valuation) being reduced with a regulatory filter based on Article 4 paragraph 3 Banking Act (see section 5.3.3.2). In this regard, the legal opinion states that the regulatory practice and culture at the time made measures against the will of the bank appear unrealistic from the outset, at least with regard to Article 125 CAO.[2105]

First of all, the Commission notes that it cannot understand why FINMA pushed for the abolition of mandatory simplifications (Art. 125 CAO) on the one hand, but at the same time introduced new simplifications through the regulatory filter.[2106]

According to the expert opinion, the measures selected may appeared suitable for achieving the objective from the perspective of the time and not obviously inappropriate.[2107] However, the PUK concludes that the filter was not appropriate. However, this does not change the legality of the measure.[2108]

Furthermore, it is clear from the following explanations of the effect of the filter that it represented a considerable facilitation in terms of scope. The Commission has serious doubts about its transparency.

The PUK was unable to conclusively clarify the reasons and circumstances that led to the regulatory filter being granted in 2017. There are no documents to FINMA's statements (see section 5.3.3.2). An inquiry to the then Head of the FDF, the SIF and the then State Secretary did not provide any clarification. The SIF stated that it was not aware of the regulatory filter for the

[2103] According to the expert report Birchler (2024), p. 6. CS did not state how the respective amount arrived at. By mid-2021 at the latest, the challenges of capitalizing the parent company and the details of the corresponding regime for in the market were known with the publication of a report by the renowned research house *Autonomous*.
[2104] Letter from FINMA to the PUK dated 14.6.2024, p. 1
[2105] Expert opinion Zellweger-Gutknecht (2024), p. 27
[2106] According to FINMA, the neutralization of the switch from collective valuation to individual valuation in regulatory capital would have been necessary in any case. If the provisions of the TBTF ruling had not amended, the regulatory filter based on Art. 125 CAO would have had to be granted (FINMA statement of 28.10.2024 as part of the administrative consultation). The opinion comes to the conclusion that FINMA's situation at the time must be taken into account and that it had to grant the filter due to the lack of valid alternatives. At the same time, it disputed that FINMA itself not explain the reasons for the lack of alternatives (legal opinion Zellweger-Gutknecht [2024], p. 5 and 27; for a list of the missing alternatives, see the comments from p. 39 onwards). In the opinion of the then of FINMA, the only alternative to the filter would have been not to grant it and to retain Art. 125 CAO. He described this provision as toxic due to the lack of transparency.
[2107] Legal opinion Zellweger-Gutknecht (2024), p. 28
[2108] Legal opinion Zellweger-Gutknecht (2024), p. 28

It also stated in an internal document that FINMA had jumped the gun with its 2017 ruling.[2110] SIF therefore felt under pressure to create the same conditions for all banks by abolishing Article 125 CAO.

From the PUK's perspective, it is not understandable per se that FINMA, as an independent authority, felt compelled to grant the regulatory filter. As explained in sections 5.2 and 5.3.3 and in the legal opinion, the big banks, and CS in particular have repeatedly exerted influence on certain adjustments to regulation.[2111] The PUK believes that influencing policy in this way is questionable. Although the relevant stakeholders should be heard, the acceptance of the interest groups or institutions concerned should not be the decisive factor for the state authorities.

The Commission also notes that the SNB opposed the introduction of the filter in 2017. From the 's perspective, the reasons for this simplification were not clear. It also considered the quantitative impact of the filter to be substantial. Finally, it was of the opinion that the ran counter to the goal of better capitalization of the parent company (see section 5.3.3).

FINMA was right to link the granting of the regulatory filter to the requirement that the valuation of the parent company's holdings be checked for plausibility by an independent audit firm. Nevertheless, the PCC does not fully understand why CS AG was still able to benefit from a significantly higher filter than FINMA considered permissible despite FINMA's limitation of the eligible *fair values* (see section 5.3.3.3). The Commission would have expected FINMA, which supported the proposed value adjustments in principle, to have enforced them consistently in CS AG's reporting.

Finally, in connection with the granting of the regulatory filter, the Commission is also critical of the fact that the same ruling introduced the risk weighting of the parent company's participations instead of their full deduction: In the Commission's view, the participation deduction regime has the advantage that a capital crisis at the parent company is not exacerbated by a crisis at the subsidiary as a result of fluctuations in the value of the participations. In contrast, according to FINMA, the risk weighting of participations has a procyclical effect. The PUK considers it appropriate for the Federal Council to examine a "clean hol- ding", as applies to G-SIBs in the USA. In its 2023 report on financial stability, the SNB also out the problem of capitalization of the parent company in the event of value adjustments to foreign investments: Under Swiss rules, these holdings would be weighted according to risk and not deducted from capital; in contrast, the deduction method better protects the parent company's CET1 capital from value adjustments.[2112]

[2109] As an independent supervisory authority, FINMA does not consult the FDF on supervisory measures at individual banks. In this case, however, SIF was about the discussions with the banks in connection with the abolition of Art. 125 CAO (section 5.3.3.2).

[2110] At the same time, it should be emphasized at this point that the SNB supported the introduction of the risk of participations (and thus also the abolition of Art. 125 CAO) in principle according to the same document. The pressure on the SIF apparently resulted from a difference of opinion between FINMA, the SNB and the SIF regarding the impact of the planned change on the leverage ratio. As far as the committee could see, this difference of opinion was not related to the regulatory filter. Furthermore, the SIF supported the deletion of Art. 125 CAO.

[2111] Legal opinion Zellweger-Gutknecht (2024), p. 14, 18 f., 20, 22, 27

[2112] SNB (2023): Financial Stability Report 2023, p. 32

Effects of the regulatory filter from the first application until summer 2022

According to the expert report, the filter in 2019 was almost twice as high as expected when the ruling was issued in 2017. In the drastic loss year 2022, it temporarily accounted for half of CS AG's own funds. Without the filter, CS AG would have fallen slightly below the regulatory capital target from 2021 and clearly below it from 2022 (see section 5.3.3.3). In the Commission's view, *the impact* of the regulatory filter CS AG's capital situation was *considerable*. In FINMA's view, CS AG was not undercapitalized because the filter was based on applicable law and corresponded to a valuable regulatory asset.[2113]

The Commission notes that the regulatory filter did not affect the economic substance the parent company's holdings. Notwithstanding this, the further development of CS AG was significantly *influenced* by the granting of the regulatory filter. With the switch to individual valuation from the 2019 financial yearCS AG would have had to hold significantly more equity capital in order to be able to report a constant capitalization (CET1 ratio).[2114] As this change was implemented in Article 27 of the Banking Ordinance in January 2017 with a transitional period until the 2019 financial year, CS would not have had to carry out this capital increase all at once. It is not possible to determine today whether it would have succeeded in doing so and thus gained in robustness or whether FINMA would have had to restructure CS AG at that time.

The capital increase would have been a major challenge for both CS AG and FINMA. CS AG would have had to raise additional capital within two years[2115] and FINMA would have had to deal with the difficult situation of how to implement a high capital requirement triggered by a change in accounting.

The PUK got the impression that FINMA wanted to give CS AG time to increase its own funds in order to implement the changeover. However, the situation developed differently than expected. The market value of certain holdings of the parent company fell steadily due to the poor business performance. As a result of this loss in value, the filter gained in weight compared to the common equity tier 1 capital. Without the filter, the weighted equity ratio would have fallen significantly below the regulatory minimum in 2022 (see section 5.3.3.3).

The Commission is of the opinion that the regulatory filter was based on an inappropriate decision by FINMA.

Furthermore, based on the expert report, the Commission came to the conclusion that FINMA had designed the regulatory filter incorrectly in several respects and misjudged its impact:

i. In 2019, the regulatory filter was twice as high (CHF 15.3 billion) as assumed when it was introduced in 2017 (CHF 8 billion).

ii. In the Commission's view, the changeover from collective to individual valuation would have had two effects on CS AG's situation: firstly, CS AG's equity requirements would have increased significantly, and secondly, the changeover would have -

[2113] FINMA statement of 27.10.2024 as part of the administrative consultation

[2114] When applied for the first time at the end of 2019, CS AG reported the effect of the filter at CHF 15.3 billion. Regulatory requirements are a minimum figure. CS AG reported a CET1 capital ratio of 13.5 % at the end of 2019, with a regulatory requirement of 10.1 %. At that time, it therefore had a buffer of around CHF 13 billion above the total regulatory requirements, which would have limited the need for additional capital without a filter. According to the SNB's 2017 estimate, CS AG would have had to raise around CHF 3.5 billion in new regulatory hard core capital. See section 5.3.3; Birchler expert report (2024), p. 5 f.; Zellweger-Gutknecht legal opinion (2024), p. 36 ff.

[2115] FINMA's revised TBTF ruling was issued in 2017 and the change in accounting came into force in the 2019 financial year.

According to the prevailing doctrine on individual valuation, this corresponds to the principle of prudence applicable in accounting law (see section 5.3.3.2). In this respect, the appropriateness of the main objective of the regulatory filter, i.e. the neutralization of the accounting change (conversion of the accounting rules from collective to individual valuation), is questionable from the Commission's perspective.

iii. FINMA's ruling did not provide for a mandatory phase-out of the regulatory filter.

iv. The ruling did not provide for a quantitative upper limit for the regulatory filter (neither in absolute terms nor in relation to the balance sheet or other own funds). This allowed the 2022 filter to temporarily account for around half of CS AG's common equity.

v. The filter associated the handling of the valuation of CS AG's investments for regulatory purposes with certain risks because it hid certain market value losses in the reported equity.

vi. CS AG had no incentive to reduce the hidden reserves on its investments.

In view of the fact that the regulatory minimum requirements would have been very clearly and persistently undercut from 2022 onwards without the filter,[2116] the Commission questions whether it served the objectives of financial market stability (protection of creditors, investors and insurers, protection of the functioning of the financial markets) to grant this massive relief. The Commission is of the opinion that the regulatory filter masked the real situation of CS AG. Thus, CS AG was not forced to strengthen its capital position by means of a capital increase at a time when this would have been even easier under certain circumstances. If CS's capital ratio had been public without the filter, the capital markets, analysts and the media would have had a more transparent information basis for their decisions.

Against this background, the Commission would like to point out that resolution is part of TBTF regulation. However, the question arises as to whether resolution would have been possible at all. FINMA had already drawn up the resolution plan for CS in 2019. However, it did not consider CS's preparatory work for its implementation to be sufficient until the end of 2022 (see section 5.3.1.4).

In the Commission's view, a reassessment of the situation and the adoption of measures would have been essential by 2022 at the latest.

Effects of the regulatory filter from fall 2022

From the Commission's perspective, the effect of the regulatory filter must also be critically assessed during the crisis: The expert report shows that the regulatory filter was designed to neutralize the accounting changeover. From 2022, however, the filter - due to its design [-2117] was no longer able to compensate for the losses in market value accumulated since its introduction because it was no longer offset by sufficient value reserves in undervalued investments. The resulting decline in CS AG's own funds (CET1) from around CHF 37 billion to CHF 27 billion from the second to the third quarter of 2022 also became visible to the markets (at the latest with the publication of the quarterly results on 27 October 2022). At the same time (in October 2022), however, FINMA allowed CS AG to apply a lower risk weighting to some investments (250% instead of 400%). According to the expert commissioned by the PUK, this served CS AG's goal of being able to report a higher capital ratio. However, FINMA required CS AG to carry out a capital increase of CHF 4 billion in return.

2116 According to the Birchler expert report (2024), the capital ratio of CS AG was at times 5 % and thus clearly below the overall regulatory requirements of 10 %.

2117 The regulatory filter made it possible to compensate for lower values on individual investments if they were offset equivalent higher values on other investments.

In addition to this reclassification of investments, FINMA granted CS AG a temporary waiver of the minimum requirements for the equity ratio in mid-October (see section 6.3.1.1).

The Commission also notes that the parent company of CS was unable to sell the securitized products business because it would have risked falling below the equity ratio (see section 6.3.1). Here too, it remains to be seen whether CS AG would have been better capitalized or already restructured at this time without the regulatory filter or whether it would have already lost its independence. In connection with the sale of the securitized products business, FINMA itself CS AG that the regulatory filter had been very generous (see section 6.4.1). The Committee shares this view. Accordingly, it is understandable that FINMA did not want to grant any further relief to enable the sale of this part of the investment bank's business.

Based on these findings, the Commission concludes that the regulatory filter played a central role in CS's capital situation during the crisis. However, the Birchler expert report also raises a question of fundamental importance. According to himthe explanation that CS did not fail due to insufficient equity must be questioned. According to his calculations, CS AG would have been undercapitalized since 2022 at the latest without the regulatory filter and even more so with a stricter valuation of the investments. The Commission considers it important for the Federal Council to critically scrutinize the thesis that the CS crisis was a crisis of confidence and liquidity, but not a capital crisis, when dealing with the crisis.

In the opinion of the PUK, the facilitations granted by FINMA over the years were too extensive and therefore partly inappropriate.

Was FINMA faced with a dilemma? Recapitalization versus the risk of a loss of confidence in the bank

In an epilogue to his report, the expert commissioned by the PUK states that FINMA is faced with a dilemma when dealing with a weakly capitalized bank: on the one hand, it must demand a recapitalization of the bank; on the other hand, it risks weakening the confidence of the bank's lenders by making such an announcement.[2118]

For the Commission, the general question therefore arises as to whether FINMA could have taken more drastic measures against CS without encouraging a crisis of confidence before March 2023. According to the legal opinion, the risk of a further loss of confidence in the bank was the main reason why formal restructuring proceedings could not be initiated.[2119]

The report concludes that FINMA had to between short-term stability and long-term compliance[2120] and that it was entitled to regard the regulatory filter as the least damaging option with opportunities.[2121] However, the PUK is of the opinion that this dilemma could have been avoided at best and could subsequently have been mitigated with corrective measures (e.g. phase-out, cap). The Commission is also convinced that credible TBTF regulation requires the supervisory authority to be able to make use of all measures without shying away from a crisis of confidence and, if necessary, the resolution of a bank.

2118 Birchler expert report (2024), p. 24
2119 Zellweger-Gutknecht legal opinion (2024), p. 40: According to the opinion, such loss of confidence could have led to the bank becoming insolvent.
2120 Legal opinion Zellweger-Gutknecht (2024), p. 5 and 39
2121 Legal opinion Zellweger-Gutknecht (2024), p. 40

Information and involvement of the FINMA Board of Directors

In connection with the regulatory filter, questions also arise regarding FINMA's internal organization and the division of responsibilities between the Executive Board and the Board of Directors. FINMA rulings are issued by the Executive Board, unless the transaction is of major significance within the meaning of Article 9 paragraph 1 letter b FINMASA.[2122] FINMA's Executive Board issued the ruling introducing the regulatory filter (see section 5.3.3.2).

In view of the scope of the relief granted, the Commission therefore has questions as to which FINMA body was responsible for issuing the 2017 ruling. The expert opinion leaves open the question of whether this a transaction of major significance and whether the ruling should therefore have been issued by the Board of Directors.[2123] The question is not answered conclusively, as it no longer has any legal consequences according to the expert opinion.[2124]

According to the Director of FINMA at the time, the FINMA Board of Directors was regularly informed about developments at both big banks. However, no transactions relating to the regulatory filter were submitted to the Board of Directors for information or decision. There are no corresponding entries in the minutes of the Board of Directors for the period in question. According to the Chairman of the Board of Directors, the FINMA Board of Directors was therefore not sufficiently informed about the existence and consequences of the regulatory filter (see section 5.3.3.3).

For the sake of completeness, it should be noted that until a decision by the Federal Supreme Court in 2018, it was unclear what constituted a transaction of major significance. According to the Director of FINMA at the time, until this decision, individual decisions on capital requirements at a large bank were the responsibility of the Executive Board in accordance with established practice.[2125] FINMA learned the lessons from the Federal Supreme Court's decision and its organizational regulations in 2019.[2126] The Commission also notes that the newly composed FINMA Board of Directors introduced so-called focus topics in 2021. Under this heading, the Executive Board reported to the FINMA Board of Directors for the first time in 2022 on the regulatory filter, in particular on its quantification and impact.[2127]

2122 Geiger, Hans (2015): Kommentar zu Art. 4 BankG, in: Zobl, Dieter et al. (eds.): Kommentar zum Bundesgesetz über Banken und Sparkassen, 23rd ed. Zurich: Schulthess Juristische Medien AG, margin no. 28

2123 Legal opinion Zellweger-Gutknecht (2024), p. 9 f.

2124 Zellweger-Gutknecht legal opinion (2024), p. 10: The expert cites two reasons. Firstly, any deadline for contesting the decision has now passed. Secondly, nullity is only affirmed in exceptional cases if various conditions are met. This is not the case here.

2125 Minutes of the PUK meeting of 13.11.2024

2126 In its far-reaching Postfinance ruling, the Federal Supreme Court decided that a imposing stricter capital requirements on Postfinance should have been issued by the Board of Directors and not by the FINMA Executive Board. The Federal Supreme Court stated, among other things, that "rulings on own funds that affect [systemically relevant] institutions could therefore have far-reaching economic consequences or consequences for the financial market and effects of systemic importance within the meaning of Art. 2 para. 3 lit. a of the FINMA Organizational Regulations" (Federal Supreme Court ruling 2C_387/2018 of 18.12.2018, E. 3.6.1). Following the Federal Supreme 's ruling, FINMA's Board of Directors asked the Executive Board to tighten up and narrow down the Organizational Regulations so that minor rulings no longer have to be decided by the Board of Directors. The corresponding proposal by the Executive Board was formally confirmed by the Board of Directors in 2019.

2127 Letter from FINMA to the PUK dated 14.6.2024, p. 5; FINMA statement dated 28.10.2024 as part of the administrative consultation

Conclusion

Based on its mandate, the PUK therefore concludes that FINMA had the legal authority to grant exemptions and that the application of the regulatory filter was lawful.

In principle, the PUK acknowledges FINMA's efforts to disclose the relief granted to CS more transparently than under the regime set out in Article 125 CAO. However, in the Commission's view, the regulatory filter was not suitable for this objective due to its design. It is also of the opinion that the neutralization of the new accounting regulations brought about by the filter was not entirely appropriate, as these new regulations were intended to achieve positive effects (see above). In this respect, FINMA's management of this point in connection with the regulatory filter cannot be described as appropriate.

The Commission notes that the retention of the filter was part of UBS's schedule of claims (see sections 7.2.1, 7.2.2.1, 7.2.2.4). With the legal merger of the two big banks, however, this regulation was abolished, which the Commission welcomes.

In connection with the regulatory filter, the PUK once again emphasizes the importance of sufficient capitalization of systemically important banks. Stability in a crisis depends to a large extent on whether the bank a solid capital base and can absorb losses and liquidity outflows. Sufficient own funds (gone concern funds) are also crucial for successful restructuring or resolution. Although CS just met the capital adequacy requirements, the parent company was undercapitalized due to its foreign investments not being fully backed by equity.

In view of these considerations, the PUK suggests restricting the possibility for SIBs to grant relief from the applicable capital and liquidity requirements at the legislative or ordinance level. For example, the PUK considers it appropriate to stipulate in the law that relief can only be granted for a limited period of time. Furthermore, systemically important banks should always have to disclose relief as transparently and comprehensibly as possible. The PUK invites the Federal Council to enshrine such restrictions in law or ordinance together with the package of measures in accordance with section 7.5.9 of its report of April 10, 2024. The results of the above-mentioned examination of the scope of Article 4 paragraph 3 BankA should be taken into account in an appropriate manner.

The PUK also a review of the existing capital adequacy requirements. In particular, the capital adequacy of foreign participations should be strengthened.

Motion no. 2: Restrict the easing of capital and liquidity requirements for SIBs

The Federal Council is instructed to submit a draft decree to the Federal Assembly that limits the granting of relief from capital and liquidity requirements for SIBs in accordance with Article 4 paragraph 3 of the Banking Act. The granting of relief should be transparent, limited in time and accompanied by a clear phase-out plan.

Recommendation no. 4

The Federal Council is requested to examine whether the quality and quantity of the SIBs' own funds are sufficiently protected in accordance with the current requirements to ensure the solidity of the SIBs.

11.1.1.4 Interim conclusion on FINMA's supervisory activities

The Commission's conclusions on FINMA's management between 2015 and the start of the crisis differ depending on the subject area. The ongoing supervision and enforcement proceedings are assessed below. The regulatory filter is dealt with separately.

As part of its ongoing supervision and enforcement proceedings, FINMA used the instruments available to it lawfully overall in the view of the PUK. However, the Commission that FINMA did not assert itself sufficiently vis-à-vis CS. In particular, it did not act consistently enough in individual enforcement proceedings. Overall, the Commission therefore found that FINMA's conduct of business was not entirely appropriate.

The PUK is highly critical of the regulatory filter, despite the fact that it was found to be lawful. After all, the consequences of the filter were significantly higher than FINMA had expected, which is why the PUK cannot understand why FINMA not take stronger corrective measures in this regard.

Finally, the effectiveness of the measures taken by FINMA is also questionable for the PUK, or not in all respects, as CS only implemented FINMA's requirements partially or late. The PUK sees potential for improvement both in terms of FINMA's instruments and its ability to enforce them. The PUK believes that it is essential that FINMA should give greater emphasis to its demands in future as part of its ongoing supervision. The Federal Council should examine further measures: Firstly, in the PUK's view, measures regarding FINMA's staffing levels would be appropriate. Secondly, the expansion of FINMA's range of instruments should be examined - including the power to impose pecuniary administrative sanctions (fines) against systemically important banks as institutions and against private individuals. The PUK notes that Federal Council considers it feasible to introduce the power to impose fines on a financial market institution (see motion no. 3 at the end of section 11.1.2).[2128]

11.1.2 Microprudential supervision in view of the crisis

Influence on the capital planning of CS

The PUK's investigation showed that FINMA repeatedly criticized CS's capital planning over the years. In particular, FINMA criticized the fact that CS paid dividends to its shareholders irrespective of the steady generation of profits (see section 5.3.1.3). In crisis situations, it has proven successful in other jurisdictions to temporarily prevent dividend distributions or share buybacks in order to strengthen the capital base. Accordingly, the Commission believes that it should be examined whether a temporary restriction on dividends and share buybacks for capital planning purposes should be included in FINMA's range of instruments (see motion no. 3 at the end of section 11.1.2).

Preparatory work for the settlement of the CS

As explained above, FINMA approved CS's stabilization plan at an early stage: it considered CS's Swiss emergency plans to be feasible as at the end of 2019 and CS's preparatory work for resolution as at the end of 2022 to be sufficient (see section 5.3.1.4). FINMA began preparing the restructuring order and the restructuring plan for CS in mid-October 2022. Initial drafts of these two documents were available at the beginning of November 2022 (see section 6.3.1.1).

As far as the PUK was aware, sufficient preparations had been made for a renovation in March 2023. According to the PUK's investigation, there were many reasons why restructuring was not possible despite the preparations that had been made. Firstly, CS was confronted with a crisis of confidence. The question of the prospects of success of a restructuring was closely linked to the question of how confidence in CS could be restored. Before the PUK, it was stated that the merger with UBS was more suitable for this purpose.

[2128] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 285)

than a resolution under the existing TBTF legislation. Secondly, there were legal and implementation risks despite intensive preparation (*valuation-in-resolution exercise*) at both international and national level, as a result of which the authorities preferred the merger with UBS under private law to a restructuring of CS (see also section 13.2.6). In this context, the authorities feared that a failed restructuring could trigger a national and international economic crisis.

The PUK also notes that its investigation has not revealed any indications that the failure to implement the resolution plans was due to any inadequate operational preparation by the authorities and FINMA in particular (see sections 13.1.5 and 13.2.4). It remains uncertain whether a resolution would have been supported by the foreign authorities (see section 7.2.5.3). Finally, the authorities could not anticipate the consequences of a resolution of CS with certainty because it would have been the first resolution of a G-SIB.

The PUK also notes that, despite its extensive investigations, it was not entirely clear whether the authorities would have proceeded with a restructuring, a temporary public takeover (TPO) or even a forced merger with UBS if no agreement had been reached between CS and UBS (see section 13.2.4).

In line with the statements and expert opinions expressed before it, the PUK has nevertheless come to the conclusion that restructuring is and should remain an effective part of the TBTF mechanism. However, the PUK that the international feasibility of a restructuring be reviewed and that the Federal Council work within the relevant bodies to ensure that an international resolution is possible.

Role of AT1 bonds in the management of FINMA

As mentioned in section 8.6, the write-off of the AT1 bonds is the subject of ongoing legal proceedings. Pursuant to Article 154a paragraph 4 ParlA in conjunction with Article 163 ParlA, the investigation by the PUK does not prevent the conduct of civil and administrative court proceedings or preliminary investigations and court proceedings in criminal matters. In line with the long-standing practice of other supreme supervisory bodies2129 , the PUK exercises restraint in examining issues that are the subject of ongoing court proceedings due to the principle of separation of powers. The role of AT1 bonds in FINMA's management is mentioned below insofar as it relates to FINMA's preparatory work. Recourse to emergency law is discussed in section 13.2.5.

By way of introduction, the PUK notes that the AT1 bonds play a role in the assessment of FINMA's management in two respects: Firstly, in the summer of 2022 (see section 6.2.1) and later also in January and February 2023 (see section 6.4.1), the question arose as to whether CS could buy back its AT1 bonds in order to send a confidence-building signal to the markets. Secondly, in October 2022 (see section 6.3.3) and March 2023 (see section 7.2), the question arose as to whether and when the AT1 bonds should be written off in order to improve CS's equity situation.

In January and February 2023, FINMA dealt with CS's request to buy back its AT1 bonds, e.g. on the occasion of FINMA's weekly discussions with CS on January 30 and February 6, 2023 (see section 6.4.1).

2129 Secretariat of the CPC: Vademecum of the Control Committees of the Federal Assembly, December 2023, point 1.7, https://www.parlament.ch> Bodies> Commissions > Supervisory Committees > Control Committees > Basic paper on information rights (as at 20.11.2024)

As with the granting of ELA (see section 11.3.2), the PUK has noticed that instruments intended to stabilize a systemically important bank in emergency situations can in fact have the opposite effect. For example, CS wanted to buy back AT1 bonds in order to send confidence-boosting signals to the market (see section 6.4.1).

Furthermore, AT1 bonds are part of the going-concern capital.[2130] As such, they serve to reduce the probability of a resolution (see section 5.2.2). However, FINMA only ordered the write-down of the AT1 bonds in application of the applicable legal bases in March 2023, immediately before CS became insolvent. The PUK therefore considers it essential to critically examine the function of the AT1 bonds and to amend the relevant legislation if necessary.

With regard to FINMA's preparation for a possible write-down of the AT1 bonds, the PUK then states the following:

Even before the weekend of 18 and 19 March, FINMA was already looking at the possibility and conditions for the write-down of AT1 instruments. Initially, the analyses at the beginning of October 2022 focused on the effects of a possible AT1 write-down in the event of a resolution. Later, in mid-October 2022, FINMA also prepared for a possible write-down of the AT1 bonds following an ELA drawdown outside of a restructuring and without a bail-in. FINMA's analysis included the risks of a possible AT1 write-down for the confidence of market participants as well as possible legal risks in connection with the proportionality of the measure. On October 19, the AF dealt with issues relating to the creditor hierarchy and the contractual write-down conditions (see section 6.3.3.1).

In the opinion of the PUK, FINMA dealt with the key issues surrounding the write-down of the AT1 bonds in the run-up to the acute crisis in March 2023 and recognized the risks. This preparatory work place both internally at an operational level and together with the FDF and the SNB as part of the AF. The FINMA Board of Directors was also informed about the challenges in connection with the write-down of the AT1 bonds and the reasons for this measure (see section 6.3.1.2).

The PUK also welcomes the fact that FINMA attempted to anticipate all legal risks in the acute crisis, irrespective of its preparatory measures. It should be noted that the FDF, the SNB and FINMA worked together to find a solution and at the same time each authority endeavoured to minimize the risks for Switzerland as a whole and for its own authority. The PUK also considers it credible that UBS would only have agreed to the merger with CS without writing off the AT1 bonds if the Confederation agreed to much higher guarantees. In view of the situation from 15 to March 19, 2023, the PUK considers it appropriate to prepare the order for the AT1 write-off.

Support for the new strategic orientation

FINMA closely monitored CS's new strategic direction as well as the work on the contingency measures relating to the liquidity situation and the bank's preparations for various scenarios from July 2022 (see section 6.2.1). It made specific demands and intensified its monitoring in the course of the second half of 2022 (see section 6.3.1).

FINMA also set clear deadlines for CS to reach intermediate stages in the implementation of measures and also urged the preparation of the sale scenario at an early stage. The PUK found that FINMA met with little cooperation from CS management (see section 6.3.5.4).

In the opinion of the PUK, the support provided by FINMA and the other authorities helped CS to survive the crisis in the fall of 2022 and regain the trust of the public.

[2130] "Definition of capital in Basel III - Executive Summary", https://www.bis.org/fsi/fsisummaries/defcap_b3.pdf (as at: 7.8.2024)

markets stabilized somewhat for a few months. At the same time, FINMA and the other Swiss authorities continued to search for solutions should the situation at CS deteriorate.

In the opinion of the PUK, FINMA rightly expected that CS's new strategy must be able to be implemented without further regulatory relief from FINMA. In the view of the PCC, CS had already benefited from many of FINMA's concessions at this time (regulatory filter, lowering of the capital and liquidity buffers, etc.; see sections 6.2.1 and 6.3.1.1). In this context, the PUK notes firstly that FINMA did not rule out the significant shrinkage of the investment bank, but linked it to comprehensible conditions (see sections 6.2.1 and 6.3.1.1). Secondly, the problem with the sale of the international securitization business (the securitized products business, which was part of the Investment Bank) was that the parent company was insufficiently capitalized. However, FINMA had been demanding that CS improve the capitalization of the parent company for years (see section 5.3.1.3). Thirdly, the PUK notes that a significant downsizing of the investment bank had been planned for years and was never implemented.

Determination of the PONV

The PUK's investigation revealed that FINMA addressed the question of whether CS's PONV existed at the beginning of October 2022 (see section 6.3.1.1). This question came up again in the crisis days from March 15, 2023 (see section 7.2.4.3). The PONV was effectively established on March 19 (see section 7.2.5.1).

FINMA has broad legal discretion in determining whether the PONV has occurred. Key factors in FINMA's assessment included the bank's inability to liquidity at market conditions, the drastic liquidity outflows at the parent company and the Swiss subsidiary between March 15 and 19, 2023, as well as the concerns of foreign supervisory authorities and the threat of a tightening of liquidity requirements by these authorities (see section 7.2.4.4). The PUK found no evidence that FINMA had determined the PONV too late.

However, the PUK considers it unsatisfactory that FINMA did not intervene before the PONV. The protective measures represent a milder intervention than the restructuring and bankruptcy liquidation also mentioned in Article 25 BankA. The PUK is critical of the fact that FINMA did not make use of its discretionary powers in this regard did not take protective measures earlier. Although the decision not to apply protective measures at an earlier stage was lawful, it was not really expedient in the eyes of the Commission. In view of the very different consequences for the bank's business activities, its shareholders and the economy, the PUK believes that it would be desirable for protective and resolution measures to be triggered at different times.

Specifically, FINMA should be able to take binding measures at an early stage (e.g. based on findings from on-site inspections or market indicators) in order to intervene in the bank at an early stage. For example, FINMA should be able to prohibit the sale of certain instruments or issue instructions to the bank's governing bodies. The PUK notes that the Federal Council is planning to introduce such measures and welcomes its proposals to strengthen the supervisory instruments for early intervention.[2131]

[2131] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 180)

Motion no. 3: Strengthen FINMA's assertiveness with SIBs

The Federal Council is instructed to examine suitable measures to strengthen FINMA's enforcement power with regard to SIBs and to submit them to the Federal Assembly. The following measures, among others, are to be examined:

a. the introduction of the authority to impose fines on both SIBs and private individuals;

b. the expansion of FINMA's tools for early intervention by means of time-differentiated measures;

c. the explicit authority to order capital planning from a SIB;

d. adapting the relevant legal bases so that FINMA can formally issue its recommendations to SIBs in the area of banking supervision;

e. or other measures so that FINMA can meet the big banks on an equal footing.

11.1.3 Further findings on the management of FINMA

Comments on the political environment in which FINMA operated

In this section, the PUK describes further findings on FINMA's management. They relate to the environment in which FINMA operated from 2015 to 2022:

Firstly, FINMA came under a certain amount of political pressure from around 2015, particularly with regard to its role in banking regulation and international standard setting (see sections 5.2.5.2 and 5.2.7).

Secondly, the big banks got involved in TBTF regulation during this pushback phase: for example, the Federal Council granted CS extended transition periods for the implementation of capital requirements following the partial revision of the CAO in 2016. The Federal Council also decided on long transition periods for the introduction of a new liquidity concept in 2022, despite FINMA's concerns in favour of the banks. Furthermore, the *net stable funding ratio* was also introduced under pressure from the big banks (see section 9.1.1). Finally, the big banks were involved in the abolition of Article 125 CAO, which was related to the granting of the regulatory filter (see section 5.3.3).

Despite this background, it is incomprehensible to the PUK that FINMA has not always made full use of its resources. As an independent authority, FINMA is expected to perform its duties in full despite political pressure, to explain any new measures that may be required, to inform the politically responsible authorities of the difficulties at an early stage and to demand any necessary instruments.[2132]

It is to FINMA's credit that, despite the resistance, it campaigned for a tightening of the legal requirements for systemically important banks and for the introduction of supportive measures at the legislative level in the event of a crisis: for example, it campaigned for the deletion of Article 125 CAO, which made the granting of relief mandatory (see section 5.3.3), for the introduction of the PLB (see section 5.2.5.3) and for the examination of a TPO (see section 5.2.5.6).

[2132] According to FINMA, this was not made public but was passed on to SIF for further consideration in the political process. In April 2023, the Chair of the FINMA Board of Directors publicly called for three new instruments for the first time (senior manager regime, authority to impose fines and enforcement transparency). FINMA statement of 25.10.2024 as part of the administrative consultation (footnote: "Fines, senior management regime and enforcement transparency").

The "PostFinance" case also illustrates the procedural hurdles that FINMA had to overcome in its business activities. The case in question essentially concerned a tightening of the capital adequacy requirements that FINMA imposed on PostFinance in 2016 and which has not yet become legally binding due to several court rulings.[2133]

Procedural hurdles

The "PostFinance" case had repercussions for FINMA.[2134] It was also critically assessed in legal doctrine: one author formerly directly involved with FINMA suggested, among other things, the introduction of a special administrative procedure for prudential supervisory orders and the transfer of responsibility for the prudential supervision of systemically important banks to the SNB (see section 14.1.1).[2135]

The PUK understands that FINMA strives to use its resources efficiently. Nevertheless, it notes that FINMA already qualified CS as an exception before the emergency merger, but also since then as part of its investigation.[2136] In view of the importance of CS as a global systemically important bank and Switzerland's efforts since the introduction of the TBTF regime to impose the highest requirements on its financial market institutions above and beyond international standards (*best-in-class principle*), as well as the knowledge of CS's long-standing weaknesses, the PUK believes it would have been desirable if FINMA had accepted the risks of lengthy legal proceedings and dared to take the most stringent measures (e.g. withdrawal of a guarantee).

However, the PUK recognizes that legal proceedings against rulings can tie up considerable FINMA resources. It welcomes the Federal Council's efforts to examine various measures aimed at shortening the duration of proceedings.[2137]

The PUK FINMA's conduct of business to be lawful with regard to the aspects described above, but not entirely appropriate: Firstly, FINMA should have consistently used the instruments at its disposal despite the political pressure (see the assessment of appropriateness in the previous chapters). Secondly, FINMA can be expected to take a political stance.

2133 Judgment of the Federal Administrative Court B-5595/2016 of 14.3.2016 and judgment of the Federal Supreme Court 2C_387/2018 of 18.12.2018. This case specifically concerned a ruling issued by FINMA in 2016, in which it imposed higher capital requirements on Postfinance following the development of the interest rate environment. Postfinance's challenge to this ruling led to the Federal Supreme Court having to deal with it. The court ruled in favour of based on a question of competence: the imposition of higher capital adequacy requirements fell within the competence of the FINMA Board of Directors based on Article 9 FINMASA - in accordance with the organizational regulations at the time - but the Board had not issued the ruling in question. The Federal Supreme Court referred the matter back to FINMA for reassessment. Before FINMA could issue another ruling, Postfinance confronted FINMA with a request for recusal, which took the parties back to the Federal Supreme Court. The parties later disputed issues relating to the suspensive effect of the new FINMA issued on 6.7.2021. Postfinance's appeal against this FINMA ruling is still pending before the Federal Supreme Court.

2134 Minutes of the PUK meeting of 20.3.2024, p. 17. Following the above-mentioned decision of the Federal Supreme Court, FINMA's Board of Directors took a technical and pre
the process in question. In 2019, FINMA amended the Organizational Regulations so that smaller transactions no longer considered to be transactions of major significance.

2135 Wyss, David (2023): Financial market supervision between power and powerlessness. In: Chenaux, Jean-Luc et al. (eds.): SZW 2023, p. 623 ff.

2136 This can be , for example, in the 2020 assessment letter dated 1.5.2021: "*Never in the history of FINMA has a major financial firm exhibited simultaneously so many issues requiring enforcement proceedings and urgent remediation measures*" (p. 1); see also FINMA (2023): Lessons learned from the CS crisis, p. 33.

2137 Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 310)

The PUK has made its voice heard so that the instruments it believes are missing are introduced. Finally, in the interests of effectiveness, the PUK calls on the Federal Council to examine a bill to restrict legal remedies and to substantially shorten the appeal procedures for prudential decisions by FINMA.

Recommendation no. 5

The PUK calls on the Federal Council to examine a draft bill for the SIBs to limit legal remedies and to substantially shorten the appeal procedures for prudential decisions by FINMA.

Business of major significance

The question of the interpretation of Article 9 paragraph 1 letter b FINMASA (business of major importance) not only had an impact on the internal organization of FINMA in terms of procedural hurdles, but also, in the opinion of the PUK, on the cooperation between the Board of Directors and the FINMA Executive Board.[2138] The blurred separation of strategic business, which was the responsibility of the Board of Directors, from operational business, which was the responsibility of the Executive Board, made the relationship between the two bodies more difficult in the following respects:

i. The lack of trust between the then Head of the FDF and the then Chairman of the Board of Directors of FINMA was due, among other things, to the particularly strong role of the (then) Director of FINMA (see section 5.6.2).

ii. FINMA's Board of Directors was not informed of the existence and consequences of the regulatory filter (see sections 5.3.3.3 and 11.1.1.3).

The question of which transactions as transactions of major significance within the meaning of Article 9 paragraph 1 letter b FINMASA is at FINMA's discretion. Although the PUK does not believe that FINMA has exercised its discretion inappropriately, it is of the opinion that the provision in question should be reviewed in the interests of legal certainty following an initial revision in 2019. The Commission notes that a certain degree of organizational leeway between the Board of Directors and the Executive Board remains inherent in the system, irrespective of FINMA as an institution.

Postulate No. 4: Facilitate FINMA governance

The Federal Council is instructed to examine how the provision in Article 9 paragraph 1 letter b FINMASA can be adapted or, if necessary, repealed in order to facilitate FINMA's governance with regard to the working relationship between the Executive Board and the Board of Directors. In this context, it should also examine whether or in which constellations enforcement proceedings against systemically important banks should constitute a transaction of major significance in accordance with Article 9 paragraph 1 letter b FINMASA.

[2138] The interpretation of Article 9 FINMASA is also related to the enforcement proceedings, about which the Board of Directors is only informed (see section 11.1.1)

11.2 Audit supervision by the FAOA and FINMA

11.2.1 Evaluation of FAOA and FINMA supervision of audit firms

The analysis of the oversight of audit firms by the FAOA from 2015 to 2022 shows that the FAOA carried out annual audits of the CS audit mandate. To this end, it introduced fixed procedures based on two types of audit: the Regulatory Audit (RA) and the Financial Audit (FA) (see section 5.4.1). As already explained in chapter 5.4, the FAOA did not alternate between these two types of audit in a strict rhythm. Comprehensive audits that covered both the FA and RA areas only took place in 2015 and 2016.

The PUK notes that although this alternating approach ensures a certain degree of flexibility and appropriate risk management, the decisions were incompletely documented. The formal deficiencies in the decisions, namely the lack of a documented justification for the choice between an FA or RA audit, can impair the transparency and stringency of the audits carried out. In the PUK's view, this is all the more serious in cases where an important audit mandate, such as that of CS, was audited without a comprehensive inspection being deemed necessary at a crucial moment - such as the change of audit firm in 2021.

In addition, the FAOA based its audit activities on the documentation of the audit firms without directly reviewing the CS documents. The investigators of the PUK found no evidence that the FAOA compared samples from the audit documents with the institution's documentation in the *file reviews*. This may raise questions about the efficiency and stringency of the inspection process. Although the method used complies with the applicable standards, the lack of a direct review and proof of sampling can be seen as a weakness in the inspection process. A re-evaluation of this process may therefore be necessary.[2139]

As already mentioned above and in section 5.4, the FAOA carried out regular audits of audit firms. However, the Commission notes that the frequency and scope of these audits were not always adapted to the particularities of the audited companies, specifically CS, and the previous findings. For example, the FAOA did not carry out any follow-up audits during the period under review and did not initiate an ad hoc review, as in its opinion there was no initial suspicion of audit failure on the part of the two audit firms and the CS mandate was already subject to annual inspections. The audit cycle thus continued to be rigidly applied despite the emerging difficulties at CS, without sufficient account of new risks or continuing deficiencies. This circumstance may have impaired the effectiveness of the supervisory measures. The PUK agrees with the conclusion of its investigators that an ad hoc audit would be particularly relevant for companies and file reviews that are not inspected annually.

