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Government handling of the CS crisis

Report by the Parliamentary Investigation Committee of 17 December 2024

Opinion of the Federal Council

on 20 December 2024

Ms President of the National Council
Mr President of the Council of States
Ladies and gentlemen

We present to you the opinion of the Federal Council on the report of the Parliamentary Investigation Committee of 17 December 2024 and on the Committee's recommendations, motions and postulates in connection with its assessments.

We remain, Ms President of the National Council, Mr President of the Council of States, yours sincerely

...

On behalf of the Swiss Federal Council

The President of the Swiss Confederation:
Viola Amherd
The Federal Chancellor: Viktor Rossi

Summary

On 20 December 2024, the Parliamentary Investigation Committee (PInC) published its report on the government handling of the CS crisis. The Federal Council welcomes the fact that, in its report, the PInC takes a positive view of the government's actions during the Credit Suisse and confirms that the chosen solution, which involved the takeover of Credit Suisse by UBS, was preferable to the alternatives. In its report for the attention of the Federal Assembly, the Federal Council expresses its opinion on the PInC's findings.

Background

In mid-March 2023, the Federal Council, the Swiss National Bank (SNB) and the Swiss Financial Market Supervisory Authority (FINMA) found themselves facing the immediate threat of the failure of the globally active and systemically important Credit Suisse, which would bring with it the risk of an international financial crisis and huge damage to the Swiss financial centre, the economy and the state. On 19 March 2023, the authorities succeeded, with liquidity assistance from the SNB and federal guarantees, in paving the way for the takeover of Credit Suisse by UBS, and thus averting the damage. On 8 June 2023, the National Council and the Council of States created a PInC to evaluate "Government handling of the emergency takeover of Credit Suisse by UBS." Its task was to investigate the actions taken by the competent authorities in the handling of the crisis. The PInC published its report containing the results of its inquiry on 20 December 2024.

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In its report, the PInC concludes that the authorities' crisis management successfully averted a worldwide financial crisis; a feat which is worthy of praise. The PInC considers the chosen solution, which involved the takeover of Credit Suisse by UBS, to be appropriate. This solution successfully averted a financial and economic crisis and calmed the markets. The PInC shares the view of the Federal Council that the takeover of Credit Suisse by UBS was preferable to the alternatives which were investigated.

In its report, the PInC expressed the view that the chosen solution exposed some weaknesses in the current too-big-to-fail (TBTF) regulations. The Federal Council shares this view. It therefore carried out an in-depth evaluation of the regulations governing systemically important banks in the wake of the Credit Suisse crisis, based on Article 52 of the Banking Act. In the corresponding report on banking stability of 10 April 2024¹, the Federal Council proposed a broad package of measures to develop and strengthen the TBTF regime. The findings of the PInC will be integrated into this ongoing work. Furthermore, the proposals the PInC put forward in its report included suggestions on to improve the toolkit available to the authorities in a crisis. The Federal Council will examine the measures proposed by the PInC and make adjustments where necessary.

¹ BBl 2024 1023

Despite the positive outcome that the crisis management achieved, the Federal Council still considers the PInC's reappraisal of the events that occurred around Credit Suisse to be important. The work of the PInC will make a major contribution to strengthening credibility and trust in the state and the authorities.

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Opinion

1 Introduction

1.1 National political significance of the Credit Suisse crisis

Fifteen years after the Federal Council, the Swiss National Bank (SNB) and the Swiss Federal Banking Commission had to take far-reaching action to avert danger which threatened the existence of UBS and its clients, and along with it, huge associated damage for the Swiss economy, in March 2023, the Federal Council, the SNB and FINMA found themselves facing another emergency – one in which they had to make bold decisions to safeguard financial stability and the Swiss economy. The situation was preceded by a steady loss of trust in Credit Suisse, both by the markets and clients.

In March 2023, after two US regional banks got into distress, Credit Suisse's crisis of confidence deteriorated very rapidly. The bank's stock market value and the market value of Credit Suisse's particularly risky AT1 bonds were both extremely badly hit by market reactions. This increased the liquidity outflows and aggravated the bank's liquidity situation substantially. It was clear to the authorities that Credit Suisse was no longer capable of gaining the trust of the markets on its own and therefore the risk of a disorderly insolvency, with huge implications for the Swiss economy, was imminent. The authorities thus had to implement a solution, within a few days and under great pressure, based on the preparations they had made in the preceding months.

Faced with financial markets under stress, and in view of the extent of the loss of trust in Credit Suisse, the authorities considered the market-friendly solution of a takeover of Credit Suisse by UBS to be the most expedient option, both for the state and the taxpayer, and the most risk-averse and cost-effective option for ending the crisis of confidence. However, the takeover needed to be accompanied by government support measures in order to safeguard the liquidity of Credit Suisse and to lay the foundations for a successful takeover. Due to the level of urgency, the measures could not be implemented through the ordinary legislative process nor through the ordinary amendment process, but instead had to be put into force under emergency law and by means of urgent lending decisions by the Finance Delegation.

The Federal Council still considers the solution chosen at the time to be the correct and best choice under the circumstances, even from the current perspective. The private takeover of Credit Suisse by UBS, supported by liquidity assistance, with a federal guarantee, provided by the SNB and a loss protection agreement for UBS, strengthened trust in the Swiss financial system, ensured the stability of the international financial system and averted serious consequences for the Swiss economy. It was vital for the citizens, as well as the companies based in the business hub of Switzerland, and hence the Swiss economy, that the measures avoided a further escalation of the crisis. When UBS terminated the federal loss protection agreement, and the agreement between Credit Suisse and the SNB on liquidity assistance loans with a federal default guarantee was also cancelled on 11 August 2023, the risks for the Confederation that were associated with the chosen solution also ceased to exist.

1.2 Appraisal of the report and the work carried out by the PInC

The Federal Council noted with interest the report by the Parliamentary Investigation Committee (PInC) on government handling of the CS crisis, and thanks the PInC for the thorough evaluation of the events surrounding the takeover of Credit Suisse by UBS.

The Federal Council observes that the PInC also shares the view that the chosen solution, of a takeover of Credit Suisse by UBS, was appropriate and was the preferred option over all the alternatives which were investigated. It is the view of the PInC that this solution fulfilled its urgent goal, which was to calm market participants and prevent a financial and economic crisis. The PInC observed that CS was taken over by a bank which could be relied upon to deliver a viable solution, and that the financial risks for the Confederation ceased to exist as soon as the relevant guarantee agreements ended on 11 August 2023. Furthermore, the PInC deemed the takeover by UBS to be the scenario with the best cost-benefit ratio. As such, it shares the Federal Council's opinion that it would have been questionable as to whether a restructuring could have restored the markets' trust in the bank as effectively, and also that the financial and legal risks of temporary public ownership (TPO) would have been difficult to gauge and barely justifiable. It must also be assumed that, without the viable solution found on 19 March 2023, Credit Suisse would have entered insolvency as soon as the Asian stock markets opened on 20 March 2023, with grave consequences for domestic and international financial stability. The Federal Council acknowledges the PInC's appraisal, which states that, thanks to extensive preparatory work, the authorities were able to take measures quickly to deal with the crisis successfully. As such, the PInC recognises the actions of the Federal Council and the other authorities involved, in its report.

The work carried out by the PInC also broadly confirms the appropriateness of the measures envisaged by the Federal Council in its report on banking stability of 10 April 2024². The Federal Council acknowledges that the PInC supports the approach that was taken and is also willing to consider the measures suggested by the PInC for even better and more efficient crisis management.

Lastly, it is important to establish the events within the wider context. The PInC emphasises in its report that the cause of the CS crisis and the resulting takeover by UBS was down to the commercial behaviour of CS, its questionable risk culture in combination with sub-par risk management and its governance by senior management. The Federal Council shares this view and points to the fact that the PInC's remit, under Article 2 paragraph 1 of the PInC mandate, was restricted to investigating the government's handling of the takeover of Credit Suisse by UBS, whereas determining who was responsible for the Credit Suisse crisis is outside the reference of parliamentary oversight. The focus of the report on crisis preparedness

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and support by the competent authorities must therefore not imply that the situation at Credit Suisse resulted from actions or a failure to act by the authorities. Responsibility for the behaviour of Credit Suisse, which led to its demise, lay comprehensively and at all times with its organs.

