



[Geschäftsnummer]

Conduct of federal authorities in the context of the Credit Suisse crisis

Report by the Parliamentary Investigation Committee

17 December 2024

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

The Parliamentary Investigation Commission hereby submits its report on the conduct of federal authorities in the context of the Credit Suisse crisis and requests that you take note of it.

17 December 2024

On behalf of the PInC

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Summary

1. Background

Following the emergency merger of Credit Suisse (CS) with UBS on 19 March 2023, fundamental questions were raised regarding the stewardship role played by the agencies responsible for ensuring financial market stability. Of primary interest were the Federal Council, the Federal Department of Finance (FDF), the Swiss Financial Market Supervisory Authority (FINMA) and the Swiss National Bank (SNB). On 8 June 2023, the National Council and the Council of States responded by creating a Parliamentary Investigation Committee (PInC) to evaluate government handling of the emergency merger of CS. This committee was tasked with ‘examining the actions of the Federal Council, the Federal Administration and other federal bodies in the years leading up to the emergency merger of CS with UBS, insofar as these are subject to parliamentary oversight’.

PInC inquiry

The following is a summary of the main findings of the PInC inquiry. This summary is provided for general guidance only and is no substitute for reading the entire report, which contains statements of facts and observations that help to fully explain the PInC’s conclusions and recommendations.

The PInC held a total of 45 meetings between June 2023 and December 2024. For its inquiry, it set out to gather information and data from the broadest possible range of sources. It held a total of 79 hearings of current and former federal officials involved in the government’s handling of the CS crisis, as well as of representatives of CS and UBS. The PInC also analysed a very large number of internal administrative and bank records. In addition to non-publicly accessible documents, it also consulted public reports from the authorities involved, scholarly publications and media reports. The PInC also called in ten economic and legal experts to clarify a number of highly technical issues.

At the start of its inquiry, the PInC prepared an inquiry concept plan and specified the period under inquiry. This period needed to be long enough before the emergency merger of CS with UBS to adequately contextualise events and identify any potentially relevant aspects of the authorities’ activities. The PInC chose to start from the year 2015, which was when the Federal Council published its first evaluation report on systemically important banks.

In its inquiry, the PInC identified the following four key phases:

- *First phase (actions taken prior to the crisis) covering the events from 2015 up to and including the summer of 2022, i.e. prior to the actual crisis.*
- *Second phase (actions taken in the early stages of the crisis) lasting from autumn 2022 to mid-March 2023. This period covers the massive liquidity outflows experienced by CS in early October 2022, the switch by the authorities to crisis mode, and the worsening of the crisis through mid-March 2023.*
- *Third phase (actions taken during the acute stage of the crisis) covering events between 15 and 19 March 2023, when the negotiations and preparations for the merger took place.*
- *Fourth phase (implementation of the emergency merger) covering implementation of the merger after 19 March 2023 until the transaction between UBS and CS was finalised on 12 June 2023.*

The PlnC inquiry focused on the first three phases, up to and including the emergency merger. For the sake of completeness, phase four was also examined and presented in the report, albeit not to the same level of detail. The PlnC's recommendations and parliamentary initiatives are based on the findings of the inquiry for the first three phases. Unless otherwise stated, they relate to how systemically important banks are regulated and supervised.

2. Crisis resulted from years of mismanagement by the Board of Directors and Executive Board of CS

As the body exercising parliamentary oversight, the PlnC was tasked with investigating the actions taken by the federal authorities; therefore, its remit did not include analysis of actions taken by CS. The PlnC inquiry did, however, consider the bank's development whenever this helped to shed light on the actions taken by the authorities. The PlnC notes by way of introduction that it attributes the near-collapse of CS and the resulting emergency merger to the self-inflicted crisis suffered by CS. This is summarised below.

In the wake of the 2007–2008 financial crisis, the financial services sector made a very slow recovery (see 5.1.1). In particular, the European banking sector saw a decline in profitability and interest income remained modest due to the low interest rate environment. The difficult conditions led to lower equity prices and a worsening of credit quality. In addition, there was greater uncertainty about the future resulting from numerous international political upheavals (e.g. the 2016 US elections or the outbreak of war in Ukraine in 2022), the COVID-19 pandemic and the unexpectedly high inflation rate between 2022 and 2023 that resulted from it (see 6.1.1).

CS was less affected by the financial crisis than other financial institutions such as UBS. It was considered a solid banking institution by comparison (see 5.1.2). However, the bank's extensive strategy adjustments, particularly to reduce risks in investment banking, and court-ordered fines led to high costs that could not be covered by earnings, which were lower than expected in various sectors. Between 2012 and 2022, CS had to pay over CHF 11 billion in fines, settlements or damages. At the same time, CS's variable compensation payments remained between CHF 1 billion and CHF 5 billion a year (see 5.1.2), totalling CHF 31.7 billion. The sum of the annual results for 2012 to 2022 results in a total loss of CHF 32.3 billion. The share price lagged the European bank index from 2012 onwards and the company's equity was continuously downgraded by the market.

Negative headlines led at times to a greater public scrutiny, particularly in the wake of the Mozambique scandal in 2016 or the employee spying affair in 2019. The Greensill and Archegos scandals, which came to light in 2021, led to growing scepticism that CS could maintain its resilience and profitability. This caused its share price to plummet to a level from which it never recovered. CS posted a loss for the 2021 financial year. In the first two quarters of 2022, CS also reported heavy losses caused by insufficient earnings in several areas and the outbreak of war in Ukraine. As a result, several rating agencies downgraded CS for the first time in May 2022.

Partly as a result of these negative developments, CS experienced several personnel changes to the Board of Directors and the Executive Board in 2021 and 2022. In the summer of 2022, CS announced a new strategy review. The results were to be presented at the end of October 2022 (see 6.1.2). In early October 2022, a tweet from an Australian journalist about the collapse of a global systemically important bank triggered speculation about the state of CS, resulting in huge capital outflows from CS. Markets reacted cautiously to the presentation of the new strategy at the end of the month and the situation remained volatile.

At the beginning of March 2023, a regional banking crisis swept across the US (see 7.1.1). Although CS had no links to the affected banks, its share price, like that of other European banks, fell sharply. CS shares came under further selling pressure

when the chairman of the Saudi National Bank publicly stated on 15 March that no further investments in CS would be made. Cash outflows intensified again, forcing CS to request emergency liquidity assistance (ELA) from the Swiss National Bank (SNB) during the night of 15–16 March in order to remain solvent.

3. Too-big-to-fail legislation: background, actors and further developments

Background

Too-big-to-fail legislation in Switzerland (TBTF legislation) was introduced in the wake of the global financial and economic crisis and the associated government bailout of UBS in 2008. TBTF legislation was intended to minimise the risk of insolvency of a systemically important banking institution. At the same time, the legislation was designed to clearly specify the scope of government action in the event of a systemically important bank experiencing economic hardship.

The revision of the Banking Act (BankA) in 2012 marked the starting point for development of TBTF regulations in Switzerland (see 4.2.2). The revised BankA and related ordinances such as the Liquidity Ordinance (LiqO), the Capital Adequacy Ordinance (CAO) and the Banking Ordinance (BankO) set out special requirements for systemically important banks in terms of equity capital, liquidity, risk diversification and organisational structure. Since then, the TBTF regulations have been adapted further to bring them closer in line with international standards (see 4.1), in particular the Basel III standards adopted by the Basel Committee on Banking Supervision (BCBS) and the Guiding Principles issued by the Financial Stability Board (FSB).

Financial market stability oversight in Switzerland – key actors and coordination

In Switzerland, several actors work closely together to safeguard financial stability. Under the Financial Market Supervision Act (FINMASA) and other financial market legislation, the Swiss Financial Market Supervisory Authority (FINMA) is responsible for microprudential supervision. It licenses the financial institutions operating in Switzerland, supervises them on an ongoing basis, enforces compliance with FINMASA rules through enforcement proceedings, and is responsible for the liquidation of systemically important banks (see 3.2). In contrast, the Swiss National Bank (SNB) is responsible for macroprudential oversight. The SNB helps to maintain the stability of the system as a whole by analysing risks posed to the entire financial system, by monitoring systemically important financial market infrastructures and helping to shape the general conditions applying to the Swiss financial centre (see 3.3).