Effective oversight of audit firms includes not only an appropriate frequency of inspections, but also the flexibility to intensify inspections if circumstances so require. From the perspective of the PCU, it is therefore difficult to understand why the FAOA in normal mode in the last few years before the emergency merger between CS and UBS. However, the FAOA points out that the applicable law does not explicitly provide for a switch crisis mode and that such decisions are the responsibility of FINMA**.** The FAOA carried out the first ad hoc audit after the emergency merger from summer 2023. However, this review was not completed until October 2024. The long deadline is difficult for the Commission to understand.

[2139] Geissbühler/Jovanovic investigation report (2024), section 2.2, p. 23 ff.

Recommendation no. 6

The PUK the Federal Council to improve the transparency and traceability of FAOA inspection processes at SIBs, in particular by formalizing and systematically documenting decisions on the scope of inspections. In addition, the frequency and scope of inspections in relation to SIBs are to be adjusted based on risk and a more dynamic supervisory concept is to be introduced.

Furthermore, the Commission found that the FAOA did not comprehensively review whether the measures it imposed were implemented. The corresponding audit by the FAOA was carried out on the basis of random samples. It is not always possible to detect potentially serious deficiencies with a random . This could reduce the effectiveness of the corrective measures and be detrimental to the quality of the audits carried out by the audit firms.

The lack of rigor in the reviews increases the risk that the problems identified will not be rectified, which could affect the reliability of the audits and therefore confidence in the supervisory system. The FAOA is obliged to carry out its reviews in a risk-oriented and resource-conserving manner. It therefore makes sense to divide the measures into those that are mandatory and those that are to be reviewed on a random basis, whereby a justification for this division must be documented internally.

Recommendation no. 7

The Commission recommends that the Federal Council ensure that the FAOA comprehensively reviews the implementation of the corrective measures. Systematic rather than random checks should be used to ensure full compliance with quality standards.

Test strategies and test priorities

The PUK was also interested in the determination of audit priorities by FINMA in cooperation with the audit firms on the one hand and the determination of audit priorities by the FAOA on the other, and examined this issue in principle. However, the individual audit strategies of the audit firms were not analyzed in detail, as this would have gone beyond the scope of the PUK investigation. The audit strategies that FINMA developed together with the audit firms for CS differed from the standard audit strategies for other banks in terms of audit frequency and depth, which indicates that they were defined on a risk basis.

As far as the FAOA's audit priorities are concerned, the PUK found that various information was transmitted between FINMA and the FAOA, but that no systematic exchange took place (see section 11.2.2 on this and the existing need for optimization).

11.2.2 Evaluation of the cooperation between the FAOA and FINMA

Among other things, the PUK investigated the interaction between FINMA and the FAOA in the supervision of audit firms. The Commission notes that audit firms play a central role in microprudential supervision as an extension of FINMA. In view of this important role, the current division of supervisory responsibilities between FINMA and the FAOA raises questions about the effectiveness of this supervision. Specifically, this division of responsibilities can lead to duplication or gaps in supervision, which is not ideal for ensuring strict and consistent supervision of large financial institutions such as CS.

Specifically, the Commission found that regular contacts took place between the FAOA and FINMA between 2015 and 2022 as part of the supervision of audit firms and financial institutions, as by law. These interactions are key to ensuring coordinated and effective supervision. However, the Commission is of the opinion that, despite these contacts, both strategic and operational cooperation between the FAOA and FINMA is not always appropriate (5.4.3). This is particularly important when dealing with critical situations, such as that at CS, where strategic coordination is key to an appropriate and coordinated response by the two supervisory authorities.

As far as the PUK is aware, there was no separate exchange of information on the situation at CS at the *strategic* level, although both players must have been aware of the growing crisis at CS. The interactions *at the operational* level of the FAOA and FINMA differed in the individual areas: The exchange in the FAOA area was obviously more intensive. FINMA's comments were also incorporated into the FAOA's audit strategies. In the FA area, the picture is less clear: from 2017, the FAOA's audit strategies no longer contain any references to FINMA's advice, which the Commission finds difficult to understand. In its statement, the FAOA explained that it no longer received any information from FINMA from this point onwards (5.4.3). This fact also shows that cooperation needs to be improved.

The investigation mandate also revealed that FINMA and the FAOA each considered the other authority to be responsible in certain areas. In the Commission's view, this shows that there is a need to clarify the respective competencies and areas of responsibility. In this regard, the PUK also notes that FINMA and the FAOA defined their cooperation in very summary terms in the form of an exchange letter from 2015.

Recommendation no. 8

The Commission calls on the Federal Council to ensure that cooperation and the exchange of information between FINMA and the FAOA are intensified and better coordinated. A more binding cooperation agreement, for example in the form of a memorandum of understanding, should be examined.

The aim is to achieve an intensive exchange with high-risk financial institutions at both the strategic and operational level with the FA and RA in order to ensure continuous, harmonized and risk-based supervision. It should be ensured that the FAOA receives all relevant information from FINMA and consistently integrates it into its supervisory strategy. In addition, it should be examined whether a formal crisis mode generally needs to be defined in order strengthen cooperation between the FAOA and FINMA in times of crisis.

11.3 Macroprudential tasks of the SNB

Due to its macroprudential tasks in maintaining Switzerland's financial stability, the SNB has a central role play. Based on the presentation of the facts (see chapters 5-8), the PUK its assessment of various aspects in connection with this topic. Section 11.3.1 assesses the SNB's macroprudential tasks in general, while section 11.3.2 deals in particular with the SNB's role as *lender of last resort*.

11.3.1 Assessment of the SNB's general macroprudential tasks

The SNB's macroprudential tasks in the years 2015 to 2023 are described in section 5.5. In this regard, the PUK notes that the SNB reacted quickly when the situation required it, particularly during the coronavirus crisis in 2020. For example, the Covid-19 refinancing facilities were created in consultation with the authorities so that banks could grant higher loans to companies without compromising their regulatory liquidity ratios (see section 5.5.4). This example shows that the SNB quickly made use of the options available to it within the scope of its monetary policy instruments when CS in particular was struggling with financial difficulties.

The SNB'role in financial stability includes the continuous monitoring of the financial markets and the preparation of annual reports on financial stability. The SNB also regularly commented on the implementation of TBTF regulation in Switzerland. It identified areas in further efforts needed to be made in order to meet the relevant requirements, namely with regard to capital adequacy or the preparation of recovery and resolution plans (see section 5.5.2). However, as the SNB is not authorized to make recommendations to the banks on the basis of these reports, the reports it draws up remain a purely informational instrument. Over the years, the SNB has consistently advocated the tightening of liquidity and capital requirements in the further development of TBTF legislation (see section 5.2.7). In 2016, for example, it argued for an accelerated progression of capital requirements for large banks (see section 5.2.3.1), and in 2018, during the revision of the CAO, for the two parent companies of the CS Group and UBS Group to be brought under the *going concern capital requirements* more quickly (see section 5.2.5.1). 5.2.5.1), for the introduction of a PLB (see section 5.2.5.3), in 2021 for a faster introduction of an NSFR (see section 5.2.5.5) and for the introduction of a TPO in the ordinary legislative procedure (see section 5.2.5.6).

The SNB's annual reports on financial stability are intended to provide an overview of developments in the banking sector, particularly those that could have an impact on financial stability in Switzerland. The PUK is aware that these reports are not intended to prevent problems that only affect one bank. This is primarily the task of microprudential supervision (i.e. carried out by FINMA). The SNB's annual financial stability reports nevertheless provide a certain overview of the state of the systemically important banks, in particular by tracking market indicators. This allows the individual situation of a bank to be placed in an overall context. In addition, these reports are discussed at regular meetings between the SNB Governing Board and the FINMA Board of Directors or in the SNB-FINMA Steering Committee (see section 5.5.2). This was also the case in spring 2022. At that time, the SNB and FINMA discussed the delicate situation at CS, in particular the question of whether there was a need for action regarding the capitalization of the parent company (see section 5.5.2). However, no joint measures were taken. In this regard, the PUK is of the opinion that in cases where agreement between the two players, concrete and coordinated measures should follow and, in particular, the AF should be convened to discuss the situation with all authorities involved, including SIF and FFA. According to the organizational regulations of the AF (Art. 2.5)

Each member can request the convening of the AF if the risk situation makes this necessary. In the case of CS, the AF did not meet until August 2022 (see section 13.1.1).

A recommendation for an appropriate exchange of information from the annual financial stability reports between the authorities can be found in section 13.1.1 (see recommendation no. 12 in section 13.1.1).

In Switzerland, it is also up to the SNB to determine which banks are systemically relevant (see section 5.5.1).[2140] According to the Banking Act, institutions are designated as systemically relevant if they perform functions that are essential for the Swiss economy and if their failure would cause significant damage to the Swiss economy and the Swiss financial system.[2141] The SNB bases its assessment on various criteria, such as the market share of systemically important functions, the ratio of the bank's total assets to Switzerland's annual GDP and the bank's risk profile.[2142]

However, the PUK notes that financial stability can also be jeopardized if banks that are not classified as systemically important experience serious economic difficulties. This was the case in the USA, for example, with the collapse of Silicon Valley Bank and Signature Bank of New York (see section 7.1.1). The PUK would therefore welcome it if the SNB, in cooperation with the authorities involved, regularly reviewed whether the definition of systemic importance is still up to date and applicable.

11.3.2 Assessment of the SNB's role as *lender of last resort*

If a bank gets into liquidity difficulties and can no longer refinance itself on the market, the SNB has option of providing the bank with extraordinary liquidity assistance (ELA) as a second line of defense[2143] (see section 5.5.3). With this instrument, the SNB contributes to the stability of the financial system, for example by enabling a bank to cope with a *bank run*.

As the PUK found, the granting of ELA and ELA+ was crucial in enabling the authorities to prepare the emergency merger of CS with UBS. The persons heard by the PUK were unanimously convinced of the benefits of the ELA, both during the crisis and afterwards. Without these measures, the bank would have been insolvent as early as Friday, March 17, 2023 (see Box 17 in section 7.2.2.5, section 7.2.3.5).

The PUK welcomes the fact that the SNB has already been preparatory measures for the granting of an ELA for several years. The processes introduced by the SNB - in particular the Memorandum of Understanding signed with CS and the annual review of liquidity assistance (see section 5.5.3) - proved to be effective and enabled the rapid provision of extensive liquidity. In total, the SNB granted CS liquidity amounting to CHF 88.44 billion as part of ELA and ELA+. A significant portion of these amounts was disbursed in foreign currencies to cover the needs of Credit Suisse (Schweiz) AG and Credit Suisse AG (see Table 25 below). In addition to this amount, there is the liquidity provided by the SNB under the EFF (CHF 10 billion) and the PLB (CHF 70 billion) (see sections 7.2.2 and 7.2.5).

2140 Art. 8 para. 3 Banking Act; Art. 25 para. 2 FMIA
2141 Art. 7 para. 1 BankA
2142 Art. 8 para. 2 BankA
2143 In order to reduce the banks' liquidity risk, Switzerland provides for three defense mechanisms.
lines of : The first line of defense consists of the liquidity reserves that the banks the second line of defense is the ELA, and the third line of defense consists of the SNB's liquidity assistance during the restructuring of a bank (PLB).

Table 25: Swiss franc and foreign currency amounts granted to CS under ELA and ELA+

Date of the decision	*The amount and currency of the credit granted by the SNB* *Amount*	*Recipient*
Thursday, March 16 (ELA)	CHF 29 billion USD 8 bn. EUR 2 bn. *Total (in CHF):* 38.44 billion	Credit Suisse (Switzerland) Ltd.
Friday, March 17 (ELA+)	*Total (in CHF):* 20 billion.[2144]	Credit Suisse AG
Sunday, March 19 (ELA+)	CHF 5 billion USD 20 billion EUR 5 bn. *Total (in CHF):* 30 billion	Credit Suisse AG

Source: "Formal Request to SNB for a covered loan in accordance with the MoU", CS application dated 15.3.2023; "Formal Request to SNB for ELA according to a special emergency ordinance of the Swiss Federal Counsel", CS application dated 17.3.2023; "Formal Request to SNB for ELA according to a special emergency ordinance of the Swiss Federal Counsel", request by CS dated 19.3.2023. See also sections 7.2.2.5, 7.2.3.5 and 7.2.5.5.

This instrument was used for the first time when CS utilized the ELA. Under current law, collateral must be provided by the bank utilizing the ELA. In recent years, the SNB has repeatedly examined whether the range of eligible collateral should be extended and has implemented extensions (see section 5.5.3 and Table 11 in section 5.5.3). However, the PUK notes that the liquidity provided as part of the ELA was still not sufficient for CS to from the crisis on its own. In the opinion of the PUK, this is partly due to the fact that the SNB cannot oblige banks to take precautions with regard to an ELA on the basis of the applicable law. It is not authorized to order a bank to provide a minimum amount of collateral or to make other operational preparations that facilitate the transfer of collateral to the SNB. It is therefore dependent on cooperation of the bank in question. In the present case, several persons heard by the PUK were of the opinion that CS had not prepared itself well enough (see section 5.5.3). In order for effective preparations to be made for the withdrawal of ELA, the PUK believes that an authority must have the power to prescribe preparatory measures to the SIBs. In its report on banking stability, the Federal Council comes to the same conclusion.[2145] In the PUK's view, this authority could exercised either directly by the SNB or by FINMA as part of its microprudential supervision and in close cooperation with the SNB. If necessary, such measures could be bindingly stipulated in the Memorandum of Understanding that the SNB concludes with the banks concerned on ELA (see motion no. 4 below).

[2144] The breakdown between CHF, USD and EUR is not stated in the document. However, the letter accompanying the receipt of a solvency confirmation from FINMA states that the bank required support to immediately increase its liquidity in USD and EUR (letter from CS Group AG dated 17.3.2023 to FINMA).

[2145] Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 149 f.). See also Report of the Expert Group on Banking Stability (2023): Need for Reform after the Demise of Credit Suisse, p. 55; and Tucker, Paul (2023): Regimes for Lender of Last Resort Assistance to Illiquid Monetary Institutions: Lessons in the Wake of Credit Suisse, Fall 2023.

Although the benefits of the ELA granted by the SNB to CS are undisputed, the SNB was criticized for being too cautious in exercising its role as lender of last resort (see section 6.4.2, box 17 in section 7.2.2.5).[2146]

The PUK states that the principle according to which the SNB may only grant liquidity assistance against sufficient collateral is enshrined in law[2147] and corresponds to the relevant international practice.[2148] The Federal Council also dealt with this question and came to the conclusion that it is impossible to compare the collateral accepted by the various national banks for an ELA on an international level.[2149] Thus, the question of whether the SNB's practice is too restrictive remains open for the PUK.

The PUK also states that the SNB has wide discretionary powers to determine what it considers to be sufficient collateral and which *haircuts* are applied (see section 5.5.3).[2150]

The use of ELA and intervention by the SNB must remain a subsidiary measure in the event that a bank can no longer refinance itself on the market. However, the instrument of an ELA only makes sense if it is actually used by the banks that need it. The PUK notes that CS discussed an ELA application with the SNB and FINMA on several occasions, but was concerned about the indirect consequences of an ELA withdrawal (see section 6.3.2).[2151] CS using an ELA on three occasions - in October 2022, early November 2022 and late December 2022 - but ultimately did not submit a formal application to the SNB as it shied away from the obligation to disclose an ELA withdrawal (see chap. 6.3.3.1, 6.3.4.1, 6.3.5.4).[2152] CS even signaled that it would prefer to fall short of certain liquidity requirements instead of applying for ELA (see section 6.4.2). This indicates that the bank feared stigmatization. The PUK is therefore of the opinion that this instrument in its current form cannot fulfill its purpose in every case.

Motion no. 4: Expand the SNB's powers vis-à-vis SIBs with regard to ELA

The Federal Council is instructed to amend the legal basis so that the SNB is given the authority to impose preparatory measures on SIBs for any utilization of extraordinary liquidity assistance (ELA). It should also take measures to reduce the stigmatization associated with the use of ELA.[2153]

2146 This criticism is also voiced by the former deputy governor of the BoE, who calls for more transparency (The Credit Suisse case should give us nightmares. In: NZZ, 28.6.2024, p. 22 f.).
2147 Art. 9 para. 1 let. e NBA
2148 Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 136)
2149 Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 137 ff.)
2150 See also the Federal Council's message of 26.6.2002 on the revision of the National Bank Act (BBl **2002** 6097, here 6199)
2151 The creation of the Covid-19 refinancing facilities by the SNB was also
The reason for this is to avoid stigmatizing a bank in the event of an ELA claim (see section 5.5.4).
2152 From the SNB's perspective, it should be noted that at these three points in time, CS was in the still held a surplus of highly liquid assets compared to the liquidity requirements (SNB statement of 27.10.2024 as part of the administrative consultation).
2153 This stigmatization associated with the use of ELA is also recognized in reports. The Federal Council plans to "explore ways to reduce the
Examine the "stigma problem" of ELA. See Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 56, p. 150, p. 166); Expert Group Banking Stability (2023): Need for Reform after the Downfall of Credit Suisse, p. 47 f.; Group of Thirty (2024): Bank Failures and Contagion - Lender Of Last Resort, Liquidity, and Risk Management, p. 9

The PUK also notes that the CS crisis has shown how dangerous and how quickly *bank runs* can occur, particularly as a result of the ever-increasing digitalization of the banking sector. The PUK is therefore of the opinion that measures should be taken to improve the supply of liquidity to the banks.[2154] In its report, the Federal Council particularly wants to strengthen the three lines of defense of liquidity protection, namely 1) by reviewing and, if necessary, adjusting the key figures and requirements of liquidity regulation (LCR and NFSR), 2) by expanding the potential of liquidity provision by the lender of last resort, including an obligation for banks to prepare collateral, and 3) by introducing the PLB in ordinary law.[2155] The PUK emphasizes the importance of these efforts.

Recommendation no. 9

The Federal Council is invited to examine which internationally coordinated and targeted measures can be taken in the event of a digital bank run.

12 Federal supervision of FINMA, FAOA and SNB

12.1 Supervision of FINMA by the FDF/Federal Council - evaluation by the Commission

Development of relationships from 2016

The relationship between the FDF and FINMA has been in a constant of flux over the past ten years, largely characterized by political cycles and personnel changes. In this context, the Commission notes that the relationship between the FDF and FINMA developed negatively in FINMA's perception following the change in departmental leadership in 2016 and that political pressure on FINMA increased (see section 5.6.2). In this context, FINMA spoke of scepticism towards its supervisory and regulatory activities, some of which also existed in the FDF and had strained relations with the Department of Finance. Various political initiatives and the deliberations on them illustrate this fact. Against the will of the Federal Council, Parliament passed several motions to restrict FINMA's powers. This development tied up more resources within FINMA, which were needed in particular to deal with political initiatives. On the negative side, according to FINMA, these developments did not go unnoticed abroad and, in the perception of FINMA exponents, influenced the attitude of foreign authorities towards the Swiss supervisory authority (see section 5.6.2).[2156]

In the wake of increasing political pressure on FINMA's position, the Federal Council issued the Ordinance to the Financial Market Supervision Act in 2019 in implementation of Motion 17.3317 (Mo. 17.3317 "Clear responsibilities between financial market policy and financial market supervision"). During the consultation process, the political pressure was reflected, among other things, in the demand for even stricter requirements to restrict FINMA's powers, which the Federal Council ultimately did not take into account (see section 5.2.5.2). The Commission is critical the fact that the FDF did not take into account the FOJ's assessment in the official consultation that the Federal Council did not have a sufficient legal basis for the requirements of the new ordinance. The FDJP also refrained from submitting a co-report (see section 5.2.5.2).

[2154] See also the Federal Council report of 10.4.2024 on banking stability (BBl **2024** 1023, p. 142 f., p. 150 f., p. 164 ff.); Expert Group on Banking Stability (2023): Need for reform after the demise of Credit Suisse, p. 55

[2155] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 165 f.)

[2156] Minutes of the GPK subcommittees FDF/WBF-N/S of 16.4.2018; minutes of the PUK meeting of 21.2.2024; written answers to the PUK of 9.4.2024

The FDF, which was responsible for drafting and implementing the ordinance, and FINMA, as the authority affected by it, understandably assessed its impact differently. While FINMA felt that some of its powers were restricted, the FDF's powers in the area of international tasks and regulation were clarified (see sections 5.2.5.2 and 5.6.2). The Commission acknowledges that the ordinance led to an additional bureaucratic burden in the perception of various FINMA managers and weakened the focus on the authority's actual supervisory activities (see section 5.2.5.2 and section 5.6.2).

Change in the Chairman of the Board of Directors

There were also personnel changes at FINMA during this phase, in particular due to the premature (during the current term of office) change in the Chair of the Board of Directors (see section 5.6.2).

According to various people involved, the relationship between the then Head of the FDF and the then Chairman of the FINMA Board of Directors was heavily strained, making cooperation difficult. The Committee finds it difficult to understand how the working relationship between the Head of the FDF and the Chairman of the FINMA Board of Directors could deteriorate to such an extent over several years that this was ultimately one of the reasons for the premature resignation of the Chairman of the Board of Directors. The question arises as to whether an earlier reaction by the FDF would not have been more appropriate.

The Commission also concludes that the resignation of the former Chairman of the Board of Directors was characterized by a certain lack of transparency and informal agreements. The Commission does not fully understand why the former Chairman of the Board of Directors was elected for a further four-year term of office in July 2019 but was unable to complete it (see section 5.6.2). A resignation at the end of the regular term of office would probably have provided more stability both externally and internally. The Commission also criticizes the non-formalized nature of the resignation without an official letter of resignation or dismissal. The only written documentation available to the PUK in this regard is the letter from the then Head of the FDF to the Chairman of the Board of Directors, in which he congratulates him on his re-election and asks him to step down at the end of 2020 (see section 5.6.2).[2157]

The Commission also notes that the replacement of the Chairman of the Board of Directors took place very quickly in view of the premature resignation of the then Chairman of the Board of Directors. On the one hand, this was probably due to the fact that an internal solution was chosen. On the other hand, the Commission wonders how comprehensively the current selection procedures for such an important position are regulated.

FDF-FINMA dialog forums

The Commission notes that the exchange of information between the FDF and FINMA intensified overall during the period under review and was institutionalized through various dialogue channels (see section 5.6.2). These various discussion channels have different focuses and can be largely distinguished from one another in terms of content.

Some of these forums were created as part of the implementation of the aforementioned Ordinance on the Financial Market Supervision Act and contributed to an improved exchange between the authorities, which proved to be valuable in past crises (Covid-19 pandemic, war of aggression against Ukraine). However, it is not clear to the Commission why bilaterally coordinated minutes not kept for all of these dialogues. While this was the case for the owners' talks and also for

[2157] "I am pleased to confirm that the Federal Council has re-elected you as Chairman of the FINMA Board of Directors. The new term of office begins on January 1, 2020 and ends on December 31, 2023. As discussed, you will step down from this position at the end of next year." Source: Letter from the then Head of the FDF to the then Chairman of the FINMA Board of Directors dated 3.7.2019.

While this is the case with policy dialogs, the PUK is not aware of any mutually approved protocols for strategic dialogs. A corresponding recommendation for a coherent protocol can be found in chapter
13.2.1 (see recommendation no. 15 in section 13.2.1).

As the CS problems became more acute and the relevant bodies switched to crisis mode, the two authorities dispensed with bilateral parallel discussions in the aforementioned formats. From then on, the exchange of information and coordination took place at the appropriate level and, as provided for in the corresponding MoU, in the AF and the LG, which the Commission considers to be appropriate.

12.2 Supervision of the FAOA by the FDJP - evaluation by the Commission

Although the FAOA is independent, it is subject to the administrative supervision of the FDJP (see section 5.6.3). However, the Commission notes that this administrative supervision is limited to a minimum. The interactions between the FDJP and the FAOA are often limited to a brief exchange without real discussion of the strategic issues and challenges facing the FAOA. This approach a certain passivity on the part of the FDJP, which could mean that the department is insufficiently informed about the complex circumstances and critical challenges facing the FAOA.

Consequently, the quality of the FDJP's oversight of the FAOA's activities may be compromised. Furthermore, the current mechanisms do not appear to be sufficient to deal with potential conflicts of interest or to respond appropriately to international recommendations, such as those of the IMF. This lack of proactivity and alignment with international standards could weaken the FAOA's ability to fully perform its important role as a regulator of the financial system.

12.3 Role of the FDF/Federal Council with regard to the SNB - assessment by the Commission

Exchange between the SNB and the FDF

The independence of the SNB is much broader than that of the two independent units FINMA and the FAOA. Accordingly, the channels of dialog and exchange between the SNB and the federal authorities are less closely defined (see section 3.5.1 and section 5.6.1).

While the bilateral exchange between the SNB and FINMA is regulated by the MoU in the area of financial stability (see section 3.6.2), there is no such communication channel between the SNB and the FDF at both a strategic and operational level. Apart from the two bodies of the tripartite MoU, the AF and the LG, there are no comparable institutionalized dialogue channels between the SNB and the FDF bodies responsible for the financial market, namely the SIF and the FFA. In the Commission's opinion, developments at systemically important banks and their impact on financial stability are generally not discussed enough between the Confederation and FINMA, but also between the Confederation and the SNB. For example, FINMA and the SNB already discussed the confidence deficit at CS and the risk of another potential incident at the Steering Committee on May 31, 2022. However, SIF and the FFA were only informed in detail about the situation at an AF meeting in August (see section 13.1.1). The PCC critically notes that neither the SNB nor FINMA considered it appropriate inform the political authorities (SIF and FDF heads and, through them, the full Federal Council) after the exchange in May 2022. Given the inherent scope of a G-SIB crisis, this demonstrates a lack of sensitivity. At the same time, the PUK also notes that the convening of the

AF is the responsibility of FINMA and the authorities did not identify any need for action on the part of the federal government in the AF of August 3, 2022.[2158]

The Commission is aware that the establishment of a further bilateral exchange does not necessarily added value, but is nevertheless of the opinion that the two parties should inform each other more proactively about developments in the area of financial stability. This can also take place in the organs of the tripartite memorandum.

Recommendation no. 10

The Commission invites the Federal Council to ensure that the FDF and the SNB each other more proactively about important developments relating to systemically important banks and their impact on financial stability. This can take place within the existing regulatory structures or through the conclusion of a further bilateral MoU between the FDF and the SNB.

Exchange between the SNB and the entire Federal Council

The annual exchange between the SNB Chairman and the full Federal Council is generally not recorded in the minutes. However, due to its importance, the meeting of 2 November 2022 was exceptionally summarized in the Federal Council minutes (see section 5.6.1 and section 6.3.4.1). The institutionalized discussions between the Federal Council and FINMA are not recorded either. Since November 2022, the FDF has prepared an information note with enclosures for the Federal Council in advance.

Recommendation no. 11

The Commission invites the Federal Council to document the content discussed in an appropriate form as part of the regular discussions on the economic situation, monetary policy with the SNB (pursuant to Art. 6 NBA) and discussions on the strategy of supervisory activities and current financial policy issues with FINMA (pursuant to Art. 21 para. 2 FINMASA).

13 Crisis management by the Federal Council, Federal Administration, FINMA and SNB

13.1 Management in the accentuating crisis (summer 2022 to early March 2023)

13.1.1 Cooperation between the various committees

Cooperation between the various authorities is increased importance in times of crisis. The clarity of competencies and responsibilities, a regulated flow of information, increased agility in terms of time and clear processes are important in this interaction. This chapter contains a summary of the findings of the PUK on the cooperation between the FDF (including SIF and FFA), FINMA and the SNB in the period from the first signs of the crisis (summer 2022) to the beginning of March 2023. General aspects of the division of responsibilities between the various players are discussed in section 14.1.

[2158] Transcription of the AF meeting of 3.8.2022, p. 8

Appropriate activation of crisis mode in AF

Although it is difficult to pinpoint the exact date on which CS's crisis began to emerge, it should be noted that various indicators deteriorated significantly over the course of 2022. For example, several rating agencies lowered CS's rating in May 2022 and again in August of the same year (see section 5.1.2). The SNB's Financial Stability Report 2022 out for the first time that the market clearly differentiated between the two major Swiss banks and rated CS more negatively than UBS.[2159]

An initial ad hoc meeting of the AF was scheduled by FINMA for August 3, 2022 at the request of the FDF. The PUK notes that this was the first time that the SIF and the FFA were informed about the developments at CS. By contrast, the SNB and FINMA had already discussed a potential crisis in the spring (see section 6.2.3). The LG, on which the head of the FDF sat, its first meeting on CS at the suggestion of the AF on August 23, 2022 (see section 6.2.3).

The authorities activated crisis mode from the beginning of October 2022 when CS was confronted with massive liquidity outflows (see section 6.1.2). Specifically, FINMA set up a crisis organization on 5 October 2022, which led to the creation of an Executive Committee that could address the FINMA Board of Directors directly without having to involve the entire Executive Board. On the same day, after being informed by the Director of FINMA about the creation of this committee, the AF also switched to "Phase Red" (see section 6.3.3.1). There is discretionary leeway regarding the switch to crisis mode. This raises the question of whether an earlier switch to crisis organization would have been sensible. In this regard, the PUK states that the beginning of October was a suitable time to activate crisis mode. After the switch to crisis mode, the frequency of the AF and LG meetings was greatly increased. Between October 2022 and mid-March 2023, the AF held 22 meetings, while the LG met 16 times (see chronology in Annex 4). The PUK welcomes the intensified exchange, which was essential for a good flow of information between the various authorities. It also concludes that the crisis organization of the AF and the change from the "green phase" to the "red phase" are appropriately defined in the AF's organizational regulations (see Chapter 6.3.3.1).

Coordination and exchange of information in the LG and AF

Officials from various authorities responsible for financial stability Switzerland were represented at the meetings of the LG and the AF. In addition to the permanent members of the AF, i.e. the Director of FINMA, the Vice President of the SNB, the State Secretary for International Financial Matters and the Director of the FFA, the meetings were also regularly by officials from other affected areas.[2160] The PUK is of the opinion that this broad representation was an advantage for good crisis management. As the case primarily followed up via these AF meetings, the people attending these meetings played a key role in preparing the decisions of the SC. FINMA kept the members of these bodies regularly and comprehensively informed about the situation at CS (see sections 6.3.3.1, 6.3.4.2, 6.3.5.1, 6.4.2, 6.4.3.2).

The PUK also notes that in several cases the members of the AF did not immediately pass on certain information to the LG. The flow of information was thus left to the respective authorities within the hierarchy. Thus

[2159] SNB (2022): Financial Stability Report 2022, German version, Sept. 2022, p. 6. As every year, this report was first published in English (in June 2022).

[2160] These include the Head of the Banking division, the Head of the Business Division, the Head of the Recovery and Resolution division and the head of FINMA's Recovery, Resolution and Resolvability organizational unit, the Deputy Head of Department II, the Director of the Financial Stability division in Department II, the person responsible for systemically important banks in Department II of the SNB, the Deputy Director of the FFA, the Head of the Legal and Risk Management division, the Head of the FFA's Financial Service II and the Head of SIF's Financial System and Financial Markets division.

the results of the Valuation-in-Resolution *exercise* (see Box 12 in section 6.3.4.2), which took place in November 2022, were discussed in the AF, but not in the LG according to the information available to the PUK. In addition, the results of the economic cost-benefit analyses of the various exit scenarios, which were discussed in detail in the AF on February 28, 2023 (see section 6.4.3.2), were not considered mature enough to be discussed in the LG. The PUK recognizes that the information passed on to this strategic body had to be solid. At the same time, it points out that there is a fine line between withholding information and delaying the provision of information due to inadequate preparation for a decision. This is all the more true as the discussion of the macroeconomic cost-benefit analyses held among the members of the AF revealed not all participants agreed on the purpose of these analyses and the conclusions to be from them regarding need for action (see section 6.4.3.2). In such a situation, the higher-level body should be involved so that it can form its own opinion and make the necessary decisions.

The PUK notes that not all authorities have been on the same level of knowledge throughout the entire process since October 2022 at the latest due to the passing on (or withholding) of information and due to the different views, which may have made it difficult to intervene decisively at an earlier stage.

Finally, according to a person heard by the PUK[2161] , compatibility between the IT systems of the main players was not ensured. The Federal Administration's document management system was not suitable use in a crisis situation because, among other things, it did not offer the possibility of working together on a document. There is also a lack of secure communication channels between the FDF, the SNB and FINMA. FDF employees were therefore forced to use the FINMA and SNB systems if they wanted to send them encrypted e-mails.

Cooperation between the authorities during the crisis must not be impaired by technical obstacles. The PUK believes that these must be eliminated (see recommendation 12).

Lack of traceability of the AF sessions

The key documents for the PUK also included the transcripts of the meetings of the AF, which, as mentioned above, played an important role in managing the crisis. The PUK notes that these transcriptions are not minutes, but rather *verbatim* transcripts of the discussions (*verbatim*), which fully reflect the various contributions to the discussions. This means that the course of the conversations in this crisis organ can be followed exactly. However, it makes it more difficult to understand and comprehend the authorities' decision-making process. If what is said is reproduced verbatim, unfinished sentences remain unfinished, decisions are not always conveyed as such and there is no clearly recognizable structure to the discussion. In addition, these transcriptions were not validated by the meeting participants. Finally, the list of attendees was sometimes incomplete.[2162]

The documents submitted to the PUK show that actual minutes of the AF meetings were not kept until 17 April 2023. The

2161 Minutes of the PUK meeting of 24.1.2024, p. 7 and 15

2162 Some transcriptions of the AF have been annotated the following note: "Speakers only. and persons mentioned by name during the meeting are listed as participants. Where It was possible for other people to take part quietly."

PUK welcomes this improvement and expects the authorities to continue to take such minutes at AF meetings.[2163]

The LG meetings, with the exception of the meetings between the 17th and March 19, 2023, but very briefly (see section 13.2.1).

Non-Meetings

The non-formalized non-meetings, which were initiated by the then Head of the FDF and the Chairman of the SNB, created a parallel format to the authorities' existing crisis organization. In total, between the
Between October 16 and December 29, 2022, at least five such meetings were held with the Chairman of the Board of Directors of CS and one with the Chairman of the Board of Directors of UBS (see section 6.3.3.2). The meetings were intended to create low-threshold, direct access to the management level of CS, emphasize certain demands of the authorities and to explore the fundamental feasibility of options for action in the event of escalation, in particular the sale of CS. The partial absence of FINMA was explained by the fact that this made it possible to hold discussions that were not influenced by the strained supervisory relationship between FINMA and CS.[2164]

The Commission does not fundamentally question the legality of these meetings, although the *Memorandum of* Understanding[2165] between the FDF, SNB and FINMA already provides for two bodies, the AF and the LG, in which both technical and strategic dialogues can also be held with banking institutions. As the Memorandum of Understanding not legally binding as a declaration of intent by the parties involved, such informal meetings were possible, especially as no binding decisions were made at these meetings.

From the Commission's perspective, however, questions arose in particular regarding the appropriateness of the meetings. On the one hand, the meetings with the Chairman of the CS Board of Directors within the existing crisis organization (AF and LG) were for the most part not prepared and thus, in the opinion of the Commission, insufficiently prepared and followed up. Specifically, neither the content of the discussions nor the direction that the authorities were pursuing were structurally agreed with the other members of the LG and AF in advance. In addition, the information from the non-meetings did not subsequently flow consistently back into the regular crisis committees. As a result, there was no institutionalized form of information transfer within the framework of the AF and LG meetings, which is why the members of these bodies were ultimately not of all meetings or their content. Even the Chairwoman of the FINMA Board of Directors, decided not to attend certain meetings, was not informed about all meetings with the Chairman of the CS Board of Directors.

The Commission understands the authorities' desire to give high priority to the secrecy of the meetings due to the fear of leaks - this is by the location (SNB headquarters in Zurich), the time (Sunday evening) and the small circle of people informed. However, due to these precautionary measures and in order to preserve the informal nature of these meetings, neither agendas nor reliable (i.e. content-checked) meeting notes or minutes were prepared.[2166] The lack of content-related embedding or feedback, which made these meetings so informal, was a major factor in the decision to hold them.

[2163] As part of the administrative consultation, SIF argued that the AF meetings are normally always minuted. As FINMA was very busy during this phase from summer 2022, the authorities of the tripartite MoU dispensed with appropriate minutes of the meetings and had verbatim minutes drawn up on the basis of an audio recording. From January 2023, the SIF introduced a table to record ongoing work, pending issues and responsibilities. However, this table did not serve as minutes (SIF statement of 27.10.2024 as part of the administrative consultation).
[2164] Minutes of the PUK meeting of 8.11.2023, p. 31f., p. 39
[2165] MoU FDF, FINMA, SNB
[2166] Minutes of the PUK meeting of 8.11.2023, p. 31

This was inherent in the non-meeting approach, which ultimately to the inadequate transfer of information to the crisis bodies. This created few synergies for regular cooperation between the authorities. In this context, the Commission also criticizes the inconsistent flow of information between the FDF, SNB and FINMA after the meetings.[2167] It notes that FINMA prepared the last non-meeting on 29 Decem- ber 2022 and established written and, in particular, binding nature. However, the scope and quality of the purely verbal information shared within the FDF in particular did not correspond to the importance that the participants said they attached to these meetings.

The generally rudimentary communication of information and the lack of coordination should be emphasized insofar as the MoU provides for the authorities to take into account the impact of their actions on the areas of responsibility of the other parties and to coordinate their activities in the event of financial crises (section 3 MoU). In the Commission's opinion, was not the case, particularly with regard to FINMA, which was not represented at all meetings and was not informed of a non-meeting.

However, the Commission recognizes that the informal meetings made it easier to develop new approaches outside of the regular structures. This enabled the takeover solution with UBS, which ultimately became an effective solution in an acute crisis, to be considered at an early stage. The Commission also understands that informal meetings outside of the institutionalized crisis organization can offer added value for the authorities. Due to their informal nature, such meetings cannot be over-regulated without losing their advantages. Nevertheless, the PUK is of opinion that informal meetings - especially at the highest level as in the present case - are very sensitive for all three authorities and must correspond adequately with the existing regulatory structures so as not to undermine their functionality or run counter to their work. In addition, a minimum level of transparency should be guaranteed with regard to the topics discussed at such non-meetings. Finally, better integration into the overall crisis management of the authorities would avoid the mere appearance of one-sided proximity to the banks.

Recommendation no. 12

The PUK requests the Federal Council to ensure that the authorities of the tripartite memorandum of understanding on financial stability and financial market regulation pass on information promptly to the various members of the crisis bodies and between the levels (operational and strategic level). In particular, the information from the SNB's annual reports on financial stability should be discussed with all the authorities involved.

In addition, the Federal Council should ensure that the authorities of the Memorandum take measures to ensure that meetings of an informal nature correspond better with the regulatory structures of the Memorandum. Any decisions are to be taken by the responsible bodies.

Finally, it should ensure that the corresponding IT and communication systems are suitable for close cooperation between these authorities in times of crisis.

[2167] While FINMA and the SNB conducted oral debriefings and FINMA involved various responsible persons, at least at the last meeting, the PUK has neither notes of discussions nor other sources that would prove that the State Secretary for International Financial or the FFA Director were appropriately involved.

13.1.2 FINMA's cooperation with foreign authorities

Cooperation in the Crisis Management Group and the Core College

FINMA worked particularly closely the authorities in foreign jurisdictions in the context of its supervisory activities over CS during the period under review (see section 5.3.1.5 and section 6.3.1.3). Due to the structure of the CS Group, the exchange with the US and UK resolution authorities in particular was intensified from summer 2022 in order to monitor the bank's situation. This took place within the framework of the existing regulatory and crisis structures of the "Colleges", in this case the *Core College* and the *Crisis Management Group*, which already used for regular exchanges and practical crisis exercises in the years before the CS crisis (see section 5.3.1.5). The Commission acknowledges FINMA's close and long-standing cooperation with foreign authorities and highlights in particular the Crisis Management Group's practical crisis exercises. In the Commission's view, these sometimes resource-intensive exchange forums have also proven their worth due to the personal relationships established as a result and have facilitated work in a real crisis situation. The Commission also sees the fact that the SNB is involved in the relevant committees as an advantage, as this simplifies the flow of information between the international and national levels.

The valuation-in-resolution *exercise* (see Box 12 in section 6.3.4.2) with real-time data, which was carried out in November 2022 to assess the feasibility of the restructuring plan, is viewed particularly positively by the Commission in view of the acute crisis in March 2023. FINMA dealt with the implementation of the restructuring at an early stage and in consultation the foreign authorities of CMG. In particular, the evaluation of the results and the subsequent repetition of the exercise represented added value in the eyes of the Commission, as the restructuring was planned as a solution scenario right up to the end and the exercise provided key information for further planning.

Cooperation with the foreign authorities was made more difficult at times by certain circumstances originated at CS itself. Of particular note in this regard are the problems experienced by CS in preparing reliable forecasts for the liquidity ratios of all CS units (see section 6.3.1.1). In this case, however, FINMA and the foreign authorities lacked the tools to improve their information situation, as this data had to be provided by the bank itself.

The problem of ring fencing and foreign liquidity facilities

FINMA anticipated possible reactions by foreign authorities to developments in CS's liquidity and capital situation in its dealings with CS and communicated these transparently to the bank and the authorities in the AF and LG (see sections 6.3.3.1 and 6.3.4). Both the Fed and the PRA took initial ring-fencing measures against CS's foreign subsidiaries from October 2022. Due to the ongoing liquidity outflows at CS, the Fed also increased the liquidity to be held by the bank in the US in March 2023. These measures ultimately led to parts of the ELA obtained by CS being placed with the Fed (see Box 16 in section 7.2.2.2).

In this regard, the Commission notes that the general problem of ring fencing continues to exist under the current TBTF regulation and that FINMA's scope for action is restricted as a result (see also section 9.1.2). It therefore welcomes and supports the Federal Council's proposal in its report on banking stability to increase the capital backing of foreign participations in order to counteract the effects of ring fencing.[2168]

[2168] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 96 f.)