Despite the positive outcome the crisis management achieved, the Federal Council considers the PInC's reappraisal of the events that occurred around Credit Suisse to be important. The work of the PInC will make a major contribution to strengthening credibility and trust in the state and the authorities.

1.3 Collaboration with the PInC

The Federal Council rates its collaboration with the PInC as generally positive. The Head of the FDF, as a representative of the Federal Council, or respectively the liaison officer appointed by her to safeguard the Federal Council's rights in the PInC procedure, former Federal Supreme Court judge Dr Niklaus Oberholzer, was able to take part in the hearings carried out by the PInC, in accordance with the applicable legislation. The liaison officer was also given access to the external reports which the PInC had commissioned. However, because of the confidentiality obligations that were imposed, along with the time restrictions for access, it was not possible for the Federal Council to analyse these reports, which related to specific specialist topics, with support from specialists, and to comment on the individual findings.

The members of the Federal Council and the federal authorities concerned were given two opportunities to check extracts of the reports for formal or material errors. The Federal Council regrets that the feedback from the members of the Federal Council and the other federal authorities that were consulted was not taken into consideration by the PInC in many areas. From the Federal Council's perspective, the report therefore contains partially contentious statements and examples which are presented out of context, which can lead to false conclusions. The Federal Council also notes that certain conclusions drawn by the PInC are based exclusively on the opinions of individual external experts. It is the view of the Federal Council that a wider support base for these analyses and a critical appraisal would have been wise.

The finalised version of the PInC's report, with the final assessment and the recommendations, motions and postulates, was not submitted to the Federal Council until shortly before publication. It is important to the Federal Council that the Federal Assembly can discuss the PInC's findings once it is aware of the outcome of the assessment. It has therefore prepared its statement for the Federal Assembly in a very short period of time. It is on this basis that the Federal Council is giving its opinion in this statement on the key points of the PInC's report and, due to a lack of time, has not discussed in detail all of the individual issues raised, the assessments and the suggestions.

2 Opinion of the Federal Council on the findings of the inquiry

2.1 Too-big-to-fail legislation and audit regulations

2.1.1 Monitoring and further development of the TBTF legislation in Switzerland between 2015 and 2022

The PlnC considers that the Federal Council's reports under Article 52 of the Banking Act (BankA) between 2015 and 2022 were too summary in nature, and that there is a lack of strategic overview. In response, the Federal Council points out that the legislator's mandate was clearly and narrowly defined. In essence, the requirement is that the Swiss TBTF regulations in sections 5 and 6 of the Banking Act be evaluated against international usage³. The aforementioned sections of the Banking Act contain requirements for systemically important banks (SIBs) on capital, liquidity, risk diversification, remuneration and emergency planning, but not on other areas of banking regulation, such as depositor protection. As such, the Federal Council's reporting adhered closely to the legal mandate, something which was not criticised during the parliamentary debates on the individual reports. However, in early 2023, the Federal Council instructed the FDF to perform a comprehensive review of the circumstances that led to the measures in conjunction with the takeover of Credit Suisse by UBS, and to include this review, together with an in-depth evaluation of the too-big-to-fail regulations, in the next Federal Council report on systemically important banks under Article 52 of the Banking Act. The Federal Council notes that this change of focus in the Federal Council report on banking stability of 10 April 2024⁴ was positively received by the PlnC. It takes on board the suggestion to also present a broad and strategic assessment in future reports, and is willing to draw up a corresponding amendment to the legal mandate. However, the Federal Council takes the view that, given this more comprehensive objective, it would be more appropriate to present Parliament with a correspondingly more detailed report every four years in future, instead of every two years. The FDF would nonetheless continue to inform the relevant committees regularly and as required, as part of the six-monthly report on international financial issues regarding the further development of the relevant international standards.

With regard to the further development of the TBTF regulations, the PlnC notes that, until approximately 2015, Switzerland acted particularly fast and strictly compared to other countries. In the period from 2015 to 2022, however, the PlnC noted an increasing accommodation towards the banking sector and the big banks on the part of the Federal Council, and a decreasing willingness to tighten the Swiss TBTF regulations over and above international standards. As examples, the PlnC cites,

³ Article 52 Banking Act: "At the latest 3 years after the entry into force of sections 5 and 6 of the amendment of 30 September 2011, and thereafter within 2 years, the Federal Council shall review the provisions relating to the comparability and degree of implementation of the corresponding international standards abroad. It submits a report to the Federal Assembly and indicates any need for amendments at the legislative and ordinance level."

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among other things, the longer transition periods for Credit Suisse to introduce going-concern and gone-concern requirements for global systemically important banks (G-SIBs), the introduction of the Federal Act on the Calculation of the Participation Deduction for Systemically Important Banks, the delayed introduction of the going-concern requirements for the parent banks of Credit Suisse and UBS, the delayed introduction of the net stable funding ratio (NSFR) and long transition periods for introducing a new liquidity concept in 2022.

The Federal Council points out that the adjustments made after 2015 also involved a further tightening of the TBTF regime. Moreover, the tightening of individual provisions, such as the introduction of additional liquidity requirements for SIBs in 2022, went beyond the international standards. Overall, however, it is true that the willingness to go beyond international standards in the TBTF regulations has waned markedly over the years, including on the part of the legislator. Conversely, the Federal Council considers that the granting of transition periods cannot be viewed as a trend towards deregulation. Rather, it is a tried and tested instrument for the proportionate introduction of stricter regulations, and will continue to be appropriate in the future.

Thus, the criticism that the further development of the TBTF regulations has not been sufficient misses the mark, in the Federal Council's view. The TBTF rules introduced in 2012 and gradually refined since then have strengthened the resilience of SIBs substantially. This increased resilience was demonstrated, for example, in the challenging economic environment during the COVID-19 pandemic, and in autumn 2022 in the case of Credit Suisse. In the Federal Council's opinion, the existing TBTF regime was also a major factor in the choice of solution to the Credit Suisse crisis. For instance, the capital and liquidity requirements significantly improved SIBs' resilience. Moreover, an important side effect of the TBTF regulations is that the incentives provided by the capital requirements contributed to the reduction in size of the two G-SIBs since the 2007-08 financial crisis. Compared to GDP, UBS's total assets are now much lower than they were during the financial crisis, despite having taken over Credit Suisse.

The Federal Council's position is that Switzerland should retain its place as one of the leading international financial centres. In its report on banking stability of 10 April 2024⁵, the Federal Council maintained that, in line with the financial centre strategy of 4 December 2020, Switzerland should continue to be an attractive location, including for global financial institutions. At the same time, it acknowledges in its report that there is a need for action as regards the further development of the TBTF regime. In the Federal Council's view, the strengthening of the TBTF regime should be proportionate and effective, while the TBTF regime should continue to be as practicable and internationally comparable as possible.

Moreover, the PlnC recommends that the Federal Council lend greater weight to objections raised by the FOJ, FINMA and the SNB when drawing up legislative proposals in this area. It is important to the Federal Council that the objections and interests of specialist authorities be appropriately taken into account. Conversely, the fact that not all the authorities' concerns were addressed does not mean that all

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concerns voiced by financial and economic circles were taken into account. Rather, most of the latest round of amendments to banking regulations have involved a tightening, which was criticised by those affected. Maintaining the interests of Switzerland as a whole will continue to be the top priority in future decision-making, and therefore a balance between stakeholder positions will still need to be sought. It should also be pointed out that the further development of the regulations is not a purely technical exercise, but rather a highly political process driven by the expectations of politicians and society. Thus, the Federal Council is clear about the fact that, as a rule, the end result will reflect neither the minimum nor the maximum variant, but will be a solution that can find acceptance with the majority and is in the interests of Switzerland as a whole.

The PInC's assessment of the existing tools in the Swiss TBTF regulations is based on the findings in an expert opinion by Lea Hungerbühler, who finds that there are two deviations from the international standard. Firstly, the lack of a legal basis for a public liquidity backstop (PLB) and, secondly, gaps in the area of deposit insurance. In addition, the legal basis for temporary public ownership (TPO) does not exist. However, the deviations noted in the expert opinion are the result of a political process and should be viewed in the context of democratic politics.