In the area of financial market policy, the Federal Department of Finance (FDF) is represented by two offices: the State Secretariat for International Finance (SIF) and the Federal Finance Administration (FFA). The SIF is the main office of the FDF for formulating the basic principles for financial market policy and regulation and represents Switzerland in various committees such as the Financial Stability Board (FSB) and the International Monetary Fund (IMF). The FFA, for its part, helps to coordinate the activities of the authorities under the tripartite memorandum of understanding (see below). Beyond that, however, the FFA does not deal explicitly with matters pertaining to financial market stability (see 3.1).

In the area of financial stability and financial market regulation, there are two memoranda of understanding for cooperation and coordination between the various actors. 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 MoU sets out the rules for information sharing and cooperation, particularly in relation to crisis prevention and management. Coordination is handled by two bodies: the Committee on Financial Crises (CFC) is responsible for operational planning of crisis measures, e.g. gathering information for decision-making and carrying out situation analyses, while the Steering Committee (SC) is in charge

of strategic and organisational planning of crisis measures and interventions. The two bodies meet at different intervals depending on the situation. When there is no crisis, the CFC meets twice a year and the SC meets as and when required. In times of crisis, meetings are held at more frequent intervals (see 3.6.1).

Secondly, the bilateral memorandum of understanding on financial stability lays down the division of responsibilities between the SNB and FINMA with regard to financial stability (see 3.6.2). The two authorities liaise at the strategic level through the SNB-FINMA Steering Committee, which meets twice a year, i.e. not only in crisis situations.

Further elaboration of TBTF regulations

Up until around 2015, Switzerland had some of the world's most advanced (and earliest implemented) TBTF regulations. Even afterwards, Swiss TBTF legislation was further elaborated (see 5.2), e.g. with the switch from the system of equity deductions and alleviation to the new risk diversification rules under Art. 125 CAO (2017/2019) or with the introduction of a net stable funding ratio (NSFR). After 2015, however, a slightly different trend emerged: with a view to maintaining the competitiveness of large Swiss banks, international standards were not meant to be implemented ahead of other financial centres. In the policymaking arena, and by extension, in the administration as well, there was growing pushback against more stringent regulation of the banking sector and against a further tightening of existing TBTF regulations. The Federal Council made various concessions to the large Swiss banks in subsequent revisions of TBTF regulations, despite the opposing concerns expressed by FINMA and the SNB regarding financial stability. The Ordinance to the Financial Market Supervision Act, which the Federal Council issued in response to the Landolt motion of 4 May 2017 (17.3317 'Clear responsibilities between financial market policymaking and financial market supervision'), also followed on from these developments.

When the CS crisis intensified in autumn 2022 and then again in spring 2023, the Swiss authorities lacked important crisis management tools that other jurisdictions had had in place for several years. This was due to the fact that the update to the TBTF regulations had been inadequate in some areas (see 9.1.1 and 9.1.2). In the PlnC's view, the crucial factor here was the Federal Council's reluctance to introduce a public liquidity backstop (PLB) (see 9.1.1). While the major financial centres quickly followed the FSB's 2016 recommendation to implement a PLB and both FINMA and the SNB had called for the introduction of a PLB by 2018 at the latest, the Federal Council did not adopt the key parameters of a PLB bill until spring 2022. At the time of publication of this report, the bill was still pending in Parliament.

Drawing from the lessons learnt from the CS crisis, the PlnC is of the opinion that certain fundamental adjustments need to be made to the future design of TBTF regulations. In particular, due consideration must be given to the international interdependencies and the comparatively large size of Switzerland's one remaining global systemically important bank (G-SIB). Moreover, greater importance should be given to the interests of financial stability and the economy as a whole (see 9.1.2).

Monitoring of TBTF regulations

Pursuant to Article 52 BankA, the Federal Council has submitted annual evaluation reports on TBTF regulations in Switzerland since 2015 (see 5.2). However, the PlnC found these reports up to and including 2021 to be overly summarised (see 9.1.1). There was insufficient strategic review of how TBTF regulations could be developed further and insufficient reference to the recommendations made in previous reports. During these years, the Federal Council also did not commission an external evaluation, which, among other things, resulted in an incomplete comparison of Swiss regulations with international standards. The Federal Council should address these aspects (see 9.1.2).

4. FINMA supervision in the years leading up to the crisis

As a systemically important bank, CS was subject to special supervisory regulations. These related in particular to capital adequacy and liquidity requirements, the preparation of emergency, recovery and liquidation plans as well as the bank's risk management and compliance procedures.

In its assessment letters to CS, FINMA addressed the following topics each year: the bank's strategy, corporate structure and governance, risk management, capital and liquidity situation, and liquidation planning (see 5.3.1). It notified CS of its current assessment of the situation, indicated the areas where corrective action was needed, highlighted progress made since the previous assessment letter and conveyed its expectations with a corresponding deadline. FINMA also carried out several on-site inspections and stress tests at CS and appointed auditors. Finally, FINMA worked with foreign supervisory authorities in various bodies to provide supervision of CS.

As part of its ongoing supervision, FINMA repeatedly raised various issues with CS. From 2015 at the latest, it regularly asserted that CS should proactively and transparently report to it on major regulatory developments. However, CS failed to comply with these requests. In addition, FINMA expressed doubts regarding the sustainability of the bank's strategy and, in particular, its remuneration policy. It also drew CS's attention to the risks associated with the numerous changes in the Executive Board. The risks identified included gaps in the anti-money laundering system and in decentralised risk control. Furthermore, FINMA repeatedly voiced its concerns that CS was not growing its equity organically but rather through injections of capital and financing from other subsidiaries. These concerns were stated more firmly with the tightening of regulatory requirements for subsidiaries abroad. FINMA regularly imposed additional requirements on CS and almost annually demanded improvements in the reporting of its equity and liquidity situation (see 5.3.1). Based on the PlnC's analysis, FINMA made ample use of the supervisory tools at its disposal, in particular annual assessment letters, on-site inspections and numerous stress tests. Despite this, CS made little progress. Overall, this raises questions regarding the effectiveness of FINMA's interventions (see 11.1.1).

The PlnC further observed that FINMA regularly conveyed its expectations to CS in writing, specifically in the form of assessment letters. Some requests had to be repeated over several years. However, the PlnC noted that FINMA very rarely issued formal rulings. In order to improve enforceability and to ensure legal protection for the supervised G-SIBs, the PlnC considers it appropriate for FINMA to issue formal rulings when conveying its expectations regarding action to be taken.

Regulatory filter

As part of its microprudential supervisory duties, FINMA issued a formal ruling in 2013 to adjust the capital adequacy requirements of Credit Suisse AG (CS AG, the parent company). In 2017, FINMA issued a second formal ruling amending the previous one. The new ruling called for risk diversification of the parent company's holdings to be staggered. At the time, the relevant ordinance provided for full deduction of these holdings and so the formal ruling amounted to a policy change. This was deemed necessary because applicable legislation at the time provided for mandatory alleviation when holdings were deducted under certain conditions. Several players saw the need for action: FINMA explained to PlnC that the mandatory alleviation measures were non-transparent and unacceptable (see 5.3.3).

In the same ruling from 2017, FINMA also granted a regulatory filter. The PlnC was unable to fully clarify the circumstances under which it was granted. FINMA stated that CS agreed to the aforementioned policy change only on condition that a regulatory filter be granted, and therefore it was also a condition for the Federal Council to agree to the abolition of Art. 125 CAO. The PlnC was unable to find any evidence of this (see 5.3.2). The SNB, which FINMA had consulted at the time, had reservations about the filter.

The regulatory filter made it possible to neutralise the then impending change to the Swiss Code of Obligations with regard to the accounting requirements for holdings. The regulatory filter thus became part of the reported equity capital. FINMA made its approval of the filter contingent on CS disclosing its equity capital on a quarterly basis and having a third party regularly audit the relevant valuations of holdings in its subsidiaries. The filter affected the regulatory capital and the capital ratio (ratio of core capital to risk-weighted assets) of CS AG and did not alter the accounting (see 5.3.3).