The PUK is critical of the fact FINMA and CS mentioned access to the facilities of foreign central banks in the plans for Funding in Resolution (FiR), but did not quantify them.[2169] The Commission is aware that the real problem was that the parent company of CS had generally prepared too little collateral with the SNB and foreign central banks, resulting in a conflict of objectives between liquidity allocation and upstreaming efforts (see section 14.1.1). Nevertheless, the question arises as to why these hypothetically available facility volumes were not specifically quantified by FINMA and CS in the FiR plans or why FINMA and the SNB did not have this information, even though they were in with the US and UK regulatory authorities.

13.1.3 Information from the Federal Council

Date on which the full Federal Council is informed for the first time

The MoU on tripartite cooperation in the area of financial stability and financial market regulation gives the Head of the FDF a certain amount of leeway when informing the full Federal Council (Art. 3 para. 6 MoU). However, it is mandatory to inform the college directly about the assessment and the need for measures at the latest when the risk assessment leads to the conclusion that extraordinary measures by the authorities are likely (see section 3.6.1).

FINMA operated in crisis mode from October 5, 2022, and the AF switched to "Phase Red "[2170] (see section 6.3.3.1). In the Commission's view, the head of the FDF should have informed the full Federal Council of these circumstances. In this regard, the Commission notes that the then Head of the FDF informed the full Federal Council twice before November 2022 (on 24 August and 26 October 2022) under "Varia" about CS's liquidity problems and kept the information general and brief on both occasions. An initial in-depth discussion on possible measures by the authorities - specifically the introduction of the PLB by emergency law - did not take place until November 2, 2022 in the presence of the SNB Chairman, albeit more due to a coincidence in time with the annual meeting with the SNB Chairman and without appropriate prior information. The Commission considers it opportune that the planned meeting with the SNB Chairman was used to discuss this acute issue. However, it questions whether the then Head of the FDF informed the Federal Council early enough and in sufficient quality in accordance with the definition of the MoU.[2171] With regard to the meeting of November 2, 2022, the Commission notes that the members of the Federal Council reacted with surprise to the extraordinarily critical situation of the bank, as the previous information provided by the Head of the FDF had apparently not adequately conveyed the critical situation (see sections 6.3.4.1 and 6.3.4.2). It was therefore logical that the Federal Council as a whole scheduled an extraordinary meeting for November 4 and instructed the FDF firstly to provide in-depth information on the situation at CS and secondly to submit a concrete proposal for preparing the introduction of the PLB.

Canceled extraordinary Federal Council meeting on November 4, 2022

The Commission cannot understand why the Head of the FDF requested the President of the Swiss Confederation to hold the meeting scheduled for November 4 already on November 4.

[2169] According to the FSB guidelines in the area of funding in resolution, the home resolution authority is responsible, together with the bank, for determining the main measures to deal with liquidity bottlenecks in resolution. Source: FSB (2018): "Funding Strategy Elements of an Implementable Resolution Plan", p. 1, 15.

[2170] "Phase Red" refers to a situation in which the situation on the financial markets or individual Swiss institutions poses an immediate threat to the Swiss economy or the functioning of the Swiss or international financial system. Source: Art. 3.2.1 of the Organizational Regulations of the AF dated 6.1.2015.

[2171] "However, at the latest at the time at which the risk assessment leads to the conclusion that extraordinary measures by the authorities are likely, the head or the Head of the FDF is obliged to inform the full Federal Council immediately." Source: Art. 3 para. 6 of the MoU FDF, FINMA, SNB.

evening of November 2. The reason given by the head of the FDF for canceling the meeting at short notice was that the AF not submitted an application for a PLB, as CS had resisted the state liquidity assistance. A meeting was therefore not necessary.

However, in the Commission's opinion, the fact that the AF had refrained from submitting an application is not reason enough to justify the decision not to hold the meeting at short notice, especially as the FDF had also been instructed to submit a note on the bank's situation as well as a list of the SNB's and FINMA's powers and the Federal Council's various options. However, the Federal Council did not receive these documents in the course of the rejection, although they were again requested at the meeting on November 9 (see sections 6.3.4.1 and 6.3.4.2). A discussion on these topics with representatives of the SNB and FINMA took place on
On November 9, the meeting took place exclusively as part of the Federal Council's Financial Affairs Committee (see section 6.3.4.2). The Commission notes in this regard that the Federal Council as a whole, to which the minutes of the Federal Council Committee were submitted, not subsequently request a new agenda item. The then President of the Swiss Confederation did inform himself independently (see section 6.3.4.2) in order to better understand the interplay between the SNB and FINMA. However, as far as the PUK was aware, he did not advocate forwarding this information to the full Federal Council.

In connection with the planned meeting on 4 November, the Commission also notes that the General Secretariat of the FDF was hardly involved in the work on the CS dossier in autumn 2022 (see section 6.3.4.1), although the General Secretariats actually serve as a staff unit for the departments and perform a coordinating function with regard to the business of the departments in the Federal Council. The Commission notes that the lack of substantive involvement of the Secretary General delayed the preparations for the meeting on November 4, but that this ultimately no consequences, as the meeting in question did not take place. Nevertheless, the PUK views the non-involvement rather negatively, especially as the GPK had explicitly demanded in its report on the investigation of the 2007/08 financial crisis2172 that the general secretariats should be included in the information flows in an appropriate manner for the management of important business.2173

Information from the Federal Council 2022 - lack of written form

With regard to the information provided to the entire Federal Council by the then Head of the FDF, the Commission is particularly critical of the fact that he only informed the entire Federal Council verbally and consistently refrained from providing written documents. According to his own statements, the information policy of the then Minister of Finance towards the Federal Council was based on his lack of trust in the Federal Administration with regard to indiscretions, as these would have had an impact on the global financial markets. At his hearings before the PUK, the former head of the FDF also referred to the numerous corona leaks. The Commission notes that any type of information - including information obtained orally - could have been leaked, which not the case throughout the fall. Other extremely sensitive information that was shared in the Federal Council during this time was also not leaked to the public.

A large number of current and former members of the Federal Council criticized the PUK for not submitting written documents to the College. Within the Federal Council, the lack of written documentation was criticized at the meeting of
November 2 and at subsequent meetings several times to the head of the FDF.

2172 GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3413 f.)

2173 Specifically, recommendation 13 of the CPC reads: "The CPC calls on the Federal Council to ensure that the respective General Secretariat is suitably involved in the information flows for the management of important business - especially if it interdepartmental - in the departments concerned, so that it can perform its function as a staff unit of the department, but also of head of department."

addressed and criticized accordingly (see section 6.3.4.2). The way in which information was provided remained the same even after the criticism of the Federal Council members and the Federal Chancellor in November 2022. One Federal Council member explained in this regard that it was difficult to fulfill its role and responsibility without documents and a basis for decision-making at this stage.[2174]

At the two Federal Council meetings in December 2022 at which the situation at CS was discussed, the Head of the FDF also provided information to the Federal Council as a whole verbally, which also prompted criticism from several members of the Federal Council. The Commission notes that, according to various members of the Federal Council, the College was not in a position to assess the extent of the bank's difficulties on the basis of the provided.

When CS's liquidity situation worsened again at the end of December 2022 and intervention by the authorities became more likely, the head of the FDF again refrained from informing the full Federal Council (see section 6.3.5.1).

The Commission cannot understand why the former head of the FDF - with the exception of the minutes of the Federal Council's Financial Affairs Committee - from providing written information to the Federal Council. The possibility of an information leak, regardless of its potential impact, cannot be used as an excuse for dispensing with written information. According to the Commission's assessment, the head of the FDF could have worked with table documents, for example. This would have limited the circle of addressees to the Federal Council.

The FDF shared little information with the committee making it difficult for the Federal Council to the business as a collegiate body. In the Commission's opinion, the head of the FDF therefore did not fully comply with his duty to inform the Federal Council regularly about the risks and challenges of important transactions accordance with Article 12a para. 1 RVOG. This article was introduced to strengthen collective leadership[2175] and, according to legal doctrine, serves to ensure that the members of the Federal Council a comparable level of knowledge so that they can actively participate in the decision-making process.[2176]

However, the Commission also wonders why the Federal Council as a whole and the acting Federal President did not make use of their leeway to obtain further information. The Federal Council and the then Federal Chancellor insisted on several occasions and demanded written documents.[2177] However, in view of the Federal Council's repeated criticism of the lack of written information, it could certainly have enforced its information rights more consistently. Article 12a paragraph 2 RVOG empowers the Federal Council to oblige heads of department to provide information within a specified period of time. However, this would have required a Federal Council resolution.[2178] According to Article 25 paragraph 2 letter d RVOG, the President of the Swiss Confederation would also have had the authority to order clarifications on certain matters and thus enforce his legal right to information against the head of the FDF.[2179] Since neither the members of the Federal Council nor the incumbent President of the Swiss Confederation demanded the written form with all the means at their disposal, they also bear the responsibility for the information until a decision is reached.

[2174] Minutes of the PUK meeting of 21.2.2024

[2175] Supplementary dispatch on the government reform of 13.10.2010 (BBl **2010** 7811, here 7820)

[2176] Sägesser Thomas (2022): Government and Administration Organization Act RVOG of March 21, 1997, 2nd ed. Bern: Stämpfli Verlag, Art. 12a N 6 f.

[2177] Minutes of the PUK meeting of 8.11.2023, p. 53 f.; Minutes of the PUK meeting of 21.2.2024, p. 58 f.; Minutes of the PUK meeting of 21.2.2024, p. 10 ff.

[2178] Supplementary dispatch on the government reform of 13.10.2010 (BBl **2010** 7811, here 7827)

[2179] Sägesser Thomas (2022): Government and Administration Organization Act RVOG of March 21, 1997, 2nd ed. Bern: Stämpfli Verlag, Art. 25 N 46

The Federal Council has a certain degree of responsibility for the long period of inadequate information available to it.

In view of the fact that previous investigations have already identified a lack of collective responsibility on the part of the Federal Council,[2180] the Commission believes that it is of central importance to initiate a sustainable improvement in this area.

Information from the Federal Council 2023

Between January and February 2023, the new head of the FDF discussed the CS crisis in the Federal Council at four meetings, which meant an increase in the frequency of information (see section 6.4.2). Under the new head of the FDF, the Federal Council discussed the four scenarios for the first time at the beginning of February 2023 on the basis of written documents (see section 6.4.3). The table document distributed for this merely outlined the four scenarios in very summary form, but contained neither an economic nor a more detailed legal assessment. The paper was after the end of the meeting. However, the members of the Federal Council assessed it rather positively overall and considered it to be an important basis for discussion. However, the Commission finds it difficult to understand why, according to the minutes of the 2023 meeting, the members of the Federal Council no longer criticized the way in which information was passed on, as they had done in November 2022 with regard to the lack of written form.

Overall, the Commission notes that the information shared with the Federal Council in 2023 - despite the first written documents on the scenarios - was still only of limited use. The only written document up to the acute crisis was characterized by a low information content and served more to contextualize the information conveyed orally. In the Committee's view, it is questionable whether the members of the Federal Council were able to form a well-founded assessment of the advantages and disadvantages of the individual scenarios and their implications based on this summary presentation.

Recommendation no. 13

The Federal Council is urged to ensure that it is informed to an appropriate extent about important business, if necessary with the aid of written documents. In doing so, a procedure should be chosen that excludes breaches of official secrecy. In addition, the PUK calls on the Federal Council and the President of the Confederation to use their powers under Article 12a paragraph 2 and Article 25 paragraph 2 letter d RVOG in comparable situations and to ensure that the College is informed in writing.

No indiscretions from the Federal Administration and Federal Council between fall 2022 and early March 2023

On a positive note, no confidential or secret information from Federal Council meetings and Federal Council committee meetings was leaked to the public between fall 2022 and March 2023. The investigations by the CPC into the leaks during the Covid-19 pandemic also revealed that the Federal Council succeeded in maintaining the confidentiality of various other dossiers whose confidentiality was in the interests of the country.[2181]

Federal Council Committee on Financial Matters

The purpose of the Federal Council committees is to strengthen interdepartmental leadership by preparing important and cross-departmental issues and decisions for the full Federal Council. Between fall 2022 and mid-March 2023

[2180] GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3413 f.)

[2181] Indiscretions in connection with Covid-19 business of the Federal Council, report of the GPK-N/S of 17.11.2023 (BBl **2024** 335, p. 75)

the responsible Federal Council Committee on Financial Matters met twice, both times in November 2022. A third meeting scheduled for December did not take place for reasons unknown to the PUK (see section 6.3.4.2).

The Commission is firmly of the opinion that the Federal Council committees are not suitable as crisis bodies. This view is shared by the Federal Council, according to which important political issues be discussed and decided in the Federal Council and not in committees.[2182] Nevertheless, the Commission concludes that the Federal Council Committee was not sufficiently involved after the Federal Council was first informed verbally at the end of August 2022. In fact, meetings of the committee on the topic of the introduction of the PLB did not take place until November (see section 6.3.4.2), although the AF and the LG had already been the matter since mid-September. In this regard, the Commission acknowledges that the discussion of the introduction of the PLB in the committee proved to be extremely constructive, because the inclusion of the two other Federal Council members led to an in-depth clarification of the conditions for the application of emergency law (see section 13.1.4).

DETEC and EAER employees were not allowed to attend the committee meeting on November 9, 2022 for reasons of confidentiality (see section 6.3.4.2). In principle, the Commission understands the authorities' high need for information security, but in retrospect questions the appropriateness of excluding the employees, especially as FINMA, the SNB and the FDF were present with several representatives.[2183] Firstly, little information - and above all no written information - was shared on the specific situation of CS, and the discussions focused on the introduction of the PLB under emergency law. Secondly, this approach further restricted the exchange of information between the committee members, which was already characterized by an asymmetry of information.

In the Commission's opinion, the flow of information between the committee meetings and the Federal Council meetings worked well. Both the minutes of the committee and the relevant enclosures were made available to the Federal Council (see sections 6.3.4.2, 6.3.4.3 and 6.3.5.1).

The FDF head's decision not to allow the Federal Council's Financial Affairs Committee to meet in 2023 to discuss the CS crisis and instead to inform the full Council (see section 6.4.3.1) is considered by the Commission to be appropriate under the given circumstances. This decision was communicated transparently to the full Federal Council and met with understanding within the College.[2184]

Information for the new members of the Federal Council

The Commission acknowledges the active and detailed introduction of the two new Federal Council members to the CS dossier by the then Federal Chancellor in December 2022. This included the handover of all Federal Council decisions on the PLB available to the Federal Chancellery and the minutes of the relevant Federal Council meetings from the months of November and December (see section 6.3.5.2).

Trust within the Federal Council

In its investigation, the PUK also addressed the issue of trust within the Federal Council. The statements of the Federal Council members differed in this regard. In addition to the former head of the FDF, another member of the Federal Council pointed out that the general climate in the Federal Council in the fall of 2022

[2182] Supplementary message on the government reform of 13.10.2010 (BBl **2010** 7811, here 7828)
[2183] These were the SNB Governing Board, the CEO and Chairwoman of the Board of Directors of FINMA, the FFA Director and the State Secretary for International Financial Matters.
[2184] Minutes of the PUK meeting of 29.11.2023, p. 18 f., 27 f.; Minutes of the PUK meeting of 29.11.2023, p. 34

was still under pressure. The risk of indiscretions was considered to be very high, and the reluctance of the then head of the FDF to provide written information was therefore plausible.[2185] The then Vice-Chancellor told the PUK that he had concluded from the statements of the head of the FDF that the latter did not trust the Federal Council to keep confidential information within the body. However, he himself had generally perceived the relationship of trust between the members of the Federal Council as "positive to very positive" both at the end of 2022 and at the beginning of 2023.[2186] Another Federal Council member stated that he did not perceive a problem of trust within the body from 2023 onwards and rather had the impression the Federal Council was aware of its great responsibility in this dossier.[2187] The former Federal Chancellor also shared the assessment that the entire Federal Council was of the seriousness of the situation. In his view, the fears of the then head of the FDF understandable due to the previous crises. However, he was of the opinion that the Federal Council be informed even if there was a risk of indiscretion.[2188] A third member of the Federal Council described the argument of not providing information due to leaks in other dossiers as "untenable". According to this member, highly sensitive transactions and transactions with stock market relevance generally do not lead to indiscretions.[2189]

In this context, the PUK also took note of the GPK's inspection of the Federal Council's discretions on Covid-19 business. This shows that trust in the Federal Council was at least temporarily impaired, especially during the pandemic. The extent to which this loss of mutual trust also hampered cooperation in the committee in the context of the CS crisis from autumn 2022 and especially during the acute crisis cannot be conclusively assessed for the PUK in view of the very different statements made by the Federal Council members. The different views on the relationship of trust within the Federal Council show that for some members, cooperation within the committee still characterized by the pronounced indiscretions during the Covid-19 pandemic, while other members perceived the indiscretions as a problem that only occurred in individual Federal Council transactions.

The Commission is of the opinion that the issue of indiscretions and trust was sufficiently analyzed as part of the aforementioned GPK investigation and that the implementation of the corresponding recommendations should be awaited before further measures are proposed.

13.1.4 Preparation for the introduction of a PLB in fall and winter 2022

Preparation for the introduction of a PLB under emergency law in November 2022

In the course of the worsening situation at CS, the AF discussed the early introduction of a PLB as a measure in the CS crisis for the first time on September 12 (see section 6.2.3). The authorities were able to draw on the ongoing work of the FDF. Following the Federal Council's decision in March 2022 to introduce a PLB (see section 5.2.6.2), the FDF was involved in drafting a corresponding proposal. From the end of October 2022, various scenarios for resolving the CS crisis were discussed in the AF and LG committees, in which the emergency introduction of a PLB would have been necessary (see section 6.3.3.1). From November 2, 2022, the scenario of a PLB introduction by emergency law was also discussed in the Federal Council, and the FDF prepared a specific Federal Council proposal (see section 6.3.4.1).

The Commission notes that the introduction of a PLB by emergency law in the fall of 2022 was quickly prepared by the authorities and that corresponding documents

2185 Minutes of the PUK meeting of 14.2.2024, p. 87
2186 Minutes of the PUK meeting of 17.1.2024, p. 28, 30
2187 Minutes of the PUK meeting of 29.11.2023, p. 25
2188 Minutes of the PUK meeting of 21.2.2024, p. 53, 56, 58 f., 70 f.
2189 Minutes of the PUK meeting of 8.11.2023, p. 66, 71

(draft ordinance, draft explanatory notes) were available in November 2022 (see section 6.3.4.3). The Commission welcomes the fact that the Federal Council discussed the necessity and timing of the involvement of the FinDel as part of its discussions on the short-term introduction of a PLB in fall 2022, as requested by the GPK back in 2010 (see section 6.3.4.3).

Inclusion of the FOJ in fall and winter 2022

After the Federal Council meeting on November 4 was canceled, the responsible authorities (FDF, FINMA and SNB) continued the preparatory work for the introduction of a PLB under emergency law and discussed certain points in more detail (see section 6.3.4.2). In the course of November, the Federal Council's Financial Affairs Committee also dealt with the introduction of a PLB. This committee urged the clarification of fundamental questions regarding the application of emergency law. Accordingly, the FOJ was increasingly involved in this phasehaving already been involved at a technical level since the beginning of October 2022 (see section 6.3.4.3): The Director of the FOJ was invited to a meeting of the Federal Council Committee on Financial Matters in November 2022 and questioned on various aspects of the introduction of a PLB under emergency law, specifically also on the question of whether it should be introduced by urgent federal law rather than by emergency law. In addition, the FOJ was instructed to present its findings in a note to the Federal Council. The committee is of the opinion that the FOJ was adequately involved in this phase for the most part.

However, it criticizes the fact that the FOJ was no longer involved from the end of November until 15 March 2023 after the notification of its note and that there was therefore no further exchange between the lead authorities and the FOJ on the implementation of the information provided by the FOJ. The relevant recommendation to the Federal Council can be found in section 14.2.1, where additional findings on the involvement of the FOJ in the CS crisis as a whole are set out.

In the Commission's view, the involvement of the FOJ to clarify fundamental questions regarding the application of emergency law was indispensable and therefore appropriate. The Commission also notes that the lead authorities (FFA, SIF) actually implemented the FOJ's advice on the need for in-depth clarifications on the introduction of a PLB under emergency law at the end of 2022 and from the beginning of 2023 (see section 6.3.4.3).

Non-introduction of a PLB in fall 2022

With regard to the question of the appropriateness of not introducing a PLB by emergency law or by urgent federal law in fall / winter 2022, the PUK comes to the following conclusion: Whether the emergency introduction of a PLB in fall 2022 would have been a useful or harmful signal in the sense of a fire accelerator cannot be conclusively assessed in retrospect. In addition, the question arises as to whether an emergency introduction of the PLB would have been permissible at all in the fall of 2022, i.e. whether a sufficient emergency legal situation already existed at that time. In any case, a short-term emergency introduction - if it had been permissible - would have had to be communicated very carefully in order not to further weaken market confidence in CS. It is questionable whether this could have succeeded, as the use of emergency law is in itself a signal of crisis and CS was operating in a volatile and unstable environment. The authorities' doubts about the usefulness of this measure and their fear of a detrimental effect at that time are in any case understandable for the Commission. This is all the more true in view of the bank's refusal and embellishments in the fall of 2022.

From the PUK's perspective, however, it is clear that the introduction of a PLB, as recommended by the international bodies, should have been consistently pursued from 2016 (see section 9.1.1). The Federal Council should have included the topic in its evaluation reports on systemically important banks at an early stage, for example (see section 9.1.1), so that a political discussion could have taken place. The existence of a PLB enshrined in law might have changed the dynamics in the fall of 2022

could have done. The federal authorities would probably have been able to communicate more proactively about CS's situation. The markets' trust in a bank that operates from a national legal system with a legally enshrined PLB might also have been greater. This could have led to greater patience on the part of investors with regard to the realignment of CS's strategy.

An actual recommendation by the PCC on the introduction of a PLB is unnecessary in view of the bill pending in the Federal Assembly. Please refer to section 9.1.2 for the PUK's position on this bill.

13.1.5 Preparation of the various scenarios in the committees

Between summer 2022 and March 2023, a significant proportion of the activities of the crisis bodies, in particular the AF, were devoted to considering crisis exit scenarios. This chapter contains the PUK's findings on the way in which the various scenarios were developed and prepared by the authorities. On the whole, the PUK is of the opinion that the preparatory work in the crisis bodies was appropriate, but points out some areas for improvement.

Open discussions about numerous options

The authorities have prepared the planned options (liquidation, ELA) and also considered new ones (TPO, ELA+, takeover). From the PUK's perspective, it should be noted that measures and instruments were also discussed that are not provided for in the TBTF instruments. On the one hand, this shows that every crisis is different and that the regulator could not or cannot counteract all constellations. On the other hand, this circumstance makes it clear that a revision of the TBTF regime is necessary based on the experience gained in the context of the CS crisis (see section 9.1.2).

Firstly, since the first signs of the crisis from fall 2022, the authorities have continuously and openly addressed the possible intervention measures. Secondly, they addressed several options and analyzed them - also in combination with each other - in varying degrees of detail (see Chapters 6.3 and 6.4, in particular Box 11 in Chapter 6.3.3.1):

i. Crisis management by CS itself: Long the scenario preferred by the authorities, was definitively rejected on March 15, 2023.

ii. Utilization of an ELA: One of the SNB's existing instruments, occurred in all scenarios.

iii. Utilization of an ELA+: Extended possibility of utilizing an ELA, which required an introduction by emergency law, was discussed in the AF and the LG from December 2022.

iv. Takeover by another (domestic or foreign) bank: scenario discussed from the end of October 2022.

v. Restructuring of CS: Procedure would have fallen within FINMA's remit, has been discussed as a possible solution scenario since the beginning of October 2022, when discussions began.

vi. Bankruptcy of CS Group AG and CS AG and activation of the emergency plan for CS (Switzerland) Ltd: Discussed from November 2022.

vii. Temporary nationalization (TPO) of Credit Suisse (Schweiz) AG: This was discussed as an option in the event of the bankruptcy of CS (see above) and would have required the application of emergency law.

viii. TPO of the entire group: Would have required the application of emergency law, was only discussed in March 2023.

ix. Federal capital participation in CS: Discussed in October 2022, but rejected after initial analysis.

x. Accelerated introduction of the PLB, but without its activation: should have been discussed in an extraordinary Federal Council meeting, but this was canceled at short notice.

xi. Introduction and activation of the PLB for the CS by emergency law: Was discussed in the context of the various scenarios.

The external experts commissioned by the PUK pointed out that other measures would also have been possible, in particular a deposit guarantee or a *bank holiday*.[2190] These alternatives are not in the documents reviewed by the PUK. Nevertheless, the PUK is of the opinion that the authorities covered the most important possible measures in their preparations. The various options were carefully examined and the most realistic measures or options were adequately explored without the authorities committing themselves too quickly to one scenario or another. Some options that were initially rejected could therefore be taken up again later. This applies in particular to a possible capital participation by the Confederation in CS (Box 11 in section 6.3.3.1).

Formation of specific working groups within the bodies of the tripartite Memorandum of Understanding

From fall 2022, the AF formed several working groups on different topics in which various authorities were represented. For example, on October 5, 2022, the AF set up a working group to examine the authorities' various options and their advantages and disadvantages in more detail (section 6.3.3.1) and to carry out an analysis of the economic costs (section 6.4.3.2). At the initiative of the authorities, a PLB working group (section 5.2.5.3) and a TPO working group (sections 5.2.5.6, 6.4.2) were also formed. The PUK is of the opinion that these bodies it possible to the specific expertise of the specialists involved to adequately prepare the scenarios at the operational level before they were forwarded to the crisis bodies.[2191] It is not always clear from the transcripts of the AF whether the responsibilities in the working groups were clearly defined.

Clarification of emergency law

Some of the options at the center included the application of emergency law. This was particularly the case with the TPO, as Swiss law does not provide for such an option (see section 9.1.2). The Commission comes to the following conclusions regarding the possibility of introducing a TPO under emergency law in March 2023:

i. The authorities have been carrying out clarifications on certain variants of the TPO (see Box 7 in section 5.2.5.6) as part of the working group set up by the AF since September 2020, i.e. well before the CS crisis came to a head (see section 5.2.5.6). However, it should also be noted that the TPO has been discussed internationally since 2011 and various countries enshrined it in law as early as 2016 (see section 5.2.2.1).

ii. Immediately before the acute crisis in March 2023, the authorities initiated broad and open-ended clarifications on the TPO and also considered options that had not been discussed for some time or had never really been discussed (see section 6.4.3.2). Preparations for the option of a TPO for the entire Group, which was ultimately pursued, nevertheless had to be made at extremely short notice during the acute crisis from March 15, 2023 (see section 13.2.4).

[2190] Expert report BSS (2024), p. 18-20. Deposit protection: In the event of a bank's bankruptcy, depositors' assets are protected by the state up to a certain amount. *Bank holiday*: Temporary closure of the bank, usually followed by a period in which cash withdrawals are not possible or only possible to a limited extent.

[2191] For information on the involvement of actors outside the tripartite MoU bodies, such as SECO, see section 14.2.

The PUK is therefore of the opinion that the clarifications regarding the TPO were only partially appropriate during the phase of the escalating crisis (from summer 2022 to mid-March 2023) (for the involvement of the FOJ, see sections 13.2.4 and 14.2.1).

The question of emergency law also arose with the PLB. The plan was to introduce it under ordinary law in 2023. However, due to the CS crisis, events came thick and fast. The PUK emphasizes that the authorities had the foresight to clarify how the PLB could have been introduced in November 2022 under emergency law and with appropriate involvement of the FOJ (see section 6.3.4.3). In addition, the authorities dealt with the introduction of an ELA+ from the end of December 2022, which also required emergency legislation (see section 6.3.5.1).

Preparatory work for a possible restructuring of CS

One of the scenarios considered was the restructuring of CS. FINMA was responsible for preparing this, as it the authority to order the restructuring of a bank in the event of imminent insolvency (see section 3.2). In this regard, the PUK notes that this scenario was intensively prepared and tested from fall 2022, in particular with a *valuation-in-resolution exercise* that was carried out in November (see Box 12 in section 6.3.4.2 and section 13.1.2). The PUK shares the view of several of the persons it consulted that this exercise was a necessary step in the preparatory work for the scenario of a restructuring of CS. FINMA had almost completed the draft restructuring order in November 2022 so that it could be finalized within the few days of the acute crisis in March 2023 (see sections 6.3.1.1, 7.2.2.6, 7.2.3.6). The draft was finalized, translated into English and coordinated with the foreign authorities of the Crisis Management Group (see section 7.2.4.4), which shows that the preparation was appropriate. The PUK points out that several people outside FINMA nevertheless expressed a certain scepticism during the hearings with regard to the feasibility and stabilizing effect of a restructuring.[2192]

Preparatory work for a takeover of CS by another bank

The scenario of a takeover of CS by another bank has been discussed since October 2022 (see section 6.3.3.1). The biggest challenge identified by the authorities was the time required to such a transaction with another bank: A Swiss solution seemed to be the only viable option in the short term. A solution with a foreign bank would only have been conceivable in the longer term (see section 6.3.4).

The PUK notes that it quickly became clear that UBS was a realistic option. This is because the Head of the FDF and the Chairman of the SNB held talks with the Chairman of the Board of Directors of UBS at the IMF's annual meeting in Washington in October 2022 and shortly afterwards in Zurich and sounded out his potential interest.

The authorities, in particular FINMA, also asked CS in November and December 2022 to potential partners. However, the conclusion remained the same, namely that only UBS was a credible candidate to take over the bank in the short term (see sections 6.3.1.1, 6.3.5.1).

The scenario of a takeover by a foreign institution was nevertheless pursued further: It was discussed again in January 2023 and submitted to the Federal Council (see sections 6.4.1, 6.4.2, 6.4.3.1), and the economic costs of this option were estimated (see section 6.4.3.2). However, the PUK notes that this option was not prepared in the same way as a takeover by UBS, which was the only bank contacted the FDF and the SNB to explore its interest.

[2192] Minutes of the PUK meeting of 8.11.2023, p. 76; Minutes of the PUK meeting of 29.11.2023, p. 18; Minutes of the PUK meeting of 21.2.2024, p. 54; Minutes of the meeting
of the PUK of 27.3.2024, p. 16, 18, 21; minutes of the PUK meeting of 24.4.2024, p. 77; minutes of the PUK meeting of 15.5.2024, p. 63 and 66; minutes of the PUK meeting of 22.5.2024, p. 29, p. 70f

On February 1, 2023, when the Federal Council discussed the various scenarios, the head of the FDF stated that no specific buyer bank known. A probe would only be possible once a definitive decision had been made for this scenario (see section 6.4.3.1). This restraint was not maintained towards UBS. Instead, it was contacted informally as early as October 2022. According to the SNB, the sale of CS was included by the authorities as a realistic and, depending on the escalation case, preferred option on the basis of these discussions. The preparation of UBS for such a scenario is absolutely central due to the meeting of
October 23, 2022.[2193] According to the information available to the PUK, the next contacts between the authorities and UBS took place in March 2023.

In connection with the preparatory work for the scenario of a takeover by another bank, the PUK also points out that FINMA anticipated the need to set up a data room and did not cease to exert pressure on CS until it was actually set up (section 6.4.1). The necessity and urgency of setting up a virtual data room were the subject of various interactions between FINMA and CS and, most recently, a non-meeting (see section 6.3.3.2). Like several of the persons consulted, the PUK is of the opinion that the data room made a significant contribution to ensuring that the transaction between CS and UBS in March 2023 could be implemented within the specified deadlines.

The PUK's findings on the involvement COMCO in March 2023 are set out in section 14.2.3.

Macroeconomic analyses of the costs and benefits of the various scenarios

Compared to the alarming situation between October and December 2022, CS's financial situation at the beginning of 2023 appeared relatively calm from the outside. However, the situation remained tense. At this time, the authorities were examining in greater depth the question of the costs and benefits that the various crisis exit scenarios would likely have (see sections 6.4.2, 6.4.3), which the PUK welcomes.[2194] Quantitative analyses were discussed for the first time in the AF on February 28, 2023 (see section 6.4.3.2).

The experts commissioned by the PUK consider these analyses to be appropriate overall. The authorities' cost estimates are plausible and comprehensible. However, some cost blocks were overestimated: The assumed costs of the *worst-case scenario*, i.e. the failure of CS's systemically important functions, would at the upper limit and therefore estimated rather pessimistically. The costs associated with a loss of reputation and importance of the Swiss financial center were also overestimated in the various scenarios (see Box 24 below). The PUK shares this view.

Between February and March 2023, the authorities calculated the cost consequences of the various scenarios using two models: In *Model 1*, which the AF discussed on February 28, a cost-benefit analysis was separately for each scenario. *Model 2*, which was prepared by an AF working group for the meeting on March 14, also took into account the fallback scenarios that would still have been available to the authorities if the measures taken had failed. The effects of the paradigm shift are not addressed in the documents examined by the PUK. According to the expert report commissioned by the PUK, the chosen approach was appropriate. The PUK is of the opinion that the same procedure should be followed again if necessary.

The cost-benefit analyses were carried out by representatives of the SNB, FINMA, FFA and SIF in the AF. SECO, on the other hand, was not involved. It was only informed summarily on March 17 (see

2193 SNB statement of 31.7.2024 as part of the administrative consultation

2194 In November 2022, the authorities also referred to an expert opinion by an external consultant.
(Oliver Wyman) in order to answer the question of the costs associated with a PLB.
costs (section 6.3.5.1).

Chap. 7.2.3.9). This is surprising given that SECO, as the federal government's center of competence for all core economic policy issues, counts macroeconomic analyses among its core competencies (see section 3.7). The findings of the PUK on the involvement of SECO are set out in section 14.2.2.

Purpose of macroeconomic analyses and information for the Federal Council

The macroeconomic analyses conducted by the representatives of the SNB, FINMA, FFA and SIF were discussed in the AF on February 28, 2023 (see section 6.4.3.2). For the first time, quantified estimates of the costs and benefits of the various scenarios were available. As explained above, the PUK welcomes the performance of such analyses by the authorities. They enabled a systematic comparison of the measures to the Confederation. However, the PUK notes that the purpose of these analyses was not clear to everyone involved, or at least that not everyone who attended the AF meeting was in agreement. In principle, the SNB pursued an ex-ante focus: the cost-benefit calculations for the individual scenarios were intended to serve as a basis for the authorities' decision to intervene. The SIF and the FFA, on the other hand, took a more ex-post approach. The head of the FDF was keen to use these analyses to rationalize the decision and quantify the costs of the individual measures (see section 6.4.3.2).

In these macroeconomic analyses, a distinction was made between two situations in which the authorities could intervene: Situation 1 (increased stress, but no clear signs of a need for restructuring) and Situation 2 (escalation of the situation, clear signs of a need for restructuring) (see section 6.4.3.2). The measure with the best cost-benefit ratio was not the same in these two situations. In addition, the authorities did not define the situations more precisely. There were therefore no criteria for deciding whether (and since when) situation 1 had already occurred and whether (and when) intervention by the authorities was necessary. According to the analyses, the takeover by a foreign bank was the most favorable scenario in situation 1 (see sections 6.4.3.2, 7.1.2).[2195]

These macroeconomic analyses were not discussed in the LG, as the acute crisis broke out before the planned meeting (see section 6.4.3.2). It can be assumed that the head of the FDF was aware of these analyses, as they were carried out on her behalf (see above). However, the PUK notes that the Federal Council was not informed of these analyses in writing, which would have been the responsibility of the head of the FDF. In February 2023, it only received a summary document on the various scenarios, without any information on the economic costs. As far as the PUK is aware, the calculations of the economic costs were not submitted to the Federal Council as a whole until mid-March, which the PUK cannot understand (see section 13.2.3). During the acute crisis, various pieces of information were provided, but these cannot be reconstructed due to a lack of documentation and the summary minutes of the Federal Council.

[2195] See also the KOF Expert Report (2024), p. 13, and the BSS Expert Report (2024), S. 14

Box 24: Key findings of the expert reports on the macroeconomic analyses of the scenarios commissioned by the PUK

The PUK commissioned the KOF Swiss Economic Institute and BSS Volkswirtschaftliche Beratung AG to evaluate the analyses that the authorities had prepared for the individual crisis exit scenarios. The aim of this commission was to find out whether the cost-benefit analyses carried out prior to the decision-making process for the individual scenarios were based on plausible assumptions and to check whether the results and the methodology used were comprehensible and precise. Two contracts were awarded. The full results are available in the expert reports.[2196] The most important results are summarized in this box. The macroeconomic analyses of the authorities presented in detail in Chapter 6.4.3.2.

Conclusion from the two expert reports

The academic literature does not provide a uniform basis for estimating costs in the context of banking crises. The official analyses were therefore inevitably subject to a high degree of uncertainty. Time pressure and possible political preferences also played a role. The expert reports state that the sequence of options in the authorities' considerations appears largely plausible and stable with regard to corrections or adjustments to the calculation methods. Both reports discuss alternative factors (to the cost blocks) and methods (to the modeling) that might also have been valuable for the discussion.

Criticism of Model 1 in the expert reports

The BSS criticizes the way in which the authorities have calculated the costs in model 1 and applies a slightly different logic. However, the logic of the BSS has no impact on the order of the scenarios.[2197] The calculation methods of the authorities and the BSS both result in clearly higher net benefits for the options in situation 2 (defined by the authorities as "escalation, clear signs of a need for remediation") than in situation 1 ("increased stress, but no clear signs of a need for remediation"). In other words, from an overall economic perspective, the net benefit would have been highest if CS had been placed in situation 2. According to the calculations of the BSS and the authorities, option C "Restructuring" would then have been the best scenario in macroeconomic terms.[2198] This result may come as a surprise.

The KOF attributes this result to the fact that the risk of occurrence of the worst-case scenario was estimated to be significantly higher in situation 2 than in situation 1 and thus had an upward effect on the calculation of the benefit of an option applied. The costs of the worst case were estimated by the authorities to be high, in the upper range of what discussed in theory.[2199] The KOF concludes from this that waiting or doing nothing would have been very risky and therefore hardly a real option despite the supposedly high net benefit.

Criticism of Model 2 in the expert reports

The BSS partially questions the sequence of scenarios in Model 2. For example, according to the authorities' calculation, a failure of Option A would have led directly to Option B in Situation 2, the merger with a domestic bank. Other measures, such as a merger with a foreign bank, were no longer presented as possible follow-up measures.[2200] The selection made is not fully comprehensible from the documents. In addition, the chances of success

2196 KOF expert report (2024); BSS expert report (2024)
2197 Expert report BSS (2024), p. 22
2198 Expert report BSS (2024), p. 22 f.
2199 KOF Expert Report (2024), p. 13 and 20
2200 Expert report BSS (2024), p. 25

of the options, regardless of whether they would have been applied as the first or fourth measure in a sequence.[2201]

The KOF acknowledges that Model 2 is more appropriate for the complexity of the situation, but out that the demands placed on the assumptions made also increase with increasing complexity. It would therefore made sense, in its view, to use different models to test the robustness of the assumptions.[2202]

Criticism of the expert reports on the cost blocks

All four scenarios and the worst-case scenario included costs for the Swiss economy. The costs were presented as a percentage of Swiss GDP in 2022.[2203] The authorities considered five cost blocks. These are listed below, together with the most important considerations from the expert reports.

- Block 1: Jobs and taxes

Both expert reports can understand the procedure with certain points of criticism. Little weight was given to this block in the cost calculations.[2204]

- Block 2: Reputational damage for the Swiss financial center

Both reports argue that the authorities have overestimated the potential reputational damage. The KOF states that in situation 2, the order of costs per option would change if the reputational factor were not taken into account. However, as the costs were weighted according to their (failure) probabilities when calculating the net benefit, the order of the options would remain the same, only the gaps would become smaller. The KOF acknowledges that it would not have been realistic to completely disregard the potential reputational damage.[2205]

- Block 3: Intensification of the TBTF problem

The expert reports express greater concerns than the authorities when it comes to tightening up the TBTF problem. However, according to the experts, estimating the costs was difficult. For example, both reports address the problem known in economics as "moral hazard": as the authorities' actions at CS did not correspond to the TBTF regulation script, other banks in Switzerland can deduce that they would also be rescued in the event of a crisis. However, the KOF points out that this problem has been reduced, as there currently no other large domestic private bank that could rescue UBS.[2206]

- Block 4: Monetary losses of the Confederation/the SNB

The authorities have given little or no weighting to this cost block. The BSS estimates the costs to be slightly higher, at a maximum of 2.5 % of GDP.[2207] However, this does not change the order of the options.

- Block 5: Deterioration of the competitive situation

[2201] The only exception: In the event that Option C would follow Measure B2/Inland, a probability of success of 50 % instead of 70 % was assumed and the success-weighted costs were estimated to be higher. BSS expert report (2024), p. 26; KOF expert report (2024), p. 36.

[2202] KOF Expert Report (2024), p. 44

[2203] Swiss GDP amounted to around CHF 780 billion in 2022 (source: KOF Expert Report (2024), p. 10).

[2204] KOF Expert Report (2024), p. 24; BSS Expert Report (2024), p. 29 ff.

[2205] KOF Expert Report (2024), p. 34

[2206] KOF Expert Report (2024), p. 47 f.; BSS Expert Report (2024), p. 38

[2207] Expert report BSS (2024), p. 37

The effects on competition and the diversity of supply were only taken into account in Model 1. It remains unclear why this block was omitted in Model 2. The BSS is of the opinion that the costs of reduced competition in Switzerland in particular should have been taken into account.[2208] The KOF takes the same view. However, as the costs were estimated low in Model 1 - which is understandable - and their level varied little between the different options, taking them into account would hardly have led to any significant changes in the overall assessment.[2209]

Overall assessment

Both expert reports recognize that the authorities were confronted with great uncertainty and time pressure. The assumptions made appear plausible even after their critical ex-post analysis.

13.1.6 Change at the top of the FDF

On January 1, 2023, Federal Councillor Keller-Sutter took over the leadership of the FDF. Her predecessor claimed to the PCC that the handover of the department had not functioned optimally, particularly at the level of the specialist offices. The PUK agrees with this finding.