As regards the substance of the deviations observed in the standards, the following can be said. With respect to the PLB, the Federal Council refers to the corresponding bill which it approved on 6 September 2023, and which has been pending in Parliament since that date. The Federal Council addressed the question of deposit insurance in its report on banking stability. The assessment it contains shows that measures such as expanding deposit insurance could, in principle, strengthen depositor protection. Nonetheless, the Federal Council points out that the options mentioned with regard to deposit insurance were already known at the time of the amendments to the BankA that came into force on 1 January 2023, but were intentionally not included by the legislator. Furthermore, in the Federal Council's opinion, adjustments to depositor protection are not a targeted measure for mitigating the TBTF issue. The primary objective of the TBTF regime remains to ensure the continuation of systemically important functions and thus depositors' access to their assets, in which case deposit insurance does not come into play. Deposit insurance can therefore have only an extremely limited impact on mitigating the TBTF issue. However, the Federal Council does share the view that, this notwithstanding, certain operational improvements in depositor protection are appropriate and achievable with limited effort, and it is prepared to examine adjustments to that effect.

As regards the legal basis for a TPO, this question was examined in depth in the report on banking stability. The Federal Council concluded that the moral hazard resulting from enshrining a TPO in law, as well as the associated risks, would clearly outweigh the potential benefits in a resolution. It should also be noted that a TPO is not part of the international standard of the Financial Stability Board (FSB), as is explicitly explained in the corresponding FSB methodology⁶. The FSB mentions a TPO merely

⁶ See *Key Attributes Assessment Methodology for the Banking Sector*, FSB, 19 October 2016, Explanatory Note 6d: "Temporary public ownership not a required resolution tool – It is not necessary for a resolution regime to include the power to place a failing bank into temporary public ownership."

as a possible resolution tool which individual countries could consider introducing, but refrains from a clear recommendation, unlike for other instruments. Owing to the conflicting aims of providing an explicit legal basis for a TPO and the TBTF legislation's goal of avoiding state assistance, and given the overall assessment of negative incentives and potential benefits, the Federal Council decided not to introduce a TPO into law. It continues to maintain this position.

As regards the general design of the TBTF regulations, the PlnC notes that the Credit Suisse crisis revealed conflicting goals between certain measures and the TBTF legislation. According to Article 7 paragraph 2 of the BankA, the legislation is aimed at avoiding state assistance. A PLB or TPO would run counter to that aim. In the PlnC's view, the question arises of whether a major banking crisis would be manageable without state assistance, or whether in fact state assistance to ward off significant damage is inevitable. In addition, the PlnC considers that the TBTF legislation focuses too much on Switzerland. Against this background, the PlnC is requesting an adjustment to the purpose article of the TBTF regulations and an extension of the TBTF legislation's goals, in order to facilitate implementation in an international context and to avoid the risk of triggering an international financial crisis. The Federal Council is open to considering these adjustments.

Moreover, with regard to the design of the Swiss TBTF regulations, the PlnC observes that they are not equipped to deal with a crisis of confidence. Finally, the PlnC points out the need to take account of the significant size of the remaining G-SIB in the design of the TBTF regulations. It recommends that the Federal Council develop the TBTF legislation further and adjust it to take account of the significant size of the remaining Swiss G-SIB. The Federal Council shares this assessment and, by means of the report on banking stability, has presented a broad package of measures which aims to substantially reduce the likelihood of a renewed crisis at a global systemically important bank in Switzerland, and to ensure its resolvability in such an event.

2.1.2 Statutory regulation of audit oversight with regard to systemically important banks

In the PlnC's view, the dual supervision system for financial institutions carries the risk of conflicts of interest. In this regard, it refers to corresponding IMF assessments. The PlnC calls for a review of the current system, including the question of direct mandates and the obligatory rotation of audit firms, with a focus on audit effectiveness. Stricter rules for the supervision of SIBs and G-SIBs should also be examined. In its report on banking stability⁷, the Federal Council states that it will consider abolishing dual supervision, or strengthening it with stricter rules on the use of audit firms (e.g. requirements on independence and direct mandates).

Furthermore, the PlnC regards the coordination between the FAOA and FINMA as insufficient, and criticises the lack of a regulatory framework for the formal crisis mode. The Federal Council will not comment on the assessment of the collaboration

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between the FAOA and FINMA, which are independent entities. However, it is prepared to examine a clearer regulation of the collaboration between FINMA and the FAOA, as part of the improvements to the statutory regulation of cooperation between financial market authorities.

2.2 Risk management and early crisis detection

2.2.1 Assessment of the PInC of risk management

The Federal Council notes that the PInC considers the risk management carried out by the risk bearer, the State Secretariat for International Finance (SIF), to be appropriate and suitable. In the view of the PInC, SIF's raising of the probability rating of the risk of insolvency of a systemically important institution from "rare" to "possible" in February 2023 accurately reflects the situation at the time.

The Federal Council acknowledges the PInC's perspective that the Conference of Secretaries General (CSG) did not sufficiently address the risk of insolvency of a systemically important financial institution, or that the CSG's role in this regard was not sufficiently clear. With reference to the report of the Control Committees of 30 January 2018 regarding risk reporting for the attention of the Federal Council⁸, the PInC emphasises that it must be possible in specific cases for the respective risk bearer to escalate to the Federal Council. In its opinion on the Secretariat of the Control Committees' report⁹, the Federal Council argued that it was already possible to escalate, and suitable escalation instruments could be applied. The Federal Council continues to hold this view.

Finally, according to the PInC, there is no mechanism that ensures the transition from risk management to crisis management. The graphical representation in the risk reporting system does not allow a risk to be adequately represented as it materialises and it is therefore not suitable for this purpose. Effective crisis management is part of risk management and the relevant intersections have been defined.¹⁰ In response, the Federal Council points out that the graphical representation in risk reporting is there for risk management purposes, rather than for crisis management. Moreover, there are already ways of indicating a risk as it materialises in risk management, and a suitable graphical representation of a risk as it materialises would not have brought any added value for the crisis management of CS.

⁸ BBl 2018 1457

⁹ BBl 2018 2381, 2389

¹⁰ Handbook on federal risk management, section 6.2

2.2.2 Early crisis detection

In its report, the PInC identified shortcomings in early crisis detection. Specifically, the PInC takes the view that the right of escalation to the Federal Chancellery should be provided for in the early crisis detection system. The PInC also believes that the role of the Federal Chancellery and its authority levels in the area of early crisis detection must be strengthened. The Federal Council acknowledges the PInC's opinion that the processes for early detection of potential crises should be improved. In this regard, the Federal Council refers to the new Ordinance on the Crisis Organisation of the Federal Administration, which will come into force on 1 February 2025. This will strengthen interdepartmental and supra-departmental anticipation, and will place the Federal Chancellery in charge of the coordination group for crisis anticipation. All departments and offices, as well as the Federal Chancellery, provide this group with findings from their respective early detection systems. The Federal Chancellery moderates the process as well as regular meetings with representatives of all departments within the framework of the coordination group for crisis anticipation. The Federal Chancellery can subsequently submit a proposal, in the name of this group, to the CSG for a discussion on the need for a supra-departmental crisis organisation. Every department also has the option to contact the CSG, independently of the coordination group for crisis anticipation. If four Secretary Generals of the departments are in favour of it, the Federal Chancellery submits a request in the name of the CSG to the Federal Council to determine the lead and, if necessary, to set up the strategic policy crisis management team. As such, there is the option to escalate, irrespective of the thematic responsibility of a department.

2.3 Financial market supervision

2.3.1 Microprudential supervision by FINMA

The PInC comes to the conclusion that FINMA identified the weak points in the areas of organisation, equity and liquidity, and in the emergency planning of CS, and addressed them using various instruments. At the same time, the PInC questions the effectiveness of the instruments which were available to FINMA. In particular, there is no explicit legal basis for standards regarding financial institutions' remuneration systems. The Federal Council acknowledges that the PInC welcomes the measures envisaged by the Federal Council in this regard in its report on banking stability¹¹.

Furthermore, the PInC makes various statements regarding FINMA's management, its staffing and the use of its instruments. Where these findings fall within its competence, the Federal Council refers to two fundamental observations:

- Firstly, FINMA already has a broad set of instruments which – particularly in the case of big banks – ranges from all the necessary on-the-spot checks, to capital or liquidity surcharges or other measures required to restore order, through to a comprehensive set of instruments for a resolution.