When the regulatory filter was designed in 2017, its effect was estimated by FINMA to be around CHF 8 billion. When it was first applied at the end of 2019, CS reported the filter's effect to be CHF 15.3 billion, nearly twice as high as the original estimate. The amount of the regulatory filter remained approximately the same during the period 2019 to 2022. However, the reported equity of CS AG, calculated without the filter, fell significantly from the third quarter of 2021 due to poor business performance. Without applying the filter, the capital ratio would have fallen from 10% at the end of 2019 to 5% in the third quarter of 2022, well below the regulatory minimum. The filter allowed CS AG to maintain the appearance of sufficient capitalisation until the very end. The filter meant that FINMA did not need to order earlier or larger capital injections (see 5.3.3). The audit firm that FINMA commissioned to check the plausibility of the market value calculations of the parent company's holdings identified a substantial overestimation of fair value by CS AG at the end of 2019 and mid-2021. FINMA limited the amount that the bank was allowed to allocate to the filter, but ultimately this had only an indirect effect on the filter (see 5.3.3).

The PInC considers that the regulatory filter had a considerable impact in terms of regulatory oversight of the equity situation of CS AG (see 11.1.1.3). Art. 4 BankA constituted an adequate legal basis and so the approach taken by FINMA was lawful. Nevertheless, the PInC finds extensive interpretation of the legal basis in the formal ruling and thus considers the measure taken to have been inappropriate.

Furthermore, the PInC has reservations as to the extent to which introducing the regulatory filter was to have served FINMA's aim of achieving greater transparency (by publishing meaningful figures on reported equity). CS's parent company reported the amount of the filter in a manner that was hardly comprehensible to outsiders. Furthermore, the PInC does not understand why FINMA initiated the removal of mandatory alleviation measures (Art. 125 CAO) only to reintroduce them at the same time with the regulatory filter.

The PInC notes that the regulatory filter did not affect the economic substance of the parent company's holdings. Nevertheless, the granting of the regulatory filter had a significant impact on the further development of CS. The regulatory filter obscured the true situation of CS AG. As a result, CS was not forced to strengthen its equity situation at a time when it might have been easier to do so. If the capital ratio of CS AG had been public without the filter, this could have given capital markets, financial analysts and the media more transparent information on which to base their decisions. Furthermore, based on an expert report, the PInC reached the conclusion that FINMA had designed the regulatory filter incorrectly in several respects and had not properly assessed its impact. In the PInC's view, the effect of the regulatory filter should be viewed critically not only before but also during the crisis, and such relief should be carefully reconsidered. For this reason, the PInC will submit a corresponding motion (see 11.1.1).

Enforcement proceedings

In addition to its ongoing supervision of CS, FINMA had to initiate enforcement proceedings for violations of regulatory provisions in order to restore legal compliance (see 5.3.2). Between 1 January 2012 and 31 December 2022, FINMA conducted preliminary clarifications in 42 cases involving alleged violations of supervisory legisla-

tion by CS. In 11 cases, the preliminary clarifications led to the opening of enforcement proceedings to restore legal compliance. During the same period, eight enforcement proceedings were conducted against members of the CS Executive Board. Three of these were closed when the individuals concerned signed waivers. Five cases are still pending.

PIInC is of the opinion that FINMA acted lawfully in its enforcement proceedings and, for the most part, expediently and effectively. However, the PIInC regrets that FINMA failed to enforce legal compliance with supervisory legislation with regard to business practices at CS despite numerous enforcement proceedings. Furthermore, the PIInC finds it incomprehensible that, despite the bank's many transgressions, no causal responsibility could be established for the relevant misconduct. The PIInC has formulated a recommendation to improve the effectiveness of enforcement proceedings (see 11.1.1).

5. Macroprudential tasks of the SNB in the years leading up to the crisis

The SNB helps to maintain the stability of the financial system by performing various macroprudential tasks (see 3.3 and 5.5) in conjunction with FINMA. In particular, it identifies systemically important financial groups, continuously monitors the financial system and publishes its findings in the annual Financial Stability Report. The SNB also provides emergency liquidity assistance (ELA) as a lender of last resort and takes other measures in response to economic conditions (e.g. countercyclical capital buffer, COVID-19 refinancing facilities).

The PIInC notes that during the period under inquiry, the SNB regularly commented on the implementation of TBTF regulations and the situation of large Swiss banks in its Financial Stability Reports. The SNB regarded the situation of the two large Swiss banks as comparable until 2021. From the 2022 Financial Stability Report onwards, it began to view CS differently and discussed its precarious situation with FINMA. However, no specific measures were taken at that time. In particular, no information was provided to the Committee on Financial Crises or the Steering Committee (see 11.3.1).

Close attention was given to how well the SNB performed as a lender of last resort. The PIInC welcomes the SNB's efforts to provide banks with liquidity assistance y. This may 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 accepted collateral. The SNB has considerable leeway when it comes to recognising the collateral of the banking institutions seeking liquidity. During the period under inquiry, the SNB continuously reviewed and expanded its range of accepted collateral (see 5.5.3). However, the banks themselves should take specific preparatory measures that would enable the expanded range of collateral to be applied where necessary.

In March 2023, the SNB provided CS with over CHF 88 billion in emergency liquidity assistance (either ELA or ELA+). However, this was not enough. CS would have had sufficient opportunity to make the necessary preparations for drawing a larger amount of ELA but, according to the information available to the PIInC, it did not do so. However, the SNB lacked the authority to require systemically important banks to take preparatory measures before drawing on ELA funds. In addition, CS refrained from drawing on ELA funds on three occasions between October and December 2022, partly due to the potential stigmatising effect of having to report receiving ELA. For the PIInC, the question remains as to whether the SNB's practice is too restrictive with regard to allocation and the eligible collateral. The PIInC recognises a need for action with regard to both the SNB's lack of authority to impose preparatory measures and also the stigmatising effect of ELA, and has submitted a motion in this regard (see 11.3.2).

6. FAOA/FINMA audit oversight between 2015 and 2023

The dual supervisory system in the Swiss banking sector is based on the principle that banks select and remunerate their audit firms themselves. The current division of responsibilities concerning the oversight of audit firms dates back to 2015, i.e. the start of the PInC period under inquiry. Since that time, the Federal Audit Oversight Authority (FAOA) has been solely responsible for the licensing of audit firms. It also establishes quality standards in this area. FINMA, in turn, is solely responsible for the content and basic principles applying to regulatory audits.

FAOA audit oversight

Between 2015 and 2022, the FAOA conducted annual evaluations of audit firms, alternating 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 conducted by KPMG and PwC and took corrective action, mainly the provision of training. KPMG's audits contained deficiencies in 2015, 2018 and 2019, while PwC's audits contained deficiencies in 2022.

The PInC notes that oversight was handled in an appropriate manner overall. While the chosen approach of alternating between the two audit types ensured adequate risk management, there are insufficient records regarding the decisions made regarding the scope of these audits. This can have an adverse effect on the transparency and rigour of audits, which is particularly important when the audit mandate relates to a financial institution such as CS. Additionally, at crucial moments for CS (e.g. the change of audit firm in 2021), a comprehensive inspection was not deemed necessary.

Effective oversight of audit firms requires not only timely inspections, but also the flexibility to intensify inspections when circumstances so dictate. The PInC finds it inconceivable that the FAOA remained in normal working mode in the years leading up to the emergency merger of CS with UBS and did not carry out its first ad hoc audit until the summer of 2023, after the emergency merger had occurred. The fact that this audit was not completed until October 2024 is also difficult for the PInC to understand (see 11.2.1).

In addition, the FAOA based its audit work on the documentation provided by the audit firms, without directly reviewing CS records. While this method is in line with the applicable standards, it can weaken the meaningfulness of the audit, which is why this approach should be reconsidered. Furthermore, the FAOA only carried out random checks to ensure that the measures it had imposed were being implemented. This does not always reveal potentially serious shortcomings that could reduce the effectiveness of corrective action and prove detrimental to the quality of the audits conducted by the audit firms. There is a need for greater transparency and systematic documentation of the FAOA's decision-making processes regarding the scope of inspections, particularly for institutions that pose a risk. Finally, a stricter and more systematic review of corrective action taken in critical cases, as well as a more flexible and better coordinated approach to inspections in crisis situations, would improve the overall effectiveness of supervision. The PInC has formulated corresponding recommendations in this respect (see 11.2).

FINMA's role in audit oversight

FINMA develops its audit strategy for banking institutions, in particular for large banks such as CS, in collaboration with audit firms. Between 2015 and 2022, high risks were identified for CS, particularly with regard to equity, liquidity and compliance with anti-money laundering regulations. FINMA intensified its control measures and used external auditors for specific audits. Additional action was also taken in response to these risks, such as on-site inspections. These steps, which were taken in addition to the audits conducted by audit firms, ensured that the main risk areas had been covered (see 5.4.2).