Contacts between Federal Councillor Maurer and Federal Councillor Keller-Sutter including handover of dossier

In the run-up to the handover of the department, there was one meeting and two telephone conversations between the then head of the department and Federal Councillor Keller- Sutter. The PUK does not comment on the number of meetings that took place. Much more important is what was discussed at the meetings or by telephone, what information was exchanged and how the important dossiers handed over. In the view of the PCC, it was clear at the time the dossier was handed over on December 19, 2022 that the CS dossier was a central dossier, especially as the situation at CS at the time was described by the head of the department himself as stable but at a low level.[2210] Nevertheless, the head of the department at the time failed to provide Federal Councillor Keller-Sutter with written information on CS.

The PUK is of the opinion that the requirements for the handover of the dossiers, in particular the important dossiers, were not met in this case. In such a situation, it is not sufficient if the documents are only available to the new head of department at the beginning of the year.

Exchange between various administrative units and Federal Councillor Keller-Sutter

At the level of the administrative units, there were only contacts between the Director of the FFA and Federal Councillor Keller-Sutter in December 2022, mainly in preparation for budget planning. However, the first meeting between the new Head of the FDF and the Chair of the FINMA Board of Directors on the one hand and the State Secretary for International Financial Matters on the other did not take place until January 2023. According to the information available to the PUK

2208 Expert report BSS (2024), p. 42
2209 KOF Expert Report (2024), p. 32
2210 The information that CS's liquidity situation remains critical, but at a low level, the then Head of the FDF was informed during the meeting of the AF of 25.11.2022 the Head of Banking Supervision of FINMA.

The head of the department at the time spoke out against a meeting in December or considered such a meeting to be inappropriate.[2211]

In the opinion of the PUK, the then Head of the FDF evidently underestimated the importance of timely preparation of his successor in a high-risk dossier.

The "Aide-mémoire for the members of the Federal Council and the Federal Chancellor "[2212] states that "[w]hen there is a change at the head of a department [...] the previous head of the department [...] shall ensure the transfer of knowledge to the new incumbent". The Federal Chancellery provides those concerned with a checklist for this purpose.

The PUK is clearly of the opinion that the departmental handover in this dossier did not function adequately and that there is a need for action to ensure that such an omission does not occur again in the future.

Recommendation no. 14

The Federal Council is invited to review the regulations on the handover of departments. To this end, it must develop an institutionalized process that goes beyond a checklist.

13.1.7 Public communication

In the phase from summer 2022 to March 2023, the main players only made public statements in very isolated cases. The first official communication would taken place after the Federal Council meeting on November 2, 2022, in the event the Federal Council took concrete measures. Although this was not the case, the preparatory work that had begun was continued, both with a view to public communication by the authorities and in event that information was made public (see section 6.4.4.). The question arises as to whether the public communication was appropriate and had the desired effect.

Public statements

As mentioned at the beginning, the authorities only made individual statements during this period, for example in interviews. The individual statements up to December were rather cautious. Reference was to the generally high level of uncertainty, the risks faced by the banks and the fact that the authorities were the situation at CS. However, the Head of the FDF and the Chairman of the SNB communicated proactively on the situation at CS in December 2022, which is the Commission addressed these statements. Both the Head of the FDF and the Chairman of the SNB were positive about the realignment of CS. The then Head of the FDF also out that there was good news from CS.

[2211] See the explanations in section 6.3.5.3 and the corresponding reference to the email from the State Secretary for International Financial Matters to the then General of the FDF dated 14.12.2022 and the email from the personal assistant of the Head of the FDJP and current Head of the FDF to the then Secretary General of the FDJP dated 15.12.2022. During the consultation, the then Head of the FDF stated that he had informed his successor, the then Head of the FDJP, by telephone before Christmas and between Christmas and New Year and asked her to hold a meeting with the State Secretary for Financial Matters immediately because the situation had deteriorated further.

[2212] Aide Memoire for the members of the Federal Council and the Federal dated 5.11.2014, point 1.25, p. 15

and that CS's work to implement the new strategy would require trust and time (see section 6.4.4.).[2213] According to him, this communication by the then Head of the FDF was made in consultation with the then Chairman of the SNB and with CS, which had asked for a positive signal to the public,[2214] and in view of the fact that CS was still in an extremely tense situation and the outlook was uncertain (see discussions in the LG and AF).

The question arises as to whether these statements were appropriate at the - given CS's actual difficult situation. According to the information provided by the PUK, the aim of these statements was reassure the public in order to give CS the necessary time carry out the transformation in peace. It is not possible to assess whether these statements had a calming effect on the public.

Preparation of communication by FC and FDF

Preparations for the authorities' public communication on an all-important decision regarding CS began in November 2022. On 2 November, the Federal Council instructed the FC and the FDF to draw up a communication concept in view of the planned meeting on 4 November.[2215] The FC and the FDF quickly began this work. Clear instructions were given by the FC from the outset. As mentioned in section 6.4.4, the FC initially found cooperation difficult because the responsibilities and accountabilities in the FDF were not clearly defined. Cooperation subsequently improved noticeably and, according to representatives of the Federal Chancellery, subsequently went well.[2216] The PCC found that the communication work was prepared carefully and comprehensively by the FC and later also by the FDF and also continued in the background, although a decision by the Federal Council on the introduction of a PLB had not yet been made. Those responsible anticipated any need for communication and also prepared themselves in case of indiscretions. They also involved the bodies involved (FINMA and SNB) in the communication work at an early stage. The PUK considers this work to be appropriate.

13.2 Management in the acute crisis from March 15 to 19, 2023

13.2.1 Cooperation between the authorities and bodies

Intensifying the exchange within the crisis bodies

During the five-day acute crisis, i.e. from March 15 to 19, 2023, cooperation between the authorities was extremely intensive. The chronology of events (Annex 4, but also sections 7.2.1, 7.2.3, 7.2.4, 7.2.5, 7.2.6) shows how quickly the various meetings and interactions - particularly between the Swiss authorities, the banks and the foreign authorities - followed one another. The PUK welcomes the availability and flexibility of the parties involved. It is of the opinion that the establishment of a crisis room in the Bernerhof, the headquarters of the FDF, was appropriate. This enabled close coordination between the authorities and reduced the time needed for consultation and decision-making (section 7.2.1, but also 7.2.2 to 7.2.5).

The PUK notes that the intensity of the crisis that certain processes were no longer adhered to. For example, the LG meetings between March 17 and 19, 2023 were not minuted. For its part, the AF did

[2213] The SNB raises the key interest rate to 1.0 percent and welcomes the realignment of Credit Suisse. In: NZZ, 15.12.2022; Balance sheet as Finance Minister - Federal Councillor Maurer, what would you have done differently in hindsight? In: srf.ch, 13.12.2022; In between, you just have to let it rip. In: NZZ, 31.12.2022

[2214] Minutes of the PUK meeting of 8.11.2024; Minutes of the PUK meeting of 22.5.2024

[2215] Written answers to the PUK dated 12.4.2024

[2216] Written answers to the PUK of 12.4.2024, minutes of the PUK meeting of 21.2.2024, p. 56

did not hold any formal meetings, but its members were nevertheless strongly mobilized. The PUK understands the sense of urgency that prevailed in these meetings; it does not expect detailed minutes to be taken in such cases. Nevertheless, it notes that the lack of written records of these meetings makes it difficult to subsequently understand the events and the responsibilities of the individual persons. In the opinion of the PUK, the traceability of decisions in times of crisis is particularly important. Minutes that cannot be drawn up in detail immediately due to time pressure should be completed in a timely manner so that the considerations led to the decision-making process and the decisions themselves can be easily understood.

Recommendation no. 15

The PUK invites the Federal Council to ensure that the authorities concerned take the necessary precautions to ensure that their meetings appropriately recorded in order to guarantee traceability. In particular, the meetings of the institutionalized exchange bodies between SIF and FINMA as well as the meetings held in times of acute crisis (e.. meetings of the Financial Crisis Committee or the Steering Committee) should recorded in a uniform manner, even if the minutes are only very brief.

Part of the recommendation (exchange vessels between SIF and FINMA) refers to the explanations in section 12.1.1.

Joint intervention by the authorities

The PCC also states that many people were involved in the negotiations with the banks at the front line (for the role of the authorities in the negotiations, see section 7.2.4). According to the sequence events reconstructed by the PUK, several people took the lead at different times. At the meetings with the banks on March 15, 2023, the head of the FDF led the discussions, with the authorities describing the sale to UBS as the desired solution (see section 7.2.1). The following day, Thursday, March 16, the SNB Chairman contacted the Chairman of the Board of Directors of UBS about the list of demands submitted by UBS (see section 7.2.2.1), and after the exchange between the two banks on March 16, the Chairman of the Board of Directors of UBS contacted the SNB Chairman and the FINMA Director to complain about the poor cooperation of CS (see section 7.2.2.3). On Friday, 17 March, the State Secretary for International Financial Matters organized a meeting between the representatives of CS and UBS in order to speed up an agreement between the two banks (see section 7.2.3.3). On Saturday, March 18, the CEO of UBS informed the State Secretary for International Financial Matters about the interim status of the due diligence review (see section 7.2.4.2), after which UBS requested the Head of Legal and Risk Management at the FFA to suspend certain provisions of the Merger Act (see section 7.2.4.6). The discussions with UBS on the problematic aspects of the NCU were conducted by the SNB and FINMA (see section 7.2.4.6). The head of the FDF then contacted the Chairman of the CS Board of Directors by telephone on Saturday, March 18, and asked him to accept UBS's offer in the interests of Switzerland, as there was no plan B (see section 7.2.4.6). During the negotiations on the purchase price, the SNB Chairman initially submitted a purchase price offer of CHF 1 billion. CS subsequently criticized this amount to the State Secretary for International Financial Matters, whereupon she submitted a price of CHF 2 billion (see Box 21 in section 7.2.4.6). According to her statements to the PUK, the negotiations on the possible elimination of the MAC clause and the compensation that the Confederation would pay in return were also moderated by the State Secretary for International Financial Matters.

From the PUK's point of view, the joint intervention of the authorities was appropriate as it strengthened their position. However, such an approach can also that it is not clear who is ultimately responsible. From the PUK's point of view, it was indeed

It was not always clear which actors responsible for what. However, the regular LG meetings ensured an appropriate flow of information between those involved.

Recommendation no. 16

The Commission recommends that the Federal Council ensure that, in the event of a crisis, responsibility is defined at an early stage for matters that affect several authorities equally. In addition, responsibilities should be clearly defined in the event of a crisis and a central point of contact should be designated for contact with external .

Cooperation with other administrative units (FOJ, SECO, COMCO) and their involvement are discussed in chapter 14.2.

13.2.2 Cooperation between the Swiss authorities and foreign authorities

Coordination foreign authorities was also of great importance in crisis management. As the acute crisis worsened, the authorities intensified their contacts from March 15 (see section 7.2.1 ff.). The exchange with the foreign authorities took place along the lines of responsibilities: While the head of the FDF was in contact with the foreign finance ministers, FINMA covered the foreign supervisory authorities and the SNB the foreign central banks.

International contacts focused on information about developments at CS (particularly in the Core College) in Switzerland and foreign markets as well as the measures planned and already taken both in Switzerland (ELA) and abroad (particularly increases in liquidity requirements by the Fed). In addition, operational coordination with regard to the measures being prepared (in particular the restructuring decree, possible merger of CS and UBS) was also key. As far as the PUK was aware, the key international bodies were closely involved and kept informed from March 15, 2023. For example, the Fed and the PRA were aware of the forthcoming media release by FINMA and the SNB on March 15, 2023.

Many of the international contacts naturally took place on an ad hoc and informal basis, which is why they are not all documented in writing. In the context of the acute crisis, this is understandable from the PUK's point of view, for example in the case of bilateral contacts at ministerial level. The specific content of the individual contacts therefore remains partially open (see section 7.2.2.9). What is clear from the perspective of the PCU, however, is that the Swiss authorities gained the impression from their contacts with the foreign partner authorities that they were very concerned about the scenario of a restructuring of CS, in particular due to the bail-in. In the discussions, the foreign authorities signaled that they saw the risk of a serious financial crisis in the event of a restructuring.

In the view of the PCU, the international contacts were, as far as it can judge on the basis of the information available to it, appropriate and effective. It is important for the PUK that the international stakeholders were proactively and closely informed. In this way, the Swiss authorities also laid the foundation for the fundamental approval of the foreign regulatory authorities for the merger of UBS and CS, which was an important condition for UBS for the "takeover" of CS. From the perspective of the PUK, it should also be emphasized that FINMA's restructuring order was also coordinated with the foreign partner authorities.

13.2.3 Information of the Federal Council by FDF, FINMA and SNB

During the acute crisis at CS in March 2023, the frequency of Federal Council meetings increased significantly in view of the escalating events.

The PUK welcomes the involvement of the entire Federal Council through regular extraordinary meetings. The PUK also considers the use of Threema as an additional information channel to be a positive contribution to prompt, comprehensive and active internal crisis communication. This primarily enabled appointments to be made, but at times also provided up-to-date information and updates, such as when the situation escalated on March 15, 2023 (see section 7.2.1). The active use of the Threema chat group by the Federal Chancellery also facilitated the organization of the extraordinary meetings during these days.

The Commission considers the participation of representatives of FINMA, SIF, the SNB and the two banks in various Federal Council meetings to be a beneficial and expedient measure to keep the committee informed about the status of the work and the banks' negotiations. The Commission is critical of the fact that the Head of the DDPS was unable to take note of the meeting documents at the Federal Council meeting on March 16, 2023 due to her obligations in the current spring session (see section 7.2.2.7).

In general, the Commission notes that the regular processes for Federal Council business could hardly be adhered to during the acute crisis due to the time pressure and complexity of the issue. During the March days, only one department submitted a questioning co-report on the FDF application for the adoption of the emergency ordinance on additional liquidity assistance loans on March 16, 2023, while the other departments refrained from doing so. Due to the short deadline, the FDHA did not expect a written response in advance of the next Federal Council meeting. Nevertheless, the committee notes that the FDHA posed critical questions in the co-report on the preparation, the implementation risks and the alternatives in the event of the takeover failing (see section 7.2.2.7).

With regard to the quality of the documents submitted to the Federal Council by the head of the FDF, the Commission notes that these included the documents necessary for the implementation of the measures (Federal Council proposals, emergency ordinance, explanatory memorandum) (see section 7.2.4.5). However, there were no in-depth descriptions of the scenarios and no estimates of the economic costs made by an AF working group. An information note from the FDF for the Federal Council meeting on March 18, 2023 announced an oral explanation of the consequences and costs of all variants and also included an overview of the scenarios and the communication with the authorities. However, in the opinion of the Commission, the Federal Council received this information extremely late (see section 7.2.4.5). If the merger had failed, it would have had to decide on an alternative scenario on Sunday, March 19, 2023. The PUK doubts whether the Federal Council was able to form a conclusive, balanced view all scenarios and their consequences on the basis of the documents distributed, but also due to the high time pressure.

According to the Commission's assessment, the Federal Council's orientation on the scenarios, in particular the TPO, was not optimal in the days of the acute crisis. For example, the TPO was presented to the Federal Council as an alternative solution on March 16, 2023. Just one day later, however, it was informed that the TPO was unrealistic due to the time required and the legal risks. However, the Federal Council then insisted on the development of a second solution in the event that the merger should fail. It is not clear from the minutes whether it was referring to the restructuring or the TPO (see section 7.2.3.2). On March 18, 2023, the head of the FDF then informed the Federal Council that the TPO was still in preparation and that Sergio Ermotti, among others, had been discussed as a possible CEO (see section 7.2.4.5). For the Commission, the question therefore arises as to whether the entire Federal Council had a sufficient information basis in this crisis phase.

to be able to effectively track the development status of the various solution scenarios. In particular, it is suboptimal that the head of the FDF not immediately inform the other members of the Federal Council of the results of the work on the scenarios in February and early March 2023. In view of the complexity of the dossier and the decisions to be made, it would have made sense for the entire Federal Council to have this information, as would other government bodies. This would have allowed it to weigh up its decision over a number of weeks.

13.2.4 Completion of the scenarios and measures

As described above (see section 13.1.5), the authorities prepared various scenarios from fall 2022. When the crisis at CS came to a head in mid-March 2023, the authorities worked intensively on finalizing possible measures implement a solution. The PUK notes that time pressure was a decisive factor in this final phase: as was emphasized several times by people involved during this acute crisis, which lasted a few days - from 15 to 19 March - a solution had to be found at all costs by Sunday evening, before the markets reopened (see sections 7.2.1, 7.2.2.6, 7.2.3.6, 7.2.3.8, 7.2.4.1, 7.2.4.5).

On Sunday, 19 March, the authorities had three fully developed options at their disposal: a takeover of CS by UBS (including a forced takeover), a restructuring of CS and a temporary nationalization (TPO) of the Group. The PUK considers this to be positive overall. Even during these very intensive days in March, the authorities were able to work on several scenarios simultaneously. The Commission's assessment of the various scenarios is set out below.

Final preparations for the takeover of CS by UBS

It is clear from the documents analyzed by the PCU and the hearings held that a takeover of CS by UBS was the scenario preferred by the authorities (see sections 7.2.1 to 7.2.5). The Head of the FDF informed the two banks on March 15 that they would have to take the measures necessary for this solution to come about (see section 7.2.1). The other scenarios were prepared at the request of the Federal Council and in the event that the negotiations between the banks failed (see section 7.2.3.2).

The authorities - namely the FDF and SNB - played an active intermediary role in the negotiations with the banks and to a certain extent replaced direct contact between CS and UBS. For example, UBS discussed its list of demands with the authorities and not with CS (see sections 7.2.1, 7.2.2.1), and after an initial unsuccessful contact between the two banks on March 16 (see section 7.2.2.3), the authorities took on a mediating role. Specifically, SIF organized a meeting between the representatives of CS and UBS on Friday, 17 March, in order to get the negotiations back on track (see section 7.2.3.3). On Saturday evening, March 18, the authorities reached an agreement with UBS (see section 7.2.4.6). On Sunday, the authorities worked hard to find a solution with CS, initially with an initial increase in the purchase price to CHF 2 billion and later, for example, with an adjustment to the MAC clause and a further increase in the sale price - while continuing negotiations with UBS in parallel (see section 7.2.5.5). During the search for a solution, the authorities paid attention to a certain balance of interests between CS and UBS as well as to the financial impact on the Confederation. As a result of the increase in the guarantees to UBS (from CHF 5 billion to CHF 9 billion), the purchase price offered by UBS for CS was increased (from CHF 1 billion to CHF 3 billion) (see Box 21 in section 7.2.4.6). The FFA also set clear limits for UBS, whose demands regarding exemptions from the Merger Act went too far in the opinion of the administration (see section 7.2.4.6). Finally, the possibility of a forced merger between CS and UBS was also by the authorities. In addition

an Article 14b would have been added to the emergency ordinance. For the authorities, however, this was only a solution for extreme emergencies (see section 7.2.5.2).

In the opinion of the PUK, thanks to the active mediating role of the authorities, a negotiation result was achieved within a short period of time that took appropriate account of the most important concerns of the parties involved (see also section 13.2.6). At the same time, it should be noted that the role of the authorities in finding a solution was significantly more active than might be expected in view of the public statements: The head of the FDF spoke of a commercial solution and emphasized that it was not a state rescue of CS.[2217] The PUK is nonetheless of the opinion that the authorities played a central role in the solution found, especially since there was a clear connection between the state guarantees and the price offered by UBS.

Final preparations for the renovation of the CS

The scenario of a restructuring of CS had already prepared by FINMA from fall 2022. As a result, only a small amount of work was to finalize this scenario in March 2023. This scenario was still one of the possible options, although it was considered risky (see section 7.2.1). On
On March 15, the bank was requested by FINMA draw up an approvable restructuring plan by the end of following day, Thursday, March 16 (see section 7.2.2.6). This deadline was then extended to Friday, March 17 (see section 7.2.2.8). A draft restructuring order from FINMA and its English translation were available on March 17 (see section 7.2.3.6). This document shows that everything was ready for the restructuring of CS, which is why the PUK considers the preparatory work to be appropriate.

At the same time, FINMA was involved in the search for a CEO for CS. The Chairman of the Board of Directors of FINMA therefore contacted Ser- gio Ermotti (see section 7.2.4.1). The PUK notes, however, that the purpose of this contact was not understood in the same way by all parties involved: For FINMA, it was with view to restructuring the bank, whereas according to the SNB, the search for a CEO took place with a view to a TPO (see sections 7.2.4.1, 7.2.4.5). As the minutes of these few days are incomplete, the PUK was unable to clarify this question conclusively.[2218] Sergio Ermotti the PUK that he had ultimately made himself available for all options (see section 7.2.4.1).

Final preparations for a TPO of Credit Suisse Group AG

The third scenario that the authorities prepared in these last few days was that of a temporary nationalization (TPO) of Credit Suisse Group AG. On the afternoon of 17 March 2023, the LG decided to press ahead with preparations for this alternative scenario, although the Federal Council had expressed some scepticism about this alternative in the morning (see sections 7.2.3.2 and 7.2.3.6). At the same time, the Federal Council had also called for another solution to be worked out in addition to the merger with UBS (see section 7.2.3.2). In the course of March 19, drafts of a TPO emergency ordinance with corresponding explanations and a corresponding Federal Council proposal were finally submitted (see section 7.2.5.2). The PCC notes that on 19 March 2023, the Federal Council's proposal and the explanatory notes for an ordinance on the TPO of Credit Suisse Group AG would have been ready, and is therefore of the opinion that the preparatory work for a TPO *during the CS crisis* was by and large appropriate.

[2217] Karin Keller-Sutter: "This is no bailout. This is a commercial solution." (41:05), of the Federal Council's media conference on 19.3.2023, available at https://www.efd.admin.ch > Financial centre> Takeover of Credit Suisse by UBS> Dossier > Media conference on 19.3.2023 (as at 30.7.2024)

[2218] See also recommendation no. 15 in section 13.2.1

The late involvement of the FOJ (on the involvement of the FOJ in general, see section 14.2.1), which was only consulted on the scenario of a TPO on March 18, 2023 (with advance notice on the evening of March 17), deserves improvement (see sections 7.2.3.9 and 7.2.4.7). This involvement took place under great time pressure for the FOJ, which had not previously considered the possibility of a TPO of CS. From the FOJ's perspective, the considerations regarding a TPO in the Swiss legal system were a "green field".[2219] As explained in section 7.2.4.7, it would have been possible to involve the FOJ much earlier. It should be noted that the authorities had in principle planned to involve the FOJ at an early stage, but the outbreak of the acute CS crisis intervened: At its meeting on March 7, 2023, the AF had decided to draw up a mandate with questions on the TPO for the FOJ (see section 6.4.3.2). However, this decision was overtaken just a few days later in light of the escalating events.

13.2.5 Application of emergency law

The Federal Council's Emergency Ordinance of March 16, 2023 and its amendment of March 19, 2023

In this chapter, the PUK presents its findings on the question of whether the recourse to emergency law in the acute crisis in March 2023 was lawful. On March 16, 2023, the Federal Council issued an emergency ordinance (ordinance based on Art. 184 para. 3 and Art. 185 para. 3 BV) on the introduction of a PLB and ELA+ (see section 7.2.2.7). On March 19, it issued an amendment to this emergency ordinance in order to a legal basis for the conclusion of a guarantee agreement with UBS (see section 7.2.5.5). Accordingly, this chapter deals with the following five aspects of the Federal Council's application of emergency law in March 2023:

1. Notarial introduction of the PLB;
2. emergency introduction of ELA+;
3. FINMA order to CS to write off the AT1 bonds;
4. Exclusion of access to information in accordance with the Freedom of Information Act;
5. Notarial creation of authority to conclude a guarantee agreement.

The appropriateness of the chosen solution also has an influence on the assessment of the legality of the application of emergency law. This is because one of the prerequisites for the application of emergency law is that the measure in question is subsidiary,
i.e. it is not possible take a more suitable measure (see box 13 in section 6.3.4.3). For these reasons, the subsidiarity aspect of the chosen solution is briefly mentioned in this chapter.

1. Emergency introduction of the PLB

The emergency introduction of the PLB on March 16, 2023 was well prepared due to the escalation of the CS crisis in autumn 2022 and the preparatory work carried out by the authorities since then (see section 13.1.4).

At the time the emergency ordinance was issued, the authorities had to assume that CS would become insolvent before the weekend of March 18 and 19 without the state liquidity guarantee provided by PLB and ELA+ (see the next section on ELA+) (see section 7.2.2.5). The resolution of CS was therefore a realistic scenario. A resolution would have entailed considerable risks for national and international financial stability, for the bank's systemically important functions and thus for the Swiss financial center and the economy as a whole (see Table 15 in section 6.4.2).

Accordingly, the emergency introduction of the PLB on March 16, 2023 was lawful, i.e. the requirements of the relevant provisions of the Federal Constitution

[2219] Minutes of the PUK meeting of 24.1.2024, p. 78

were fulfilled (see Box 13 in Chapter 6.3.4.3), with separate explanations on the requirement of subsidiarity following at the end of this chapter.

2. Emergency introduction of ELA+

The competent authorities already discussed the possibility of extending the ELA in the fall and winter of 2022 (see sections 6.3.3-6.3.5). Concrete proposals for ELA+ were formulated in the AF for the first time at the end of January 2023 (see section 6.4.2), as the SNB came to the conclusion at that time that the ELA would not be sufficient if confidence in CS could not be restored. The authorities subsequently intensified the preparations for the emergency introduction of ELA+ in the AF and the LG (see section 6.4.3.2). At the meeting on March 7, the AF decided to submit certain questions on ELA+ to the FOJ. However, this decision became obsolete a few days later due to the outbreak of the acute crisis. The FOJ was then involved in the crisis on the evening of March 15 and examined in particular the constitutionality of the bankruptcy privilege that the SNB received in return for the liquidity provided as ELA+ (see section 7.2.1).

The granting of ELA, which is based on the National Bank Act,[2220] is linked to the provision of sufficient collateral by the bank. In the case of PLB, the collateral is primarily provided by the federal government by means of a federal guarantee (instead of by the borrowing bank). In the case of ELA+, there is no formal legal right to collateral. However, both ELA+ and the PLB are economically secured by the bankruptcy privilege of the SNB as lender. Basically, the authorities introduced ELA+ by emergency law so that the extraordinary liquidity support for CS was not only via the PLB, whose risks are borne by the Confederation and therefore ultimately by taxpayers (see section 7.2.2.5). By granting ELA+, however, the SNB as a lender took on additional risk, although this risk was in turn mitigated by the bankruptcy privilege. Without ELA+, a PLB would have been necessary to an even greater extent (see section 7.2.3.5).

With regard to the legality of the introduction of ELA+ under emergency law, reference is therefore made to the corresponding comments on the PLB (see above). The Commission also concludes that the introduction of ELA+ under emergency law was appropriate: not only because it enabled CS to continue its business activities and maintain financial stability (see section 13.2.6), but also because it to minimize the risks for taxpayers.

3. FINMA order to CS to write off the AT1 bonds

In order to be able to adequately assess the conduct of the authorities in connection with the emergency merger of Credit Suisse with UBS, the Commission - as mentioned in the introduction to Part II of this report - also examined the order to write off the AT1 bonds from the perspective of parliamentary oversight. However, it is a certain degree of restraint in its report in this area, as FINMA's ruling of March 19, 2023 ordering the write-off of the AT1 instruments is the subject of various pending court proceedings. This approach is based on the separation of powers and is in line with the long-standing practice of the bodies of parliamentary oversight. For these reasons, the Commission will limit itself to a few findings on the emergency granting of authority to order the write-off of the AT1 bonds by means of Article 5a of the Emergency Ordinance amended on March 19, 2023.

Firstly, it should be recalled (see section 11.1.2) that the AT1 bonds would have been written off not only under the solution chosen on March 19, 2023, but also in all alternative scenarios.

Secondly, the Commission notes the following in principle regarding the authorities' considerations on the write-down of AT1 instruments in March 2023: Although the time pressure in the acute crisis in March 2023 was enormous, and the FOJ was only superficially involved in the order to write down AT1 bonds (see

[2220] Art. 5 para. 2 let. e in conjunction with. Art. 9 para. 1 let. e NBA

Section 7.2.4.7). However, the authorities had already dealt with the issue of the write-down of AT1 bonds beforehand. This does not only concern FINMA; the potential write-down of AT1 bonds was also discussed in the AF and the LG from October 2022 (see section 6.3.3.1).

Thirdly, with regard to the granting of the authority to order the write-down of the AT1 bonds under emergency law, the question arises as to whether it was even necessary to grant FINMA this authority (additionally) under emergency law. This is because, as required by law (Art. 29 CAO), the AT1 bonds issued by CS contractually stipulated that they would be written off in full in the event of certain events (see Box 19 in section 7.2.3.7) and that this write-off can also take place before the write-off of equity instruments. One such trigger event is the granting of extraordinary government support at the time of imminent insolvency (PONV) as determined by the authorities (see box 20 in section 7.2.4.4). In view of the pending court proceedings, it cannot be the task of the Commission to assess whether the contractual clauses in the issue prospectuses of the AT1 instruments in question the event that has occurred. The risk of write-off was also recognized by the market, as the AT1 bonds were already valued lower on the market before mid-March 2023.

From the Commission's perspective, it should be noted overall that the order to write down the AT1 bonds was part of all resolution scenarios in the CS case in line with the purpose and function of such instruments (write-down to reduce liabilities, which simultaneously increases the available capital and enables the continuation of business activities despite major losses), and not just in March 2023. Rather, this was already the case in the TBTF regulation and in FINMA's resolution planning, which it had been driving forward since summer 2022 at the latest and had also discussed with the other authorities. In this context, the PUK also points out that the package of measures adopted by the state to prevent the insolvency of CS was far-reaching and was issued on the basis of emergency law. In this respect, the PCC notes that the state was involved to a considerable extent in finding a solution.

4. Exclusion of access to information in accordance with the Freedom of Information Act

With the emergency ordinance of March 16, 2023, the Federal Council excluded access to the information and data relating to the authorities' work on the CS dossier in accordance with the Federal Act on the Protection of Personal Data. The authorities cited the following reasons:

i. Business secrets of CS,
ii. ensuring the free flow of information between banks and authorities and
iii. the authorities' fear that important resources will be tied up at crucial times due to the processing of incoming public applications.

As both FINMA and the SNB are not subject to the DDO, it was also unclear whether or not bank documents forwarded by FINMA and the SNB to the Confederation were subject to the DDO (see section 7.2.2.7).

The Commission understands the authorities' need to proactively eliminate the aforementioned legal uncertainty in the situation at the time. It can also understand the authorities' legitimate efforts to ensure an unrestricted flow of information with the banks during the critical phase of the emergency merger in mid-March 2023 and to pool resources during this intensive period, as well as the banks' legitimate concern to protect their business secrets. At the same time, the public's interest in being able to understand the invocation of emergency law by the authorities is important. Accordingly, the chosen procedure raises questions for the Commission in terms of proportionality.

Firstly, the argument of conserving resources is only partially comprehensible, as the emergency ordinance, even in the version that came into force on March 16, 2023

The decision was only published on March 19 at 8 p.m., i.e. after the public announcement of the emergency merger. Any public requests would therefore only have been received after March 19, and resources would not have been tied up responding to public requests in the days from March 15 to 19, 2023 for this reason alone. In addition, the authorities have 20 days to to a request from the public. This period can be extended by 20 days under certain circumstances (Art. 12 para. 2 BGÖ). Above all, however, resource ecology is not a reason provided for by the FSCA for making an exception to access to official documents. Such exceptions or restrictions to access are provided for in Articles 7-9 of the FSCA, which in principle would have allowed for a more nuanced approach to public requests without having to completely prohibit access to all documents in the CS dossier by emergency law.

Secondly, the exclusion of access to information was already in the drafts of an emergency ordinance on the introduction of the PLB, which were prepared by the administration in October 2022 and dealt with by the Federal Council's Financial Affairs Committee in November 2022.[2221] The FOJ already spoke out against this measure in autumn 2022.[2222] In autumn 2022, the situation was even less tense than in March 2023, so that resource considerations are unlikely to have played a major role at that time - at least not one so great that it would have outweighed the public's interest in information.

The Commission is therefore more concerned with protecting the flow of information between the banks and the authorities and protecting the banks' business secrets. However, even under these circumstances, the Commission has doubts as to the proportionality of the measure. For example, it should have been anticipated that the merger agreement between UBS and CS would have to be published in the approval process before the US supervisory authorities (which happened on April 26, 2023).[2223]

Such a deviation from the principle of public access to the administration, as decided the Federal Council in Article 6 para. 3 of the Emergency Ordinance, does not seem appropriate to the Committee. As the Federal Council had already considered restricting the principle of public access under emergency law in autumn 2022, it also had sufficient time to weigh up this issue in a balanced and proportionate manner in March 2023, despite the time pressure.

In view of the public's legitimate interest in being able to understand the administration's actions under emergency law, the limited period of validity of the emergency ordinance of six months from its entry into force (Art. 15 para. 2), which was also respected with the extension of September 6, 2023, does not change the Commission's view.

The Commission recognizes that the Federal Council in its dispatch on the PLB of September 6, [20232224] waived a future restriction on the principle of public access. In addition, in its report "Application of emergency law" of 19 June 2024, the Federal Council acknowledged the importance of the control of the administration by citizens made possible by the Federal Act on the Protection of the Constitution in fulfilment of the postulate of the National Council's Legal Affairs Committee of 24 March 2023 (23.3438 "Application of emergency law") and the Schwander postulate of 6 May 2020 (20.3440 "Clarification of the scope of protection in Article 185 paragraph 1 of the Federal Constitution")[2225]

[2221] Art. 5 para. 3 of the draft Ordinance on the Granting of Federal Default Guarantees for Liquidity Support Loans from the Swiss National Bank to Systemically Important Banks, as at 18.11.2022

[2222] Minutes of the PUK meeting of 24.1.2024, p. 67

[2223] Amended and Restated Merger Agreement, Exhibit 2.1 to UBS Group AG's Filing with the United States Securities and Exchange Commission dated April 26, 2023

[2224] Federal Council Dispatch of 6.9.2023 on the amendment of the Banking Act (BBl **2023** 2165, see section 7.7)

[2225] The Federal Council's postulate report also refers to pa. Iv. Caroni "Duty of foundation when enacting emergency law" of 15.6.2023 (23.439).

especially in times of crisis. In doing so, it declared that in future the right of access to official documents under Article 6 of the Federal Act on Freedom of Information would only be excluded by emergency law in exceptional cases.[2226] The Commission considers the creation of transparency to be particularly important in times of crisis and therefore makes the following recommendation:

Recommendation no. 17

The Commission calls the Federal Council to also observe the principle of public administration when enacting emergency legislation and to amend the Publicity Act of
December 17, 2004. It also requests the Federal Council, in consultation with the FDPIC, FINMA and the SNB, to proactively clear up any legal uncertainties regarding the right of access to information under the FIAA in constellations such as the one that occurred in March 2023.

5. *Notarial creation of authority to conclude a guarantee agreement in favor of the acquiring bank*

the Federal Council introduced the PLB and ELA+ by emergency ordinance on March 16, 2023, the authorities continued to work on a solution to the CS crisis. The possibility of a merger with UBS quickly emerged as the preferred solution. As UBS only had a limited amount of time to assess the impact of the merger, in its revised list of demands from the
16 March 2023, the Confederation issued a state loss guarantee in its favor (see section 7.2.2.1). Article 14a paragraph 1 of the Emergency Ordinance amended on 19 March 2023 finally stipulated that the Confederation was authorized to grant a guarantee in favour of UBS to cover losses arising from the liquidation of CS assets. Paragraph 2 of the same article set the maximum amount at CHF 9 billion.

Despite the liquidity support granted since March 16, 2023, the authorities had to assume on March 19 that, without a solution in the form of a merger, liquidation or TPO, CS would go bankrupt a few hours later, when the Asian stock exchanges opened, with devastating consequences for national and international financial stability. The Commission therefore concludes that, as in the case of PLB and ELA+, there was a threat to a relevant protected asset and that there was objective and temporal urgency for the measure taken. With regard to subsidiarity, please refer to the general comments at the end of this chapter and to section 13.2.6. The PUK therefore concludes that the emergency decree granting the Confederation the authority to conclude a guarantee agreement in favor of the acquiring bank (UBS) was lawful.

Subsidiarity requirement of the chosen solution

As mentioned at the beginning, one of the requirements for the lawfulness of the application of emergency law is that it was not possible to take a more suitable measure (requirement of subsidiarity). While the Commission, as explained above, is of the opinion that this requirement was not met when excluding access to information in accordance with the Public Access Act, it notes the following with regard to the actual core of the emergency ordinances of March 2023 (PLB, ELA+ and guarantee agreement):

i. The clarification and preparation of the selected solution and the alternative scenarios was appropriate overall (see sections 13.1.4, 13.1.5 and 13.2.4).
ii. From the authorities' point of view, there was no milder or more suitable measure at the time they had to make their . The solution chosen was appropriate and effective overall (see Chap. 13.2.6).

[2226] Application of emergency law, Federal Council postulate report of 19.6.2024 (BBl **2024** 1784)

Accordingly, the Commission concludes that the requirement of subsidiarity in the application of emergency law was met in March 2023 with regard to the main aspects of the chosen solution.

13.2.6 Assessment of the chosen solution

On March 19, 2023, the authorities announced that they welcomed the takeover of CS by UBS and that various measures had been taken to support the transaction.[2227] In assessing the appropriateness of the chosen solution, the PUK attempted to understand the actions of the authorities at the time of the decision and on the basis of the information available to them at the time in order to avoid applying too strict a standard in retrospect. The situation in March 2023 was characterized by great uncertainty with regard to the potential consequences of an intervention by the authorities. The PUK considers the chosen solution to be broadly appropriate. It bases this assessment on the following and distinguishes between short- and medium- and long-term effects.

Short-term effects

i. The takeover of CS by UBS achieved its primary objective: it calmed market participants and prevented a potential international financial and economic crisis. The share prices of the two banks stabilized from 20 March 2023 and recovered (see section 8.1). The national and international markets opened on Monday morning without panic.

ii. CS was taken over by a bank that be trusted provide a viable solution, which also solved the confidence problem that was the cause of the liquidity outflows. One of UBS's main advantages its comprehensive management capacity. It was largely a private sector solution and the state did not have to become permanently involved, which would have violated the TBTF rules.

iii. On August 11, 2023, UBS Group AG terminated the guarantee agreement with the Confederation at its own request, thereby eliminating the associated financial risks. The Commission welcomes this outcome. On the evening of March 19, however, there was no guarantee that the markets would react positively and that taxpayers would not have to bear the costs of the transaction.

iv. According to the plausibility checks carried out by the external consultants on behalf of the PCC,[2228] the analyses of the economic costs of the crisis exit scenarios prepared by the authorities were generally plausible and robust (see section 13.1.5). The PUK notes that in an acute crisis such as the one in mid-March 2023, the takeover of CS by a Swiss bank was the scenario with the best cost-benefit ratio (see sections 6.4.3.2 and 7.1.2). It is therefore understandable that this solution was the authorities' first choice. However, the costs of the guarantees provided by the Confederation were not taken into account when calculating the economic costs of a takeover of CS by UBS, as UBS only requested these guarantees at a later date.

Medium and long-term effects

i. Antitrust issues: The takeover of CS by UBS raises antitrust issues, among other things. In its statement of September 25, 2023, COMCO announced that it had found indications of competition law violations in six markets.

[2227] "Safeguarding financial market stability: The Federal Council welcomes and supports the of Credit Suisse by UBS", Federal Council press release of 19.3.2023
[2228] KOF Expert Report (2024); BSS Expert Report (2024)

The FINMA found no evidence that UBS had achieved a dominant market position or expanded its dominant market position following the merger with CS. However, FINMA decided to conclude its antitrust control proceedings so as not to destabilize the markets (see section 8.2.1).

ii. Comparison with the effects of the TPO alternative: The chosen solution must also be considered with regard to the medium and long-term effects of the alternative solutions. As is well known, the decision in favor of the emergency merger was based on the fact that a TPO or restructuring would have been associated with major risks. A TPO also raises the question of whether the markets would have placed the necessary trust in the Confederation - which they no longer had in the management of CS. It would have difficult for the authorities to find people within a few hours who would been prepared to take over the leading positions in the bank (see section 7.2.4.1). In view of the lack of confidence in the management of CS, the authorities could not have been content with replacing only the Chairman of the Board of Directors. In this respect, the Commission is of the opinion that there was a problem with the corporate culture at CS, as demonstrated by the numerous scandals (see section 5.1.2).

In addition, a TPO would have made the Swiss state the defendant in numerous cases as the owner, which would have been very politically sensitive for the Federal Council. There would probably have been a lack of political acceptance for this solution in Parliament and among the public. Finally, the Commission notes that the scenario of a TPO of the entire CS Group was not of the macroeconomic options analyzed, as this alternative only came up again in March 2023 (see section 7.2.1). The PUK is therefore of the opinion that the financial and legal risks of a TPO were difficult to assess and that the solution would also have violated the TBTF legislation. However, the TPO would have had the advantage that there could still be two Swiss G-SIBs today. At present, only UBS is still considered an internationally active systemically important bank. The consequences of the bankruptcy of this bank would be devastating for the Swiss and international financial center - all the more so as no Swiss bank would be in a position to take over UBS, as UBS did with CS.

iii. Comparison with the effects of alternative restructuring: As far as the restructuring scenario is concerned, the restructuring plan and the corresponding FINMA ruling were ready to be signed on March 19 and agreed with the foreign authorities (see section 7.2.4.4). The FSB considered a restructuring to be credible.[2229] However, various representatives of Swiss and foreign authorities expressed doubts about this solution (see section 13.1.5). The question also arises as to whether a restructuring would have been sufficient to restore market confidence in the bank: It would have been the first time that a G- SIB had been restructured, which is why the financial and legal consequences for Switzerland, but also at an international level, were uncertain. There was also a risk that the worst-case scenario would occur: if a restructuring had failed, the bank would have gone bankrupt - a scenario that all parties involved wanted to avoid.