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- Secondly, the Federal Council intends to further strengthen FINMA's toolkit and thereby supervision itself, in particular with regard to systemically important banks, and refers in this regard to the measures envisaged in its report on banking stability in the area of responsibility (Measures 1 to 3, 6), on expanding FINMA's instruments (Measures 4, 6 and 8), on public information on supervisory procedures (Measure 5), on shortening the appeals process for prudential decisions (Measure 9), on staffing resources (Measure 12), on the FINMA Board of Directors' responsibility for matters of substantial importance (Measure 13) as well as on strengthening early intervention by the supervisory authorities (Measure 22).

With regard to AT1 instruments, the PInC recommends a critical review of the legislation, and amendment where necessary. This review was carried out already as part of work on the report on banking stability. In line with international efforts, the Federal Council has spoken out in favour of strengthening the risk-bearing function of such instruments in the going concern (Measure 19).

The PInC also suggests examining the possibility of a "clean holding company", as is the case in the United States for G-SIBs, for example. The Federal Council agrees with this suggestion. This measure, which is not to be confused with the requirement for a flat holding structure, is also explained in the report on banking stability and is intended to be ensured as part of resolution planning. It would already be largely fulfilled by the one remaining Swiss G-SIB.

Finally, the PInC invites the Federal Council to examine, as part of its package of measures, whether in future the possibility of easing the applicable capital and liquidity requirements should be more specifically defined or restricted at the legislative and ordinance level. The Federal Council points out that in a principle-based regulatory framework, which does not regulate every conceivable individual case, the supervisory authority must have discretion for specific individual cases, both for tightening and easing regulations. However, the requirements and criteria for such individual decisions can be reviewed again and, if necessary, more precisely defined. The Federal Council is prepared to consider implementing the recommendation to this effect.

2.3.2 Audit oversight and supervision by the FAOA and FINMA

In its report, the PInC expresses its views on the performance of audit oversight and supervision by the FAOA and FINMA, and on the coordination and cooperation between the FAOA and FINMA. These questions are the responsibility of the FAOA and FINMA, which are independent entities. The Federal Council will therefore not comment on this.

2.3.3 Macropprudential oversight by the SNB

The PInC notes that the FDF was informed very late about the precarious situation at CS by FINMA and the SNB. The Federal Council finds it important in this context that the PInC deemed the financial crisis management committee's switch to crisis mode at the beginning of October 2022 to be appropriately timed. In general, the Federal Council shares the view that the earliest possible involvement of all the authorities concerned is crucial.

The PInC also suggests that the definition of systemic importance should be regularly reviewed. In its report on banking stability¹², the Federal Council states that the definition of systemic importance that is currently enshrined in law corresponds to the international standard according to the Basel Committee on Banking Supervision (BCBS)¹³ and it continues to be suitable. An expansion of the concept of systemic importance could lead to the blurring of an important distinction between banks that must be saved from failure because the resulting damage would significantly harm the economy and the financial system, and banks that would essentially harm their clients and owners if they failed, which may be politically difficult but must remain possible. Switzerland will continue to actively participate in the discussions, including those in the FSB, in connection with systemic importance. These discussions also include the possible application of resolution planning and other instruments to other banks.

The PInC also shares the Federal Council's view that a regulatory framework needs to be developed to allow SIBs to be instructed or required by regulation to provide sufficient transferable and unencumbered collateral to the SNB and foreign central banks to guarantee access to additional liquid funds if needed.

The PInC also agrees with the Federal Council that recourse to emergency liquidity assistance (ELA) and SNB intervention must remain subsidiary measures for the case that a bank can no longer refinance itself on the market. It points out that ELA is not always able to fulfil its purpose as an instrument, as a bank may fear stigmatisation as a result. Finally, the PInC report supports the conclusions and recommendations of those reports that call for improvements to the banks' supply of liquidity.

As set out in the report on banking stability, the Federal Council intends to review the existing legal basis and framework as part of the implementation of postulate 23.3445 "Review of the SNB's toolkit" and, if necessary, to refine and develop it further. In the view of the Federal Council, the lender of last resort (LoLR) should expand the potential for liquidity provision in a crisis by using both ordinary and emergency facilities. Part of strengthening the LoLR regime also involves a regulatory requirement for banks to prepare collateral, whereby the heterogeneous business models of banks, the need to ensure a good cost-benefit ratio and the ability to plan must be taken into account when implementing such a requirement. In addition, ways of reducing the stigma issue and increasing the transferability of liquidity assistance

¹² BBI 2024 1023

¹³ The latest edition can be found at BCBS (2023): https://www.bis.org/basel_framework/chapter/SCO/40.htm, Version effective as of 9 Nov. 2021

within a banking group are to be examined. Banks should also expand access to facilities provided by foreign central banks as far as possible.

2.4 Federal supervision of FINMA, the SNB and the FAOA

2.4.1 FDF/Federal Council supervision of FINMA

The PInC notes that the relationship between the FDF and FINMA has varied in intensity over the years. The Federal Council emphasises that the current dialogue between FINMA and the FDF is close and extremely constructive. The PInC's request that all institutionalised communication channels between FINMA and the FDF be systematically recorded has been complied with since 2023. Furthermore, in November 2024, the Federal Council decided to include the annual discussions with FINMA and the SNB in the expanded minutes of Federal Council resolutions.

2.4.2 Federal Department of Justice and Police (FDJP) oversight of the FAOA

The PInC criticises the fact that the FDJP's administrative oversight of the FAOA is exercised to only a minimal extent. The Federal Council points out that the restraint shown by the FDJP in the supervision of the FAOA is prescribed by law. In accordance with Article 38 of the Federal Act on the Licensing and Oversight of Auditors (AOA), the authority of the FDJP is essentially limited to the election of the Board of Directors and the approval of the terms of employment of the Director, as well as the approval of the strategic objectives and the annual report. In addition, there is an audit of the strategic objectives (brief report; in-depth report every four years) and regular oversight meetings.

2.4.3 FDF/Federal Council supervision of the SNB

The PInC criticises the fact that, in addition to the committees provided for in the tripartite memorandum of understanding, there are no institutionalised communication channels between the SNB and the FDF units responsible for the financial market, and suggests strengthening and institutionalising the exchange between the FDF and the SNB. The Federal Council notes that there is already close and regular dialogue between the Federal Administration units responsible for the financial market and the SNB. For example, the SNB's Governing Board attends the meetings of the Federal Council Finance Committee at least three times a year. In addition, there is an annual exchange between the Chairman of the SNB and the entire Federal Council. Likewise, the head of the FDF and the Chairman of the SNB

regularly exchange information bilaterally. However, the Federal Council is willing to consider more extensive institutionalisation of the exchange with the SNB.

2.5 Crisis management by the Federal Council, the Federal Administration, FINMA and the SNB

2.5.1 Management of the crisis as it intensified (summer 2022 to March 2023)

The PInC considers the beginning of October 2022 an appropriate time for the financial crisis management committee (FCMC) to switch to crisis mode and views the authorities' broad representation in the steering committee (SC) and in the FCMC as beneficial to good crisis management. Nevertheless, the PInC still sees room for improvement in the exchange of information between the authorities involved and in the integration of informal contacts. The Federal Council shares this view and, in its report on banking stability of 10 April 2024¹⁴, set out measures for strengthening cooperation between the authorities concerned.

The PInC also found that there were no secure communication channels available due to a lack of compatibility between the IT systems of the key parties. Work has since begun on overcoming these technical obstacles. The PInC also identifies a need for action regarding the flow of information between the individual authorities and between the levels. The Federal Council shares the view that ensuring the flow of information is imperative.

In relation to FINMA's cooperation with foreign authorities regarding the CS case, the PInC points out that the difficulty of the circumstances was increased by CS not providing data. Because of this, the Federal Council's report on banking stability¹⁵ proposes tightening the requirements regarding the provision of information about the liquidity situation to the supervisory authority (Measure 25).

The information provided to the Federal Council from autumn until the end of December 2022 and the handover of files when the Head of the FDF changed at the end of 2022 is considered inadequate by the PInC. Furthermore, the PInC considers the information shared with the Federal Council in 2023 to be of limited use. The Federal Council would like to point out that it was regularly and appropriately informed by the FDF in writing and verbally from 2023 onwards and was thus able to make a well-founded appraisal of the advantages and disadvantages of the individual scenarios and their implications based on the information provided to it.