Collaboration between FAOA and FINMA

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

During the period under inquiry, the FAOA and FINMA shared information on various occasions at strategic level (e.g. during official consultations). However, there was no separate information sharing at strategic level regarding CS, despite the fact that both authorities had to have been aware of the worsening crisis at the bank. The interactions between the FAOA and FINMA at operational level varied in individual areas and were not consistently documented from 2017 onwards. Regular information sharing would have been essential to ensure coordinated and effective oversight. The PInC inquiry revealed that FINMA and the FAOA each considered the other to be responsible for certain areas. A clearer allocation of responsibilities and more formalised cooperation could help to avoid overlaps or gaps in supervision and improve the efficiency of the oversight system (see 11.2.2).

In light of experiences thus far and the challenges associated with audit oversight, PInC wonders whether it might not make more sense to assign audit oversight of systemically important banks to a single body, i.e. FINMA (see 14.1.2).

7. Federal oversight of FINMA, the FAOA and the SNB

As stand-alone public institutions, FINMA, the FAOA and the SNB, enjoy a certain level of independence from the federal government. Nevertheless, these three institutions are subject to varying degrees of oversight by the Federal Council and the Federal Administration. This oversight is handled in particular by the FDF and the FDJP. Despite this, there was very little interaction between the Federal Council and the three institutions mentioned above regarding the situation of CS, both before and during the crisis.

FINMA

FINMA is a public institution with its own legal personality. It has organisational autonomy and carries out its supervisory activities independently. It is subject to administrative oversight by the FDF, which acts on behalf of the Federal Council. Several communication channels exist between the FDF and FINMA to facilitate information sharing and enable the FDF to perform certain supervisory tasks. These include, for example, oversight meetings that typically take place between the government agency and the stand-alone public institutions placed under their authority. In addition, a number of important liaison committees were established in recent years, particularly for the purpose of implementing the Ordinance to the Financial Market Supervision Act. This has led to a more precise allocation of regulatory responsibilities between the FDF and FINMA. In addition, a number of new cooperation and liaison processes between the SIF and FINMA have been established as of 2020.

The subject of CS did not come up in oversight meetings between the head of the FDF and the Chair of FINMA's Board of Directors (nor in the new dialogue between FINMA and the SIF) until the end of 2022. Instead, CS's specific liquidity problems were addressed in trilateral CFC and SC meetings (see 5.6.2), which the PInC considers to have been appropriate.

During the PInC period under inquiry, political pressure on FINMA intensified and contacts between the then head of the FDF and the then Chair of FINMA's Board of Directors deteriorated. As a result, the Chair of FINMA's Board of Directors tendered his resignation at the end of 2020, in the middle of his second term of office. Thereupon, the current Chair of FINMA's Board of Directors was elected by the Federal Council at the request of the then head of the FDF (see 5.6.2). The PInC notes

that cooperation between the heads of FINMA and the FDF has not always been smooth in the past and that the change in the Chair of FINMA's Board of Directors did not follow clearly formalised procedures.

FAOA

As a public institution, the FAOA is subject to administrative oversight by the FDJP, which holds one or two oversight meetings with the FAOA each year in addition to periodic executive-level meetings. Risk and compliance management were discussed on various occasions during these meetings. However, as these topics were not addressed by individual audit firms and regulatory audit firms, the FAOA's information was limited to conveying the information that the FAOA had been evaluating the CS audit mandate annually since 2012 (see 5.6.3). The PInC notes that the FDJP's administrative oversight of the FAOA is minimal and recommends that it should carry out its oversight tasks more vigorously.

Communication channels with the SNB

Switzerland's Federal Constitution stipulates that the SNB conduct monetary policy independently. The Federal Council mainly has powers of appointment and approval. The Chairman of the SNB's Governing Board meets with the entire Federal Council at least once a year to discuss the economic situation, monetary policy and current issues related to Swiss economic policy. The CS crisis was discussed at the meeting in November 2022 (see below).

Apart from the CFC and the SC (i.e. the two committees created by the trilateral memorandum of understanding), there are no direct communication channels between the FDF and the SNB. The PInC sees a need for improved communication. Drawing inspiration from the MoU between FINMA and the SNB in the area of financial stability, the FDF and the SNB should share information more proactively on relevant developments at systemically important banks and discuss their impact on financial stability (see 12.3).

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

Risk management

The Federal Administration has had its own risk management system in place for about 20 years (see 5.7.1). The risk of insolvency of systemically important financial institutions was added to the risk management system after the financial crisis in 2008 and has since been a risk that the Federal Council considers. The classification of this risk changed twice during the period under inquiry: in the 2017 risk report, the risk was downgraded from 'possible' (every 3 to 10 years) to 'rare' (every 10 to 50 years). In its risk reporting for 2022, the SIF increased the likelihood of occurrence of the risk back to the 'possible' level in February 2023. It should be noted that the risk in question was hardly discussed outside the relevant federal department: in the period between 2014 and 2023, the Conference of Secretaries General (CSG) explicitly addressed the risk on only one occasion (see 5.7.1).

In relation to the risk of the insolvency of a systemically important financial institution, it is the responsibility of the SIF to ensure the stability of the Swiss financial sector and to report on measures that have been taken to avert this risk. The measures listed between 2015 and 2022 were all related to TBTF regulations. From the PInC's vantage point, risk management was appropriate overall. The PInC considers that it was both correct and absolutely necessary for the Federal Council to be in charge of managing this risk. In retrospect, downgrading the risk from 'possible' to 'unlikely' in the 2017 risk report was overly optimistic. As things currently stand, the risk reporting system is unable to adequately reflect a risk as it materialises. Therefore, the

PlnC calls for measures to ensure a smooth transition from risk management to commencement of crisis management. This means that an institutionalised framework must be created. It is imperative that risk management be embedded more effectively in the overall crisis management concept. The PlnC has formulated a corresponding recommendation along this line (see 10.1).

Early crisis detection

Early crisis detection at Federal Council level, which is handled by the Federal Chancellery (FCh), is closely related to risk management. It has a time horizon of 12 to 18 months. The purpose of early crisis detection is to identify, analyse and monitor risks that could potentially lead to a crisis that the Federal Council would be called upon to address (see 5.7.2.).

Since the risk of ‘insolvency of systemically important financial institutions’ has been recognised ever since risk management began, no specific consideration was given to early crisis detection in this case. The PlnC therefore concludes that there is no early crisis detection as such. The PlnC considers that early crisis detection can only be used appropriately and effectively if crises can be detected as early as possible and if the right conclusions are drawn. It does not matter whether the risk reporting system accurately identifies a corresponding risk or not. The PlnC will submit a postulate to this effect (see 10.2).

9. Crisis management from the summer of 2022

Starting in the summer of 2022, the CS situation steadily worsened. Three phases can be identified: 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 early March 2023 (continued preparation for a possible acute crisis under new department leadership).

As the main supervisory authority, FINMA was always the first to be informed about the changing situation at CS. It was also up to FINMA to take action within the scope of its statutory remit. This makes a description of its supervisory activities a suitable starting point for the following account of the actual handling of the crisis by the Federal Council, the FDF and the coordinating bodies SC and CFC.

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

FINMA stepped up its supervisory activities from summer 2022. It launched a project to support CS’s change in strategy and from mid-July exerted greater pressure on CS to improve its contingency plan in response to the structural loss situation. From August, it met with the bank’s CEO and Chairman of the Board of Directors for weekly status updates on the range of measures being implemented in parallel. During this phase, CS was the main focus of discussion in each of the meetings of FINMA’s Board of Directors (see 6.2.1). From September, weekly high-level meetings were held with CS senior management to examine strategic and operational developments.

A key part of FINMA’s activities was also its interactions with foreign authorities. 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 6.3.1).

SNB takes action in the early phase of the crisis

As the guardian of financial market stability, the SNB also took specific action in relation to CS and provided ELA from autumn 2022. Specifically, the SNB stepped up its preparations for granting of ELA by asking CS to identify further assets that could serve as collateral for the SNB for possible use of ELA. However, the loans proposed

by CS did not meet the SNB's criteria. In addition to this, the SNB began carrying out daily liquidity monitoring with CS from June 2022 (see 6.2.2).