In view of these various aspects, the Commission is of the opinion that the merger of CS with another bank was preferable to all the alternatives examined and that the authorities' decision is understandable based on the knowledge available at the time and under the given time pressure. The Commission also recognizes that the authorities were able to take measures to overcome the acute crisis relatively quickly thanks to various preparatory measures and were able to implement one of the scenarios developed in the previous months. The authorities implemented

[2229] FSB (2023): 2023 Bank Failures, Preliminary lessons learned for resolution, p. 11

From March 15, they did everything their power to keep CS solvent until the weekend and for the possible takeover and to have a viable solution in place for the opening of the stock exchanges. Despite the enormous time pressure, they continued to develop various options until the end, in the knowledge that a purchase by UBS was the preferred option from March 15, 2023 at the latest. In view of the acute situation and the associated time pressure, the committee understands that there was no longer time to implement an alternative with a foreign bank and thus find a solution that would have been more advantageous from a long-term competition and TBTF perspective. However, the PUK is of the opinion that the chosen solution has clearly exposed individual weaknesses in the existing TBTF regulation. In the PUK's view, it cannot be ruled out that the fact that the state has twice prevented the resolution of a systemically important bank will create disadvantageous incentives for the future. This could lead to some players taking excessive risks and relying on the state to rescue them in the event of problems. To counteract this effect, the Commission refers to its Recommendation No. 1 on the future design of TBTF regulation (see section 9.1.2).

13.2.7 Public communication

In this chapter, the PUK assesses the public communication of the authorities in the phase between March 15 and 19, 2023.

Press release from the SNB and FINMA dated March 15, 2023

The SNB and FINMA published a press release on March 15 (see sections 7.2.1 and 7.2.6). They stated that the problems of certain banks in the USA would not pose any risks for the Swiss financial market. FINMA confirmed that CS the regulatory requirements in terms of capital and liquidity. The SNB pointed out that it would provide the globally active bank with liquidity if necessary[2230].

The PUK notes that the decision to make this communication was taken between the parties involved in the LG, that the SNB and FINMA prepared the media release and that the Federal Council received it before it was published. The resulting calming of the situation was actually reflected in CS's share price. However, the effect was short-lived.[2231]

The Commission asked itself whether the content of this communication corresponded to the facts at the time. Some shareholders accused that they had been misled by this information. Both FINMA and the SNB confirmed to the PUK that their respective statements on the situation of CS in this communication were factually correct. According to FINMA, CS actually met the liquidity and capital requirements at that .

The Commission is aware of the challenges associated with the situation at the time and notes that the authorities decided on this communication, which was subsequently criticized, on the basis of careful consideration.

Communication work with regard to the press conference

As explained in sections 6.4.4. and 13.1.7, the communication managers at the FCh, FDF, SNB and FINMA were already working on the basis for coordinated communication in November 2022. This work continued in the background, and in March, when a decision regarding CS was unavoidable, it was possible to build on it. The content of the financial instruments had been worked out in principle, contacts could be made quickly and it was clear who needed to be informed about what and when.

[2230] "FINMA and SNB comment on uncertainties in the market", press release by the SNB and FINMA dated 15.3.2023
[2231] Written answers to the PUK of 22.1.2024 and minutes of the LG of 16.3.2023

Several coordination meetings were held between March 15 and 19, documents were prepared, adapted and submitted to the Federal Council several times. It was clear relatively early on that communication would have to take place on Sunday, March 19. The major challenge was that the exact content of this communication was not yet clear, as the negotiations were still in full swing. This meant that the Federal Council also had to decide on the communication concept and content at this stage, although various elements were still unresolved[2232].

Once the negotiations were concluded, everything was ready and it was possible communicate as planned within a very short time. The media were informed in good time and the press conference with representatives of the Federal Council, the administration, the SNB, FINMA and the banks went smoothly.

In the opinion of the PUK, the communication work with various stakeholders - including external ones - was carefully planned and prepared, coordinated and organized in an exemplary manner. In the PUK's view, the solution was communicated credibly and the communication had the desired effect. The communication was widely reported in the national and international media and also led to a calming of the situation on the financial market (see section 8.1 ff.).

The PUK gives a very good report card to the communication work under the leadership of the FC and the FDFand in cooperation with the SNB, FINMA and the banks involved.

14 Overarching findings

In this chapter, the PUK its overarching findings from the investigation. Firstly, it deals with the distribution of competencies at federal level. The focus here is on the distribution of responsibilities for maintaining financial stability, supervision of audit companies and the general distribution of responsibilities between the authorities and departments. Secondly, the PUK addresses the involvement of other affected administrative units and players (FOJ, SECO and COMCO). Thirdly, the Commission looks at company law and the position of the shareholders. The fourth and final part deals with the PUK's findings on the application of the Parliament Act and the need for legislative action identified.

14.1 Distribution of competencies at federal level

14.1.1 Allocation of responsibilities for financial stability

The law applicable in Switzerland stipulates that FINMA supervises banks in - including systemically important banks (see sections 2.1 and 3.2). However, systemically relevant banks are of particular importance at a macroeconomic level because their disorderly failure poses high risks to Swiss financial stability (see section 4.2). The SNB the so-called macroprudential tasks. In contrast to FINMA, it has selective contact with systemically important banks.

In other countries, a single authority supervises systemically important banks. In such countries, the need for coordination is less than in Switzerland. Even though the PUK sees the advantages of such models, it is fundamentally of the opinion that the division of responsibilities in Switzerland has proven its worth. In the opinion of the PCC, FINMA, the SNB and the FDF have exercised their respective competencies and have generally communicated the information that the other authorities required.

Nevertheless, the PUK believes that improvements in the following areas are possible and necessary to strengthen financial stability:

[2232] Minutes of the PUK meeting of 17.1.2024, p. 34

1. It is the SNB's responsibility to define and assess the collateral required to obtain ELA. Meanwhile, FINMA is responsible for reviewing and approving the stabilization plan of a systemically important bank. In this plan, the bank describes the measures it intends to take to stabilize itself in the event of a crisis in such a way that it can continue its business activities without state intervention (Art. 64 para. 1 Banking Ordinance; see section 5.3.1.4). As described in section 11.3.2, the PUK believes that the SNB or FINMA should be able to oblige the bank to prepare sufficient collateral in future. In addition, the *definition and assessment of the collateral required for the ELA* should be included in the *review of the* bank's *stabilization plan*.
2. The unit of a banking group that performs the systemically important functions must itself sufficient own funds and liquidity ensure the continuation of the systemically important functions in the event of a crisis. This means this unit cannot provide any amount of funds to other group companies in the event of a crisis (see Box 16 on upstreaming in section 7.2.2.2). These transfer restrictions must be provided for in the bank's emergency plan. Under current law, FINMA approves the emergency plan and therefore also the transfer restrictions. At the same time, the SNB can only provide liquidity to the group entity that can offer sufficient collateral. In case of CS, however, the upstreaming restrictions were in conflict with the allocation of liquidity within the group.

   Although this conflict of objectives, which clearly demonstrated in the CS crisis, cannot be fully resolved, it should be mitigated by means of measures to increase the transferability of liquidity within a banking group. The PUK therefore welcomes the Federal Council's plan to examine corresponding measures.[2233]
3. The PUK's investigation revealed the cooperation between the SNB, FINMA and the FDF in safeguarding financial stability before and during the acute crisis caused tensions in some cases: The federal guarantee for the SNB under the PLB served as a safeguard for the SNB, but exposed the Confederation. Finally, the PUK also notes that FINMA granted CS the regulatory filter contrary to the SNB's opinion at the time (see section 11.1.1.3). However, the SNB neither systematically followed up on nor escalated this opinion at a later date. The PUK also notes that in March 2023, the SNB did not question FINMA's assessment that CS was a valuable, solvent bank - which was necessary for the granting of liquidity. Finally, there was disagreement between the three authorities in the AF with regard to the allocation of responsibilities for the impact assessment and with regard to the assumption of the costs for the expert opinion on the PLB (see section 6.3.5.1).

   In the opinion of the PUK, financial stability is enhanced if tensions and conflicts of objectives and responsibilities are reduced in the event of a crisis and coordination takes place at an early stage. To this end, an office should be designated that can take the lead in the event of a crisis and coordinate overarching decisions. Direct access to the Federal Council should be guaranteed.

   In this context, the PUK also notes that the cooperation between the FDF, the SNB and FINMA is only set out in a MoU. In the opinion of the PCC, this does not a sufficiently binding and, in some cases, sufficiently detailed legal basis to effectively regulate cooperation and the allocation of responsibilities.

[2233] Report of the Federal Council of 10.4.2024 on banking stability (BBl **2024** 1023, p. 166)

For example, the MoU is not sufficiently clear on when the Federal Council as a whole must be informed of extraordinary measures taken by the authorities.

The PUK welcomes the Federal Council's proposal to examine what measures can be taken to optimize responsibilities, competencies and cooperation between the authorities in a crisis.

The PUK suggests that the Federal Council examine whether the division of responsibilities and cooperation between the three authorities should be regulated at the legislative level instead of by a MoU.

14.1.2 Allocation of responsibilities in the area of supervision audit firms (FINMA/RAB)

The PUK has analyzed in detail the division of responsibilities between the FAOA and FINMA in the area of oversight of audit firms (section 5.4). Several findings can be drawn from this analysis.

The legal basis governing the cooperation between these two authorities is clear. According to Article 22 AOA and Article 28 FINMASA, FAOA and FINMA must not only communicate with each other, but also closely coordinate their entire information and supervisory activities in order to avoid duplication and ensure increased supervisory effectiveness.[2234]

The distribution of responsibilities has since 2015. Oversight responsibilities for audit firms that carry out audits in accordance with financial market legislation have been concentrated more strongly at the FAOA. Since this reorganization, the FAOA has been solely responsible for the licensing and supervision of audit firms in the areas of auditing and regulatory auditing. In addition, the FAOA sets standards for auditing and quality assurance in auditing. FINMA, in turn, is solely responsible for the content and principles of the regulatory audit, which means that it continues to play a key role in the supervision of risks in the financial sector.[2235]

This division of responsibilities enables greater specialization of the tasks of the two authorities and thus increases efficiency. However, this specialization requires ongoing and structured cooperation between the FAOA and FINMA. This is all the more important as FINMA must be able to rely on the work of the audit firms supervised by the FAOA and must ensure that the FAOA fully complies with its supervisory duties.[2236]

However, the PUK found that this cooperation does not function optimally and is not sufficiently formalized (section 5.4). Contacts between the FAOA and FINMA - particularly at operational level - are not systematically recorded by the FAOA. The lack of systematic logging raises the question of the extent to which the activities of the two authorities can be traced.[2237]

The PUK was also unable to identify any strategic contacts between the FAOA and FINMA regarding the emergency merger of CS with UBS. This lack of coordination in such a critical situation is evidence of a gap in crisis management. The current division of responsibilities has advantages and disadvantages. In view of previous experience and the specific challenges of auditing supervision of systemically important banks, the PUK wonders whether it would not make more sense to place supervision of these institutions with a single body, i.e. FINMA. The PUK requests the Federal Council to examine a specific regulation for systemically important banks.

2234 Geissbühler/Jovanovic expert report (2024), Chapter VII, p. 48 ff.
2235 Geissbühler/Jovanovic expert report (2024), Chapter VII, p. 48 ff.
2236 Geissbühler/Jovanovic expert report (2024), Chapter VII, p. 48 ff.
2237 Geissbühler/Jovanovic investigation report (2024), p. 40

Recommendation no. 18

The PUK recommends that the Federal Council examine whether the audit supervision of SIBs could not be placed solely with FINMA.

14.1.3 General distribution of responsibilities between the authorities and departments

This chapter analyzes the effects of the authorities' actions in the CS crisis on the general distribution of responsibilities between the authorities and the departments. In a first step, the PUK deals with the departmental principle. A second part is dedicated to the traceability of Federal Council decisions, with a focus on the minutes of Federal Council meetings.

The departmental principle

The area of risk management in particular shows that strict adherence to the departmental principle is problematic, especially in times of crisis.

The departmental principle is enshrined in Article 177 of the Federal Constitution. This states that the business of the Federal Council for preparation and execution is allocated to the individual members by department (para. 2) and that business is assigned to the departments and their subordinate administrative units for independent execution (para. 3). The departmental principle is further specified in Art. 35 RVOG: Each member of the Federal Council shall head a department (para. 2).

Closely to the departmental principle is the collegial principle, which is also enshrined in the same constitutional provision. The collegial principle is described in more detail in Article 12 RVOG: On the one hand, the Federal Council makes its decisions as a collegiate body; on the other hand, the members of the Federal Council represent the decisions of the collegiate body.

In order for the Federal Council to make a decision as a collegiate body, it be adequately informed. The then Head of the FDF did not provide the Federal Council with sufficient information about the situation at CS, even though the risk of insolvency of a systemically important financial institution was beginning to materialize. In the view of the PUK, the departmental principle must not lead to the Federal Council de facto unable to act in a crisis because important information is withheld from it by a department (see also section 13.1.3).

In view of the unfulfilled postulates 22.3508 and 22.35092238, the PUK has decided not to formulate a recommendation or submit a motion. The findings of the PUK show once again that the departmental principle in particular has an inhibiting effect on crisis management. This aspect is the subject of the submitted postulates.

Comprehensibility of decisions made by the Federal Council

In accordance with Article 13 paragraph 3 RVOG, the main content of the negotiations and the resolutions of the Federal Council are recorded in writing throughout. The minutes are intended to ensure traceability and serve as a management tool for the Federal Council.

2238 These are two identical GPK postulates: Po. GPK-N "Overall assessment and revision of the Confederation's crisis organization based on the lessons learned from the Covid-19 crisis" of 17.5.2022 (22.3508) and Po. GPK-S "Overall assessment and revision of the Confederation's crisis organization based on the lessons learned from the Covid-19 crisis" of 17.5.2022 (22.3509).

The PCC notes that the minutes of Federal Council meetings are very summarized and usually do not allow any conclusions to be drawn about the discussion and decision-making in the Federal Council. The CPC has already made this observation several times in various reports, most recently in the report on indiscretions in connection with Covid-19-related Federal Council business (Recommendation 4).[2239] The CPC stated that "the current form of the minutes [...] does not meet the legal requirements of Article 13 para. 3 RVOG" and "makes effective management more difficult". They described the recording of minutes of Federal Council meetings as inappropriate. The PUK clearly agrees with this assessment.

In its statement on the GPK report, the Federal Council concludes that the Federal Council minutes "already reflect its discussions and decision-making in a comprehensible manner".[2240] The Federal Council rejects the editing of verbatim protocols because "the members of the Federal Council must be able to express their thoughts and exchange and [...] also change their deliberations without pressure from outside, with as much freedom as possible". The Federal Council fears that excessively detailed minutes could have a negative impact on the quality of its deliberations and decisions.

In light of its experience and taking into account the Federal Council's previous position on this issue, the PUK is keen to strengthen the traceability of the Federal Council's discussions and its decision-making. In light of the above-mentioned recommendation of the GPK, the PUK refrains from making its own recommendation. However, it notes that the recommendation of the GPK must be implemented.

14.2 Inclusion of other affected administrative units and stakeholders in the crisis organization

14.2.1 Involvement of the Federal Office of Justice

The FOJ was consulted on four occasions as part of the CS dossier:

i. firstly, between October and November 2022 at technical level on the drafts of a PLB emergency ordinance (see section 6.3.4.3),

ii. secondly, in the person of the Director of the FOJ at the extraordinary meeting of the Federal Council Committee on Financial Matters on November 22, 2022 (the Director of the FOJ then summarized his remarks in the note of
November 28, 2022 for the attention of the Federal Council, see section 6.3.4.3),

iii. thirdly, in the acute crisis on the evening of March 15, 2023 (see section 7.2.1) and

iv. Fourthly, also during the acute crisis, on the weekend of the 18th and March 19, 2023 (see section 7.2.4.7), whereby initial information on the upcoming work was already sent to the Director of the FOJ on Friday evening, March 17, 2023 (see section 7.2.3.9).

The involvement of the FOJ in the fall of 2022 enabled the Federal Council to obtain more detailed information in the fall and winter of 2022 on the advantages and disadvantages of the various options for action and on alternatives to the introduction of a PLB under emergency law. In the fall of 2022, the FOJ suggested that the Federal Council examine various restrictions to the emergency law proposal for the PLB in order to ensure that it the requirement for the subsidiarity of emergency law. The competent authorities examined the points raised by the FOJ in the fall and winter of 2022 and then in greater depth from January 2023. However, as far as the PC is aware, the competent authorities did not subsequently inform the FOJ of the results of these clarifications. At the AC meeting on March 7, 2023, it was decided to commission the FOJ again with expert opinions in the near future. However, as the events

[2239] GPK-N/S: Report on indiscretions (BBl **2024** 335, p. 49)

[2240] Federal Council statement of 24.1.2024 on the GPK-N/S report of 17.11.2023 on indiscretions (BBl **2024** 336, p. 6)

a few days later, this order was no longer issued to the FOJ before the office was called in again at 9 p.m. on the evening of March 15, 2023 during the acute crisis.

In the Commission's view, it is incomprehensible that the aforementioned clarifications by the FFA and SIF on the aspect of subsidiarity were not subsequently discussed with the FOJ until its renewed involvement on March 15, 2023. The Commission is of the opinion that the FOJ could have provided a useful external perspective on the considerations of the specialist offices and that ongoing and greater involvement of the FOJ could have triggered important constitutional considerations. Even though the FOJ's legislative monitoring usually only takes at a comparatively advanced stage of the legislative process, the FOJ has shown a willingness to participate in draft legislation at an early stage if this is appropriate. However, this requires a corresponding request from the specialist offices, which must actively approach the FOJ.

In addition, ongoing involvement of the FOJ could have reduced the extreme time pressure under the FOJ had to make its assessments during the acute crisis in March 2023 and would have allowed the Office to better maintain its outside perspective. It would have been possible to involve the FOJ before the weekend of the crisis, particularly with regard to the introduction of a TPO, even if the clarifications made by the authorities before March 2023 did not relate to the exact same variant of a TPO as the one that was in the foreground on the weekend of March 18 and 19, 2023 (TPO of the entire CS Group). For example, the FOJ could have been involved in the in-depth clarifications of the TPO working group from January 2023 or already from the establishment of this working group by the AF on September 16, 2020. This applies all the more as the AF pursued the option of an implicit introduction of a TPO from the outset, which made the enactment of emergency legislation foreseeable from the start of the work (see section 5.2.5.6).

In addition to the timing and frequency of the FOJ's involvement, the PUK would like emphasize another aspect: The events of November 2022 show that the FOJ is unable to assess key points itself and is reliant on the expertise of the specialist authorities. In its current form, the FOJ is not in a position to be the competence center for all areas of law. The CPC had already this in 2010.[2241] Accordingly, in its note of 28 November 2022, the FOJ left the final assessment of the criterion of material urgency to the assessments and forecasts of the competent specialist authorities.[2242]

In view of these two findings, the Commission wonders whether the work of the FOJ, which is so important for the rule of law, is adequately incorporated into the discussions *at Federal Council level*. If the FOJ raises reservations about a draft legislative enactment as part of its preventive legal control during the office consultation and the responsible specialist office or department does not take these reservations into account, the FOJ can have a difference identified in the Federal Council's application and request a co-report from the head the FDJP department, which it if necessary.[2243] Other departments are also free to take up the FOJ's application. However, whether the head of the FDJP or another department actually submits a co-report is then a political decision over which the FOJ no longer has any influence. For example, when the Federal Council issued a new ordinance on the Financial Market Supervision Act in April 2019, the FOJ, despite its reservations about the ordinance, refrained from preparing a co-report application ready for signature after consulting with the GS-FDJP (see section 5.2.5.2).

The Commission concludes that the involvement of the FOJ in the CS crisis, which is extremely important in terms of democratic policy and the rule of law, was, with the exception of the meeting of the

2241 GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3406)
2242 Note from the FOJ dated 28.11.2022, point 2.2, p. 5
2243 Minutes of the PUK meeting of 24.1.2024, p. 65

Federal Council Committee on Financial Matters in November 2022 did not take place at the highest political level, but exclusively at a technical level. The CPC already noted this problem in its report "The authorities under the pressure of the financial crisis and the release of UBS client data to the USA" of 30 May 2010 (see recommendation no. 14 in section 13.1.6).[2244] The CPC not only called on the Federal Council to improve the level-appropriate involvement of the FOJ times of crisis as part of its investigation into the financial crisis of 2007/08, but also in its report of 30 June 2023 on the protection of fundamental rights by the federal authorities in combating the Covid-19 pandemic (see recommendation no. 14 in section 13.1.6). June 2023 on the protection of fundamental rights by the federal authorities in the fight against the Covid-19 pandemic (see recommendation no. 1 in section 9.1.2).[2245] The PCC does not consider the involvement of the FOJ in the CS crisis to be appropriate, particularly in light of the partial lack of constitutional jurisdiction in Switzerland. In line with the analysis of the CPC in 2010, the FCC is of the opinion that this circumstance can hardly be blamed on the FOJ, but rather on the Federal Council.[2246] After the experience of the CS crisis, the FCC concludes all the more that the Federal Council should urgently press ahead with its deliberations on strengthening the role of the FOJ in times of crisis.

The Commission notes that the Federal Council has already considered some of these issues in its postulate report "Strengthening preventive legal control" of March 5, 20102247. In addition, following the CS crisis, it envisaged further measures to strengthen legal certainty when enacting emergency law in its postulate report "Application of emergency law" of June 19, 2023. Specifically, it plans to integrate a testing scheme for issuing emergency ordinances and a grid with criteria for implementing the legal obligation to give reasons into the FOJ's legislative guidelines addressed to the specialist offices. These measures will primarily enable the relevant specialist offices and departments to independently make the necessary legal considerations when issuing emergency ordinances. However, based on the experience gained during the CS crisis and in view of the findings of higher supervisory law in the past regarding the role of the FOJ, the Committee would like to point out that the active involvement of the FOJ is just as important when issuing emergency legislation. In contrast to the specialist offices themselves the FOJ can contribute an independent external view from the perspective of the rule of law and constitutional law.

On the basis of the above findings on the potential for improvement in the FOJ's involvement, the PUK makes the following recommendation to the Federal Council:

Recommendation no. 19

The Commission calls the Federal Council to ensure the early and ongoing involvement of the Federal Office of Justice when enacting emergency legislation and to ensure that the positions of the Office are brought the attention of the College in an appropriate form.

14.2.2 Involvement of SECO

SECO is the federal government's competence center for all core economic policy issues. The Economic Policy Directorate, which is part of SECO, is responsible for analyzing Switzerland's economic development and develops the economic basis for political decision-making (see section 3.7). SECO therefore has the relevant knowledge to maintain and promote Switzerland as a business location.

2244 GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3407)
2245 Respect for fundamental rights by the federal authorities in the fight against Covid-19 Pandemic using the example of the extension of the Covid certificate, GPK-N report of 30.6.2023 (BBl **2023** 1956, p. 25)
2246 GPK-N/S: Report on the 2008 financial crisis (BBl **2011** 3099, here 3405)
2247 Strengthening preventive legal control, Federal Council report of 5.3.2010 in Er-

SECO's tasks are clearly different from those of other authorities that supervise or control the Swiss economy. For example, SECO has no financial market supervisory tasks like FINMA and has no monetary policy instruments like the SNB. The division of competencies that SECO is not represented in either the LG or the AF. Nevertheless, the Commission cannot understand why SECO's expertise was not included in an appropriate form in the discussion of possible scenarios (see also section 13.1.5). Even if SECO is not responsible per se for financial market stability according to the Memorandum of Understanding, the Commission is of the opinion that in such a crucial issue, all bodies with the relevant expertise should be involved. Only after the merger did SECO draw up a competition law assessment of the merger on March 22, 2023. This internal memo was limited to the responsibilities for examining merger projects in accordance with Article 10 para. 3 KG.[2248]

Prior to the announcement of the merger on March 19, 2023, SECO prepared a factsheet on its own initiative on March 17, 2023 on possible exit scenarios from the CS crisis. Both the naming of the scenarios and the assessment of the economic consequences differed from the SNB's analyses. The main reason for the differences was that SECO only had limited information available (see section 7.2.3.9).

SECO then regularly took part in the ordinary office consultations that were held after March 19, 2023 in order to transpose the emergency ordinance issued in March into ordinary law. The Steering Committee, which was chaired by the SIF, was responsible for the strategic management of the office consultations. The General Secretariat of the FDF and the FFA were also represented on the committee. The AF, of which SIF, the FFA, FINMA and the SNB are members, worked together with the Steering Committee by exchanging information, but also by co-steering.[2249] SECO, FINMA and the SNB were not part of the Steering Committee. A corresponding request from SECO was rejected. A SECO told the PUK that without a seat on the steering committee, it was difficult to understand the direction in which the work in the technical working groups should go. It was therefore also not clear to SECO what the factual and technical findings from the crisis were.[2250] According to the information available to the PUK, the aim of this project was to review supervisory instruments, capital and liquidity instruments and the emergency plan. This is not SECO's core competence. When SECO's competencies were discussed, it was involved selectively, according to the SFAO. This was the case twice.[2251]

The Commission recognizes the need for a lean project structure. At the same time, it seems to the Commission that SECO had relevant specialist knowledge, which it not able to contribute sufficiently to the discussion during the follow-up to the CS crisis. In the opinion of the PUK, SECO's perspective could have provided valuable impetus and would have been a possible added value. In similar cases, all authorities should be able to contribute and understand the work of the steering committee if they have relevant expertise in the subject area.

2248 SECO statement of 21.10.2024 as part of the administrative consultation
2249 Graphic "UBS loss guarantee project setup" as at 15.5.2023
2250 Minutes of the PUK meeting of 1.5.2024, p. 18
2251 Minutes of the PUK meeting of 1.5.2024, p. 18 and 53 f.; Statement of the FDF of 23.5.2023 on the joint report of the EAER dated 23.5.2023

14.2.3 Involvement of the COMCO

As a rule, it is the COMCO's responsibility to review mergers of companies subject to notification with regard to their impact on competition and compliance with antitrust law and then to approve or prohibit them (see Box 1 and section 8.2.1). However, FINMA can assume this role if it deems the merger necessary for reasons of creditor protection. In this case, it must COMCO to comment. However, this opinion is not binding on FINMA.[2252]

In the case of the merger between CS and UBS, according to the information available to the PCC, the first contact between FINMA and COMCO took place on March 17, 2023 (see also section 7.2.3.9). The FINMA Director informed the Director of the COMCO Secretariat that a merger was being negotiated and that a decision was expected by the evening of Sunday, March 19. COMCO replied that it would not be able to prepare a competition law opinion within this period. FINMA then stated that it was assuming COMCO's role in this merger.[2253]

The question of when and how COMCO should be involved was months earlier. At the beginning of November 2022, for example, the AF spoke against the involvement of COMCO, as there still many unanswered questions regarding the possible scenarios that could lead out of the CS crisis. The option of selling CS to another bank was also still very vague at this time (see section 6.3.4).[2254] The involvement of COMCO was discussed repeatedly in the following months. However, the issues identified with regard to COMCO appeared to be solvable, not urgent or not yet sufficiently elaborated, so that contacting COMCO was not considered necessary or did not make sense (for a discussion of the scenarios, see sections 6.3.3.1 and 6.4.3).[2255]

The PUK acknowledges the ongoing deliberations of the authorities and bodies, such as the AF. A high degree of uncertainty and a sensitive subject matter can in principle lead to the decision not to extend the circle of persons involved prematurely. Furthermore, under current law it was possible for FINMA to assume the role of COMCO in justified cases. Nevertheless, it must be criticized that COMCO was not involved earlier. The takeover of CS by UBS was the preferred solution from the outset. The probability that this solution would be adopted if CS was unable to stabilize itself was therefore considerable. It had to clear to the authorities that this solution would be detrimental to effective competition between the banks. If COMCO had been involved, its expertise could have been incorporated into the preparations and negotiations. Under certain circumstances, COMCO could also have issued an initial statement. In view of the disadvantages of a merger solution, this could have led to the other options being examined and elaborated in greater depth. The Federal Council could also have been presented with a more detailed basis for a decision. In retrospect, it is difficult to say when would have been a sensible time to make contact, as the assessments of CS's situation varied greatly and regularly. However, inclusion from fall 2022 would have possible. The argument that the number of authorities informed had to be kept small is understandable, but not very valid in the case of COMCO. COMCO is used to dealing with highly confidential documents and business secrets.

In its subsequent statement of September 25, 2023, COMCO identified six markets in which UBS could have obtained or strengthened a dominant position as a result of the merger with CS (see

[2252] Art. 10 para. 3 KG
[2253] COMCO opinion of 25.9.2023 pursuant to Art. 10 para. 3 CartA and recommendation pursuant to Art. 45 para. 2 CartA, para. 27 et seq.
[2254] Transcription of the AF meeting of 1.11.2022, p. 21
[2255] Transcripts of the AF meeting of 22.12.2022, 6.1.2023, 2.2.2023 and 22.2.2023

Section 8.2.1). On this basis, it recommended an in-depth review of the merger, but did not formulate any measures, conditions or requirements. In its ruling, FINMA stated that the clarifications carried out were comparable to an in-depth review by COMCO and that the remaining uncertainty regarding the effects in certain markets was less than the risk that a further review could once again fuel uncertainty regarding banking and financial stability.[2256] Creditor protection was thus prioritized over competition law concerns. Although the term "creditor protection" appears in the Cartel Act (Art. 10 para. 3 CartA), it is not defined. As FINMA can assume the powers of COMCO if it justifies this with the protection of creditors, and the opinion of COMCO is not binding for FINMA, the Commission believes it makes sense to define the term "creditor protection" more clearly.

Recommendation no. 20

The Commission invites the Federal Council to review the legal provision that FINMA can assume the powers of COMCO in certain cases. The Commission sees a need for clarification in particular with regard to the definition of the term "creditor protection" and the timing of FINMA' involvement of COMCO.

14.3 Further legal fields of action in the context of systemically important banks

In the course of its investigation, the PUK identified further areas of legal action that do not directly the TBTF framework, but which it believes are nevertheless important in the context of systemically important banks.

14.3.1 Company law and position of the shareholders

As indicated in the introduction to Part II of the report, the Commission also asked itself questions about the role and position of the shareholders in view of CS's self-inflicted loss of confidence.

Institutional shareholders who control the majority of voting rights generally do not their dissatisfaction with a bank's corporate policy through public criticism, but by selling their shares.[2257] In this case, however, smaller and independent shareholder representatives made public statements. As a representative of Swiss pension funds, the Ethos Foundation had called for further restrictions on remuneration practices after CS voluntarily reduced its variable performance-related remuneration by 40 % in 20172258, but these were not implemented.[2259] For years, its criticism of CS's remuneration policy had little effect in the consultative votes on the bank's remuneration report, although the results of these votes deteriorated over time. In 2022, for example, the remuneration report was only accepted with just under 50.6% of the votes.[2260]

Despite the aforementioned scandals and FINMA's enforcement proceedings against CS, some of which were made public (see section 5.3.2), the CS Board of Directors

2256 FINMA ruling in the matter of UBS Group AG dated 21.5.2024, point 276
2257 Expert report Hau/Rochet (2024), p. 22
2258 "The Board of Directors publishes amended proposals on the remuneration agenda items to
of the 2017 Annual General Meeting and an update of the remuneration report.
richt", CS media release dated 18.4.2017, https://www.credit-suisse.com/about-us-news/en/articles/media-releases/compensation-update-1804-201704.html
(as at: 28.5.2024)
2259 Expert report Hau/Rochet (2024), p. 22
2260 FINMA (2023): Lessons learned from the CS crisis, p. 53

year after year, which meant that shareholders from asserting responsibility claims against the Board of Directors. Only the Greensill scandal in 2020 had consequences in this regard. The discharge for the 2020 financial year had been suspended at the 2021 Annual General Meeting due to the problems surrounding Greensill and Archegos that had recently become public. At the Annual General Meeting in 2022, which was held virtually and at which the votes of the shareholders read out, discharge for the 2020 financial year was denied to the Board of Directors. Discharge was granted for the 2021 financial year. However, the issues relating to the Greensill case were provisionally excluded.[2261]

Against this backdrop, the PUK raises the question of whether the current regulation of shareholder rights in systemically important large companies should be reviewed, for example with regard to strengthening the position of small shareholders. In the case of such companies, the public sector must provide assistance in the form of guarantees and/or financial contributions in the event of a company failure and take on risk, which is why the influence of shareholders should be strengthened.

Postulate no. 5: Strengthen the shareholder base in systemically important large companies

The Commission calls on the Federal Council to examine in detail how the shareholder base, including small shareholders, of systemically important large companies can be strengthened. This applies in particular to decisions that are important for the stability of the system.

14.3.2 Criteria for ensuring proper business conduct by the Executive Board and Board of Directors

As already emphasized several times, the PUK sees the cause of the crisis of confidence at CS in a mixture of a questionable risk culture, inadequate risk management and insufficient governance on the part of the bank's Board of Directors and Executive Board. The fact that FINMA conducted eight enforcement proceedings against CS employees, including members of management, during the PUK's investigation period underlines this finding. As a G-SIB, CS not only played a central role in the Swiss financial center, but also in the entire Swiss economic system. The PUK is of the opinion that the misconduct described was also based on a lack of sense of responsibility towards the Swiss economy. In the PUK's view, this raises questions about the currently applicable guarantee criteria at individual level as well as at the level of the Executive Board and the Board of Directors as the most important body of a bank. These criteria should take greater account of the general interests of Switzerland as a business location. The Commission is of the opinion that, in the interests of impeccable and sustainable management, the guarantee criteria - moral requirements ("propriety") and professional qualifications ("fitness") - should be reviewed and expanded accordingly, for example by requiring a majority of the Board of Directors to have an in-depth connection to Switzerland in future.

[2261] SRF: Aktionäre lehnen Entlastung der CS-Fuehrung abtung-der-cs-fuehrung-ab , 29.4.2022, https://www.srf.ch/news/wirtschaft/an-generalversammlung-aktionaere-lehnen-entlas- (as at: 29.8.2024); SRF: Eine schallende Ohrfeige Quit- Chancengert-decharge-eine-schallende-ohrfeige-die-quittung-fuer-verpasste-chancen - die tung für verpasste , 29.4.2022, https://www.srf.ch/news/wirtschaft/cs-gv-verwei- (as at: 12.9.2024)

Postulate no. 6: Review guarantee criteria to strengthen the responsibility of SIBs towards the Swiss economy and taxpayers

The Federal Council is instructed to examine whether a legal basis should be developed with the aim of better fulfilling the responsibility of the governing bodies of SIBs towards the Swiss economy and taxpayers. In this context, it should be examined whether the current eligibility criteria (general requirements and integrity as well as professional suitability) should be supplemented at the level of the candidate, but also at the level of the entire body of the institution (including a residency requirement of at least ten years in Switzerland for the majority of the Board of Directors). Other effective measures should also be examined.

14.4 Findings on the application of the Parliament Act

The PUK's investigation has shown that various provisions of the Parliament Act relating to a PUK need to be clarified or made more precise. The of this chapter is to identify the provisions where the PUK believes there is a need for legislative action, to outline the respective problem and to present concrete proposals for solutions.

The provisions on a PUK can be found in the ninth title of the Parliament Act (Art. 163 et seq. ParlA), whereby reference is made to other provisions of the ParlA in a few places. For example, with regard to the information rights of a PUK, the ParlA refers to those of the delegations of the supervisory committees (Art. 150, 153 et seq. ParlA).[2262]

14.4.1 The position of the Federal Council within the meaning of Article 167 ParlA

The position of the Federal Council in the proceedings of a PUK is governed by Article 167 ParlA. The first paragraph of this provision stipulates that the Federal Council has the right to attend the hearings of the PUK and to ask supplementary questions. It may also inspect the documents issued and the expert opinions and hearing minutes of the PUK. The PUK would like to repeal this provision for several reasons:[2263]

i. It is a breach of the principle of separation of powers if the Federal Council is allowed to attend the hearings of the PUK and inspect the documents, including minutes and expert opinions. In the PUK's view, this breach is not compatible with the constitutionally enshrined independence of parliamentary oversight and is therefore not justified. In addition, the Federal Council may submit its comments to the Commission before the report is published (see below).

ii. The construct of the Federal Council being represented by one of its members vis-à-vis the PUK (Art. 167 para. 3 ParlA), in conjunction with Art. 167 para. 1 ParlA, means that this one member knows which of his colleagues is making what comments. This is problematic for several reasons: Firstly, the member concerned has an unjustified information advantage over his or her colleagues. In addition, this member decides which information

[2262] Furthermore, Articles 42-48 and 51-54 of the Federal Act of 4.12.1947 on Federal Civil Procedure (FCP; SR **273**) shall mutatis mutandis to the taking of evidence by the PUK, unless the Parliament Act provides otherwise (Art. 166 para. 5 ParlA). Articles 49, 50 and 201-209 of the Swiss Code of Criminal Procedure of 5.10.2007 (CCP, SR **312.0**) shall apply mutatis mutandis the summoning and possible production persons required to provide information (Art. 153 para. 3 ParlA).

[2263] See also the example of the Canton of Zurich, which also recently abolished the special procedural rights of the cantonal government (total revision of 25.3.2019 of the Cantonal Council Act of the Canton of Zurich [KRG-ZH; LS **171.1**] and the Cantonal Council Regulations of the Canton of Zurich [KRR-ZH; LS **171.11**]).

be passed on to the college. Secondly, this fact can have a negative impact on cooperation within the College and on mutual trust. Thirdly, this constellation does not help the PUK to establish the truth, as the other members of the Federal Council are unable or unwilling to speak freely.

iii. The same conclusions can also be drawn with regard to the hearing of other persons in the service of the Confederation. It does not serve the independent establishment of the truth by the Commission if the responsible head of a department is informed about the statements of a person reporting to him or her. The suspension of the specific rights of the Federal Council serves not only the interest of establishing the truth but also the protection of the persons heard.

iv. The current regulation also does not take into account the situation of former members of the Federal Council, as they have no rights whatsoever. For example, they do not know what information from their own hearings is passed on to the Federal Council. This is not appropriate for the PUK. If the rights of the Federal Council under Article 167 paragraph 1 are not abolished, it should be examined how the rights of former members of the Federal Council could be strengthened.

For the sake of completeness, it should be noted at this point that a member of the Federal Council whose interests are directly affected by the investigation must be entitled to the rights under Article 168 ParlA.

Right of the Federal Council to express its opinion

In contrast to the rights in Article 167 paragraph 1 ParlA, the right of the Federal Council to express an opinion and make a statement is not to be repealed, but rather specified. Article 167 paragraph 2 ParlA stipulates that the Federal Council may comment on the results of the investigation before the PUK and in a report to the Federal Assembly. This right of the Federal Council should be retained not least because of its importance to state policy. However, a distinction must be . In the view of the PUK, the first part of this provision (statement to the Commission) contains various ambiguities. It is clear from the provision that the Federal Council may comment on the findings of a PUK before it. However, three questions arise in this regard:

i. What is the subject of the Federal Council's statement - what can the Federal Council comment on?
ii. When can the Federal Council make a statement (question of timing)?
iii. Can the Federal Council make an oral or written statement (question of form)?

In the opinion of the PUK, this provision should be clarified so that it is clear that a statement by the Federal Council to the Commission on the final report must be provided for prior to its publication. The Federal Council's statement is also published when the final report is published and at the same time constitutes the Federal Council's report to the Federal Assembly within the meaning of Article 167 paragraph 2, second clause.

The Federal Council should be granted a reasonable period of time to do so. In the view of the PUK, what constitutes an appropriate deadline must be left open in the present case and must be decided on a case-by-case basis, as this depends, among other things, on the scope and complexity of the report.

Special position of the representative of the Federal Council

Article 167 paragraph 3 ParlA provides for a special position of the representative of the Federal Council vis-à-vis the PUK. In this context, reference should be in part to the problems described above. Furthermore, this special position can lead to an area of tension that is difficult to resolve, especially if the representative of the Federal Council is the head of the department in question.

or the head of department who is directly or most affected by the PUK's investigation. From the PUK's point of view, this tension should be resolved by the Federal Chancellor as the Federal Council's contact person for the PUK if the investigation is not directed against him or her. If - as requested above - the special rights of the Federal Council under Article 167 paragraph 1 ParlA are abolished, there will no longer be a need for a Federal Council liaison person for the PUK.

14.4.2 Rights of data subjects within the meaning of Article 168 ParlA

Article 168 ParlA contains the rights of the persons concerned. According to paragraph 1, the PUK determines which persons directly affected in their interests by the investigation. According to the wording of this paragraph, these persons must be informed immediately granted the rights set out in Article 167 paragraph 1 ParlA. The law does not specify the term "persons whose interests are directly affected". The materials merely state that it must be an error for which a person can be reproached.[2264] A person whose interests are particularly affected is therefore not someone who is particularly involved. Under current law, the person must have made a mistake. This means that the status currently associated with an accusation that may not subsequently be substantiated. If this status becomes public knowledge, this is tantamount to a prior conviction for the person concerned. Article 168 ParlA should explicitly state that a person will not be mentioned in the report if the allegations are not substantiated.

For this reason, the PUK has interpreted this provision accordingly. The PUK "Management of the authorities - CS emergency merger" has carried out various clarifications in this regard with its procedural expert and has clarified this terminology. Accordingly, person's interests are directly affected if the following conditions are cumulatively met:

i. The person is or was a member of the Federal Council, the Federal Administration or other federal authorities.
ii. This is a person who exercised a high-ranking function in the context under investigation, such as a member of the Federal Council, an office director or leading executives of decentralized units, such as a supervisory authority.
iii. On the basis of the information gathered in the course of the investigation, the PUK has concrete and well-founded evidence suggests that the person concerned has committed errors that can be against them. In specifying such an error, the PUK drew up the following three case studies: a. A mistake of major significance that has a direct causal link to the subject of the investigation, b. The existence of a clearly provable unlawful act and c. Repeated failure to take actions that would have been necessary for the lawful, expedient and effective conduct of business.