The Federal Council notes that the PInC came to the conclusion that the authorities covered the most important possible measures in their preparations and adequately explored the various options in sufficient depth without rushing to commit themselves to one scenario or another. The PInC also concludes that the authorities' cost estimates

¹⁴ BBI 2024 1023

¹⁵ BBI 2024 1023

were plausible and comprehensible overall, taking the considerable uncertainties into account. However, it criticises the fact that the Federal Council was not informed in writing of these estimates at an early stage, and in particular of the macroeconomic analyses. The Federal Council would like to point out that the start of the acute phase of the crisis interrupted the plan to finalise the existing analyses and notify the Federal Council.

Finally, the PlnC sees a need for action in the area of guidelines for handing over files when a department changes leadership. The Federal Council refers to the requirements set out in the aide-mémoire¹⁶ for the Members of the Federal Council and the Federal Chancellor, which it adopted in 2016 in response to a recommendation made by the Finance Committee (FC) and the Control Committee (CC) in their report on the INSIEME IT project of 21 November 2014.¹⁷ These guidelines stipulate that the outgoing head of department must ensure that knowledge is transferred to the new incumbent. The Federal Chancellery provides a checklist for this purpose; this is currently being thoroughly revised. In the view of the Federal Council, the question of responsibility for the handover of a department is thus clearly regulated and there is no need for any additional action in this regard.

2.5.2 Management of the crisis in its final phase from 5 to 19 March 2023

The PlnC welcomes the availability and flexibility of the parties involved in managing the final phase of the crisis, but is critical of the lack of minutes of some of the discussions. The Federal Council acknowledges this criticism and opines that it was due, among other things, to the extremely difficult and time-critical nature of the situation. In addition to this, the circle of people involved had to be kept as small as possible for confidentiality reasons. As such, people were brought in only if they had a task that was specific to the content of the discussion. The Federal Council believes that the small number of parties involved was ultimately a key factor in the successful management of this crisis, since there were no leaks – at least not until the takeover negotiations between the two banks concerned in the final few days.

In the PlnC's view, a central point of contact for the banks during the final phase of the crisis management was also lacking. The Federal Council points out that this is due to the different roles and responsibilities of the parties involved as defined by law. The individual authorities were in contact with the banks within the scope of their duties in their respective areas of responsibility. According to the memorandum of understanding, the SC is a body for coordinating the activities of the authorities involved, and the leadership of the SC has no authority to issue directives to the two independent authorities, the SNB and FINMA. The Federal Council is not aware of any problems arising from the current areas of responsibility and the resulting lack of

¹⁶ Aide-mémoire, section 1.25 "Transfer of knowledge when there are changes at the top of a department and the Federal Chancellery" and the corresponding checklist

¹⁷ BBI 2015 6377

a central point of contact. The PlnC also does not mention any ensuing problems in its report.

The Federal Council welcomes the fact that the PlnC considers the cooperation with foreign authorities to be appropriate and effective and that it views the involvement of the entire Federal Council and the parallel development of three options during the final phase of crisis management positively. The PlnC is of the opinion that, thanks to the active mediation by the authorities, a result that took appropriate account of the main concerns of the parties involved was achieved within a short period of time. It points to an alleged contradiction between the active role of the authorities and a statement made by the Head of the FDF at the media conference on 19 March 2023 that CS was not being rescued by state. The Federal Council believes it is clear that the solution in the case of Credit Suisse, unlike the earlier case of UBS, was a private takeover and that the federal government did not take a financial stake in the bank, even though extensive state support and assistance measures were used as part of the takeover.

The Federal Council also notes that the PlnC shares its view that the introduction of the PLB under emergency law, the introduction of ELA+, the write-down of AT1 instruments as instructed by FINMA and the enactment under emergency law of the federal government's authority to conclude a guarantee agreement in favour of UBS were lawful, and that the chosen solution was appropriate and effective overall. The PlnC also commends the communications activities.

The Federal Council understands the PlnC's criticism of the temporary exclusion from the principle of public access to information under Article 6 of the Federal Act on Freedom of Information in the Administration (FoIA). In its comments on the CS emergency ordinance, the Federal Council recognised the need for extensive information transparency in the context of granting liquidity assistance loans with a federal default guarantee. At the same time, it pointed out that such information and data from the affected banks contained business or industrial secrets within the meaning of the FoIA and that it had excluded access to official documents in this respect in order to create a clear legal situation. Legal uncertainty on this could have led to a standstill in the exchange of information between the FDF and the SNB on one side, and UBS and CS on the other, because UBS and CS would have feared sensitive information being made public. However, the Federal Council is willing to examine the questions that arise in connection with access to information under the FoIA in crisis situations and has given the FDJP a mandate to do so.

2.6 Overarching findings

In its report, the PlnC concludes that FINMA, the SNB and the FDF performed their respective responsibilities and, in principle, communicated the information that the other authorities needed. Nevertheless, the PlnC sees potential for improvement.

With regard to cooperation between the SNB, FINMA and the FDF, the PInC is of the opinion that one body should be designated to take the lead and prepare overarching decisions in the event of a conflict. This should ensure direct access to the Federal Council. The Federal Council would like to point out that, according to the memorandum of understanding, the Head of the FDF chairs the steering committee and that overarching decisions are already prepared by the FDF and submitted directly to the Federal Council. However, as announced in its report on banking stability¹⁸, the Federal Council is prepared to examine adjustments to institutional responsibilities and to cooperation between authorities with a view to strengthening the crisis management regime (Measure 37).

With regard to the division of responsibilities in the area of audit firm supervision and oversight, the Federal Council is willing to consider adjustments to the use of audit firms to supervise banks (Measures 10 and 11 in the report on banking stability), as well as improvements in the cooperation between the FAOA and FINMA.

As far as cooperation within the Federal Council is concerned, the Federal Council shares the view of the PInC that the departmental principle must not lead to a situation in which the Federal Council is heading into a crisis unable to act because important information is being withheld from it. The Federal Council points out that this was not the case here, as the Federal Council was appropriately informed, documented and able to act in the first quarter of 2023.

With regard to the PInC's concerns over the traceability of the Federal Council's discussions and resolutions, the Federal Council is of the opinion that the expanded minutes of the Federal Council meetings already reflect its discussions and resolutions in a comprehensible manner. It refers to its comments on the Control Committee's report of 17 November 2023 regarding the leaks relating to Federal Council COVID-19 matters¹⁹ and on the Control Committee's report of 15 March 2013 on the resignation of the SNB Chairman on 9 January 2012.²⁰ In accordance with the above, the members of the Federal Council should be able to "express their thoughts and exchange their ideas, discuss opinions and, in particular, change them during deliberations without any external pressure and with the greatest possible freedom. They must not be obliged to justify themselves in the future. In this sense, overly detailed minutes would be counterproductive and could have a negative impact on the quality of government deliberations and decisions."

With regard to the inclusion of other affected federal offices, the Federal Council basically shares the view of the PInC that all authorities with an interest in the matter should be included whenever possible. Like the PInC, the Federal Council also considers the prompt and close involvement of the Federal Office of Justice (FOJ) to be important. The Federal Council notes that the FOJ was involved in autumn 2022 and also immediately after the crisis entered its acute phase from 15 March 2023. Regardless of the timing of their involvement, all of the other parties involved likewise

¹⁸ BBI 2024 1023

¹⁹ BBI 2024 336, p. 6

²⁰ BBI 2013 5723

experienced the extreme time pressure which the FOJ experienced in the final phase of crisis management in March 2023.

The PInC also emphasises that it is important for the FOJ to be involved at an early stage and on an ongoing basis when emergency legislation is enacted. It calls on the Federal Council to press ahead with its deliberations on strengthening the role of the FOJ in times of crisis. The Federal Council agrees with the PInC that the FOJ should be able to provide suitable staff to prepare legislation for emerging crises and to assist the specialist offices in a crisis situation. At the same time, the Federal Council believes it is essential for the specialist offices to prepare for emerging crises in the sense of genuine crisis management, especially in the area of legislation. Independently of the crises, the FOJ has strengthened preventive judicial control by establishing an independent directorate for legislative support. In connection with its report on emergency law (Federal Council report in response to postulate 23.3438 of the National Council Legal Affairs Committee of 24 March 2023 and the Schwander postulate 20.3440 of 6 May 2020), the Federal Council has instructed the FDJP (FOJ) to examine, in accordance with the Federal Council's opinion of 29 September 2023²¹ on Recommendation 1 of the National Council Control Committee (CC-N) in its report of 30 June 2023 on the protection of fundamental rights by the federal authorities in the fight against the COVID-19 pandemic and to report back to the Federal Council by the end of 2025 on how preventive judicial control could be strengthened by the Federal Office of Justice, especially in times of crisis. It sees the PInC's assessment as confirmation of the CC-N's view that this preventive control is essential and that the FOJ must be able to carry it out efficiently even in times of crisis. It should be noted that the FOJ fulfilled its role in this case.