Committee on Financial Crises (CFC) and Steering Committee (SC) begin their crisis management activities from August 2022

As the crisis unfolded, the need for coordination between the various authorities grew (more details regarding the CFC and SC can be found in section 3 above). On 3 August 2022, an initial ad hoc meeting of the CFC was held, during which all CFC members were briefed for the first time regarding the alarming developments at CS. The members of the SC were only informed of these developments nearly three weeks later, on 23 August 2022, when they were told that the CFC still considered the situation to be under control (Phase Green). From that point onwards, the CFC's main focus was on CS's economic difficulties. In mid-September, the authorities considered early introduction of a public liquidity backstop (PLB) as a possible crisis management option for the first time (see 6.2.3).

Federal Council briefed for first time

In August 2022, the entire Federal Council was summarily informed for the first time about the critical state of CS.

Cooperation between the authorities responsible for crisis management and the involvement of the Federal Council during the period of massive liquidity withdrawals (from October to the end of December 2022)

Following the tweet mentioned earlier, CS's share price fell by 11% on 3 October 2022. Shortly afterwards, customers withdrew over CHF 100 billion in deposits, marking the beginning of massive liquidity outflows.

From mid-October onwards, FINMA began drafting its restructuring order and restructuring plan for CS. At the end of October, FINMA authorised CS to use certain liquidity buffers. In October 2022, there was also a discussion with the SNB about a liquidity-shortage financing facility, which would have provided CS with access to up to CHF 10 billion in liquidity. However, CS voluntarily withdrew its application at the end of October (see 6.3.2).

In November 2022, FINMA continued its preparations for potential restructuring of the bank. As CS was exposed to the risk of further liquidity outflows in November, FINMA decided to conduct its planned valuation-in-resolution exercise for CS with real-time data in order to test the emergency plan. This exercise was carried out at the beginning of November with the participation of CS and the US and UK authorities and was conducted successfully (see 6.3.4).

The PInC considers the exercise to have been useful, as it was important in preparing the restructuring scenario and helped to ensure that restructuring was both a viable and realistic alternative during the acute phase of the crisis in March 2023. However, the PInC does not understand why the outcome of the exercise was discussed only in the CFC but not in the SC.

Authorities step up crisis management from October 2022

Given the continued deterioration of the CS situation, the CFC switched to crisis mode (Phase Red) on 5 October 2022. The meeting frequency intensified significantly as the CFC monitored the situation more closely and sought solutions. The CFC met several times a month, and sometimes several times a week. The SC also held meetings at shorter intervals (see 6.3.3, 6.3.4, 6.3.5, 6.4.2, 6.4.3).

The PInC commends the SC and the CFC for their intensified meeting schedule and in-depth discussions. It recognises the key role that these bodies played in the crisis and views the broad representation of the various authorities involved to have been

beneficial. Thanks to this meeting schedule, the flow of information was generally good.

The Federal Council holds its first in-depth discussions on the CS crisis and considers possible measures

Following the liquidity outflows, on 26 October 2022 the head of the FDF gave the Federal Council a second update on the cashflow problems encountered by CS. The Federal Council was briefed at greater length regarding the dramatic outflows at CS for the first time on 2 November during the annual meeting with the Chairman of the SNB's Governing Board. The Federal Council was brought into the loop due to the impending deterioration of CS's liquidity situation following credit rating downgrades and because the authorities had concluded on the previous day that an emergency public liquidity backstop (PLB) was needed. The Federal Council also discussed the scenario of selling the bank. The day before, both the head of the FDF and Chairman of the SNB's Governing Board had asked the Chairman of the Board of Directors of CS to take the necessary steps in preparation for this eventuality.

An extraordinary Federal Council meeting was then scheduled for 4 November. In addition, work was commissioned to introduce a PLB by Federal Council ordinance. The FDF was also instructed to explain the CS situation in a note. However, the planned meeting was cancelled on the evening of 2 November at the initiative of the then head of the FDF (see 6.3.4). The head of the FDF justified the cancellation by stating that the SC had ultimately decided against a PLB application, partly due to CS's concern regarding a negative public reaction. The explanation given to the Federal Council was that the situation had settled somewhat, foregoing the necessity of a meeting. On 7 November, the SC decided not to ask the Federal Council to introduce and simultaneously activate the PLB for the time being, as the circumstances did not seem to justify this course of action.

Thereafter, in November, the head of the FDF gave two crisis updates to the competent Federal Council finance committee, informing them of crisis response measures and the various options available to the authorities. On 22 November, the Federal Council committee met in the presence of the director of the Federal Office of Justice (FOJ) and a representative of the FCh to discuss whether the Federal Council would be able to issue a PLB under emergency powers legislation. Confirmation was given that this was indeed possible.

The briefings given to the Federal Council during this phase took place without any written documents, a fact that was criticised by the Federal Council as a whole as well as by the members of Federal Council's finance committee. The head of the FDF justified this by expressing concern that information might be leaked, which would have had serious repercussions given the sensitive nature of this market-relevant information (see 6.3.4). In the opinion of the PInC, information policy conducted in this manner meant that the Federal Council as a collegial body was unable to carry out its role and responsibilities to the fullest extent. The cancellation of the meeting on 4 November 2022 also made it difficult to provide the entire Federal Council with extensive information. The PInC considers that written documents are necessary when discussing important business and has submitted a corresponding recommendation in this regard (see 13.1.3).

At the end of November 2022, SC members began expressing doubts on implementation of the strategy announced by CS. Considering a turnaround to be unlikely, they agreed that all authorities should discuss possible alternative solutions with CS (see 6.3.4).

Parallel dialogue with CS and UBS: non-meetings between end-October and December 2022

In parallel to the governance structures provided for in the memorandum of understanding (MoU), the then head of the FDF and the Chairman of the SNB's Governing

Board initiated so-called non-meetings with the Chairman of the Board of Directors of CS starting in late October 2022. For a majority of the non-meetings, the PlnC is not aware of the details regarding the content discussed. According to the Chairman of the SNB's Governing Board and the head of the FDF, these non-meetings served to expedite efforts to find a solution with CS in a non-formal setting. In October 2022, the willingness of UBS to take over CS was already clarified at a non-meeting with the Chairman of the Board of Directors of UBS. FINMA criticised the format of these non-meetings, stating that they were not binding in nature and that no demands were being made of CS. For this reason, FINMA only took part in three of them. It was only at the last non-meeting organised by FINMA on 29 December 2022 that CS was finally presented with binding demands. Neither FINMA nor the CFC were kept informed of all the meetings and their content (see 6.3.3). The non-meetings ended when the new head of the FDF took the helm at the start of 2023.

The PlnC concludes that these non-meetings were not very useful in terms of overall management of the crisis. They were not well integrated into the work of the crisis management bodies and information flow was not properly assured. Nevertheless, the non-meetings, in particular the one with the Chairman of the Board of Directors of UBS, did provide a certain added value, as they enabled the takeover solution to be considered at a relatively early stage. The PlnC has formulated a recommendation on how to better integrate such non-meetings into the regular work of the authorities (see 13.1.1).

End-of-year preparations

On 2 December, the full Federal Council again discussed the CS situation, taking into account the reaction time available if CS requested ELA from the SNB. It was agreed that the Federal Council members had to be reachable over the holidays (see 6.3.5). Further information was provided at Federal Council meetings held on 9 and 16 December. The head of the FDF notified the Federal Council that the CS liquidity situation remained low but stable.

On 4 December, one of the above-mentioned non-meetings took place between the head of the FDF, the Chairman of the SNB's Governing Board and the Chairman of the Board of Directors of CS. They discussed the sale of CS and the stabilising effect that public statements by the authorities would have on the bank's situation. Subsequently, in December 2022, both the Chairman of the SNB's Governing Board and the head of the FDF publicly expressed their support for the new strategy adopted by CS (see 6.4.4). The PlnC questions whether such statements were appropriate at the time, given the actual critical situation that CS found itself in. It is not possible to assess whether the public statements had the desired stabilising effect on CS, which might have justified them.

As the liquidity outflows at CS continued in December and no improvement was in sight, the CFC discussed a range of scenarios to stabilise or rescue CS (including the provision of ELA, sale of CS, various forms of PLB, and bankruptcy liquidation of the bank). The authorities agreed that CS had to pursue a sale scenario on its own. Given its institutional role, FINMA could not engage with banking institutions regarding a takeover of CS. Meanwhile, the authorities carried out further clarifications to ascertain the default risks for the federal government were it to offer a liquidity facility. FINMA and the SNB disagreed, however, over whether public trust in CS could be restored by providing additional liquidity. The SNB took the view that instruments such as ELA and a PLB could not remedy a chronic erosion of trust and that their use only made sense in the event of a sudden loss of confidence (see 6.3.5).