The investigation of the PUK "Management of the authorities - CS emergency merger" differed from the investigations of previous PUKs in that a large number of actors were involved, including independent authorities and private individuals.

The next PUK could have a completely different constellation, which is why the practice of the PUK "Management of the authorities - CS emergency merger" should not be reflected in the law.

[2264] Parliamentary initiative. Legal protection of those affected in PUK proceedings, report of the SPK-N of 25.8.1994 (BBl **1995** I 1120, here 1123 ff.): "The concept of a person whose interests are directly affected can hardly be concretized by law. It refers to persons who are suspected of having made a mistake in the area to which the parliamentary investigation relates, which can be held against them."

With regard to Article 168 ParlA, it should be noted that this also if the interests of a member of the Federal Council are particularly affected. However, this does not apply if the member in question is the member of the Federal Council who represents the Federal Council vis-à-vis the PUK in accordance with Article 167 paragraph 3 ParlA. In this , this member may exercise the rights under Article 167 paragraph 1 ParlA anyway.

If Article 167 paragraphs 1 and 3 ParlA were to be amended as set out above, the above would no longer be relevant. At the same time, this means that the rights under Article 167 paragraph 1 would have to be explicitly integrated into Article 168 paragraph 1 ParlA.

At the same time, it should be clarified whether the person within the meaning of Article 168 paragraph 1 ParlA, whose interests are directly affected by the investigation, and the person within the meaning of Article 155 paragraph 3 ParlA, "against whom an investigation [...] is directed", are identical. The PUK "Management of the authorities - CS emergency merger" also referred to Article 155 paragraph 3 ParlA, among others, to interpret the term "person whose interests are directly affected". This means a person's interests are directly affected if the investigation is directed against them in whole or in part.

Furthermore, various questions arise regarding the treatment of a person who is not classified as a person concerned from the outset, but only in the course of the proceedings. Does this person necessarily have to heard again? This aspect should be clarified in Article 168.

14.4.3 Further challenges and selective need for adjustments to various provisions

Drawing on the work of other commissions, in particular the GPK

It often takes several months for a PCC to be set up. Past experience and the specific example of the PUK "Management of the authorities - CS emergency fund" show that the CPC often carries out initial clarifications in the area of management very quickly (see also section 1.4.5). Pursuant to Article 171 paragraph 1 ParlA, the CPC and other committees may not conduct any further investigations into the relevant subject matter once the Federal Assembly has decided to set up a PCC.

It is expedient and expedient for a PUK to be able to draw on the preliminary work of the GPK or other commissions. However, there is no corresponding legal basis for this. The PUK "Management of the authorities - CS emergency merger" therefore calls for a corresponding provision to be in Article 171 ParlA. The fact that the specific participation rights of persons affected in their interests do not apply to the proceedings of the GPK and the other committees must be taken into account.

Duty of confidentiality pursuant to Article 169 ParlA

Article 169 ParlA contains the duty of confidentiality. The provision stipulates that all persons participating in meetings and interviews are subject to a duty of confidentiality until the report to the Federal Assembly is published.

According to the wording, the material scope of application therefore only extends to meetings and consultations. From the point of view of the PUK "Management of the authorities - CS emergency merger", this should be extended to the entire activity of the PUK, as all activities outside of meetings and consultations should also be covered (e.. studying files, work by experts consulted, etc.).

Information rights of the PUK vis-à-vis the independent or autonomous units

According to Article 166 paragraph 1 ParlA, the information rights of the PUK are based on those of the delegations of the supervisory committees (Art. 150 and 153 et seq. ParlA). On the one hand, this means that no information may be withheld from the PUK. On the other hand, questions arise with regard to the specific application, as the subject matter of a PUK investigation can be much broader than the case with the GPDel or FinDel. In the present case, it is primarily the information rights of the PCC vis-à-vis FINMA and the SNB that are of interest.

The PUK had to address the following practical issues:

i. May the PUK invite SNB employees who are not members of the Governing Board to a hearing, and what modalities apply?
ii. What questions may the PUK ask the representatives of the SNB and FINMA? What documents may it request?
iii. What information may the PUK obtain from FINMA on ongoing and completed enforcement proceedings and what may it report on?
iv. Is it necessary to inform the Federal Council before hearing representatives of FINMA and the SNB?

To answer these questions, the PUK commissioned clarifications from an external expert, who came to the following conclusions:

The scope of FINMA's supervision is limited to the supervisory powers of the Federal Council. Information rights vis-à-vis FINMA and its staff are governed by Articles 150, 153-156 and 166-170 ParlA, which, however, only apply to the supervisory area of the Federal Council. In the past, FINMA was once the recipient of a recommendation from the GPK, but this is controversial among academics.

Greater restraint is required with regard to the SNB. In the area of monetary policy, the object of the superintendence and thus also the scope of the information rights is limited to the powers under Article 7 paragraph 2 of the National Bank Act. In this area, the organs of the superintendence are also prohibited from making recommendations directly to the SNB. In this respect, the SNB differs from other autonomous or independent administrative bodies. Outside the area of monetary policy, the information rights under Articles 150, 153-156 and 166-170 ParlA apply.

Minutes of the meetings of the PUK

Article 165 ParlA provides for various procedural provisions. Paragraph 3 states that the main procedural events are to be recorded. On the one hand, the materials and the provisions of the ordinance do not specifically define what "essential procedural events" are. On the other hand, this provision does not correspond to the practice of the supervisory committees and the PUK "Management of the authorities - CS emergency merger", which have verbatim minutes taken for all meetings. This practice was most recently applied in the work of the PUK "Management of the Authorities - CS Emergency Merger" and is considered to be expedient and appropriate. The provision in Article 165 paragraph 3 ParlG is to be replaced by the following wording:

"The meetings are recorded in their entirety on an audio carrier. Verbatim records are drawn up on this basis. The excerpts from the minutes are submitted to the interviewees for signature."

The last sentence corresponds to the provision on the GPDel and is also applied accordingly by the PUK "Management of the authorities - CS emergency merger". The provision regarding the recording of minutes should also be applied when persons are questioned by the investigators.

Consultation

The PUK submitted the draft report or extracts from it to all persons consulted for consultation. The persons consulted were asked to inform the PUK whether the report contained any material or formal errors and whether any confidentiality restrictions prevented its publication. This is in line with the practice of the GPK and has a dual purpose: on the one hand, it is intended to ensure the quality of the report and, on the other, to inform the persons consulted about which statements and other information have been included in the draft report. In this way, all persons heard are granted at least a partial right to be heard, which goes beyond the applicable law.

Practice has shown that this consultation can be very time-consuming in individual cases, but is nevertheless beneficial. Accordingly, the PUK believes that it should be enshrined in law. The consultation of the persons consulted was carried out in line with the practice of the GPK.

14.4.4 Next steps

The PUK has decided to submit a parliamentary initiative to implement the above-mentioned aspects in the Parliament Act. Ideally, this parliamentary initiative will be assigned to one of the two GPKs for further processing.

15 Concluding remarks

The PUK was tasked with investigating the conduct of business by the Federal Council, the Federal Administration and other federal authorities over the past few years in connection the emergency merger of CS with UBS. The aim was to analyze the legality, appropriateness and effectiveness of the activities of the above-mentioned authorities and bodies as well as their interaction. The federal decree on which its work was based did not specify an end date for the conclusion of the investigation. Nevertheless, the Commission considered it important to conclude its comprehensive investigation as soon as - with the aim of the Federal Assembly and the Federal Council to complete the pending and partially suspended projects and to address the need for action identified by the PUK as quickly as possible in the interests of securing a stable financial center in the long term.

In this report, the PUK provides information on the results of its investigation in accordance with its mandate, specifies responsibilities as far as possible and identifies the areas for optimization. A central component of the report is therefore the Commission's proposals for measures to remedy the deficiencies identified, which it has formulated by means of recommendations and parliamentary procedural requests for the attention of the Federal Council. Unless otherwise stated, the aforementioned recommendations and parliamentary procedural requests relate to the regulation and supervision of systemically important banks. This differentiation is very important for the PUK.

Given the breadth of the subject matter of the investigation, the commission was forced to set priorities. It therefore does not claim to provide a complete account of the events and developments since 2015. The PUK has focused on topics that are more closely related to the emergency merger. It has examined these in more detail than topics that appear relevant to the audit of the management of the federal authorities, but which played a subordinate role in crisis management.

1. Initial situation: CS crisis under the responsibility of CS management and the role of the authorities

By way of introduction, the PUK would like to emphasize at the end of its investigation that the responsibility for the imbalance at CS, which became existentially threatening in March 2023, lies with the Board of Directors and the Executive Board of CS in recent years. It was years of mismanagement by CS management and various scandals (including aiding and abetting tax evasion, money laundering and the tails affair) in the bank's management which, in combination with poor business results and high variable remuneration for top management, to a loss of confidence in the markets. Between 2010 and 2022, the performance bonuses paid to CS management amounted to a total of CHF 39.8 billion, while the total loss over the same period was CHF 33.7 billion. In addition, there was a fundamental reluctance towards FINMA's supervisory activities. Despite FINMA's numerous interventions and, in particular, the various enforcement proceedings, CS made no sustainable progress in complying with the relevant provisions. Even in late autumn 2022, when CS's problems could no longer be ignored, the bank sometimes vehemently resisted FINMA's instructions, for example when FINMA asked CS to set up a data room that was indispensable for the subsequent merger and also in the search for potential merger and takeover partners.

Role of the authorities in the context of CS mismanagement and the CS crisis

The authorities responsible for financial stability have been following developments at CS with great concern since the fall of 2022 at the latest. Without their preparations in 2022 and their coordinated and committed intervention in March 2023, CS would have had to be wound up, with the corresponding negative consequences the national and international financial markets and economic development. In other words, the authorities' crisis management successfully prevented a global financial crisis. This achievement is to be commended. When assessing the

In the context of the management of the authorities, it must also be borne in mind that the level of knowledge after the events can hardly compared with that of the time. also impossible to reliably assess in retrospect which alternative decisions would have led to which consequences. Nevertheless, the PUK recognizes a need for improvement at various levels.

2. Main criticisms of the management before the crisis

By way of introduction, the PUK states that the management of the authorities in the years before the crisis neither caused nor exacerbated the mismanagement and the resulting problems at CS.

Nevertheless, the PUK has identified various *developments at the interface between CS and the management of* the authorities (see below), which may have contributed to the fact that the imbalance at CS could no longer be corrected in the long term and that the authorities' scope for action in dealing with the crisis was limited in some cases.

Limited impact of FINMA supervision and inappropriate regulatory filter

With regard to the pre-crisis phase, the Commission notes firstly that the competent supervisory authority, FINMA, recognized key weaknesses at CS in the pre-crisis years (see sections 1 and 5). No other institution was confronted with more enforcement proceedings than CS. However, the impact of FINMA supervision was limited, as CS refused to implement the requirements in a sustainable manner for years. Against this backdrop, the Commission regrets that FINMA not take even stricter action, for example in the form of a withdrawal of guarantees. Secondly, the PUK is extremely critical of the relief granted to CS in 2017. CS had already benefited from relief granted by FINMA at the time due to a legal obligation. The so-called regulatory filter granted in 2017 allowed 's parent company to count the difference between the collective valuation and the individual valuation of shareholdings towards its equity. Even if the filter was lawful, the PUK fundamentally questions its appropriateness. The filter had a much greater impact than originally assumed and accounted almost half of CS AG's regulatory capital in the 2022 loss year. Without this filter, CS would have already slightly failed to meet the regulatory capital requirements from 2021 and would have clearly failed to do so from 2022. The scope for action was limited from autumn 2022 due to insufficient capitalization. Whether CS would have been able to expand its capital base from 2017 if it had not been granted the filter remains to be seen. In the view of the PUK, there is an urgent need for action with regard to the granting of relief.

Further legal development - missing PLB

With regard to *legislation*, the Commission also notes that from 2015, the Federal Council and Parliament made the competitive conditions for domestic banking institutions as attractive as possible when implementing international standards (Basel III, BCBS and FSB principles). This included the authorities taking care not to implement international standards earlier than other countries with internationally important financial centers. In legislative projects, they attached great importance to the concerns of the financial sector, even if FINMA and the SNB repeatedly took opposing positions from a financial stability perspective. In addition, the Federal Council granted the G-SIBs various extended transition periods (e.g. going-concern and gone-concern requirements; new liquidity concept 2022) or delayed the introduction of new regulations (e.g. going-concern requirements for parent companies) in the further development of the TBTF regulation. As a result of these factors, Switzerland was no longer one of the leading countries in the implementation of international standards from 2015. This approach was pursued even though the Swiss big banks, as the responsible authorities were aware, were significantly larger than foreign financial institutions in relation to the Swiss economy. In view of the CS crisis and its

In the Commission's view, the lack of a PLB is particularly significant in terms of management. The PUK is of the opinion that the Federal Council was too hesitant in introducing a PLB. If Switzerland had already a PLB in place in fall 2022, the authorities would have had additional room for maneuver in fall 2022 without having to resort to emergency law and sending an unsettling signal to the markets through a possible short-term emergency law or accelerated ordinary introduction. A PLB that had already been introduced would undoubtedly have had a confidence-building effect, even if the specific effect cannot be conclusively assessed in retrospect. Although the authorities' management was lawful in this respect, it was only partially appropriate and ultimately only partially effective.

3. Assessment of the authorities' crisis management from fall 2022

It is difficult to a specific point in time when the crisis at CS began to emerge. In any case, various indicators of CS's economic situation deteriorated significantly over the course of 2022. In the summer, CS was forced to announce a far-reaching strategy adjustment. As the crisis committee and coordination body between the FDF, FINMA and the SNB, the AF dealt with the crisis situation at CS for the first time at the beginning of August 2022. The authorities activated crisis mode from the beginning of October 2022, when CS recorded massive liquidity outflows. From the PUK's point of view, the beginning of October was a suitable time to activate crisis mode.

The committees of the LG and the AF, which comprised the most important officials in the area of financial stability, now met at short intervals. The PUK is of the opinion that this broad support was an advantage for good crisis management. The PUK is somewhat more critical of the fact that the members of the AF did not pass on certain information to the LG immediately in several cases. In general, not all authorities had the same level of knowledge throughout the entire process, which may have made it more difficult to intervene decisively at an earlier stage.

Holding informal meetings from fall 2022

The non-formalized non-meetings, which were held at the initiative of the former Head of the FDF and the Chairman of the SNB from the end of October 2022, created a parallel format to the authorities' existing crisis organization. The Commission recognizes that these informal meetings had a certain importance in the preparation of a merger of CS with UBS. At the same time, however, it criticizes the fact that coordination and the exchange of information with the regulatory structures were not guaranteed, despite the corresponding provisions of the tripartite *Memorandum of Understanding*, according to which the authorities take into account the impact of their actions on the areas of responsibility of the other parties and coordinate their activities.

Examination of scenarios and application of emergency law

Between summer 2022 and March 2023, a significant proportion of the activities of the crisis bodies, particularly the AF, were devoted to considering crisis exit scenarios. From fall 2022, authorities continuously and openly possible intervention measures. They prepared both the options provided for by the TBTF regime (resolution; ELA) and considered new measures (TPO; ELA+; takeover). In the PUK's assessment, the authorities have covered the most important possible measures in their preparations.

One of the scenarios considered was the restructuring of CS. This scenario was also prepared in advance by FINMA. The scenario of a takeover of CS by another bank had been discussed since October 2022. According to the authorities' assessment, a Swiss solution was the only option that could be realized in the short term. A solution with a foreign bank would only have been feasible in the longer term. However, no concrete clarification work was carried out in this regard. To support the scenarios mentioned above, the authorities

macroeconomic analyses, but did not share this information with the LG and the Federal Council at an early stage.

4. Evaluation of crisis management in the acute phase

From March 15, 2023, the authorities did everything their power to keep CS solvent until the weekend and for the potential takeover and to have a viable solution in place for the opening of the stock exchanges. Despite the enormous time pressure, they continued to develop various options until the end, in the knowledge that a purchase by UBS the preferred option from March 15 at the latest. On Sunday, 19 March, the authorities had three fully developed options at their disposal: a takeover of CS by UBS (including a possible forced takeover), a restructuring of CS and a temporary nationalization (TPO) of the Group. The PUK considers this to be positive overall: even during these very intensive days in March, the authorities were able to work on several scenarios simultaneously.

During the search for a solution, the authorities paid attention to a certain alignment of interests between CS and UBS and to the financial impact on the Confederation. The PUK is of the opinion that the authorities played a central role in the solution found, particularly as a connection between the state guarantees and the price offered by UBS. In view of the acute situation and the associated time pressure, the Commission understands that there was no longer time at this point to implement an alternative with a foreign bank and thus find a solution that would have been more advantageous from a long-term competition and TBTF perspective. However, the PUK is of the opinion that the chosen solution has clearly revealed individual weaknesses in the existing TBTF regulation (see point 6).

Application of emergency law

The PUK also investigated the use of emergency law in the acute crisis. It came to the conclusion that the emergency introduction of the PLB on March 16, 2023 was lawful in view of the impending resolution, which would have entailed considerable risks for national and international financial stability. The emergency introduction of ELA+ was also lawful and appropriate in the Commission's view. The introduction of ELA+ enabled CS to continue its business activities, provided the necessary financial stability in the short term and helped to minimize the risks for taxpayers.

Article 5a of the Federal Council's emergency ordinance also mentioned FINMA's authority to order the write-off of the AT1 bonds. In view of the pending court proceedings, the PUK is focusing here on general considerations for ordering the write-off of the AT1 bonds. It points out that the AT1 bonds issued by CS, as required by law (Art. 29 CAO), contractually provided that they could be written off in full in the event of certain events. The risk of write-downs was also recognized by the market, as the AT1 bonds already been valued lower on the market before mid-March 2023. From the Commission's perspective, it should be noted overall that the order to write down the AT1 bonds was part of all resolution scenarios in the CS case, in line with the purpose and function of such instruments, and not just in March 2023. In this context, the PUK also points out that the package of measures taken by the state to prevent CS's insolvency was far-reaching and was issued on the basis of emergency law. In this respect, the PCC notes that the state played a significant role in finding a solution.

5. Evaluation of the management of the individual authorities during the entire period under review

The investigation of the PCU focused on the entire Federal Council and the three parties to the MoU for financial stability, specifically the FDF with the responsible specialist offices, FINMA and the SNB, and to a lesser extent the FAOA. In the following, the PUK focuses on the aforementioned actors and authorities.

The *FDF* has a key role to play in the overall assessment. It was up to the FDF to identify the need for legislative action, coordinate crisis management, to inform the Federal Council and to propose suitable measures. It also took the lead, at least in part, in managing the corresponding risk as part of risk management. Although TBTF regulation was monitored on a regular basis, there was no strategic assessment of the situation. In particular, the PLB was not actively introduced for a long time due to the assumption that a PLB would not have had a majority in parliament at the time. In the fall of the crisis, the head of the FDF responsible at the time failed to provide the government with continuous and in-depth guidance for fear of leaks. Criticism from his Federal Council colleagues did little to change this. In the Commission's opinion, the Federal Council was not sufficiently informed about the problems and approaches to action. In the opinion of the PUK, the departmental handover of the CS dossier functioned inadequately. The successor informed the Federal Council about the situation at CS shortly after taking office, but in the of the PCC also failed to provide in-depth information in some cases, particularly with regard to the various options for action. During the crisis, it worked intensively to find a solution between CS and UBS and coordinated effectively with both domestic partners and foreign authorities. Under her leadership, the authorities succeeded in averting an international financial crisis.

Although the *Federal Council as a whole* took stock of the TBTF regulations every two years, it did not actually assess the current situation. From 2015 onwards, it made various decisions that accommodated the banks' positions, repeatedly failed to address the concerns expressed by FINMA and the SNB with regard to financial stability and also implemented the international standards more slowly (see section 2). From November 2022, it repeatedly with the imbalance at CS. The management of the committee was made more difficult by what the PUK considered to be an inadequate information base for a long time. In November 2022, the Federal Council repeatedly criticized this. This was no longer the case in 2023. Until the March crisis, the Federal Council was only rudimentarily informed about the various scenarios. Even in March, it only received verbal information that could no longer be reconstructed. In the Commission's view, it is positive that the Federal Council insisted that alternative scenarios were pursued further in view of the long-pending agreement between CS and UBS. However, it was not clear to the Commission which plan B the committee would have chosen.

The *SNB* had already taken preparatory measures for the granting of ELA several years before the start of the crisis. These preparations, in particular the MoU with CS and the annual review of liquidity assistance, were of great value in the event of a crisis. In addition to liquidity assistance under the EFF and the PLB introduced under emergency law, the SNB also provided liquidity through the one-off ELA+ instrument. The regular ELA instrument was also by a bank for the first time. The SNB has reviewed the banks' eligible collateral several times in recent . However, the ELA provided during the crisis was not sufficient. For the PUK, the question remains open as to whether the SNB's practice with regard to the allocation and eligible collateral is too restrictive. In the Commission's view, there is a need for clarification in this regard. The legal basis should be adapted so that the SNB is given the authority to impose preparatory measures on the SIBs for any utilization of extraordinary liquidity assistance. In addition, measures should be taken to reduce the stigmatization associated with the use of ELA.

In the years leading up to the crisis, *FINMA* repeatedly criticized the lack of a risk culture, the unsatisfactory capital situation of the parent company and the variable remuneration policy. It endeavored to make full use of the instruments at its disposal. Its supervisory activities were lawful, but in some cases not appropriate and not consistently effective. It is therefore incomprehensible to the PUK that, despite the bank's numerous misconduct, no causal responsibility could be established for the misconduct in question. In particular, the PUK was unable to understand the granting of the regulatory filter (see section 2).

As the crisis became apparent, FINMA successively intensified its supervision and urged CS to prepare various measures, in particular with regard to the search for a takeover partner and the finalization of the restructuring plan. The Commission considers the implementation of a valuation-in-resolution exercise to be positive. FINMA also carefully clarified the legal risks in March and ensured international coordination in the event of a restructuring.

The PUK also examined the cooperation between the SNB, FINMA and the FDF in relation to financial stability before and during the acute crisis. It pointed out that this was only set out in a MoU. In the opinion of the PUK, the MoU does not represent a sufficiently binding and, in part, insufficiently detailed legal basis; this is against the backdrop that tensions during the crisis management process with regard to the different roles and associated conflicts of objectives, which were not always conducive to finding a solution. There is a need for action here.

The FAOA audited CS's audit firms annually between 2015 and 2022. However, comprehensive audits were only carried out in 2015 and 2016, which included both regulatory audits and financial audits. In the opinion of the PCU, the formal deficiencies in the justification for the audit carried out in each of the other years should be rectified, partly because no comprehensive inspection was deemed necessary when the CS audit firm changed 2021. In general, the FAOA did not adjust the audit cycle despite the emerging difficulties at CS and refrained from ad hoc reviews and follow-up inspections until after the acute crisis in March 2023. In the opinion of the PUK, a risk-based and dynamic supervisory concept is therefore necessary for SIBs in the future. Cooperation and the exchange of information between FINMA and the FAOA should also be intensified. The question also arises as to whether the current system of dual supervision is fit for purpose (see section 6).

6. General findings on TBTF legislation and current need for action

There are currently two significant deviations between Swiss TBTF regulation and international standards: the lack of a PLB and the structure of deposit protection. The PUK notes that the package of measures presented by the Federal Council following the CS crisis in its report on banking stability of April 10, 2024 does not provide for any adjustments in the area of deposit protection. A bill to introduce a PLB was pending in parliament at the time of publication of the PUK report. Furthermore, Switzerland does not have a TPO explicitly enshrined in law. The PUK sees a conflict of objectives between state aid in the form of a TPO, which would be introduced in the context of a restructuring or resolution, and TBTF regulation, which aims to avoid such aid in principle.

The Commission also came to the conclusion that the TBTF legislation is too focused on Switzerland, particularly in terms of emergency planning. The focus of the emergency plan on the systemically important Swiss parts could have a problem for the distribution of liquidity within the group in the event of an ELA move. The Commission is also of the opinion that the resolution planning of a G-SIB operating internationally from Switzerland must take into account the international interdependencies. Any resolution of G-SIB crisis, as experienced CS, requires coordination with foreign supervisory authorities. The

In addition to protecting the Swiss financial system, the objectives of the TBTF legislation should also include feasibility in international relations and the avoidance of triggering an international financial crisis.

In addition, the Commission has recognized from the CS crisis that TBTF regulation is not designed for a crisis of confidence. As already mentioned, the Commission is in favor of the introduction of a PLB. Furthermore, the Commission believes that the legislation focuses too strongly on various key figures, while important market indicators are neglected.

The Commission also sees a need for action with regard to the current regulation of audit oversight. The current regulation on the oversight system should be reconsidered, including the issue of direct mandates and the question of whether a mandatory rotation of audit firms would be expedient in terms of the effectiveness of oversight. It should also be considered whether stricter rules would make sense, especially for SIBs and G-SIBs.

In general, it is essential for the PUK that the fact that the remaining G-SIBs are many times larger in relation to Swiss GDP than other financial institutions in relation to the GDP of the respective country is adequately taken into account in regulation. TBTF legislation in particular must therefore be further developed and adapted to the comparatively significant size of the remaining Swiss G-SIBs. More weight should be given to the interests of financial stability and the economy as a whole, as well as joint statements by the bodies responsible for financial stability.

The Parliamentary Commission of Inquiry submits its report on the conduct of business by the federal authorities in the context of the CS crisis to the Federal Assembly for information.

December 17, 2024

On behalf of the Commission

The President: Isabelle Chassot, Member of the Council of States

The Vice President: Franziska Ryser, National

Councillor The Secretary: Ursina Jud Huwiler

The Deputy Secretary: Stefan Koller

List of recommendations, motions, postulates and parliamentary initiatives

Recommendations

Recommendation no. 1

The Federal Council is requested to take appropriate account of the international dependencies of SIBs and the comparatively significant size of the remaining Swiss G-SIBs in the future design of the TBTF regulation. More weight should be given to the interests of financial stability and the economy as a whole as well as joint statements by the bodies responsible for financial stability.

The Commission also calls on the Federal Council to carry out a comprehensive strategic analysis of the further development of TBTF regulation in its evaluation reports in accordance with Article 52 of the Banking Act.

Recommendation no. 2

The Federal Council is invited to examine in which constellations the introduction of a right of escalation to it is appropriate in the context of risk management and to take the necessary measures to introduce this right. Special consideration must be given to the Federal Council risks.

It is also called upon to ensure the transition between risk management and crisis management and to create an institutionalized body for this purpose. In particular, the Federal Council should examine how the role of the GSK can be strengthened in this area.

Recommendation no. 3

The Federal Council is requested to create the necessary conditions for FINMA to effectively enforce and implement its enforcement proceedings. In particular, it should be examined whether Article 22 paragraph 2 FIN- MAG should be amended to allow FINMA to communicate in principle about individual enforcement proceedings relating to systemically important banks. In particular, the legal situation abroad with regard to public communication by supervisory authorities should be taken into account.

Recommendation no. 4

The Federal Council is requested to examine whether the quality and quantity of the SIBs' own funds are sufficiently protected in accordance with the current requirements to ensure the solidity of the SIBs.

Recommendation no. 5

The PUK calls on the Federal Council to examine a draft bill for the SIBs to limit legal remedies and to substantially shorten the appeal procedures for prudential decisions by FINMA.

Recommendation no. 6

The PUK the Federal Council to improve the transparency and traceability of FAOA inspection processes at SIBs, in particular by formalizing and systematically documenting decisions on the scope of inspections. In addition, the frequency and scope of inspections in relation to SIBs are to be adjusted based on risk and a more dynamic supervisory concept is to be introduced.

Recommendation no. 7

The Commission recommends that the Federal Council ensure that the FAOA comprehensively reviews the implementation of the corrective measures. Systematic rather than random checks should be used to ensure full compliance with quality standards.

Recommendation no. 8

The Commission calls on the Federal Council to ensure that cooperation and the exchange of information between FINMA and the FAOA are intensified and better coordinated. A more binding cooperation agreement, for example in the form of a memorandum of understanding, should be examined.

The aim is to achieve an intensive exchange with high-risk financial institutions at both the strategic and operational level with the FA and RA in order to ensure continuous, harmonized and risk-based supervision. It should be ensured that the FAOA receives all relevant information from FINMA and consistently integrates it into its supervisory strategy. In addition, it should be examined whether a formal crisis mode generally needs to be defined in order strengthen cooperation between the FAOA and FINMA in times of crisis.

Recommendation no. 9

The Federal Council is invited to examine which internationally coordinated and targeted measures can be taken in the event of a digital bank run.

Recommendation no. 10

The Commission invites the Federal Council to ensure that the FDF and the SNB each other more proactively about important developments relating to systemically important banks and their impact on financial stability. This can take place within the existing regulatory structures or through the conclusion of a further bilateral MoU between the FDF and the SNB.

Recommendation no. 11

The Commission invites the Federal Council to document the content discussed in an appropriate form as part of the regular discussions on the economic situation, monetary policy with the SNB (pursuant to Art. 6 NBA) and discussions on the strategy of supervisory activities and current financial policy issues with FINMA (pursuant to Art. 21 para. 2 FINMASA).

Recommendation no. 12

The PUK requests the Federal Council to ensure that the authorities of the tripartite memorandum of understanding on financial stability and financial market regulation pass on information promptly to the various members of the crisis bodies and between the levels (operational and strategic level). In particular, the information from the SNB's annual reports on financial stability should be discussed with all the authorities involved.

In addition, the Federal Council should ensure that the authorities of the Memorandum take measures to ensure that meetings of an informal nature correspond better with the regulatory structures of the Memorandum. Any decisions are to be taken by the responsible bodies.

Finally, it should ensure that the corresponding IT and communication systems are suitable for close cooperation between these authorities in times of crisis.

Recommendation no. 13

The Federal Council is urged to ensure that it is informed to an appropriate extent about important business, if necessary with the aid of written documents. In doing so, a procedure should be chosen that excludes breaches of official secrecy. In addition, the PUK calls on the Federal Council and the President of the Confederation to use their powers under Article 12a paragraph 2 and Article 25 paragraph 2 letter d RVOG in comparable situations and to ensure that the College is informed in writing.

Recommendation no. 14

The Federal Council is invited to review the regulations on the handover of departments. To this end, it must develop an institutionalized process that goes beyond a checklist.

Recommendation no. 15

The PUK invites the Federal Council to ensure that the authorities concerned take the necessary precautions to ensure that their meetings appropriately recorded in order to guarantee traceability. In particular, the meetings of the institutionalized exchange bodies between SIF and FINMA as well as the meetings held in times of acute crisis (e.. meetings of the Financial Crisis Committee or the Steering Committee) should recorded in a uniform manner, even if the minutes are only very brief.

Recommendation no. 16

The Commission recommends that the Federal Council ensure that, in the event of a crisis, responsibility is defined at an early stage for matters that affect several authorities equally. In addition, responsibilities should be clearly defined in the event of a crisis and a central point of contact should be designated for contact with external .

Recommendation no. 17

The Commission calls the Federal Council to also observe the principle of public administration when enacting emergency legislation and to amend the Publicity Act of
December 17, 2004. It also requests the Federal Council, in consultation with the FDPIC, FINMA and the SNB, to proactively clear up any legal uncertainties regarding the right of access to information under the FIAA in constellations such as the one that occurred in March 2023.

Recommendation no. 18

The PUK recommends that the Federal Council examine whether the audit supervision of SIBs could not be placed solely with FINMA.

Recommendation no. 19

The Commission calls the Federal Council ensure the early and ongoing involvement of the Federal Office of Justice when enacting emergency legislation and to ensure that the positions of the Office are brought the attention of the College in an appropriate form.

Recommendation no. 20

The Commission invites the Federal Council to review the legal provision that FINMA can assume the powers of COMCO in certain cases. The Commission sees a need for clarification in particular with regard to the definition of the term "creditor protection" and the timing of FINMA' involvement of COMCO.

Motions

Motion no. 1: Adapt the objectives of the TBTF legislation

The Federal Council is instructed to submit a draft to the Federal Assembly for amendments to the purpose article of the TBTF regulation (Art. 7 para. 2 Banking Act) based on the findings of the CS crisis.

In addition to protecting the Swiss financial system, the objectives of the TBTF legislation should also include feasibility in international relations and the avoidance of triggering an international financial crisis.

Motion no. 2: Restrict the easing of capital and liquidity requirements for SIBs

The Federal Council is instructed to submit a draft decree to the Federal Assembly that limits the granting of relief from capital and liquidity requirements for SIBs in accordance with Article 4 paragraph 3 of the Banking Act. The granting of relief should be transparent, limited in time and accompanied by a clear phase-out plan.

Motion no. 3: Strengthen FINMA's assertiveness with SIBs

The Federal Council is instructed to examine suitable measures to strengthen FINMA's enforcement power with regard to SIBs and to submit them to the Federal Assembly. The following measures, among others, are to be examined:

a. the introduction of the authority to impose fines on both SIBs and private individuals;

b. the expansion of FINMA's tools for early intervention by means of time-differentiated measures;

c. the explicit authority to order capital planning from a SIB;

d. adapting the relevant legal bases so that FINMA can formally issue its recommendations to SIBs in the area of banking supervision;

e. or other measures so that FINMA can meet the big banks on an equal footing.

Motion no. 4: Expand the SNB's powers vis-à-vis SIBs with regard to ELA

The Federal Council is instructed to amend the legal basis so that the SNB is given the authority to impose preparatory measures on SIBs for any utilization of extraordinary liquidity assistance (ELA). It should also take measures to reduce the stigmatization associated with the use of ELA.

Postulate
s

Postulate No. 1: Reduce conflicts of interest in the auditing of banks

The Commission instructs the Federal Council to review the current regulation of audit oversight for SIBs with a focus on reducing the risk of conflicts of interest and to evaluate appropriate measures, such as a direct mandate or mandatory rotation of audit firms.

Postulate no. 2: Review early crisis detection and strengthen the role of the BK

The Federal Council is instructed to review the early detection of crises by the FCh and report on this. Early crisis detection and thus the role of the Federal Chancellery must be strengthened. In particular, the Federal Council should examine the introduction of an escalation option through hierarchically subordinate administrative units to the Federal Chancellery. The Federal Council should draw up a concept for this in its report.

Postulate no. 3: Avoid false incentives in the remuneration and distributions of SIBs

The Federal Council is instructed to examine what measures are required to ensure that the remuneration systems and distributions of SIBs do not create false incentives. In particular, so-called variable remuneration (performance bonuses) should not be paid if the business is not successful.

Postulate No. 4: Facilitate FINMA governance

The Federal Council is instructed to examine how the provision in Article 9 paragraph 1 letter b FINMASA can be adapted or, if necessary, repealed in order to facilitate FINMA's governance with regard to the working relationship between the Executive Board and the Board of Directors. In this context, it should also examine whether or in which constellations enforcement proceedings against systemically important banks should constitute a transaction of major significance in accordance with Article 9 paragraph 1 letter b FINMASA.

Postulate no. 5: Strengthen the shareholder base in systemically important large companies

The Commission calls on the Federal Council to examine in detail how the shareholder base, including small shareholders, of systemically important large companies can be strengthened. This applies in particular to decisions that are important for the stability of the system.

Postulate no. 6: Review guarantee criteria to strengthen the responsibility of SIBs towards the Swiss economy and taxpayers

The Federal Council is instructed to examine whether a legal basis should be developed with the aim of better fulfilling the responsibility of the governing bodies of SIBs towards the Swiss economy and taxpayers. It should be examined whether the current eligibility criteria (general requirements and integrity as well as professional suitability) should be supplemented at the level of the candidate, but also at the level of the entire body of the institution (including a minimum ten-year residency requirement in Switzerland for the majority of the Board of Directors). Other targeted measures should also be examined.

Parliamentary initiative

The PUK has decided to submit a parliamentary initiative to amend the provisions of the Parliament Act relating to the PUK. The parliamentary initiative will be submitted separately.

Appendix 1: List of abbreviations

AF	Financial Crises Committee
ASF	Available Stable Funding
ASV-RAB	Ordinance of the Federal Audit Oversight Authority on the Oversight of Audit Firms of 17.3.2008 (Oversight Ordinance FAOA, SR *221.302.33*)
AT1	*Additional Tier 1 capital*
BankG	Federal Act of 8.11.1934 on Banks and Savings Banks (Banking Act; SR *952.0*)
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
BJ	Federal Office of Justice
BK	Federal Chancellery
BoE	Bank of England
BPV	Federal Office of Private Insurance
BV	Federal Constitution (SR *101*)
BZP	Federal Act of 4.12.1947 on Federal Civil Procedure (SR *273*)
CBLB	Central Bank Liquidity Backstop
CEO	Chief Executive Officer
CET1	Common Equity Tier 1 capital
CMG	Crisis Management Group
CPMI	Committee for Payment Transactions and Market Infrastructures
CS	Credit Suisse
D-SIB	Domestic Systemically Important Bank
FBC	Swiss Federal Banking Commission
EVS	Federal Department of Finance
EFF	Bottleneck financing facility
EFV	Federal Finance Administration
FDJP	Federal Department of Justice and Police
ELA	Emergency Liquidity Assistance
ELA+	Emergency Liquidity Assistance Plus
ENA	Enforcement Committee of the FINMA Executive Board
FATF	Working group to combat money laundering
FCA	Financial Conduct Authority
FDIC	Federal Deposit Insurance Corporation
Fed	Federal Reserve System
FIDLEG	Federal Act on Financial Services of 15.6.2018 (Financial Services Act, SR *950.1*)
FinDel	Finance delegation of the Federal Assembly
FinfraG	Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19.6.2015 (Financial Market Infrastructure Act, SR *958.1*)
FINIG	Federal Act on Financial Institutions of 15.6.2018 (Financial Institutions Act, SR *954.1*)
FINMA	Swiss Financial Market Supervisory Authority
FINMAG	Federal Act of 22.6.2007 on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act, SR *956.1*)
FINMA-PV	Financial Market Audit Ordinance of 5.11.2014 (SR *956.161*)
FINMA CIRCULAR	FINMA Circular

FK-N	Finance Committee of the National Council
FK-S	Finance Committee of the Council of States
FSAP	*Financial Sector Assessment Program*
FSB	Financial Stability Board
GAAP	*Generally accepted accounting principles*
GPDel	Business Audit Delegation of the Federal Assembly
GPK	Control Committees of the Federal Assembly
GPK-N	Control Committee of the National Council
GPK-S	Control Committee of the Council of States
G-SIB	Global Systemically Important Bank
GSK	General Secretaries' Conference
MLA	Federal Act on Combating Money Laundering and the Financing of Terrorism of 10.10.1997 (SR *955.0*)
GV	Annual General Meeting
HQLA	High-Quality Liquid Assets
IAASB	*International Auditing and Assurance Standards Board*
IADI	International Association of Deposit Insurers
IAIS	International Organization of Insurance Supervisors
ICSID	International Center for Settlement of Investment Disputes
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions and Exchange Supervisory Authorities
IPO	Initial Public Offering
ISA	*International Standards on Auditing*
IMF	*International Monetary Fund* (IMF)
KAG	Federal Act on Collective Investment Schemes of 23.6.2006 (Collective Investment Schemes Act, SR *951.31*)
KRG-ZH	Cantonal Law of the Canton of Zurich of 25.3.2019 (LS *171.1*)
KRR-ZH	Cantonal regulations of the Canton of Zurich dated 25.3.2019 (LS *171.11*)
Kst GwG	Anti-Money Laundering Control Authority
LCR	Liquidity coverage ratio
LG	Steering committee
LiqV	Ordinance on the Liquidity of Banks and Securities Firms of 30.12.2012 (SR *952.06*)
LoLR	Lender of Last Resort
LR	Leverage ratio
MAC clause	Material inverse change clause
MoU	Memorandum of Understanding
NAV model	Net asset value model
NBG	Federal Act of 3.10.2003 on the Swiss National Bank (National Bank Act, SR *951.11*)
NSFR	Net stable funding ratio
NZZ	Neue Zürcher Zeitung
OECD	Organization for Economic Cooperation and Development
OR	Federal Act supplementing the Swiss Civil Code, Part Five: Code of Obligations of 30.3.1911 (SR *220*)
OV-EJPD	Organization Ordinance for the Federal Department of Justice and Police of 17.11.1999 (SR *172.213.1*)
ParlG	Federal Act 13.12.2002 on the Federal Assembly (Parliament Act; SR *171.10*)

PfG	Pfandbrief Act of 25.6.1930 (SR *211.423.4*)
PIOB	*Public Interest Oversight Board*
PLB	Public Liquidity Backstop
PONV	Point of Non Viability
PRA	Prudential Regulation Authority
PUK	Parliamentary commission of inquiry
PVK	Parliamentary administrative control
RAB	Federal Audit Oversight Authority
RAG	Federal Act on the Licensing and Oversight of Auditors of 16.12.2005 (Auditor Oversight Act, SR *221.302)*
RAV	Ordinance on the Licensing and Oversight of Auditors of 22.8.2007 (Audit Oversight Ordinance, SR *221.302.3*)
RSF	Required Stable Funding
RVOG	Government and Administration Organization Act of 21.3.1997 (SR *172.010*)
RWA	Risk-weighted assets
SCV	Single Client View
SEC	United States Securities and Exchange Commission
SECO	State Secretariat for Economic Affairs
sgv	Swiss Trade Association
SIB	Systemically Important Bank
SIF	State Secretariat for International Financial Matters
SMR	Senior Managers Regime
SNB	Swiss National Bank
SPK	State policy commissions
SR	Systematic collection of laws
SRF	Swiss radio and television
StGB	Swiss Criminal Code of 21.12.1937 (SR *311.0*)
Code of Criminal Procedure	Swiss Code of Criminal Procedure of 5.10.2007 (SR *312.0*)
T1	Tier 1 capital
T2	Tier 2 capital
TBTF	Too-big-to-fail
TLAC	Total Loss Absorbing Capacity
TPA	Tripartite agent
TPO	Temporary Public Ownership
DETEC	Federal Department of the Environment, Transport, Energy and Communications
VAG	Federal Act on the Supervision of Insurance Companies of 17.12.2004 (Insurance Supervision Act, SR *961.01*)
ViR	Valuation in Resolution
VR	Board of Directors
VRP	Chairman of the Board of Directors
VVG	Federal Act on Insurance Contracts of 2.4.1908 (Insurance Contract Act, SR *221.229.1*)
WAK-N	Committee for Economic Affairs and Taxation of the National Council
WAK-S	Committee for Economic Affairs and Taxation of the Council of States
WBF	Federal Department of Economic Affairs, Education and Research
WeFa	Securities facility

Appendix 2: Glossary

Aare	Generic code name used from fall 2022 by the authorities (in particular the FDF) to prepare for any crisis intervention by the authorities in the CS matter.
Processing	Restructuring or liquidation of the bank (*resolution*) with the aim of ensuring the continuation of its systemically important functions and financial stability while burdening the public sector as little as possible.
AT1	*Additional Tier 1 capital,* additional core capital. debt capital for accounting purposes, but is treated as equity for regulatory purposes. These are bonds with an unlimited term that can be converted into shares or written off in the event of financial difficulties at the issuing bank, depending on the contractual structure. The AT1 instruments serve as "going-concern" capital and can also cover losses before the shareholders in order to minimize risks for the bank. taxpayers.
Assessment Letter	Annual assessment of the strengths and weaknesses of a banking institution by FINMA. This assessment also includes the communication of the institution's internal FINMA rating. The four levels on the rating scale are: Standard supervision (*subject to standard supervisory procedures*), *increased* supervision (*subject to increased supervisory procedures*), intensive supervision (*subject to intensive supervisory procedures*), intensive *and continuous* supervision (*subject to intensive and continuous supervisory procedures)*. *ous supervisory procedures*).
B1; B2; BX	Code names used by the authorities for various banks. B1 stands for UBS, B2 stands for Credit Suisse, BX refers to a foreign (undefined) bank.
Bail-in	Conversion of debt into equity or reduction of receivables ordered by FINMA as part of restructuring proceedings.
Bail-in bonds	Debt instruments for bearing losses in the event of insolvency measures. They represent debt capital and can be converted into equity by means of *a bail-in*.
Bail-out	State rescue of a company, especially in the banking sector, by means of state recapitalization or nationalization, in which the taxpayer has to bear the costs.
Bank Run	A run on a bank by depositors who want to withdraw their deposits as quickly as possible. Today, this is also referred to as a *digital bank run*, as digitalization has accelerated this process.
Basel I	The Basel Capital Accord issued by the Basel Committee on Banking Supervision aims to strengthen the stability of the international financial system and promote a level playing field among banks. The original version of the Basel Capital Accord (Basel I), which focused minimum coverage credit risks, was adopted in 1988. In 1996, capital requirements for market risks were added.
Basel II	First revision of the Capital Accord. It was issued by the Basel Committee on Banking Supervision in 2004 and includes the Basel three-pillar concept.
Basel III	The second revision (Basel III) was decided by the Basel Committee Banking Supervision in the wake of the global financial crisis of 2008.
Basel three-pillar concept	concept that was introduced with Basel II. Pillar I refers to the minimum requirements that must be met by all banks, regardless of their size or

	specific risks apply. Pillar II enables the supervisory authorities to determine additional capital on an individual basis depending on a bank's risk profile. Pillar III contains regulations on disclosure and transparency. rency.
BCBS	Basel Committee on Banking Supervision. The BCBS is the most important organization for the development of global standards for prudential banking regulation. Its mandate is to develop the regulationsupervision and appropriate practices of banks worldwide. to improve financial stability.
Break up	scenario, which is part of the Swiss G-SIB's resolution planning. In this scenario, the restructuring has either failed or has no effect. prospect of success. In this case, the focus be on preserving the Swiss unit. The remaining part of the Group will be liquidated.
Book value	Price at which an investment is currently recorded in the bank's books. The term book value is sometimes also used in a normative sense for the value at which an investment should be recognized according to the applicable rules (lower of cost or market principle). In order to distinguish this value from the neutral concept of book value, it is simplified here as the lower of cost or market (see below).
CBLB	Central bank liquidity backstop. Liquidity assistance granted by a central bank to a systemically important bank that is a restructuring process.
CMG	Crisis Management Group. Committee in which cooperation takes place with regard to the restructuring or resolution of a G-SIB. It comprises the main supervisory and insolvency authorities of the bank concerned. In the case of Credit Suisse, the CMG is up of representatives from FINMA, the *Federal Reserve System* (Fed), the *Prudential Regulation Authority* (PRA), the *Bank of England* (BoE), the *Federal Deposit Insurance Corporation* (FDIC) and the *United States Securities and Exchange Commission* (SEC). It becomes active in the event of crises the international financial system and attempts to stabilize cooperation through close collaboration between the authorities involved. The objectives of a CMG are to *assess* the resolvability of a bank (*resolvability assessment*), to develop a common understanding of resolution planning for the G-SIBs and to stabilize the crisis situation. and resolution *planning* for the G-SIB.
CoCo-Bond	Contingent convertible bond. Convertible bonds that can be converted into another financial instrument (e.g. shares) or written off if predetermined conditions are met - such as the equity ratio falling below a defined value. The exact form The contractual terms and conditions stipulate the scope of the liability.
Como	Code name used by the authorities and CS to refer to Credit Suisse or the scenario of the takeover of Credit Suisse by UBS, depending on the documents.
Compliance	Compliance with legal, regulatory and internal provisions as well as observance of customary market standards and codes of conduct.
Contingency plan	A plan designed to ensure that an organization is able to respond effectively to a significant future incident, event or situation that may or may not occur. A *contingency plan* is sometimes also referred to as a Plan B or backup plan, as it can also be used as an alternative measure if the expected results do not materialize.
Corporate Governance	Principles and structures by which an institution is managed and controlled by its governing bodies.