The PInC takes the view that greater involvement by SECO could have provided valuable impetus. The Federal Council would like to point out that, with regard to crisis management, SECO has no specific role in the area of financial market stability or in the established bodies and processes for managing financial crises. As such, the legal powers of FINMA and the SNB to share non-public information on individual financial market participants are limited to the exchange with the FDF. However, it is important to the Federal Council that SECO be involved within its area of responsibility, as is the case, for example, in the investigation into the Credit Suisse crisis or in regulatory impact assessments.

As for the involvement of the Competition Commission (COMCO), the PInC concludes that COMCO's expertise could have been incorporated into the preparations and negotiations at an earlier stage. Although the Federal Council can understand the PInC's position, it was necessary for reasons of confidentiality to keep the number of involved parties small for as long as possible.

In its report, the PInC additionally comments on the prioritisation of the concept of creditor protection over competition law concerns. Since FINMA can assume COMCO's powers if it justifies doing so for the purposes of protecting creditors, and since COMCO's opinion is not binding on FINMA, the PInC recommends that the term "creditor protection" be defined more clearly. The Federal Council is open to

²¹ BBI 2023 2247

considering this proposal. At the same time, it emphasises that there was no ambiguity regarding FINMA's responsibility in the Credit Suisse crisis.

Furthermore, the PInC comments on questions regarding the role and position of shareholders. Specifically, it suggests reviewing the role of shareholder rights in large systemically important companies, for example with regard to strengthening the position of small shareholders. The questions regarding the role of shareholders are justified in the view of the Federal Council and do not concern the financial sector alone. Switzerland has already implemented important measures to strengthen the role of shareholders. The law on shareholdings has only recently been fully revised. The provisions of the revised law on companies limited by shares have only been in force since 1 January 2023. In the view of the Federal Council, it would be premature to revise individual provisions once more before any initial experiences with the reform have been gathered.

Furthermore, the PInC found that the misconduct by members of the CS Management Board was rooted in a lack of responsibility towards the Swiss economy. The PInC therefore suggests reviewing the currently applicable criteria for granting mandates at the individual level, as well as at the level of senior executives and the Board of Directors as the most important body of a bank. In doing so, the general interests of Switzerland as a business hub should be given greater consideration. The Federal Council shares the PInC's desire for the sense of responsibility of the managers of systemically important banks to be strengthened. However, there is no evidence that requirements regarding the origin or place of residence of the members of a company's Board of Directors lead to better governance or less risk-taking.

In its conclusion, the PInC formulates findings on the application of the Parliament Act (ParlA) in relation to the PInC. These concern the position of the Federal Council within the meaning of Article 167 of the ParlA, the rights of those concerned within the meaning of Article 168 of the ParlA, as well as other selective adjustments. Since Parliament has the authority to determine how it wishes to organise the supervision of the Federal Council and the Federal Assembly, the Federal Council shall not comment on this matter.

3 **Opinion of the Federal Council on the PInC's recommendations, motions and postulates**

The following is the Federal Council's opinion on the recommendations, motions and postulates proposed by the PInC.

Recommendations

Recommendation 1

The Federal Council is called upon to take due account of the international dependencies of SIBs and the comparatively large size of the remaining Swiss G-SIB when designing future TBTF regulations. Greater emphasis should be placed on financial stability and broader economic interests, alongside the shared positions of bodies responsible for financial stability.

The PInC further urges the Federal Council to incorporate a comprehensive strategic discussion on refining the TBTF regulations within its evaluation reports under Article 52 of the BankA.

The Federal Council concurs with the PInC's position that the international dependencies of SIBs and the comparatively large size of the remaining Swiss G-SIB warrant careful consideration in future TBTF regulations. In its report on banking stability of 10 April 2024²², the Federal Council addressed these aspects thoroughly, for example with targeted measures for international activities regarding capital requirements and global resolvability (e.g. Measures 15, 31 and 32).

Moreover, the Federal Council stands ready to continue a comprehensive strategic review of the further development of the TBTF regulations in its reporting under Article 52 of the BankA. However, in view of the broader scope of this objective, the Federal Council deems it more practical to submit a report to Parliament every four years rather than biennially. The Federal Council is prepared to draft an appropriate amendment to the statutory mandate. In the interim, the FDF would continue updating the competent committees on the development of relevant international standards through its twice-yearly briefings on international financial matters, as circumstances require.

The Federal Council accepts Recommendation 1.

²² BBI 2024 1023

Recommendation 2

The Federal Council is asked to examine risk management scenarios where introducing a right of escalation would be appropriate and to implement necessary measures accordingly. In doing so, special consideration must be given to Federal Council risks.

Furthermore, it is called upon to ensure a smooth transition between risk management and crisis management by creating an institutionalised channel. In particular, the Federal Council should examine how the role of the Conference of Secretaries General (CSG) can be strengthened in this area.

The Federal Council refers to its opinion on the Control Committees' report of 30 January 2018 regarding risk reporting.²³ It maintains that escalation mechanisms are already available and suitable escalation instruments are currently operational. Regarding the transition between risk management and crisis management, the Federal Council points to the new Ordinance on the Crisis Organisation of the Federal Administration, expected to take effect on 1 February 2025, which will enhance inter- and cross-departmental anticipation. This will also strengthen the CSG's role in this domain. The Federal Council contends that the Credit Suisse crisis would have been managed similarly by the authorities even with an institutionalised channel for transitioning between risk management and crisis management. Therefore, it sees no requirement for additional measures in this area.

Recommendation 3

The Federal Council is called upon to create the necessary conditions for FINMA to conduct its enforcement proceedings effectively. Specifically, consideration should be given to amending Article 22 paragraph 2 of the FINMASA to enable FINMA to communicate broadly on individual enforcement proceedings regarding systemically important banks. This review should particularly consider the legal situation for supervisory authorities' public communications in other countries.

In its report on banking stability²⁴, the Federal Council supports increased public disclosure when FINMA initiates investigations or proceedings. This approach serves a preventive function and creates robust incentives for financial institutions and their decision-makers. The Federal Council has therefore decided to implement this measure (Measure 5 in the report on banking stability). Implementation of Recommendation 3 is thus already in progress.

²³ BBI 2018 2381, 2389

²⁴ BBI 2024 1023

Recommendation 4

The Federal Council is called upon to examine whether the current capital requirements adequately ensure the resilience of SIBs in terms of both quality and quantity.

The Federal Council shares the PInC's objective of ensuring SIB stability and refers to its comments in the report on banking stability of 10 April 2024.²⁵ In this report, it announced more stringent implementation of SIB capital requirements, the addition of an institution-specific forward-looking component, and notably, strengthened capital requirements for foreign participations (Measures 14, 15 and 18). Recommendation 4 is therefore already being implemented.

Recommendation 5

The PInC calls on the Federal Council to examine legislation for SIBs that would limit legal remedies and substantially expedite the appeals process for FINMA's prudential decisions.

The Federal Council shares the PInC's view and refers to its announcement in the report on banking stability of 10 April 2024 to examine restricting legal remedies and shortening appeals procedures for FINMA's prudential decisions, while maintaining proportionality and fundamental procedural rights (Measure 9). Recommendation 5 is therefore already being implemented.

Recommendation 6

The PInC calls on the Federal Council to enhance the transparency and traceability of FAOA inspection processes at SIBs, particular by formalising and systematically documenting decisions on inspection scope. Additionally, the frequency and scope of SIB inspections should be adjusted using a risk-based approach and a more dynamic supervisory concept should be introduced.

The FAOA already conducts its oversight dynamically based on risk orientation principles (Art. 8 of the FAOA Ordinance on the Oversight of Audit Firms; SR 221.302.33). It conducted annual audits of CS's audit bodies from 2008 onwards and CS's audit mandate from 2012 onwards. The FAOA identified areas for improvement in these audits but found nothing that would cast doubt on the audit findings at CS. The frequency and scope of FAOA inspections follow the established risk-based oversight approach. However, the documentation of corresponding internal decisions can be more detailed. The Federal Council considers Recommendation 6 to be partially implemented and is willing to pursue additional improvements.