From 6 December onwards, FINMA representatives intensified their criticism of CS, even taking the matter to the level of the Chair of FINMA's Board of Directors. As a result, FINMA insisted even more emphatically that preparations be made for a merger with another bank (see 6.3.1).

Shortly before the holidays, the CFC met for the last time in 2022 on 22 December and noted that CS had seen outflows of around CHF 130 billion in deposits since October 2022. The conclusion was drawn that any further outflows would drastically worsen the bank's situation. FINMA therefore took steps to ensure that CS satisfied the conditions for the liquidity-shortage financing facility and ELA. FINMA notified the CFC that it had instructed CS to develop a short- and medium-term sale scenario by early January so that it would be prepared for an emergency sale of the bank. Following the CFC discussions, the SC also decided to look more closely at a possible sale of CS and to prepare accordingly (see 6.3.5).

On 28 December, the Chair of FINMA's Board of Directors alerted the Chairman of the SNB's Governing Board that CS was in an extremely dire condition and its liquidity situation had once again deteriorated significantly. A non-meeting with the Chairman of the Board of Directors of CS was held on 29 December. At this meeting, FINMA made clear demands that CS complete preparations for a sale by early January. Among other things, the Chairman of the Board of Directors of CS was instructed to produce a specific shortlist of potential buyers, establish a virtual data room and devise a short-term scenario in which CS would be taken over by UBS (see 6.3.5).

Change in FDF leadership in the context of the CS crisis

In December, the resignation of the head of the FDF at the end of 2022 triggered the need for a handover of the department to a new head. A meeting was called on 19 December 2022 between Federal Councillor Ueli Maurer and Federal Councillor Karin Keller-Sutter, in the presence of their respective secretaries general. The newly appointed head of the FDF was given a brief verbal update on the CS situation, which was described as stable. Later that month, the outgoing head of the FDF spoke with his successor over the phone twice, shortly before Christmas and between Christmas and New Year. On these occasions, the then head of the FDF continued to describe the bank's situation as stable, despite the fact that CS had experienced further difficulties during the Christmas period (see 6.3.5).

The FFA Director and Federal Councillor Karin Keller-Sutter had already met twice in December 2022, although the focus of these meetings was budget planning and not CS. The first meetings between the new head of the FDF, the Chair of FINMA's Board of Directors and the State Secretary for International Finance took place in January 2023.

The PlnC concludes that the handover of the CS dossier from the former to the new head of the FDF was not conducted optimally. There was no actual handover of the dossier. The PlnC has issued a recommendation regarding the handover of departmental leadership (see 13.1.6).

Work of the authorities continues and Federal Council kept informed from January 2023 until the acute phase of the crisis

In January and February 2023, FINMA observed and supervised CS's work on the scenarios being considered by the authorities (see below). In early January, CS provided FINMA with a shortlist of four potential buyers and in mid-January confirmed that the required data room had been prepared. During this time, FINMA urged CS to broaden the contingency measures set out in the bank's recovery, emergency and resolution plans (see 6.4.1).

In the CFC, the authorities pushed ahead in January with the formalisation of the four scenarios. They established a joint working group to conduct the macroeconomic analyses needed to assess the consequences of each scenario. The CFC tasked a second working group with preparing a detailed concept of temporary public ownership (TPO) of CS operations in Switzerland in the event of bankruptcy (see 6.4.2).

In 2023, the new head of the FDF provided the Federal Council with more frequent updates on the CS situation. For the time being, this information continued to be conveyed verbally. The corresponding documentation was submitted to the Federal Council for the first time on 1 February 2023. However, the information still remained rather general. For example, the main macroeconomic analyses conducted by the authorities involved were not discussed in the Federal Council until the acute crisis in March 2023 (see 6.4.3, 13.1.3, 13.2.3).

Development of possible solution scenarios between October 2022 and March 2023

From October 2022, the authorities began discussing various solution scenarios. These discussions took place generally at CFC meetings and later also at SC meetings. Some of the topics were handled by ad hoc working groups. From autumn 2022 to March 2023, the authorities mainly discussed the following scenarios and made preparations where appropriate (see 6.3.3):

- *CS recovers from the crisis on its own;*
- *CS is taken over by another (Swiss or foreign) bank;*
- *CS is restructured;*
- *CS declares bankruptcy, triggering the emergency plans;*
- *CS is taken over by the state temporarily (TPO).*

Individual measures (e.g. ELA, ELA+, PLB, order to write off AT1 bonds) were included in several of the solution scenarios. A merger between CS and UBS or a take-over of CS by UBS was first discussed by the CSC on 21 October 2022, after the Chairman of the SNB's Governing Board had informally approached the Chairman of the Board of Directors of UBS on the sidelines of an IMF conference in Washington, DC (see 6.3.3). Despite this initial contact in October, all the solution scenarios mentioned were further developed and submitted to the Federal Council (see 6.3.4, 6.3.5, 6.4.2, 6.4.3). The focus was not only on feasibility; the authorities were also interested in the economic impact of the individual measures. For example, the SNB, FINMA, the SIF and the FFA conducted economic impact assessments of CS bankruptcy and weighed the costs and benefits of the individual solution scenarios from January 2023 onwards (see 6.4.3). During this process, it became apparent that the objective of these analyses was not clear. While some of the actors sought to identify the best solution scenario with the aforementioned analysis, others were only interested in assessing the consequences of a given future course of action if an emergency situation were to arise. These analyses also revealed legal issues, for example regarding the implementation of a TPO. The work on the consequences could not be completed, as the authorities were overtaken by events in mid-March with the onset of the acute phase of the crisis.

PLB as a required measure in the various scenarios

It was clear from the outset of the crisis that a PLB would be necessary in most of the scenarios considered. For example, the CFC discussed early introduction of a PLB for the first time in mid-September 2022, specifically in reference to CS's economic difficulties (see 6.2.3). In doing so, the authorities benefited from the ongoing work being done by the FDF. This was because the Federal Council had instructed the FDF in March 2022 to prepare a corresponding consultation draft by mid-2023 (see 5.2.6).

On 2 November 2022, the Federal Council discussed early introduction of a PLB because the SC and the CFC had reached a conclusion the previous day that timely consideration needed to be given to a PLB under emergency powers legislation (see 6.3.4). Following the cancelled extraordinary Federal Council meeting on 4 November 2022, the Federal Council's finance committee held in-depth discussions on the introduction of a PLB under emergency powers legislation. The FOJ was consulted to clarify certain legal issues (see 6.3.4). Ultimately, the Federal Council refrained

from introducing a PLB in autumn/winter 2022 because the authorities saw no immediate need for this measure and because CS in particular feared that the early introduction of a PLB could have a negative impact on the markets. In early 2023, a PLB working group continued its preparatory work for emergency introduction of a PLB. The corresponding findings were presented to the CFC in February 2023 as part of an in-depth review of the various scenarios (see 6.4.3).

PlnC assessment

The PlnC notes that the authorities prepared both options envisaged in TBTF regulations (liquidation, ELA) as well as additional options (TPO, ELA+, takeover). The PlnC welcomes the fact that the authorities developed several solution scenarios (see 13.1.5). In particular, the PlnC considers that their analyses of the economic impact of each of the solution scenarios was crucial. Although certain aspects could have been improved, the PlnC concludes that the assumptions and cost estimates made by the authorities were plausible. However, the purpose of the macroeconomic analyses was not clear. Furthermore, the results of these analyses were not brought to the attention of the Federal Council (see 13.1.5).

10. Government-sponsored merger of CS with UBS in response to acute phase of the crisis

From 15 March 2023, events unfolded rapidly. Time pressure was a decisive factor in this acute phase of the crisis: the authorities immediately realised that urgent measures were now required to prevent the systemically important CS from being liquidated. They therefore set up a crisis unit at the main office of the FDF (Bernhof) as early as 15 March. The authorities were faced with several challenges. Firstly, they had to find the best way of averting the imminent financial crisis. Secondly, any solution required not only CS and UBS to reach an agreement, but also required approval from foreign regulators as well as the authorisation of two extraordinary guarantee credits from the Swiss Parliament's Finance Delegation (FinDel). The aim was therefore to reconcile the interests of the various partners as quickly as possible.