Data Room	A virtual space that enables users to exchange documents securely and serves as a reference platform for the implementation of a transaction-related *due diligence*.

Due Diligence	The careful analysis and evaluation of an object in a business context. *Due diligence reviews* are carried out in particular in the context of impending transactions such as company acquisitions.
D-SIB	Domestic Systemically Important Bank, national systemically important bank. The SNB designates the banks that are systemically important for Switzerland after consulting FINMA. Insofar as these are not globally systemically important and have not been designated as G-SIBs, they are considered D-SIBs. In Switzerland, PostFinance, Raiffeisen and Zürcher Kantonalbank are considered domestically focused systemically important banks.
Own funds requirement	Swiss capital adequacy regulation the requirements of the Basel Committee on Banking Supervision. This sets international standards in the area of banking regulation and supervision, including the so-called three-pillar concept in the area of capital adequacy. Pillar 1 refers to the minimum requirements that apply to all banks regardless of size or specific risks. Pillar 2 enables the supervisory authorities to set additional capital requirements on an individual basis, depending on a bank's risk profile. Finally, Pillar 3 contains regulations disclosure and transparency.
Enforcement	Term that covers all FINMA investigations, proceedings and measures with which it clarifies and punishes violations of supervisory law.
ELA	Emergency Liquidity Assistance. Extraordinary liquidity assistance granted a central bank. It must be fully covered by sufficient collateral at all times. Under current law, it is up to the SNB to assess which collateral is sufficient.
ELA+	Additional liquidity assistance loans from a central bank. In the event of the bank's bankruptcy, the repayment of the ELA+ is privileged over the claims of other creditors. In this case, the Federal Council has granted a bankruptcy privilege for this additional liquidity assistance. created. This gives the SNB the necessary security to provide CS with substantial additional liquidity.
ENA	Enforcement Committee of the FINMA Executive Board. The committee that decides on the measures to be ordered against the authorized institution or the governing bodies, owners and employees concerned or on any discontinuation of an enforcement procedure. procedure.
Esisuisse	Association founded in 2005 under the name "Deposit Protection Association of Swiss Banks and Securities Dealers" to fulfill the self-regulatory measures laid down in the Banking Act. The association is responsible for the statutory deposit guarantee and provides protection in the event of compulsory liquidation. dation of a financial institution the privileged deposits.
Fair value	The price achievable with the most objective estimate possible: if available, the market value; alternatively, the presumed proceeds achievable in the event of a sale; subsidiarily, the present value of future income.
FDIC	Federal Deposit Insurance Corporation. Federal Deposit Insurance Corporation (in the USA). It insures the customer deposits of its member banks up to USD 250,000 per customer and bank in order to prevent bank runs in the event of bank failures. the others.

Financial market infra-structures	According to the Financial Market Infrastructure Act (FMIA; SR *958.1*), exchanges, multilateral trading facilities (MTFs), central counterparties (CCPs), central securities depositories as operators of a central securities depository or a securities settlement system, trade repositories and payment systems. The financial market infrastructures can thus be subdivided into those at the level of trading (stock exchanges and MHS), settlement (CCP), settlement and custody (central securities depository), reporting (central securities depository) and payment systems. (trade repositories) and the payment system (payment systems).

	CCPs, central securities depositories, payment systems and trade repositories are also referred to collectively as post-trading infrastructures due to their activities downstream of trading.
FinDel	Finance delegation of the Federal Assembly. It has the task of approving urgent commitment and budget credits (see Art. 28 and 34 of the Financial Budget Act; SR *611.0*).
FSB	Financial Stability . Council by the G20 at its summit in 2009 to monitor the global financial system. and issues recommendations relating to banking regulation, among other things.
Geneva	Code name sometimes used by the authorities for UBS. See also B1.
Going-concern capital	For systemically important Swiss banks, the *going concern* capital as defined in the CAO refers to the "capital required for the proper continuation of the bank". This is a partial requirement of TLAC. This capital should enable the banks to continue their business operations and services so that they do not require state support or have to be restructured or wound up in the event of a crisis. Eligible capital is divided into core capital (*Tier 1*) and supplementary capital (*Tier 2)* according to quality levels. The most important component is core capital, which consists of *common equity tier 1* capital (CET1) and additional tier *1* capital. core capital (*Additional Tier 1 capital*, AT1).
Gone Concern Hospital	For systemically important Swiss banks, *gone concern* capital refers to "additional loss-absorbing capital" in accordance with the CAO. This is the other sub-requirement of TLAC. This capital is intended to enable the banks to ensure their restructuring or to continue the systemically important functions in a functioning unit and to wind up the other units in the event of a crisis. In most cases, these capital requirements are met by so-called *bail-in bonds*. These are debt instruments that have been explicitly designed to bear losses in the event of insolvency measures. The conversion to own funds takes place within the framework of a *bail-in* ordered by the authorities.
G-SIB	Global Systemically Important Bank. Bank or financial group whose disorderly failure could jeopardize global financial stability. Every year, the FSB designates the banks that considered G-SIBs in a global context. In Switzerland, only UBS is a G-SIB (previously Credit Suisse was also a G-SIB).
HQLA	High-Quality Liquid Assets. First-class, high-quality liquid assets.
Haircut	Discount on the value of an asset, expressed as a percentage. If a central bank grants a commercial bank a loan, for example, it requires collateral for the loan. It can apply a haircut to this collateral; for a government bond worth CHF 1 million, the With a haircut of 20%, the commercial bank would only be able to grant a loan of CHF 800,000.
Risk of insolvency (threat insolvency)	The risk of insolvency in relation to banks exists if there is a justified concern that a bank is over-indebted, has serious liquidity problems or is at risk of insolvency. problems or does not meet the capital adequacy requirements after the expiry of a deadline.
Internal control system	A system that encompasses the entirety of a bank's control structures and processes, which form the basis for the achievement of business policy objectives and for the proper operation of the institution at all levels of the institution. The internal control system includes not only ex post control activities, but also those planning and control.

IPO	Initial Public Offering. The first public offer by a previously unlisted company to subscribe for shares in the issuing . This is associated with a stock exchange admission and listing of the company.
LCR	Liquidity coverage ratio, ratio for short-term liquidity or minimum liquidity ratio. Ratio designed to ensure that banks hold sufficient first-class liquid assets to cover the net cash outflow at all times that is to be expected in a stress scenario defined by outflow and inflow assumptions with a time horizon of 30 calendar days (30-day horizon).
Steering Committee SNB-FINMA	Committee in which the strategic cooperation between the SNB and FINMA takes place in the common areas of interest. To avoid confusion with the Steering Committee (LG) (in French: *comité directeur [CD]*), it is referred to as the "SNB-FINMA Steering Committee" (in French: *comité directeur BNS-FINMA*). It consists of the members of the Governing Board on the SNB side and the Chair of the Board of Directors, the Vice-Chair of the Board of Directors and the Director on the FINMA side. The committee is co-chaired by the Chairman of the SNB and the Chairwoman of FINMA's Board of Directors. Other participants may be invited if necessary. The SNB-FINMA Steering Committee meets at least twice a year and whenever necessary. It discusses the macroeconomic environment, the situation on the financial markets and in the banking sector with a focus on the systemically important banks, sets the strategic priorities in the common areas of interest and discusses the results of joint projects.
LG	Steering committee. The FDF, FINMA and the SNB work closely together in the event of a crisis that threatens the stability of the financial system. To this end, they establish a joint crisis organization and work together to prepare instruments for managing a crisis. The strategic coordination of the crisis organization and any interventions is carried out by the LG. The LG is made up of the Head of the FDF, who the committee, the Chairman of the SNB Governing Board and the Chairwoman of FINMA. The LG meets as required, usually in the presence of the members of the Financial Crises Committee (AF).
Liquidation	Process in which a bank is closed and its assets are sold in order to settle the claims of creditors.
Liquidity	Has three meanings in the economy: 1) the ability of an economic entity to meet its mandatory liabilities at any time and without restriction; 2) the funds required to do so; 3) a market is considered liquid if larger transactions can be concluded in it without triggering significant price movements. The Banking Act stipulates that banks in Switzerland must have adequate liquidity.
LoLR	Lender of last resort, lender of last resort. In Switzerland, the SNB assumes this function. If domestic banks can no longer refinance themselves on the market, the SNB can provide them with liquidity against collateral under certain conditions. place.
LR	Leverage ratio. Ratio in which the core capital (T1) is compared to the total exposure.
MAC-Klausel	*Material adverse change clause,* withdrawal clause. Contractual clause in the context of a company sale that gives the buyer the option of withdrawing from the purchase agreement and not executing it if a specific event occurs between signing and closing. event that affects the company to be acquired or its subsidiaries.

market environment in a materially adverse manner.

Market value Value attributed to an asset on the market. For reasons of comprehension and readability, the term "market value" is used in this report as a synonym for "fair value". The term "fair value" includes the best estimate for those assets that are
assets that do not have a market, such as equity investments.

MoU *Memorandum of Understanding*, bilateral or multilateral agreement between several parties without legally binding effect.

NAV model *Net asset value model*. Historical valuation method based on net fund assets for regulatory purposes.

Lowest value Lowest of the possible values of an investment, i.e. the amount at which the investment should be valued in accordance with the lower of cost or market principle (Art. 960c CO); in the case of undervalued investments, generally the cost price (or acquisition value); in the case of overvalued investments
the fair value.

Emergency plan With the emergency plan, systemically important banks must prove that their systemically important functions can be continued without interruption in a crisis. Only functions that are essential for the Swiss economy and cannot be substituted in the short term, namely the domestic deposit and lending business as well as payment transactions (systemically important functions), are considered systemically important. In this sense, emergency planning focuses on the banks' Swiss business, in contrast to global *recovery* and *resolution planning*. FINMA reviews the measures in the emergency plan with regard to their effectiveness in the event of an imminent
Insolvency of the bank.

NSFR Net stable funding ratio; financing ratio; structural liquidity ratio. Ratio designed to ensure that the stable refinancing of a bank is permanently guaranteed over a one-year time horizon. The NSFR corresponds to the ratio of the available stable funding ASF) in the numerator and the required stable funding,
RSF) in the denominator.

Parent Bank The highest operating unit of a financial group that is subject to comprehensive prudential supervision by a financial market supervisory authority. Within the CS Group, *Parent Bank* refers to Credit Suisse AG (CS) in the individual institution view (not consolidated).

Pillar 2 Additional capital and liquidity requirements that the supervisory authority imposes on a bank based on its findings in the Supervisory Board report.
process, e.g. with regard to risk management or significant legal risks.

PLB Public liquidity backstop, state-guaranteed liquidity assistance, i.e. the systemically important bank receives a subsidiary liquidity supply from the central bank in the event of restructuring. The state covers the central bank's risk with a state guarantee. This is a credit that must be remunerated and repaid through commitment and risk premiums as well as interest. The purpose of this instrument is to increase the confidence of market participants in the ability of a recapitalized and solvent systemically important bank to survive. A PLB belongs to
internationally as a standard instrument in banking crises. The FSB issued a corresponding recommendation in 2016.

PONV Point of non-viability (time of impending insolvency or inability to pay). If there are reasonable grounds for concern that a bank is over-indebted or has serious liquidity problems, or if it does not meet its own capital adequacy requirements, this is referred to as the point of non-viability.

the expiry of a period of time set by FINMA

	FINMA can order protective measures in accordance with Art. 25 BankA (RS *952.0*). The bank has reached the *point of non-viability* (PONV). The term is used specifically in issuing conditions for equity instruments. It refers to one of the triggering events The Group's risk-bearing capacity for those instruments.
Project Africa	Code name of CS and the authorities for the strategy adjustment and restructuring of the bank announced in October 2022.
Recovery	Stabilization. Recovery refers to the measures taken by a company to stabilize itself without government intervention.
Recovery plan	Stabilization plan. In the recovery plan, the systemically important company sets out the measures it intends to take to stabilize itself sustainably in the event of a crisis so that it can continue its business activities without state intervention. FINMA reviews and approves the Recovery plan.
Regulatory filter	The term regulatory filter is used to derive the regulatory eligible capital from the accounting.
Resolution	See processing.
Resolution plan	Resolution plan. A plan drawn up by FINMA to restructure or liquidate a systemically important company as a whole (i.e. the case of systemically important banks operating internationally, the entire group, including foreign group companies, which is why the plan is referred to as "global" for these banks). In this plan, FINMA sets out how a restructuring or liquidation ordered by it can be carried out.
Resolvability	Resolvability. The creation of the necessary conditions to ensure that a systemically important bank can be restructured or liquidated in a crisis without jeopardizing financial stability.
Risk management	Includes the organizational structures as well as the methods and processes used to define risk strategies and risk management measures and to identify, analyze, assess, manage and control risks. The purpose of the risk management system is to manage, monitor and report risks.
RSF	Required Stable Funding. Weighted asset side of a bank balance sheet. Required funding for items on the assets side and for off-balance sheet items. The portion of equity and debt that is expected to provide reliable funding over a time horizon of one year. is the source of the oil.
Withdrawal clause	See MAC clause.
RWA	Risk-weighted assets. A measure of the risks that a bank carries on its books. It is used to determine the minimum equity capital that banks hold as a reserve. to reduce the risk of insolvency.
Refurbishment	Process in which a bank in financial difficulties is restructured in order to improve its financial situation and avoid bankruptcy. The aim of the bank is therefore to ensure the continuation of its business activities after any restructuring, or at least the continuation of the bank as a going concern. individual banking services.
SCV	Single client view (overall client view). Requirement imposed by FINMA on CS in the area of risk management.
SEC	United States Securities and Exchange Commission. The highest securities and stock exchange commission in the USA, which supervises the entire US securities market.
Securitized Products business	Transaction in which financial assets - e.g. loans - are securitized and sold to investors in the form of securities.

SIB	Systemically Important Bank. See D-SIB and G-SIB.

Single point of entry	Approach to the resolution strategy in which the plan is for the home supervisory authority of a bank to convert only the debt of the top unit of the group into new capital by means of *a bail-in*. The operating units (often active in foreign jurisdictions) should not be subject to regulatory supervision. subject to legal intervention.
SMR	Senior Managers Regime. Regime aimed at raising standards of corporate governance, strengthening individual accountability and restoring confidence in the banking sector. It has applied to the banking sector since March 2016. In institutions where the SMR applies, key employees must be approved by the FCA or PRA before they take up their role. Key employees must also have a "responsibility statement" documenting their responsibilities and accountabilities. Institutions must also confirm annually for all senior employees that they are competent to carry out their duties. are suitable.
Solvency	The financial assessment of a bank or banking group where the value of its assets exceeds the value of its liabilities and the bank or banking group simultaneously complies with the applicable capital adequacy requirements.
Standing Committee on Financial Stability	Committee in which the operational management of the cooperation between the SNB and FINMA in the common areas of interest takes place. The committee is chaired by the Head of Financial Stability (SNB) and the Head of the Banks division (FINMA). The other members of the committee are appointed by the chairmen. Depending on the items on the agenda, further participants may be invited. The committee meets at least four times a year and whenever necessary. Among other things, it specifies the objectives for joint projects based on the strategic priorities set by the Executive Committee, establishes contact with the banks in the event of joint projects, coordinates and monitors the joint work and prepares the basis for decisions.
Stress test	Test used to determine the impact of a potential crisis on the institutions' capital and solvency. The tested institutions must sufficient capital and liquidity buffers, to be able to absorb unforeseen events at any time.
System relevance	Systemically important banks are banks, financial groups and bank-dominated financial conglomerates whose failure would significantly jeopardize the stability of the Swiss economy and the financial system. The systemic importance of a bank is assessed according to its size, its interconnectedness with the financial system and the economy as well as the short-term substitutability of the services it provides. The relevant criteria here are the market share or the amount of secured deposits.
System-relevant functions	Functions performed by banks that are indispensable for the Swiss economy and cannot be substituted in the short term. These include, in particular, the domestic deposit and lending business as well as payment transactions. The SNB is responsible for designating the systemically important banks and their functions. The SNB consults FINMA on this.
System-relevant company	A company that performs functions that an economy cannot do without or that cannot be by other companies.
System risks	Risks emanating from individual market participants that could jeopardize the stability of the entire economy (system).

TBTF	Too-big-to-fail. Term used to describe companies whose bankruptcy jeopardizes the stability of the entire economy

	would. If such a bankruptcy were to occur, the state would be forced to rescue the company. The discussion centers on the systemic risks posed by such a company. banks. Synonyms: Systemically important banks.
TLAC	Total loss-absorbing capacity. A concept that includes all equity and debt capital that can be used to absorb losses and recapitalize an internationally active systemically important bank in the event of its restructuring or liquidation. The capital is made of funds for the ordinary continuation (*going concern*) and funds for the restructuring or liquidation (*gone concern*) of a bank. In 2015, the FSB published an international standard ("TLAC standard").
TPA	Tripartite agents, TPAs are specialized service providers in the area of securities settlement and management.
TPO	Temporary Public Ownership, temporary nationalization.
ViR	Valuation in Resolution *(*ViR). Serves to provide the resolution authorities with the necessary information as to whether a bank is likely *to fail*. This is particularly relevant in a capital scenario. ViR is to determine whether the capital measures are sufficient to compensate for impairment losses and whether the restructured bank will again meet the capital requirements to a sufficient extent after the capital measures. mass in order to be able to absorb further potential losses.
Central counterparty	A central counterparty is an institution that places itself between buyer and seller in a market. The central counterparty is responsible for the management of contracts and their fulfillment. In particular, it assumes the counterparty risk, i.e. the risk that a party cannot fulfill its obligations under the contract. If a party defaults, the central counterparty must have sufficient financial resources and liquidity to any losses and fulfill its payment or delivery obligations on time. can.

Appendix 3: List of persons consulted

Name	Function
(in alphabetical order)	*(Function at the time of the hearing(s) and function relevant to the work of the PUK)*[2265]
Amherd, Viola	President of the Swiss Confederation, Vice-President of the Federal Council 2023, Head of the DDPS since 1.1.2019
Amstad, Marlene	Chairwoman of the FINMA Board of Directors since 2021, Vice-Chairwoman since 2018, member of the FINMA Board of Directors since 2016
Angehrn, Urban	Director FINMA from 1.11.2021 to 30.9.2023
Farmer, Thomas	Chairman of the Board of Directors FINMA from 1.1.2016 to 31.12.2020
Baume-Schneider, Elisabeth	Federal Councillor, Head of the FDHA since 1.1.2024, Head of the FDJP from 1.1. to 31.1.2023
Berset, Alain	Former Federal Councillor, President of the Swiss Confederation 2023, Deputy Head of the FDF from 1.1.2019 to 31.12.2022
Blöchliger, Jan	Head of the Banks division and member of FINMA's Executive Board from July 2018 to January 2022
Bonacker, Michael	Group Head of Transformation of CS September 2022 to September 2023
Branson, Mark	Director FINMA from 1.4.2014 to 30.4.2021, Deputy Director FINMA from 1.2.2013 to 31.3.2014, Head of the Banks division FINMA from 1.1.2010 to 31.1.2013
Budliger-Artieda, Helene	State Secretary for Economic Affairs since 1.8.2022
Cassis, Ignazio	Federal Councillor, Head of the FDFA since 2017, President of the Confederation in 2022
D'Amelio-Favez, Sabine	Director FFA (FDF) since 1.2.2021
Danthine, Jean-Pierre	Vice-Chairman of the Governing Board of the SNB from 1.8.2012 to 30.6.2015 (Head of Department II, responsible for financial stability, among other things)
de Watteville, Jacques	State Secretary SIF from 1.11.2013 to 30.6.2016
Derendinger, Peter	Chairman of the Board of Directors Credit Suisse Schweiz AG March 2019 to October 2023
Diethelm, Markus	Head of Legal Services (Group General Counsel) at CS from June 2022, Head of Legal Services at UBS from 2008 to October 2021
Ermotti, Sergio	CEO of UBS from 1.11.2011 to 30.10.2020 and since 5.4.2023
Eymann, Patric	Head of the Enforcement division, FINMA since August 2016
Gasser, Jörg	State Secretary SIF from 1.7.2016 to 28.2.2019, Secretary General of the FDF from 2011 to May 2016

[2265] The names of certain persons are not mentioned.

Gerszt, Arie	Deputy Director FFA, Head of Legal and Risk Management FFA since February 2021, Deputy Head and later Head of the Capital Markets and Infrastructure Section SIF from September 2015 to January 2021
Girard, Alain	Head of the Recovery and Resolution division since 1.8.2022 and member of FINMA's Executive Board, active in the Recovery and Resolution division since 2015
Götschmann, Rolf	Secretary General FDF from 1.3.2021 to 31.1.2023
Gottstein, Thomas	CEO of CS from 15.2.2020 to 30.7.2022
Goumaz, Nathalie	Secretary General EAER since 1.1.2019
Hamers, Ralph	CEO of UBS from 1.11.2020 to 4.4.2023, Advisor to the Executive Board from 5.4.2023 to September 2023
Hirschi, Thomas	Head of the Banks division since February 2022, member of the FINMA Executive Board since 2020
Horta-Osório, António	Chairman of the Board of Directors of CS from 30.4.2021 to 17.1.2022
Hubacher, Michael	Head of Legal and International RAB since March 2021
Pretty Schmuki, Barbara	Secretary General FDF since 1.2.2023, previously Secretary General FDJP
Hürzeler, Martin	Head of Financial Audit since 2015 and Deputy Director FAOA since 2021
Jordan, Thomas	Chairman of the Governing Board of the SNB from 18.4.2012 to 30.9.2024
Kelleher, Colm	Chairman of the Board of Directors UBS since 7.4.2022
Keller-Sutter, Karin	Federal Councillor, Head of the FDF since 1.1.2023, Head of the FDJP from 1.1.2019 to 31.12.2022
Körner, Ulrich	CEO of CS August 2022 to June 2024
Lehmann, Axel	Chairman of the Board of Directors of CS from 17.1.2022 until the takeover by UBS in June 2023
Maechler, Andréa M.	Member of the SNB Governing Board from 1.7.2015 to 30.6.2023 (Head of Department III)
Maurer, Ueli	Former Federal Councillor, Head of the FDF from 1.1.2016 to 31.12.2022
Meier, Heinz	Head of Regulatory Audit FAOA since 2015
Parmelin, Guy	Federal Councillor, Head of EAER since 1.1.2019, member of the Federal Council Committee on Financial Affairs
Plenio, Martin	Head of Legal Affairs at the SNB (I. Department) since 2011
Rime, Bertrand	Head of Financial Stability at the SNB (Department II) since 2011
Rohner, Urs	Chairman of the Board of Directors of CS from 29.4.2011 to 30.4.2021
Ronner, Markus	Group Chief Compliance and Governance Officer and member of the Group Executive Board since 2018, Chairman of the Board of Directors of UBS Switzerland AG 2022 to October 2023
Rossi, Viktor	Federal Chancellor since 1.1.2024, previously Vice-Chancellor and Head of the Federal Council since 2019

Rösti, Albert	Federal Councillor, Head of DETEC, Deputy Head of FDF, member of the Federal Council Committee on Financial Affairs since 2023
Roth, Daniel	Head of Legal Service FDF from September 2010 to April 2016, Head of Solvency and Capital Division and member of FINMA's Extended Executive Board from April 2004 to September 2010
Sanwald, Reto	Director FAOA since 1.1.2021, Deputy Director 2010 to 2020
Scheidegger, Eric	Head of the Economic Policy Directorate since 2012 and Deputy Director of SECO since 2007
Schiltknecht, Reto	Deputy Head of the Recovery and Resolution division from August 2016 to August 2021, Head of the Solvency and Capital department in the Banks division from January 2010 to July 2016, FINMA
Schlegel, Martin	Chairman of the Governing Board of the SNB since 1.10.2024, Vice-Chairman of the Governing Board of the SNB 1.8.2022 to 30.9.2024 (Head of Department II, responsible among other things for financial stability), 1.9.2018 to 1.8.2022 Deputy Member of the Governing Board (Deputy Head of Department I)
Schöll, Michael	Director FOJ since 1.9.2021
Simonazzi, André	Vice Chancellor, Speaker of the Federal Council January 2009 to May 2024 (deceased on May 10, 2024)
Sommaruga, Simonetta	Former Federal Councillor, Head of DETEC from 1.1.2019 to 31.12.2022, Head of FDJP from 1.11.2010 to 31.12.2018
Stoffel, Daniela	State Secretary SIF (FDF) since 1.3.2019
Thiam, Tidjane	CEO of CS Group AG from 1.7.2015 to 14.2.2020
Thurnherr, Walter	Federal Chancellor 9.12.2015 to 31.12.2023
von Kaenel, Rahel	Secretary General FDF from 1.7.2016 to 28.2.2021 (currently Director EPO)
Widmer-Schlumpf, Eveline	Former Federal Councillor, Head of the FDF from 1.11.2010 to 31.12.2015
Zurbrügg, Fritz	Vice-Chairman of the Governing Board of the SNB from 1.7.2015 to 31.7.2022 (Head of Department III 2012 to 2015, Head of Department II, responsible among other things for financial stability 2015 to 2022)
-	Head of CS Team, FINMA
-	Head of Recovery and Resolution Planning Division, FINMA
-	Senior Specialist Audit and Quality Control, FINMA

Appendix 4: Chronology of the most important events

For reasons of practicability and readability, not all meeting dates of the authorities concerned were listed, but those that took place exclusively due to the crisis-related circumstances. The other dates can be found in the FINMA and FDF documents. In the case of FINMA's enforcement proceedings, the date on which the proceedings were opened is listed.

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
16.10.2008			BR, SNB and Swiss Federal Banking Commission (predecessor of the FINMA) present rescue plan to save UBS
13.10.2010			BR comments on the recommendations of the GPK
16.12.2010		Bank for International Settlements (BIS) Basel III, recommendations for capital requirements for more resilient banks and banking systems. teme	
13.1.2011		Bank for International Settlements (BIS) "Final elements of the reforms to raise the quality of regulatory capital issued by the Basel Committee".	
16.2.2011			BR implements certain recommendations of the GPK; better of the BR by the FDF in times of crisis; adjustment of Controlling and taking minutes of the works council meetings
30.3.2011		BR welcomes informal contacts with the European Commission Systemic Risk Committee, but refrains from further cooperation	

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
20.4.2011		Federal Council adopts dispatch on amending the Banking Act (dealing with systemic risks of large banks); strengthening of capital base, stricter liquidity requirements, Better risk distribution	
29.4.2011	Urs Rohner is elected Chairman of the Board of Directors at the CS Annual General Meeting		
24.8.2011		BR enacts provisions to protect bank deposits	
		BR proposes change to withholding tax so that the issuance of Coco bonds (AT1 bonds) in Switzerland is simplified	
october 2011		Financial Stability Board publishes "Key Attributes of Effective Resolution Regimes for Financial Institutions", the central international standard for, among other things, the resolution of financial institutions. of systemically important banks.	
26.10.2011			FINMA opens enforcement proceedings against CS in connection with the US cross-border financial services business. business
25.11.2011			FINMA opens enforcement proceedings "Proceedings anonymous / Arab Spring" against CS
15.2.2012		**Federal Council enacts amendment to the Banking Act to regulate the "too big to fail" issue as of March 1 (dealing with systemic risks of large banks); strengthening of capital base, stricter liquidity requirements improvements, better risk distribution**	

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
1.6.2012		Total revision of the Capital Adequacy Ordinance for implementation the new "Basel III" rules	
16.11.2012			SNB ruling establishing the systemic relevance of the Credit Suisse AG
30.11.2012		BR issues new liquidity regulations for banks by ordinance	
5.2.2013			Relief with regard to the participation deduction for the subsidiaries to be consolidated from 2014 (50% deduction from equity and 50% deduction from other capital), based on based on Art. 125 ERV
7.6.2013			FINMA approves CS recovery plan
30.6.2013			FINMA draws up resolution plan for CS (shows implementation of a restructuring liquidation ordered in an emergency)
20.12.2013			FINMA decreed that Credit Suisse Group AG as a financial group and Credit Suisse AG as a financial group and as an individual institution are subject to the special requirements for systemically institutions. Furthermore, guidelines and requirements were defined in the following areas, among others: Capital requirements, own funds, Liquidity requirements and risk distribution.
19.5.2014	CS pleads guilty to tax evasion to US authorities and pays CHF 2.6 billion Penalty		
20.5.2014			FINMA publishes summary report on enforcement proceedings against CS regarding cross-border transactions with

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			US clients between 2000 and 2008; breach of duties in risk management
21.10.2014	EU Commission fine for CS (CHF 9.2 million) and UBS (CHF 12.7 million) in connection price fixing for interest rate derivatives		
18.2.2015			BR adopts first evaluation report on system-rele vant banks ("too-big-to-fail" provisions); increased capital requirements necessary
10.3.2015	Announcement of resignation of CS CEO Brady Dougan on End of June 2015; introduction of Tidjane Thiam		
25.9.2015			FINMA opens enforcement proceedings against CS regarding breach due diligence obligations to combat money , organizational and guarantee requirements in relation to the Oil company Petrobras
21.10.2015	Announcement of a restructuring; among other things, less capital employed in Investment Banking; individual banking divisions to become more independent; a minority share of the Swiss banking unit to be sold to the be brought to the stock exchange		
4.11.2015			The Federal Council proposes a comprehensive package of amendments and to the Banking Act in its dispatch on the Financial Services and Financial Institutions Act (will be submitted at the request of the Federal Council). of the WAK-S rejected to BR)
9.11.2015		Financial Stability Board publishes standard (and Term Sheet) on Total Loss Absorbing Capacity (TLAG) for global systemically important banks.	

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
19.11.2015	Extraordinary General Meeting of CS: Ka-capital increase in the amount of CHF 6 billion.		
5.2.2016			FINMA opens two enforcement proceedings against CS regarding violation of due diligence obligations to combat money , organizational and guarantee requirements in business relationships with a politically exposed person and in the case of a politically exposed person. external asset manager
11.5.2016		Adjustment of the TBTF provisions by amending the Capital Adequacy Ordinance; strengthening of the capital base, increased additional capital for restructuring or liquidation	
June 2016	Mozambique affair and involvement of CS becomes public		
18.8.2016		**Financial Stability Board publishes guiding principles for the resolution of systemically important banks (incl. public backstop)**	
21.11.2016		Adjustment of the Capital Adequacy Ordinance to comply with the Basel III framework agreement; more risk-sensitive capital backing for derivatives and for derivatives held in the banking book. fund units held	
23.12.2016	CS reaches a settlement with the US Department of Justice in connection with mortgage cases in 2007. Payment of a civil fine in the amount of 2.48 billion US dollars and provision of 2.8 billion US dollars for compensation payments		

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
20.1.2017			FINMA initiates enforcement proceedings against CS regarding breach due diligence obligations to combat money , organizational and guarantee requirements in relation to the Oil company PDVSA and FIFA
17.3.2017			FINMA initiates enforcement proceedings against CS: violation of a FINMA ruling on cross-border client and investment banking. business
26.4.2017	CS rejects IPO for the Swiss banking and announces share capital increase instead to strengthen the capital base		
18.5.2017	Extraordinary General Meeting of CS: capital increase of CHF 4.1 billion.		
28.6.2017			Federal Council adopts second evaluation report on systemically important banks; need for action on gone concern capital requirements recognized
30.8.2017			Statement of the Federal Council on Mo. 17.3317 Landolt "Clear responsibilities between financial market policy and financial market supervision"
20.10.2017			FINMA issued a partial amendment to the TBTF decree of 20.12.13. In addition, requirements were defined in the following areas, among others: Required equity capital, risk distribution for indirect holdings, regulatory filters and disclosure.
07.12.2017		**BIS publishes updated recommendations "Basel III: Finalizing post-crisis reforms" (also known as Basel IV)**	

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
17.9.2018			FINMA concludes two enforcement proceedings against CS and identifies shortcomings in the fight against money laundering
3.7.2019			BR adopts third evaluation report on system-rele- vant banks; adjustment of gone-concern capital requirements planned for CS and UBS
September 2019	Shadowing affair involving Tidjane Thiam and Iqbal Khan goes public		
27.11.2019		The Federal Council decides to amend the Capital Adequacy Ordinance; ensuring the capitalization of the parent companies of systemically important banks in the event of a crisis, orientation towards the international capital market. onal standard of the Financial Stability Board	
13.12.2019		Federal Council adopts new ordinance on the Financial Market Supervision Act (implementation of Mo. 17.3317 Landolt)	
In the year 2020	CS-UBS takeover negotiations		
7.2.2020	Announcement of the resignation of CEO Tidjane Thiam as of 14.02., Thomas Gottstein is presented as his successor		
February - March 2020	Thiam's resignation, the spread of the coronavirus pandemic and interest rate cuts by the Federal Reserve System (Fed) send CS (and UBS) shares tumbling, Price falls below 10 francs		
24.2.2020			FINMA approves for the first time CS's Swiss Emergency Plan for the continuation of system-relevant vanter functions at risk of insolvency

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
3.3.2020		FED lowers interest rates in response to the spread of the coronavirus Coronavirus surprisingly strong by half a percentage point	
16.6.2020			High additional requirements were imposed due to CS's weaknesses in the area of liquidity after coronavirus: Credit Suisse AG level, minimum LCR 150% or 25 billion HQLA over 100%, CS Group level minimum LCR 150%. Obligation to report if these values are not met, including a remediation plan for recovery within 5 working days if necessary, o-confirmation that the buffer has been restored.
19.6.2020			Federal Council dispatch on the amendment of the Banking Act (regulatory content of the provisions from the dispatch of 4.11.2015, plus strengthening of deposit protection and adjustment of the Intermediated Securities Act) - will come into force on January 1, 2023.
27.7.2020			As part of a valuation review of the fair values of Credit Suisse AG's investment portfolio, FINMA determined that the fair applied by CS did not stand up to a third-party audit. As a result, informed CS that the eligible fair values had been reduced by CHF 9.3 billion.
21.8.2020			FINMA opens enforcement proceedings against CS on the case "Iqbal Khan shadowing affair"
20.9.2020			FINMA opens enforcement proceedings against CS in the Mozambique case; violation of the organizational requirement in connection with the lending business and violation of the reporting obligation under money laundering law

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
4.3.2021	Greensill Capital files for insolvency, CS must Freeze funds with assets amounting to CHF 10 billion		
5.3.2021			FINMA opens enforcement proceedings against CS in the Greensill case (breach of conduct and organization requirements)
9.3.2021			Immediate measures FINMA due to Greensill: set up crisis organization, information obligations, deferral of variable remuneration to persons involved, Pillar 2 capital surcharge (CET1)
25.3.2021	**CS suffers losses due to Archegos payment default (according to its own statement) in the amount of CHF 5.4 billion**		
29.3.2021			Immediate FINMA measures due to Archegos: Revised capital planning, ban on share buybacks without prior approval FINMA, review of the Group's risk appetite
16.4.2021			FINMA opens enforcement proceedings against CS in the "Archegos" and confirms ongoing proceedings in the "Greensill" case since March 2021
21.4.2021			Further immediate measures by FINMA in the context of Archegos
30.4.2021	António Horta-Osório replaces Urs Rohner as Chairman of the Board of Directors; capital increase of CHF 1.7 billion through the issue of mandates Convertible notes		

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
18.5.2021			Further immediate measures by FINMA in the context of Archegos
4.6.2021			Federal Council adopts fourth evaluation report on systemically important banks; adjustment of liquidity requirements for systemically important banks systemically important banks
			FINMA opens enforcement proceedings against CS "Vollstre-Single Client View"
1.7.2021		Amendment to the Liquidity Ordinance to transpose Basel Committee requirements into Swiss law; introduction of a financing ratio for long-term stable banking relationships. Financing	
13.7.2021	Moody's lowers CS's long-term rating by one notch from Aa3 to A1		
29.7.2021	Publication of the Paul Weiss special report on the Ar-chegos case		
30.9.2021			Opening of consultation on the amendment to the Liquidity Ordinance
19.10.2021	CS agrees a fine of 475 million dollars with the Securities and Exchange Commis- sion (SEC) in the corruption scandal surrounding the Mosam- bik affair		FINMA proceedings against CS regarding credit transactions with state-owned enterprises from Mozambique; violations of organizational requirements and money laundering rules found Obligation to report under the law
			FINMA closes proceedings against CS on the "shadowing affair" and finds serious organizational deficiencies.
4.11.2021	Board of Directors approves new CS Group ; downsizing of investment business, shift of capital to asset management		

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
13.1.2022			Subsequent to the letter dated 27.07.2020 regarding the valuation review of the fair values of Credit Suisse AG's investment portfolio, CS was informed that the attributable fair values were reduced by a further CHF 12.9 billion.
17.1.2022	Axel Lehmann takes over from António Horta-Osório as Chairman of the Board of Directors		
22.1.2022			FINMA informs CS by e-mail that the Group's Tier 1 capital ratio to be increased to 20%. It was previously 18.2%.
20.2.2022	Data leak of more than 18,000 CS accounts of autocrats and war criminals, among others (Suisse Secrets)		
11.3.2022			**BR decides to enshrine the Public Liquidity backstops; FDF to prepare consultation draft by mid-2023**
15.3.2022	Inaugural visit by VRP CS (Lehmann) to the then Head of the FDF BRUM, SIF		
11.4.2022			Letter from FINMA to CS: Demand for contingency Measures and strengthening of Credit Suisse AG's capital base
16.5.2022	Rating downgrade of CS by various rating agencies gagencies		
31.5.2022			FINMA-SNB Steering Committee meeting (Chairman & 1st Vice-Chairman SNB, FINMA Chairman, FINMA Director)

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
3.6.2022		Federal Council decides to amend the Liquidity Ordinance as of July 1, 2022; higher liquidity levels required of systemically important banks, important prerequisite for public liquidity. quidity Backstop	
16.6.2022	CS redeemed an AT1 instrument (USD 1.5 bn) on the first possible call date. FINMA demanded a replacement issue, which CS implemented (USD 1.65 bn). billion)		
27.6.2022	Federal Criminal Court sentences CS and former Employees in a money laundering and drug trafficking case involving a Bulgarian organization.		
29.6.2022			High-level discussion FINMA-SNB (FINMA Board of Directors, SNB Governing Board)
5.7.2022			Start of FINMA project Accompanying change of strategy CS
14.7.2022			Letter from FINMA to CS: CS has not yet defined any specific options for contingency measures
27.7.2022	Announcement of a comprehensive strategic overhaul audit of CS: Ulrich Körner replaces Thomas Gottstein as CEO		
3.8.2022			AF meeting
4.8.2022	Rating downgrade of CS by various rating agencies		
5.8.2022			Letter from FINMA to CS: FINMA requests extension of contingency measures, incl. considerations regarding partial IPO of Credit Suisse (Schweiz) AG

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
23.8.2022			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
24.8.2022			**BR meeting : first oral information on the situation of CS by the Head of the FDF (BRUM)**
29.8.2022			Letter from FINMA to CS regarding contingency measures: Parent situation should be included in capital considerations in with strategy review
12.9.2022			AF meeting
26.9.2022			Bilateral meeting (call) between T. Jordan and A. Lehmann
29.9.2022			CS/SNB debate (Jordan, Schlegel, Lehmann, Körner)
From October 2022	**Massive liquidity outflows at CS (110.5 billion in the fourth quarter of 2022 alone)**		
3.10.2022	Unconfirmed information regarding the CS crisis, after an internal memo from the CEO of CS about liquidity outflows was leaked		
4.10.2022			Letter from FINMA to CS: Request for development further contingency options
5.10.2022			**Switch to crisis mode (situation set to "red") of the Financial Crises Committee (FDF, FINMA, SNB); start of supervisory calls at working level regarding the liquidity situation with CS, FINMA, SNB; FED, Prudential Regulation Authority (PRA)**
			AF meeting
6.10.2022			Start of weekly FINMA-CS high-level meetings

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
7.10.2022			CS/SNB debate (e.g. T. Jordan, M. Schlegel, A. Maechler, A. Lehmann, U. Körner, M. Diethelm)
10.10.2022			**Deployment of FINMA crisis unit (Executive Board); extraordinary meeting FINMA BOARD OF DIRECTORS**
11.10.2022			Bilateral meetings between SNB Chairman Jordan and J. Powell (FED)
			AF meeting
12.-15.10.2022			Non-meeting with UBS from BRUM and TJ at the annual meeting of the IFW and the World Bank Group in Washington
12.10.2022			Extraordinary meeting of the FINMA Board of Directors
			Call T. Jordan with A. Lehmann; Meeting T. Jordan with C. Kelle- here
			Bilateral meeting between T. Jordan and A. Bailey (Bank of England)
13.10.2022			High-level exchange FINMA-SIF (FINMA Director; StS SIF)
14.10.2022			Extraordinary meeting of the FINMA Board of Directors
15.10.2022			AF meeting
16.10.2022			Non-meeting between T. Jordan, BRUM, M. Amstad and A. Loehmann
17.10.2022			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
19.10.2022			AF meeting
20.10.2022			AF meeting

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
21.10.2022			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
			Extraordinary meeting of the FINMA Board of Directors
			Separate calls by T. Jordan with Bailey (BoE) and Powell (FED)
23.10.2022			High-level meetings between: BRUM, T. Jordan and C. Kelleher and between BRUM, T. Jordan, M. Amstad and A. Lehmann
25.10.2022	Inaugural visit by UBS Chairman (Kelleher) to BRUM		
26.10.2022			BR meeting : second oral briefing on the situation of CS by the Head of the FDF (BRUM)
			AF meeting
27.10.2022	Presentation of the new CS strategy		FINMA conducts first valuation in resolution run.
28.10.2022			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
31.10.2022			Strategic Dialogue" meeting: FDF (BRUM, SIF) with Chairman and FINMA Director At this meeting, subject to information/approval the absent SNB, decided to call the BR on 2.11.