²⁵ BBI 2024 1023

Recommendation 7

The PlnC recommends that the Federal Council ensure the FAOA comprehensively reviews the implementation of corrective measures. This should employ systematic rather than random checks to ensure full compliance with quality standards.

Systematic monitoring of the implementation of audit firms' corrective measures can be highly resource-intensive and may conflict with risk-based oversight principles (see Recommendation 6 above). No specific examples have been identified regarding CS where the risk-oriented approach led to particular weaknesses. Therefore, consideration should be given to more transparent documentation of monitoring implementation methods and the reasoning behind non-systematic approaches. On this basis, the Federal Council accepts Recommendation 7.

Recommendation 8

The PlnC calls on the Federal Council to ensure enhanced and better-coordinated cooperation and information exchange between FINMA and the FAOA. This should include considering a more binding cooperation agreement, potentially through an MoU.

The aim is to promote strategic dialogue on at-risk financial institutions and on the financial audit (FA) and regulatory audit (RA) in order to ensure continuous, harmonised and risk-based supervision and oversight. Furthermore, the FAOA should receive all relevant information from FINMA and integrate it consistently into its oversight strategy. Consideration should also be given to defining a formal crisis mode to strengthen FAOA-FINMA cooperation during periods of crisis.

The FAOA already operates on a risk-oriented basis. Moreover, FINMA and the FAOA are legally required to cooperate (Art. 28 para. 2 of the FINMASA; SR 956.1; Art. 22 of the Auditor Oversight Act; SR 221.302). Both authorities must therefore trust that all information relevant to the other authority's supervision or oversight will be shared. The report does not indicate that the FAOA failed to process or incorporate relevant information received from FINMA into its oversight strategy. Nevertheless, the Federal Council accepts Recommendation 8 and will review the update of the existing cooperation agreement.

Recommendation 9

The Federal Council is called upon to examine which internationally coordinated and practical measures can be implemented in the event of a digital bank run.

As detailed in its report on banking stability, the Federal Council has thoroughly examined the impact of digitalisation on client behaviour during banking crises. Several of its proposed measures, particularly regarding liquidity, specifically address this new landscape (measures 24, 25, 28 and 29). Additionally, work is continuing at the international level. Recommendation 9 is thus already being implemented.

Recommendation 10

The PInC calls on the Federal Council to ensure that the FDF and the SNB share important developments regarding systemically important banks and their impact on financial stability more proactively. This can be achieved either within existing governance structures or through a new bilateral MoU between the FDF and the SNB.

The Federal Council notes existing close and regular dialogue between the Federal Administration agencies responsible for the financial market and the SNB. The SNB Governing Board attends Federal Council Finance Committee meetings at least three times a year, and annual exchanges occur between the SNB Chairman and the full Federal Council. Regular bilateral exchanges also take place between the Head of the FDF and the SNB Chairman, including during meetings of the International Monetary Fund, the World Bank, G20 finance ministers and central bank governors. Nonetheless, the Federal Council is willing to consider further institutionalising SNB exchanges and thus accepts Recommendation 10.

Recommendation 11

The PInC calls on the Federal Council to appropriately document its discussions with the SNB regarding the economic situation and monetary policy (pursuant to Art. 6 of the NBA), as well as its discussions with FINMA on supervisory strategy and current financial policy issues (pursuant to Art. 21 para. 2 of the FINMASA).

The Federal Council highlights that its annual exchanges with the SNB and FINMA are documented through information notes and have been included in the expanded minutes of Federal Council resolutions since November 2024. Therefore, it considers Recommendation 11 already implemented.

Recommendation 12

The PInC requests that the Federal Council ensure timely information sharing between crisis body members and across different levels (operational and strategic) by the authorities party to the tripartite memorandum of understanding on financial stability and financial market regulation. In particular, the SNB's annual financial stability reports should be discussed with all relevant authorities.

Additionally, the Federal Council should ensure that the authorities party to the MoU take measures to better align informal meetings with regular MoU structures. Any decisions must be made by the competent bodies.

Finally, it should ensure that the IT and communication systems between these authorities are suitable for close cooperation during crises.

In its report on banking stability²⁶, the Federal Council committed to examining institutional responsibility adjustments and inter-authority cooperation to strengthen crisis management mechanisms (Measure 37). The FDF has addressed IT and communication system deficiencies between authorities identified by the PInC. Recommendation 12 is thus being implemented.

Recommendation 13

The Federal Council must ensure it receives appropriate briefings on important matters, with written documentation where warranted, through procedures that safeguard official secrecy. Furthermore, the PInC calls on the Federal Council and the President of the Swiss Confederation to exercise their powers under Article 12a paragraph 2 and Article 25 paragraph 2 letter d of the GAOA in comparable situations, and ensure the full Federal Council receives written briefings.

The Federal Council acknowledges that confidentiality breaches, particularly during and after the COVID-19 pandemic, presented challenges in handling sensitive matters. However, it firmly maintains that GAOA disclosure requirements must be met, especially during crises. Regarding the final crisis management phase in spring 2023, it emphasises that it received regular, appropriate written and verbal briefings, enabling well-founded assessment of scenarios and their implications. It also notes the absence of leaks during this period.

Regarding the exercise of presidential powers under Articles 12 and 25 of the GAOA, the Federal Council maintains these were exercised appropriately in both 2022 and 2023, consistent with collegiality principles. As standardised solutions are unsuitable in this context, the Federal Council rejects this recommendation.

²⁶ BBI 2024 1023

Recommendation 14

The Federal Council is called upon to review departmental handover regulations. An institutionalised process beyond a mere checklist should be developed for this purpose.

The Federal Council believes that the requirement set out in the aide-mémoire for members of the Federal Council and the Federal Chancellor concerning the handover of departments is appropriate. This stipulates that the outgoing head of department must ensure knowledge is transferred to the new incumbent. The Federal Chancellery provides a checklist for this purpose, which is currently undergoing a thorough revision. In particular, due consideration is given to the importance of written documentation in the handover of dossiers. From the Federal Council's perspective, these instruments adequately address the matter of responsibility for departmental handover, and no additional action is required in this regard.

Recommendation 15

The PlnC calls upon the Federal Council to ensure proper documentation of meetings by concerned authorities to guarantee traceability. Particularly, communications between SIF and FINMA through institutionalised channels should be consistently recorded, as should crisis meetings (e.g. FCMC or SC meetings), even if only briefly minuted.

The Federal Council shares the concern that agreements between authorities must be appropriately recorded in order to ensure traceability. The PlnC's request that all institutionalised dialogue with FINMA be recorded in the relevant minutes has been fulfilled since 2023. The Federal Council therefore considers Recommendation 15 to have been implemented.

Recommendation 16

The PlnC recommends that the Federal Council ensure early regulation of responsibility for matters affecting multiple authorities equally during crises. Additionally, crisis responsibilities should be clearly defined with a designated central point of contact for external parties.

The Federal Council shares the PlnC's concern that responsibility in the event of a crisis should be clearly defined from the outset. As set out in the report on banking stability²⁷, it is prepared to examine improvements to the legal framework governing cooperation between the authorities involved in a financial crisis (Measure 37). However, the absence of a central point of contact for external parties in this specific case stems, in the Federal Council's view, from the distinct roles and responsibilities of the various parties. It should be noted that, according to the memorandum of understanding, the SC serves as a coordinating body for the authorities involved, and its management has no authority to issue directives to the two independent authorities, the SNB and FINMA. The Federal Council has not identified any issues arising from the current division of responsibilities in this case and sees no need for action on this specific matter.

Recommendation 17

The PlnC calls on the Federal Council to maintain public administration transparency principles when issuing emergency legislation and to apply the Freedom of Information Act of 17 December 2004. It also requests the Federal Council to proactively resolve, in consultation with the FDPIC, FINMA and the SNB, any legal uncertainties regarding information access rights under the Freedom of Information Act in situations similar to March 2023.

The Federal Council broadly shares the PlnC's view and is prepared to examine potential legal uncertainties regarding the applicability of the Freedom of Information Act in crisis situations. It is therefore prepared to accept Recommendation 17.

Recommendation 18

The PlnC recommends that the Federal Council consider whether SIB audit supervision should be consolidated under FINMA alone.