The following is a brief chronological account of the most important developments in March. The PlnC will then go over the various key aspects of the acute phase of the crisis.

A summary of the most important developments between 15 and 19 March 2023

The authorities immediately recognised the significance of the statement made by the chairman of the Saudi National Bank that there would be no further investments in CS. On the morning of **15 March 2023**, representatives of FINMA, the SNB and CS held several working-level meetings to discuss the implications of these statements. FINMA also asked CS to finalise its recovery plan by the next day (see 7.2.2).

The SC met for the first time at 12 noon. The committee members agreed that action was needed. They decided to explore all of the proposed scenarios. Given the urgency of the situation, they were determined to come up with a viable solution by Sunday evening at the latest to calm the markets before global stock markets opened for trading on Monday. The SC then decided to contact UBS and CS to prepare for a possible merger. It was also agreed that the SNB and FINMA would issue a joint press release later that day to reassure the markets.

The head of the FDF, the State Secretary for International Finance, the Chair of FINMA's Board of Directors, FINMA's CEO, the head of FINMA's Banks division, the Chairman of the SNB's Governing Board and UBS representatives met in Zurich at 4 pm. At this meeting, the Chairman of the Board of Directors of UBS presented the authorities with a one-pager setting out UBS's list of conditions. Later that evening, the head of the FDF spoke on the phone with CS senior management and conveyed her expectations to CS.

While they were holding talks with the two financial institutions, the authorities also made initial contact with foreign partner authorities. The head of the FDF then requested that an extraordinary Federal Council meeting be held the following day.

As the liquidity situation continued to deteriorate, the CS Group requested that emergency liquidity assistance (ELA) be provided to CS (Switzerland) Ltd. Their official application reached the SNB at around 9 pm. CS announced this ELA request in a press release in the night of 15–16 March 2023.

On the following day, **16 March 2023**, the Federal Council addressed the acute phase of the crisis for the first time. In the early morning, there was also an initial telephone call between CS and UBS, which proved inconclusive. Later that morning, the CFC and then the SC discussed UBS's list of conditions.

UBS's conditions related to restructuring issues, future capital requirements, mediation with relevant domestic and foreign authorities to approve the merger, public communication and government guarantees to cover potential losses following the merger. The AT1 corporate bond write-down was also mentioned. Three demands were particularly problematic: the provision of liquidity to UBS without the posting of corresponding collateral, the provision of a loss guarantee by the Swiss government in favour of UBS, and the provision of long-term alleviation of capital and liquidity requirements by FINMA. The authorities subsequently notified UBS that some of the bank's conditions could not be met at all and some only partially. The government officials agreed to work with UBS until the end of the day to clarify the unresolved issues and to find out when UBS could be expected to provide a general commitment to the CS takeover. The SNB also approved CS's ELA application that morning. The head of the FDF and the FFA Director then briefed the Chair of the Swiss Parliament's Finance Committee (FinDel).

At the first extraordinary Federal Council meeting, which was convened in the early afternoon, an initial course of action was set: the FDF requested, pursuant to Art. 184 para. 3 and Art. 185 para. 3 of the Federal Constitution, an extension of the existing ELA and immediate issuance of a public liquidity backstop (PLB) to secure state liquidity. This instrument of state liquidity protection (i.e. the PLB) was to be enacted immediately by the Federal Council so that CS could receive a liquidity assistance loan secured by a federal government default guarantee. The proposal also called on the Federal Council to apply to FinDel for emergency approval of a guarantee credit of CHF 100 billion, which was needed to secure the federal government's default guarantee. The federal government would then be able to secure the liquidity assistance loan that the SNB would provide to CS. The adopted emergency ordinance came into force at 7 pm. It was not published until 19 March 2023.

On 16 March, the authorities resumed talks with their foreign partners. In addition, CS and UBS continued their internal preparations for negotiations. UBS then submitted its extended list of conditions.

On the third day of the crisis, 17 March 2023, CS's situation became increasingly acute. In the early hours of the morning, CS submitted a revised and approvable draft of its restructuring plan to FINMA, as instructed. As they had done the previous day, the head of the FDF, the State Secretary for International Finance, the FFA Director, the Chair of FINMA's Board of Directors, the CEO of FINMA, and the Chairman and Vice Chairman of the SNB's Governing Board again held an early-morning call with the Chairman of the Board of Directors and the CEO of UBS. There were still no signs of an agreement between CS and UBS. Immediately afterwards, a video call was then held between these same officials and the Chairman of the Board of Directors and the CEO of CS. During this video call, the authorities emphasised that, in view of the acute nature of the crisis situation, from FINMA's perspective, there were only two options: liquidation of CS or takeover by UBS. Given the lack of progress in negotiations, the State Secretary for International Finance invited the heads of the two banks to a clarification meeting and drew their attention to the gravity of the situation.

As a result of the dramatic deterioration in the liquidity situation, CS applied for ELA+ that same morning, which the SNB promptly granted.

The Federal Council received the latest status report at its meeting held on the same day. It discussed a possible TPO but rejected this option for the time being. In view of the protracted negotiations, it requested that an alternative scenario be explored in the event that the merger plan fell through.

On the fourth day of the crisis, 18 March, the parallel negotiation processes continued. The SC met twice and held separate talks with UBS and CS, with CS proposing BlackRock as a new potential takeover partner. However, this possibility has to be ruled out shortly afterwards when it was rejected by BlackRock's management. Meanwhile, the Chair of FINMA's Board of Directors asked Sergio Ermotti whether he would be willing to serve as CEO in the event of a restructuring of CS. FINMA also adopted its negotiation mandate. At the extraordinary meeting of the Federal Council, discussions again revolved around possible alternative scenarios, as the two banks had not yet reached an agreement. Meanwhile, talks between the authorities and the banks continued.

In the early afternoon, the Board of Directors of UBS announced its agreement in principle to the merger with CS, but demanded greater certainty from the authorities with regard to the non-core unit (NCU), as UBS expected high operating costs over a long period of time (see 7.2.4). It was only towards evening that UBS and the authorities agreed to issue a federal government guarantee to UBS to cover potential losses that the bank might incur as a result of its takeover of CS. This loss guarantee decision was then conveyed, whereupon the head of the FDF notified the Federal Council that a deal had been reached with UBS.

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

While negotiations with the banks regarding the takeover progressed, FINMA continued to prepare the restructuring of CS as a fallback option. This solution was ready to be signed on the evening of 18 March 2023, had been coordinated internationally and could have been implemented as an alternative to the merger plan (see 7.2.4).

On Sunday, 19 March 2023, the fifth day of the crisis, the authorities focused mainly on convincing CS to accept the agreement reached with UBS the previous day. During the night of Saturday to Sunday, CS sent an extremely critical letter to the SIF, stating that the conditions were unacceptable. The main focus of criticism was the purchase price and the extensive escape clause (material adverse change clause) that UBS had introduced. In response to this, a meeting was held on Sunday morning between the Chairman of the Board of Directors of CS and various government officials. They stated that if no solution could be found with UBS, the point of non-viability (PONV) would be reached and CS would have to be liquidated. They also held out the prospect of a higher price. They then tried to reach an agreement with UBS on the remaining points of contention.

At the next Federal Council meeting, the Federal Council indicated that it was prepared to increase federal government guarantees if UBS agreed to a higher price. However, since the deal was still being finalised at that time, the Federal Council also seriously considered the possibility of a forced merger with UBS. In addition, contingency plans for temporary public ownership (TPO) were prepared, along with a restructuring plan. The preferred option remained a sale of CS to UBS or a merger between the two banks. The two meetings of the Federal Council, first with the senior management of CS and then with that of UBS, were held to this intent.

At the same time, the Finance Delegation (FinDel) of the Swiss Parliament was meeting to discuss the granting of an extraordinary guarantee credit of CHF 100 billion for emergency liquidity assistance, which was needed to implement the Federal Council's rescue package.

In the afternoon, an agreement was finally reached between CS and UBS. Subsequently, the Federal Council adopted its rescue package, which included in particular

a federal government guarantee to UBS to cover potential losses up to CHF 9 billion as well as a guarantee to the SNB to secure a liquidity assistance loan to CS for CHF 100 billion. The FinDel approved both loans and sent notification of its approval to the FDF and the FCh at 5.47 pm. The Federal Council's emergency ordinance also contained a delegation of competence for FINMA to instruct CS to write off the AT1 bonds.