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			in accordance with the MoU to inform the FDF, FINMA, SNB that an in tion by the federal government had become likely.
1.11.2022			Meeting between FDF, SIF, FINMA, SNB, FFA
			Extraordinary meeting of the FINMA Board of Directors
			Non-meeting between BRUM, T. Jordan and A. Lehmann
			AF meeting
2.11.2022			BR meeting : third oral briefing on the situation of CS by the Head of the FDF (BRUM) and the Chairman of the Board of Directors. of the SNB
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
			Mandate of the BoD: Drafting an information note for an extraordinary meeting planned for 4.11.2022, which was finally canceled
3.11.2022			Extraordinary meeting of the FINMA Board of Directors
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
			FINMA conducts second valuation in resolution run.
4.11.2022	Rating downgrade of CS by various rating agencies		Letter from FINMA to CS: Request Impact of a specific restructuring plan on the balance sheet and income statement to calculate
			AF meeting
5.11.2022			Letter from FINMA to CS: Implementation of measures to Improvement of the liquidity situation and information behavior

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			'Valuation in Resolution' workshop with CMG authorities: About 70 Representatives of the CMG authorities questioned the ViR plans (estimation of the bank's balance sheet and income statement).
7.11.2022			Extraordinary meeting of the FINMA Board of Directors
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
08.11.2022			High-level exchange Crisis Management Group[2266] (CMG)
			High-level exchange FINMA - Federal Chancellery
09.11.2022			BR meeting : fourth oral briefing on the situation of CS by the Head of the FDF (BRUM)
			Discussion between the Federal Councils Financial Affairs Committee and the SNB and FINMA on the "Public Liquidity Backstop" (PLB), in the presence of the FFA and SIF
10.11.2022			Extraordinary meeting of the FINMA Board of Directors
			AF meeting
11.11.2022			High-level meeting FINMA and CS
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
12.11.2022			Non-Meeting BRUM, T. Jordan and A. Lehmann

[2266] The Crisis Management Group is made up of representatives from FINMA, the FED, the Prudential Regulation Authority (PRA), the Bank of England (BoE), the Federal Deposit Insurance

Corporation (FDIC) and the SEC. Letter from FINMA to CS: Request for further measures in the event of a rapid deterioration in the situation and further contingencies in the event of a slow deterioration in the situation

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
14.11.2022			Extraordinary meeting of the FINMA Board of Directors
			Discussion with the President of the Swiss Confederation (Chairman FINMA & BR Cassis)
			AF meeting
15.11.2022			Debate CS/SNB (e.g. T. Jordan, M. Schlegel, A. Maechler, A. Lehmann, U. Körner, M. Diethelm)
16.11.2022			Works council meeting : fifth verbal information about the situation of the CS by the Head of the FDF (BRUM)
			Discussion between the full Federal Council and FINMA on the "Public Liquidity Backstop" (PLB)
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
			High-level exchange CMG
21.11.2022			AF meeting
22.11.2022			**Meeting of the Federal Council's Financial Affairs Committee with FINMA and the SNB, in the presence of the Director of the FOJ, of the Federal Chancellery, the FFA and the SIF**
23.11.2022	**Extraordinary CS General Meeting and capital increase of CHF 4 billion, entry of the Saudi National Bank as major shareholder**		UBS/SNB debate (T. Jordan, M. Schlegel, A. Maechler, C. Kelleher, R. Hamers)
	Inaugural visit by CS CEO (Körner) to BRUM, SIF		
25.11.2022			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
30.11.2022			Extraordinary meeting of the FINMA Board of Directors
5.12.2022			AF meeting

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
6.12.2022			FINMA-SNB Steering Committee meeting (debate)
7.12.2022			FINMA Board of Directors meeting (crisis team)
			Letter from FINMA to CS: Request for further measures in the event of a rapid deterioration in the situation and further contingencies in the event of a slow deterioration in the situation. situation
9.12.2022			BR meeting : sixth oral briefing on the situation of CS by the Head of the FDF (BRUM)
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
12.12.2022			Bilateral Meeting (Call) T. Jordan and A. Lehmann
13.12.2022			High-Level Meeting CS-FINMA (FINMA Chairman & Director, CS VRP & CEO)
16.12.2022			BR meeting : seventh oral briefing on the situation of CS by the Head of the FDF (BRUM)
			High-level exchange CMG
			Non-Meeting BRUM, T. Jordan, A. Lehmann
19.12.2022			Letter from FINMA to CS: Request for revised liquidity plan and statement that little progress has been made in developing the "sale of the bank" scenario. were
			Handover of FDF dossier (BRUM and BRKKS)

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRUM), FINMA, SNB, SIF, FFA
			AF meeting
23.12.2022			Bilateral Meeting (Call) T. Jordan and A. Lehmann
28.12.2022			High-level exchange FINMA-SIF
			FINMA e-mail to CS Chairman Lehmann: Update on Contingency measures
29.12.2022			Non-Meeting Authorities and CS (BRUM, Chairman SNB, Chairman FINMA, Chairman CS)
1.1.2023		Amendments to the Banking Act and Banking Ordinance enter into force. More specific details on deposit protection and financial/organizational requirements for non-mandated banks. companies of systemically important banking groups	
5.1.2023			FINMA workshop on CS: contingency measure, review and discussion of various scenarios
6.1.2023			AF meeting
10.1.2023			Meeting BRKKS and FINMA VRP
			High-Level Meeting Chairs Audit Committee and Risk Committee CS with FINMA
11.1.2023			Works Council meeting : verbal information on the situation at CS by the Head of the FDF (BRKKS)
			High-level exchange FINMA-SIF
			Meeting BRKKS with VRP CS (A. Lehmann)
			High-level meeting between T. Jordan, M. Schlegel, B. Rime, A. Lehmann and U. Körner

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA
12.1.2023			Extraordinary meeting of the FINMA Board of Directors
			High-level meeting FINMA and CS Board member Gellerstad
18.1.2023			Extraordinary meeting of the FINMA Board of Directors
23.1.2023	**Inaugural visit by UBS (Kelleher, Gähwiler) to BRKKS, SIF**		Letter from FINMA to CS: Contingency measures, data room set up in the event of an accelerated sales process
24.1.2023			**Discussion between FINMA Director and President Berset**
			High-level meeting FINMA Board of Directors, FINMA Director and CEO CS, discussion about possible sale of the entire CS Group
			Bilateral meeting T. Jordan and A. Lehmann
			Bilateral meeting T. Jordan and W. Dudley (UBS Board of Directors)
			AF meeting
25.1.2023			**BR meeting : verbal information, announcement Discussion on the 4 scenarios for overcoming the CS crisis by the Head of the FDF (BRKKS)**
			High-level discussion FINMA-SNB (Governing Board SNB and FINMA-VR)
26.1.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA
1.2.2023			**BR meeting: Distribution of a handout by BRKKS to the BR members on the 4 scenarios for dealing with the**

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			CS crisis, subsequent discussion, handout was published in the Connection retracted
2.2.2023			AF meeting
7.2.2023			Call SNB-CS (T. Jordan, M. Schlegel / U. Körner, D. Joshi)
			AF meeting
14.2.2023			Extraordinary meeting of the FINMA Board of Directors
			AF meeting
15.2.2023			High-level exchange CMG
16.2.2023			Meeting between BRKKS and FINMA Chairman Amstad
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA
17.2.2023			Call SNB-CS (T. Jordan, M. Schlegel / A. Lehmann, U. Körner)
22.2.2023			**BR meeting: discussion of the 4 scenarios for the CS crisis**
			Extraordinary meeting of the FINMA Board of Directors
			AF meeting
24.2.2023			FINMA meeting with CS; analysis of contingency options
28.2.2023			FINMA "Greensill" enforcement proceedings; CS has violated risk management regulations in a serious manner violate legal obligations
			AF meeting
1.3.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
6.3.2023			Owners' meeting BRKKS with Chairman FINMA
7.3.2023			g
9.3.2023	Postponement of the publication of the CS Annual Report 2022 due to requests from the SEC		Meetings of the Steering Committee (LG) together with the training Financial Crises Committee (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA
10.3.2023			FINMA press release on the non-opening of proceedings against CS VRP for statements on outflows of client funds from Credit Suisse
13.3.2023			FINMA letter to CS: renewed demand for Contin-gency Options
14.3.2023	Publication of the CS Annual Report 2022		High-level exchange Core College (FINMA and FED)
			High-level exchange Core College (FINMA and PRA)
			Bilateral meeting T. Jordan with C. Kelleher
			AF meeting
15.3.2023	**9.00 a.m.: Public information from the Chairman of the major shareholder Saudi National Bank that an additional financial investment in CS is ruled out**		12.00 p.m.: Meeting of the Steering Committee (SC) together with the "Financial Crises Committee" (FCC), Head of the FDF (BRKKS), FINMA, SNB, SIF, EFV
			Call SNB-CS (T. Jordan / U. Körner, D. Joshi, D. Wildermuth)
			3.00 p.m.: BRKKS informs BK and BP and calls for the The following day an extraordinary works council meeting is convened
			16.00: Meeting with UBS, BRKKS, SNB, FINMA, SIF (at FINMA) and video conference of BRKKS, SNB and FINMA with CS
			18.00: Meeting of the UBS Board of Directors
	CS shares fall in value by 24.2 % (shares still worth CHF 1,697 at the close of the Swiss stock		6.30 p.m.: High-level exchange Core College (FINMA, FED, PRA)

	exchange)		

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
	20.30: Joint press release by FINMA and the SNB on market uncertainties		After 7 p.m.: Telephone calls SIF with Deputy US Treasury Secretary Adeyemo; Directeur Général Trésor Moulin (FR); State Federal Chancellery Kukies (DE)
	21.00: Application CS for Emergency Liquidity Assistance (ELA) and solvency confirmation from FINMA		20.00: Several calls at working level between CS and FINMA in which the bank was requested to finalize the restructuring plan ready for approval
			From 9 p.m: Involvement of the Federal Office of Justice by the Legal Service of the FFA and the SIF at the Bernerhof
16.3.2023	1.45 a.m.: CS media release on the purchase of (ELA) 12:30 to 13:30: Extraordinary meeting of the CS Board of Directors		00.00: Start of FINMA-UBS High-Level Meetings on the over- (several follow-up meetings at the weekend)
			10 a.m.: SNB grants extraordinary liquidity assistance (ELA) in the amount of 50 billion and CS announces a series of debt buybacks in the value of up to CHF 3 billion
			7.45 a.m.: extraordinary meeting of the FINMA Board of Directors
			9.00 to 10.30 a.m.: Meeting of the AF Financial Crisis Committee
			Approx. 10 a.m.: Head of the FDF (BRKKS) and Director FFA offer FinDel President initial orientation
			11.30 a.m.: Meeting of the Steering Committee (SC) together with the "Financial Crises Committee" (FCC), Head of the FDF (BRKKS), FINMA, SNB, SIF, EFV
			Webex meeting between T. Jordan and J. Powell, M. Barr (FED Board)
			1.15 to 3.00 p.m. and 5.15 to 6.50 p.m.: Extraordinary Board meetings and decision on the emergency ordinance

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			additional liquidity assistance loans and the granting of default guarantees by the federal government. **20.00 hrs Entry into force of the ordinance**
			Separate telephone calls by BRKKS with the German Finance Minister Christian Lindner (8.45 am), the French Finance Minister Bruno Le Maire (9.30 am), the British Finance Minister Jeremy Hunt (4.15 pm) and US Treasury Secretary Janet Yellen (19.)
			5.10 p.m.: High-level exchange between FINMA and the CMG Authorities
			Telephone conversations between President Berset and the British Prime Rishi Sunak and the French President Emmanuel Macron
			Evening: SIF telephone call with Gwyneth NurseDirector General HM Treasury (UK)
17.3.2023	**12.45 p.m.: Application CS for Emergency Liquidity Assistance (ELA+) in the amount of 20 billion and solvency confirmation FINMA** (at 12.45 p.m.)		6.30 a.m.: Internal briefing FDF with BRKKS, SIF, FFA
			7.00 a.m.: High-level meeting authorities with UBS
			9.00 a.m.: Works Council meeting: Consultation during the ordinary meeting
			1 pm.: Meeting of the UBS Board of Directors and the UBS Executive Board Group Management. Also present: representatives of Bär&Karrer, Morgan Stanley
			14.30-17.: Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA with UBS and CS (each separately)

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			17.30: FINMA-CS call (CEO, CFO): CS explains that no bail-in is necessary
			Separate telephone calls from BRKKS to the British finance ministry. Secretary Jeremy Hunt (3.00 p.m.) and US Treasury Secretary Janet Yellen (3.30 p.m.)
			19.00: Conference call with UBS, SIF, Morgan Stanley (advisor UBS), Bär and Karrer (lawyers UBS) and FINMA
			20.00: High-level exchange with Core Colleges and CMG
			Separate calls by T. Jordan with A. Bailey (BoE), C. Lagarde (ECB), F. Villeroy de Galhau (Banque de France, BdF), J. Powell (FED)
18.3.2023			8.00 a.m.: Call Steering Committee "Financial Crises Committee" with UBS
			9.00-10.30 a.m.: Call of the steering committee "Committee Financial crises", Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA, UBS and CS
			Separate telephone calls from BRKKS to Philipp Hildebrand (Blackrock, 11.00 a.m.) and Al-Jadaan (Saudi of Finance, approx. 7.00 p.m.)
			Separate telephone calls by T. Jordan with A. Bailey (BoE), C. Lagarde (ECB), F. Villeroy de Galhau (BdF), J. Powell (FED)
			12.15 p.m.: Letter from FINMA to CS regarding submission of a of an approvable restructuring plan
			15.00: High-level exchange Core College (FINMA, FED);

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			3.30 p.m. and 6.45 p.m.: High-level exchange authorities with CEO/VRP UBS
			17.00 to 18.40: extraordinary BoD meeting, information note FDF
			17.15 to 18.00: Meeting of the UBS Board of Directors
			6.15 p.m.: Letter from CS to FINMA with adjusted restructuring plan in approvable quality
			20.30 to 21.15: Meeting of the UBS Board of Directors
			21.00: Information from the FinDel President
			22.30 to 23.20: CMG - Presentation and discussion of the restructuring plan and documents in the CMG
19.3.2023	**17.00: CS application for additional Emergency Liquidity Assistance (ELA+) and solvency from FINMA**		FINMA meeting with the Chairman and CEO of CS
			7.00 a.m.: Meeting of the Steering Committee (SC) together with the "Financial Crises Committee" (FCC), Head of the FDF (FFCS), FINMA, SNB, SIF, FFA
			8.30 to 11.25 a.m.: Extraordinary Board meeting with the SNB, FINMA and the Chairmen of the Board of Directors and CEOs of UBS and CS (8.30 a.m.)
			10.45 a.m.: Extraordinary meeting of FinDel (debates)
			2.30 p.m.: extraordinary meeting of the FINMA Board of Directors
			2.30 p.m.: Meeting of the UBS Board of Directors and UBS Group Executive Board
			15.00 to 16.45: Extraordinary Board meeting with the SNB and FINMA
			3.30 p.m. to 4.40 p.m. and from 5.05 p.m.: FinDel meeting and Discussion with FFA Director
			5.47 p.m.: FinDel approves the credit decision

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
			Telephone call SIF with Deputy US Secretary of the Treasury Adeyemo (several in the following days)
	8.30 p.m.: CS application for public liquidity backstop and solvency confirmation from FINMA		Telephone information from the President of the FDK Ernst Stocker (6.00 p.m.) and information from the parties (6.30 p.m.)
			19.00: **FINMA decision approving the preliminary implementation of the merger pursuant to Art. 32 para. 2 KG**
			7.30 p.m.: Media conference of the federal authorities accompanied by the CS and UBS management (announcement of the takeover of CS by UBS)
			SNB provides liquidity assistance for the takeover CS by UBS
			22.00: FINMA decision to write off the AT1 loans of CS
			22.30: High-level exchange CMG
			23.00 to 24.00: General College
20.3.2023			Extraordinary meeting of the FINMA Board of Directors
			High-level exchange authorities (FDF, FINMA, SNB)
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA
			Extraordinary Board meeting with the SNB, FINMA and the SIF and FFA
21.3.2023			FDF ruling to CS: Suspension of certain variable compensation payments
			AF meeting

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
23.3.2023			Information from FINMA on the basis for the write-down of AT1 capital instruments
			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
28.3.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
29.3.2023			Special Message from the Federal Council on the commitment credit for the SNB and UBS
4.4.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
5.4.2023			Works council resolution: Cancellation or reduction by 50% or 25% al- of the outstanding variable remuneration of the three top management levels of CS
14.4.2023		Federal Reserve Board of the US central bank approves over- acquisition of the US subsidiary of CS by UBS	
17.4.2023			AF meeting
18.4.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
26.4.2023			AF meeting
1.5.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF), Head of the FDF (BRKKS), FINMA, SNB, SIF, FFA
2.5.2023			AF meeting
10.5.2023			AF meeting
15.5.2023			AF meeting

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
16.5.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
17.5.2023			Appointment of a "Banking Stability" expert group by the EVS
19.5.2023			Meeting of the Steering Committee (LG) together with the "Financial Crises Committee" (AF)
23.5.2023			The FDF has issued an order to cancel or reduce outstanding variable remuneration for the top management levels of Credit Suisse in order to implement the Federal Council's decision of April 5 on variable remuneration at CS by the FDF
24.5.2023			AF meeting
25.5.2023			Federal Council opens consultation on the introduction of a state liquidity guarantee for systemically important banks (Public Liqui- dity backstop)
31.5.2023			AF meeting
7.6.2023			AF meeting
9.6.2023			FDF and UBS sign contract on loss guarantee
12.6.2023	UBS takeover of CS, CS share price rises no longer traded on the stock exchange (*closing*)		
13.06.2023			AF meeting
27.6.2023			AF meeting
11.8.2023	**UBS terminates the agreement on the loss assumption guarantee of the Swiss Confederation (CHF 9 billion) and the**		

Date	Credit Suisse and the financial market	International context, national legal development	BR, administration and authorities (BR, FDF, FINMA, SNB)
	Agreement with the SNB on the state-guaranteed liquidity assistance loans (maximum CHF 100 billion)		

Appendix 5: Chronology of banking regulation 2008 to [20232267]

The table below contains a list of legislative changes (federal laws and ordinances) in the area of banking regulation, in particular in connection with the too-big-to-fail regulation, from 2008 to 2023.

The list includes all regulatory proposals relating to banks and banking regulation, whereby the amendments in the area of combating money laundering and the proposals on Covid loans to mitigate the impact of the pandemic have been excluded, as these amendments are presumably of less interest here. The date of adoption by Parliament (for amendments to legislation) or by the Federal Council (for amendments to ordinances) was specified for each of the bills listed and no further intermediate steps (such as consultations and dispatches) or minor amendments (such as erratum) were included.

Please note that the content of this document has been compiled according to the chronology of the official systematic collection of laws. With regard to the objectives stated in connection with the listed laws and regulations, it should also be noted that the stated objectives merely reflect an interpretation, as they are not stated in the legal texts.

Date (decision)	**Milestone**	**Purpose**	**Object**
15.10.2008	Ordinance on the full entry into force of the Financial Market Supervision Act FINMAG, RS 956.1	Financial stability supervision	Official collection
17.12.2010	Amendment of the Banking Act BankG, RS 952.0	Financial stability	Official collection
18.3.2011	Amendment of the Banking Act BankG, RS 952.0	Financial stability	Official collection Media release

[2267] The PUK has requested from SIF an overview of all new regulations affecting the financial center in the period from 1.1.2008 to 31.12.2023.

Date (decision)	**Milestone**	**Purpose**	**Object**
30.9.2011	Amendment of the Banking Act BankG, RS 952.0	Financial stability TBTF	Official collection Media release
1.6.2012	Total revision of the Capital Adequacy Ordinance (CAO), RS 952.03	Financial stability Implementation of Basel III	Official collection Media release
1.6.2012	Partial revision of the Banking Ordinance BankV, RS 952.02	Financial stability TBTF	Official collection Media release
15.6.2012	Amendment to the Withholding Tax Act (VStG), RS 642.21	Financial stability Competitiveness of TBTF instruments	Official collection
30.11.2012	Creation of the Liquidity Regulation LiqV, RS 952.06	Financial stability Implementation of Basel III, TBTF	Official collection Media release
13.2.2013	Countercyclical capital buffer introduced in the Capital Adequacy Ordinance ERV, RS 952.03	Financial stability	Official collection Media release
22.3.2013	Amendment of the Banking Act BankG, RS 952.0	Financial stability	Official collection Media release
22.1.2014	Countercyclical capital buffer increased in the Capital Adequacy Ordinance ERV, RS 952.03	Financial stability	Official collection Media release

Date (decision)	**Milestone**	**Purpose**	**Object**
30.4.2014	Total revision of the Banking Ordinance BankV, RS 952.02	TBTF OR adjustments	Official collection Media release
25.6.2014	Revision of the Liquidity Ordinance LiqV, RS 952.06	Financial stability Implementation of Basel III	Official collection Media release
19.6.2015	Creation of the Financial Market Infrastructure Act FMIA, RS 958.1	Financial stability	Official collection Media release
25.11.2015	Creation of the Financial Market Infrastructure Ordinance FMIO, RS 958.11	Financial stability	Official collection Media release
18.3.2016	Amendment to the Withholding Tax Act (VStG), RS 642.21	Financial stability Competitiveness of TBTF instruments	Official collection
11.5.2016	Amendment to the Capital Adequacy Ordinance CAO, RS 952.03	Financial stability TBTF	Official collection Media release
29.6.2016	Amendment to the Financial Market Infrastructure Ordinance FMIO, RS 958.11	Financial stability	Official collection Media release
23.11.2016	Amendment to the Capital Adequacy Ordinance CAO, RS 952.03	Financial stability Implementation of Basel III	Official collection Media release
5.7.2017	Amendment to the Banking Ordinance BankV, RS 952.02	Strengthening the competitiveness of the Swiss financial center	Official collection Media release

Date (decision)	**Milestone**	**Purpose**	**Object**
5.7.2017	Amendment to the Financial Market Infrastructure Ordinance FMIO, RS 958.11	Financial stability	Official collection Media release
22.11.2017	Amendment to the Capital Adequacy Ordinance CAO, RS 952.03	Financial stability	Official collection Media release
22.11.2017	Amendment to the Liquidity Regulation LiqV, RS 952.06	Financial stability	Official collection Media release
15.6.2018	Creation of the Financial Institutions Act FINIG, RS 954.1	Financial stability Supervision	Official collection Media release
15.6.2018	Creation of the Financial Services Act FinSA, RS 950.1	Protection of customers and Strengthening the competitiveness of the Swiss financial center	Official collection Media release
14.9.2018	Amendment to the Financial Market Infrastructure Ordinance FMIO, RS 958.11	Financial stability	Official collection Media release
21.11.2018	Amendment to the Capital Adequacy Ordinance CAO, RS 952.03	Financial stability TBTF	Official collection Media release
30.11.2018	Amendment to the Banking Ordinance BankV, RS 952.02	Strengthening the competitiveness of the Swiss financial center	Official collection Media release
6.11.2019	Creation of the Ordinance on Financial Institutions FINIV, RS 954.11	Financial stability Supervision	Official collection Media release

Date (decision)	**Milestone**	**Purpose**	**Object**
6.11.2019	Creation of the Ordinance on Financial Services FIDLEV, RS 950.11	Protection of customers and Strengthening the competitiveness of the Swiss financial center	Official collection Media release
27.11.2019	Amendment to the Capital Adequacy Ordinance CAO, RS 952.03	Financial stability TBTF	Official collection Media release
13.12.2019	Entry into force of the Ordinance on the Financial Market Supervision Act RS 956.11	Financial stability Supervision	Official collection Media release
11.9.2020	Amendment to the Liquidity Regulation LiqV, RS 952.06	Financial stability Implementation of Basel III	Official collection Media release
25.9.2020	Creation of the Federal Act on the Adaptation of Federal Law to Developments in the Technology of Distributed Electronic Registers (DLT)	Promotion of competitiveness and creditor protection	Official collection Media release
18.6.2021	Creation of the ordinance to adapt federal law to developments in the technology of distributed electronic registers (DLT)	Promotion of competitiveness and creditor protection	Official collection Media release
3.12.2021	Amendment to the Ordinance on Financial Services FIDLEV, RS 950.11	Alignment with the EU regulation (equal treatment)	Official collection Media release
17.12.2021	Amendment of the Banking Act	Financial stability	Official collection

Date (decision)	**Milestone**	**Purpose**	**Object**
	BankG, RS 952.0		Media release
17.12.2021	Amendment to the Withholding Tax Act (VStG), RS 642.21	Financial stability Competitiveness of TBTF instruments	Official collection
26.1.2022	Countercyclical capital buffer reactivated in the Capital Adequacy Ordinance ERV, RS 952.03	Financial stability	Official collection Media release
03.06.2022	Amendment to the Liquidity Ordinance LiqV, RS 952.06	Financial stability TBTF	Official collection Media release
30.9.2022	Amendment to the Financial Market Infrastructure Ordinance FMIO, RS 958.11	Financial stability	Official collection Media release
23.11.2022	Amendment to the Banking Ordinance BankV, RS 952.02	Financial stability	Official collection Media release
16.3.2023	Creation of the regulation on additional liquidity assistance loans and the granting of default guarantees by the Swiss Confederation for liquidity assistance loans by the Swiss National Bank to systemically important banks RS 952.3	Protection of financial stability and the Swiss economy	Official collection Media release

Date (decision)	**Milestone**	**Purpose**	**Object**
17.3.2023	Amendment of the Financial Market Infrastructure Act FMIA, RS 958.1	Recognition of foreign trading venues	Official collection Media release
19.3.2023	Amendment of the regulation on additional liquidity assistance loans and the granting of default guarantees by the Swiss Confederation for liquidity assistance loans by the Swiss National Bank to systemically important banks RS 952.3	Protection of financial stability and the Swiss economy	Official collection Media release
29.9.2023	Amendment of the Financial Market Infrastructure Act FMIA, RS 958.1	Penalty in the event of false or incomplete information	Official collection Media release
29.11.2023	Amendment to the Capital Adequacy Ordinance CAO, RS 952.03	Financial stability Implementation of Basel III	Official collection Media release

Annex 6: List of FINMA's preliminary clarification and enforcement proceedings at CS between 2012 and 2022, with descriptions

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
Anonymized procedure[2270]	28.7.2010	23.1.2012				No. 81
"FutureGeneration"	7.9.2011	27.2.2012				No. 80

[2268] The short titles chosen serve to provide a clear overview of the enforcement proceedings under consideration against CS. They refer to the facts under investigation and, as far as can be seen, do not originate from any official FINMA designation.
[2269] The term "conclusion" is used here and below to refer to the date of the final ruling. In preliminary investigation proceedings, the opening and closing dates are not always clearly defined. In such cases, the last procedural acts in the relevant preliminary investigation proceedings are listed in accordance with the Langhart/Hirschle investigation report.
[2270] A number of the proceedings conducted by FINMA are not publicly known. To banking secrecy, the names are anonymized, as in the investigation report.

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Lang-hart/Hirschle study report
"US financial services business"	26.10.2011	21.9.2012	Indications of a limited number of cases of active aiding and abetting of tax offenses and the acceptance of documents relating to US tax purposes (W8-BEN), where the persons acting knew or should have known that they incorrectly the client's US tax status under the QIA ("sham structures"). The question of whether the bank complied with the requirements for an appropriate administrative organization, appropriate risk management and the guarantee of unobjectionable business activities when conducting its cross-border business with US clients. had.	Determination of serious violation of regulatory provisions (appropriate administrative organization, risk management and guarantee of proper business conduct); Restriction of business activities (prohibition on doing business with US clients who do not disclose their identity to the US tax authorities and obligation to terminate business relationships with such clients); obligation to provide regular reports; obligation to carry out a risk analysis and develop a risk concept; withdrawal of the suspensive effect of the risk management system and the risk management system. kung	Assignment of the audit firm of CS (KPMG AG) to review the implementation of the FINMA ruling; three on-site inspections	Point 129 ff.
Anonymized procedure	4.10.2012	7.3.2013				No. 82

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
"Arab Spring / anonymized procedure"	30.9.2011	24.5.2013	Question of whether the bank had violated the MLA in connection with the support of politically exposed persons (PEPs) from Egypt and Libya. In the anonymized complex of cases, the focus was on MLA violations in business relationships with increased risks with Russian clients. The preliminary investigation revealed that CS had a total of 12 business relationships that were covered by the Federal Council's sanctions ordinances. were affected.	Termination of the proceedings and letter of reprimand regarding the anonymized proceedings Determination of serious violations of regulatory provisions, ordering an audit and reporting to FINMA on the effectiveness of its own transaction monitoring measures. in an anonymized procedure.	On-site inspections; letter of reprimand with recommendations	Point 148 ff.
Anonymized procedure	27.5.2013	14.8.2013				No. 84
Anonymized procedure	7.5.2013	22.8.2013				No. 85
"Uzbekistan"	10.3.2013	23.10.2013				No. 83

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Lang-hart/Hirschle study report
Anonymized procedure	27.2.2012	12.5.2014				No. 86
Anonymized procedure	6.5.2013	3.11.2014				No. 87
"Foreign exchange trading"	6.6.2014	11.11.2014				Point 88 ff.
Anonymized procedure	8.5.2015	28.8.2015				No. 91
Anonymized procedure	22.1.2015	21.12.2015				No. 92
"Crossing the boundaries of financial services business in Italy"	21.7.2015	29.4.2016				Point 93 ff.
"1MDB"	5.6.2016	17.2.2017				Point 97 ff.
"Data incidents Italy"	19.5.2016	12.12.2017				No. 99

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Lang-hart/Hirschle study report
"Insider suspicion. Anonymized procedure"	unknown	13.8.2018				Item 101
"Petrobras/FIFA/ PDVSA"	25.9.2018	3.9.2018	Question of whether CS had violated the provisions of the AMLA as well as the requirements for an appropriate administrative organization and adequate risk management in connection with three major cases of fraud and corruption.	Identification of serious violations of regulatory provisions (AMLA due diligence obligations, compliance, risk management and administrative organization); obligation to introduce an overall customer view by the end of 2019; obligation to submit a plan of measures and a timetable to remedy the deficiencies identified; obligation to appoint a member of the Board of Directors with special expertise in the area of compliance; obligation to transfer the topic of compliance culture and organization to an appropriate committee of the Board of Directors.	Appointment of an audit officer to review the implementation of FINMA's ruling; reconsideration of the measures ordered, as a result of which CS was no longer obliged to appoint a member of the Board of Directors with special competencies in the area of compliance, but was obliged to transfer the topic of compliance culture and organization to a newly established independent committee of the Board of Directors.	Point 168 ff.
Anonymized procedure	6.4.2018	6.9.2018				No. 100

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
"Dino"	5.2.2016	3.9.2018	Indications of unauthorized cash and securities transfers permitted by a politically exposed person	Identification of serious violations of regulatory provisions (MLA due diligence obligations, organization and risk management); obligation to rectify the deficiencies identified, in particular Implementation of a sufficiently clear definition of responsibilities and competencies in the individual lines of defense, guaranteeing an independent and enforceable monitoring process; promotion and mediation of an appropriate compliance and risk culture to raise awareness and strengthen awareness, in particular as part of the existing training concept; obligation to present a plan of action and timetable to remedy the deficiencies identified; obligation to ensure that the deficiencies identified are remedied. identified defects	Appointment of an audit officer to review the implementation of FINMA's ruling	Point 219 ff.
"Distressed Debt"	unknown	2.11.2018				No. 102

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
Anonymized procedure	5.2.2016	23.11.2018	Review of compliance with AMLA provisions and of CS's risk management and organization after an external asset manager shifted or concealed losses without CS's intervention.	Identification of serious violations of regulatory provisions (cooperation with external asset managers, MLA due diligence obligations, organization and risk management); obligation to submit a plan of measures and a timetable for remedying the deficiencies identified. gel	Appointment of an audit officer to review the implementation of FINMA's ruling	Point 243 ff.
Anonymized procedure	unknown	23.11.2018				Point 103 ff.
Anonymized procedure	unknown	8.4.2019				No. 109
"SSA Bonds"	unknown	25.4.2019				No. 110
Anonymized procedure	anonymous	anonymous	anonymized	anonymized	anonymized	*anonymized*
Anonymized procedure	unknown	11.11.2019				No. 111

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Lang-hart/Hirschle study report
"Libor redemption"	unknown	25.6.2021				No. 112
"Vatican"	unknown	3.9.2021				Point 113 f.
"Mozambique"	25.9.2020	17.9.2021	Large loans from CS in London to Mozambique to build up a tuna fishing fleet	Determination of serious violation of regulatory provisions (administrative organization, risk management, internal control system); GWG reporting obligation). Obligation to restore orderly conditions with regard to risk management in the credit area, restriction of business activities (requirement regarding certain credit transactions until completion of the audit work).	Threat of restriction business activities, appointment of an audit officer regarding the implementation, appropriateness and effectiveness of the measures taken and regarding the review of certain credit risks; initiation of enforcement proceedings against an individual.	Point 278 ff.

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
"Observation cases"	21.8.2020	1.10.2021	Observation of members of the Executive Board with the help of a private security company; indications of false information provided to FINMA by the Chairman of the Board of Directors and the CEO of CS	Determination of serious violations of regulatory provisions (duty to provide information and truth; guarantee proper business conduct); duty to restore the proper state of affairs; duty to establish internal reporting of business conduct to the Board of Directors	Appointment of an audit officer to review the implementation of FINMA's ruling Opening of three enforcement proceedings against individuals	Point 300 ff.
"António Horta-Osório"	unknown	28.1.2022				No. 115
"Transaction reporting obligation"	23.3.2021	17.3.2022				No. 116

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
"Execution single client view"	4.6.2021	1.4.2022	CS did not fully implement the ordered measures within the set deadline. In the 2019 assessment letter dated April 24, 2020, FINMA stated that there were still gaps in the measures to improve the "group-wide holistic" monitoring of money laundering risks, namely the overall client view (SCV). In particular, the overall client view still did not contain any data from the GM (Global Markets) and IBCM (Investment Banking and Capital Markets) divisions, and the collection of risk data for existing clients would have to be accelerated in order to ensure an appropriate risk assessment. to ensure that the data is recorded.	Warning CS, setting a final deadline, to fully the overall customer view by 31 December 2024 at the latest; threat of restriction of business activities (ban on entering into new customer relationships where the overall customer view has not been fully implemented)	Assignment of an inspection officer	Point 327 ff.

"Greensill"	5.3.2021	9.12.2022	Indications of conflicts of interest in CS Supply Chain Finance Funds (SCF), which existed between CS Asset Management AG, Greensill Capital and Softbank Group Corp; on 26.2.2021, CS first stated that the insurance cover of the SCF notes was "in question" in the event of a default by Greensill Bank (see Lang- hart/Hirschle investigation report, point 382)	Determination of serious violations of regulatory provisions (organization, risk management, governance, conduct obligations); obligation to introduce a responsibility document (clarification of the responsibilities of the members of management for a client relationship, an incident and for overall responsibility); Obligation to periodically confirm the continuation of material and risky business relationships at the level of the member of the Executive Board or the entire Executive Board; obligation to appropriately renew the Board of Directors; obligation to report on the performance of duties by the Board of Directors (until the audit work has been completed), obligation to obtain FINMA approval for amendments to internal regulations, prohibition on outsourcing certain activities (until the audit work has been completed); obligation to report on the performance of duties by the Board of Directors (until the audit work has been completed). test work).	Assignment of an inspection officer Opening of four enforcement proceedings against individuals	Point 382 ff.

"Archegos"	16.4.2021	14.7.2023	CS had published a profit warning because the hedge fund Archegos Capital Management LLC had not met a margin call of over USD 2.7 billion.	Determination of serious violations of regulatory provisions (organization); obligation to introduce bonus schemes	Opening of enforcement proceedings against an individual	Point 398 ff.

Short title[2268]	Opening	Conclusion[2269]	Facts under investigation	FINMA instruments applied	Implementation and enforcement	Reference to the Langhart/Hirschle study report
			The fund's positions had to be liquidated through extensive sales of shares by the banks, resulting in a loss to CS of around USD 5 billion	allocation criteria at Group level that take risk appetite into account; obligation to limit the size of own positions; reporting obligation.		
Total number of preliminary clarifications carried out between January 1, 2012 and December 31, 2022: 42						
Total number of enforcement proceedings conducted against CS: 11						