From the Federal Council's perspective, it is essential to distinguish between the FAOA's oversight of audit firms under the Auditor Oversight Act and FINMA's supervision of SIBs, where FINMA is directly involved and audit firms are also utilised. In its report on banking stability, the Federal Council did not consider transferring responsibilities from the FAOA to FINMA with respect to audit oversight. However, the Federal Council did indicate in the report that it would consider abolishing or modifying the current system of dual supervision (Measures 10 and 11). The Federal Council therefore believes that Recommendation 18 is already being implemented.

²⁷ BBI 2024 1023

Recommendation 19

The PlnC calls on the Federal Council to ensure early involvement of the Federal Office of Justice in enacting emergency legislation and appropriate presentation of its positions to the Federal Council.

The Federal Office of Justice is systematically involved in the enactment of emergency legislation, and its positions are brought to the Federal Council's attention. On behalf of the Federal Council, the FDJP is already examining ways to strengthen preventive legal control by the Federal Office of Justice, particularly during times of crisis. The FDJP will report to the Federal Council on this matter by the end of 2025 (see the Federal Council's opinion of 29 September 2023 on Recommendation 1 of the CC-N in its report of 30 June 2023 on the safeguarding of fundamental rights by the federal authorities in the fight against the COVID-19 pandemic). Recommendation 19 is therefore already being implemented.

Recommendation 20

The PlnC calls on the Federal Council to review the statutory provision allowing FINMA to assume COMCO's powers in certain cases. The PlnC particularly identifies the need to clarify the definition of creditor protection and to determine precisely when FINMA assumes COMCO's responsibilities.

The Federal Council is willing to examine the definition of the term creditor protection in this context. However, it wishes to emphasise that there was no uncertainty regarding FINMA's responsibility during the Credit Suisse crisis.

Motions

Motion 1

The Federal Council is instructed to revise the purpose article of the TBTF regulations (Art. 7 para. 2 of the BankA) based on the CS crisis findings and submit a corresponding draft to the Federal Assembly.

Beyond protecting the Swiss financial system, TBTF legislation objectives should include international feasibility and prevention of international financial crises.

The Federal Council is prepared to address this matter as part of the work on the package of measures relating to the report on banking stability. The Federal Council therefore proposes that Motion 1 be adopted.

Motion 2

The Federal Council is instructed to submit draft legislation to the Federal Assembly limiting capital and liquidity requirement alleviations for SIBs under Article 4 paragraph 3 of the BankA. Such alleviations must be reported transparently, include mandatory time limits, and be accompanied by clear phase-out plans.

The Federal Council considers the PInC's proposal to be worthy of examination. However, this should not conflict with the objective of further strengthening FINMA's toolkit and powers in the supervision of SIBs. The Federal Council would also like to emphasise that in a principle-based regulatory framework, where not every conceivable scenario is regulated, a supervisory authority requires discretionary powers to both tighten and relax regulations. For example, the regulatory easing that FINMA swiftly implemented during the COVID-19 pandemic to avoid restricting lending for economic reasons was widely welcomed. Nevertheless, the Federal Council is prepared to review and, where necessary, specify the legal requirements and criteria for such individual decisions by FINMA and has instructed the FDF accordingly. On this basis, it proposes that Motion 2 be rejected. Should it be accepted by the National Council, the Federal Council would propose the amendment in a review mandate.

Motion 3

The Federal Council is instructed to examine and present to the Federal Assembly appropriate measures strengthening FINMA's powers regarding SIBs. These measures should include:

- a. authority to impose fines on both SIBs and individuals;
- b. expanded early intervention options and tools with varying timeframes, and introduction of mandatory intervention in certain cases;
- c. explicit authority to direct SIB capital planning;
- d. amendment of relevant legal bases enabling FINMA to formally issue banking supervision recommendations to SIBs;
- e. other measures enabling FINMA to engage with big banks on an equal footing.

The matter forms part of the package of measures agreed by the Federal Council on 10 April 2024 for implementation based on the report on banking stability (Measures 1 to 12, 14, 22, 23 and 32). Some of these measures were recommended by the Federal Council for implementation and others for review. The Federal Council therefore proposes that Motion 3 be adopted.

Motion 4

The Federal Council is instructed to amend legislation authorising the SNB to impose preparatory measures on SIBs for potential extraordinary liquidity assistance. It should also act to reduce the stigma associated with ELA use.

The matter forms part of the package of measures agreed by the Federal Council on 10 April 2024 for implementation based on the report on banking stability (part of Measure 28) and will be implemented in this context. The measure can, in principle, be implemented either via a direct regulatory order or via a power of instruction for the SNB or FINMA in individual cases. Measures to reduce the stigma associated with accessing liquidity assistance are also being examined in the ongoing implementation work. Furthermore, the Federal Council wishes to point out that the function of the PLB, which is currently before Parliament, must also be taken into account in the further legal development of extraordinary liquidity assistance. With this in mind, the Federal Council proposes that Motion 4 be adopted.

Postulates

Postulate 1

The PInC tasks the Federal Council with reviewing current SIB regulations to reduce the risks of conflicts of interest and evaluate appropriate measures, such as direct contracting or mandatory auditor rotation.

As this matter forms part of the package of measures based on the report on banking stability²⁸ that the Federal Council commissioned for review on 10 April 2024 (Measures 10 and 11), the Federal Council calls for Postulate 1 to be accepted.

Postulate 2

The Federal Council is tasked with reviewing and reporting on early crisis detection by the Federal Chancellery. This includes enhancing early detection capabilities and strengthening the Federal Chancellery's role. Specifically, the Federal Council should examine the introduction of an escalation channel from lower-level administrative units to the Federal Chancellery and outline this approach conceptually.

The Federal Council acknowledges the importance of early crisis detection. The new Ordinance on the Crisis Organisation of the Federal Administration, due to come into force on 1 February 2025, should already bring about improvements. However, as part of preparing the report requested by this postulate, early crisis detection will be examined thoroughly and, where necessary, further improvements can be identified and implemented. The Federal Council therefore calls for Postulate 2 to be accepted.

Postulate 3

The Federal Council is tasked with examining measures to ensure SIB remuneration systems and dividends do not create adverse incentives. In particular, variable compensation should not be awarded without demonstrable commercial success.

As this matter forms part of the package of measures based on the report on banking stability that the Federal Council commissioned for review on 10 April 2024 (Measure 3), the Federal Council calls for Postulate 3 to be accepted.

²⁸ BBI 2024 1023

Postulate 4

The Federal Council is instructed to examine adapting or repealing Article 9 paragraph 1 letter b of the FINMASA to enhance FINMA's governance regarding Board of Directors and Executive Board relations. This should include examining whether enforcement proceedings against SIBs should constitute matters of great importance under Article 9 paragraph 1 letter b of the FINMASA.

As this matter forms part of the package of measures based on the report on banking stability that the Federal Council commissioned for review on 10 April 2024 (Measure 13, taking into account the findings of the PInC), the Federal Council calls for Postulate 4 to be accepted.

Postulate 5

The PInC requests that the Federal Council thoroughly examine ways to strengthen shareholder voting rights on individual resolutions in large systemically important companies where majority ownership is dispersed across multiple shareholders.

Given that the law on companies limited by shares underwent a complete revision recently, with provisions only coming into force on 1 January 2023, the Federal Council considers it premature to revise individual provisions before gaining any practical experience with the reform. The Federal Council therefore proposes that Postulate 5 be rejected.

Postulate 6

The Federal Council is instructed to examine developing legal frameworks to enhance SIB management bodies' responsibility towards the Swiss economy and taxpayers. This should consider supplementing current criteria (general requirements, integrity, and professional qualifications) both for individual candidates and governing bodies as whole entities (including requiring Swiss residence of at least ten years for the majority of the Board of Directors). Additional targeted measures should also be examined.

The Federal Council notes that the TBTF legislation itself enhances the stability and client protection of SIBs, thereby protecting taxpayers' interests. The corporate governance measures outlined in the report on banking stability²⁹ (particularly Measure 1) are designed to promote accountability within SIBs. Regarding the introduction of criteria for the Board of Directors and its members in terms of residence and nationality requirements, the Federal Council refers to its statement on Matter motion 23.3455, which was rejected by the National Council on 10 June 2024. The Federal Council proposes that Postulate 6 be rejected.

²⁹ BBI 2024 1023