After the decision was made to merge, CS again requested ELA+ of CHF 30 billion from the SNB. The ensuing merger of CS with UBS was announced at a joint press conference held by the banks' senior management, the head of the FDF, the President of the Swiss Confederation and the heads of FINMA and the SNB. The solution that was found achieved its objective: it reassured market participants and averted a potential international financial and economic crisis.

Selected aspects of crisis management during the acute phase of the crisis

The following is a brief summary of the key aspects of crisis management during the acute phase of the crisis.

Coordination between FDF, SIF, SNB and FINMA

As explained earlier, several government officials were directly involved in negotiations with the banks (see 7.2.4), in particular the heads of the FDF, the SIF, FINMA and the SNB. On the day the crisis began, for example, the head of the FDF held talks with both banks (see 7.2.1). Subsequently, the Chairman of the SNB's Governing Board contacted the Chairman of the Board of Directors of UBS to discuss the list of conditions. He also served as the point of contact when the Chairman of the Board of Directors of UBS reported that the discussions with CS were proving difficult (see 7.2.2). Given the slow progress of negotiations between UBS and CS, the State Secretary for International Finance called a meeting with the representatives of CS and UBS (see 7.2.3). On Saturday 18 March, FINMA and the SNB held discussions with UBS regarding the problematic aspects of the NCU. On the same day, the head of the FDF contacted the Chairman of the Board of Directors of CS, urging him to accept the UBS offer (see 7.2.4).

The PInC takes a positive view of the flexibility and commitment of the actors involved. The establishment of a crisis unit at the Bernerhof enabled close coordination between the authorities and set the stage for efficient discussion and decision-making (see 7.2.1 to 7.2.5). Given the extreme urgency, certain standard processes were not followed. For example, no minutes could be taken of the SC meetings between 17 and 19 March 2023. While understandable, the lack of minutes makes it more difficult to trace some of the decisions taken.

Role of the Federal Council and its involvement

During the acute phase of the CS crisis in March 2023, the Federal Council began meeting more frequently. Apart from one exception, they met daily. Threema was used as a communication platform to facilitate the organisation of the extraordinary meetings during this period.

Representatives of FINMA, the SIF, the SNB and the two banks regularly attended these meetings. This enabled the Federal Council to obtain first-hand information and form its own opinion. This was all the more crucial given that the tight time constraints made it difficult for members of the Federal Council to prepare for the meetings.

The FDF provided the Federal Council with the documents needed for implementation of the measures. However, detailed descriptions of the scenarios and the estimates of the economic costs carried out by a CFC working group were not shared with the Federal Council. On 18 March, the Federal Council was verbally informed of the consequences and costs of all the variants. In the PInC's view, the Federal Council received this information extremely late (see 7.2.4). Had the merger not proceeded as planned, the Federal Council would have had to decide on an alternative scenario by Sunday, 19 March 2023.

The PInC therefore feels that the briefing of the Federal Council on the possible scenarios, even during the acute phase of the crisis, was not optimal. For the PInC, the question arises as to whether the Federal Council as a whole had sufficient information during the crisis to be able to effectively ascertain the state of advancement of the various solution scenarios. In this regard, the PInC finds it unsatisfactory that the FDF did not immediately notify the other members of the Federal Council regarding the results of the development work on the scenarios carried out in February and early March 2023. If this had been the case, the Federal Council would have had a few weeks to consider its decision.

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

As can be seen from the above, the authorities – specifically the FDF and the SNB – played a very active mediating role in the negotiations with the banks. They replaced, to a certain extent, direct contact between CS and UBS. For example, UBS discussed its list of conditions with the authorities and not with CS (see 7.2.1 and 7.2.2). On Saturday evening, 18 March, the authorities reached an agreement with UBS (see 7.2.4) – without any direct involvement by CS.

The authorities were careful to ensure a certain balancing of interests between CS and UBS and considered the financial implications for the federal government. Since CS still refused to accept the original price of CHF 1 billion on Sunday morning, the authorities increased the guarantees. The SNB Chairman and the State Secretary for International Finance were particularly involved in the price negotiations. The latter also moderated the negotiations on the material adverse change clause.

In the PInC's view, the very active role played by the authorities made it possible to reach a negotiated outcome within a short period of time that adequately addressed the key concerns of the stakeholders involved (see 13.2.6). The authorities played a significantly more active role than might have been expected given the public statements made after the merger decision. The PInC considers that the joint intervention by the authorities was appropriate as it strengthened their position. However, such an approach can also lead to a lack of clarity regarding who is ultimately responsible. The PInC feels that there is room for improvement in this regard and has formulated a corresponding recommendation (see 13.2.1).

Choice of scenario

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

- *Takeover of CS by UBS:* This scenario had been discussed since autumn 2022. In theory, a takeover by both domestic and foreign banks was considered. Nevertheless, no realistic alternative to a takeover by UBS was on the table. This was the solution preferred by the authorities (see 13.1.5).
- *Restructuring of CS:* FINMA began working on this scenario from autumn 2022 onwards. However, implementation was considered risky. The PInC notes nonetheless that a draft of a FINMA restructuring order and its English translation were available on 17 March and that a potential CEO for CS had been identified (see 13.1.5).
- *Temporary public ownership (TPO) of the CS Group:* This scenario gained traction again during the acute phase of the crisis. The FOJ was only brought in at a late stage, which the PInC considers unfortunate (see 13.1.5).

The PInC notes that despite its extensive clarifications, it was unable to conclusively determine what action the authorities would have taken in the event CS and UBS had

failed to reach an agreement. Would they have opted for restructuring of CS, temporary public ownership (TPO) of the CS Group, forced sale to UBS or even bankruptcy liquidation (see 7.2). It appears that the authorities had not yet agreed on a Plan B.

Assessment of the chosen solution

In March 2023, there was still a great deal of uncertainty regarding the potential consequences of intervention by the authorities. Given the circumstances, the PInC considers the chosen solution to have been appropriate. The merger between CS and UBS calmed the markets and averted a potential international financial and economic crisis. However, it raises questions under antitrust law in the medium to long term. The PInC is also of the opinion that the solution adopted has clearly exposed certain weaknesses in the existing TBTF regulations (see 13.2.6).

Coordination with foreign authorities

Close coordination with foreign authorities was also a key factor in successfully overcoming the crisis. The Swiss authorities intensified their contacts with foreign countries immediately after the onset of the acute crisis on 15 March (see 7.2.1ff). Interaction and coordination with foreign partners took place in line with institutional responsibilities. These contacts involved regular updates on the unfolding situation and corresponding action taken (e.g. SNB's decision to grant an ELA to CS and the US Federal Reserve's decision to raise the liquidity threshold). Coordination was particularly crucial with regard to the measures in the pipeline, specifically FINMA's potential restructuring order and the planned merger of CS with UBS.

Most of the discussions mentioned were arranged at short notice. They were not always documented in writing, which is why precise details of what was discussed could not always be fully ascertained. Based on the PInC's clarifications, however, it seems certain that the Swiss authorities felt that their partner authorities anticipated a serious financial meltdown in the event of liquidation and thus were seeking to expedite a merger.

Announcement on 19 March 2023

During the final phase of the negotiations, the communications teams of the parties involved worked in tandem. At a joint press conference, the President of the Swiss Confederation, the head of the FDF, the Chair of FINMA's Board of Directors, the Chair of the SNB's Governing Board and the respective chairmen of the Boards of Directors of UBS and CS announced that an agreement had been reached (see 13.2.7). In the PInC's view, the solution was conveyed credibly and the announcement had the desired effect, namely that of calming the markets.

11. Overview of the financial assistance made available

The funds deployed or guaranteed by the public sector (Confederation and the SNB) for the emergency merger of CS, as summarised below, were enormous. The funds actually drawn down were less than the amount authorised.

Part of the overall solution on 19 March 2023 was a loss protection agreement (LPA) between the Swiss Confederation and UBS amounting to CHF 9 billion to cover losses that might be incurred by UBS from the divestment of certain CS assets that were not aligned with UBS's core business (approximately 3 % of the merged bank's total assets). Under this agreement, UBS would bear the first CHF 5 billion of losses itself and the Swiss Confederation would cover further losses up to CHF 9 billion. The legal basis for this agreement was found in Article 14a of the emergency ordinance.

After 19 March 2023, the FFA and UBS agreed on the exact assets of CS that would be covered by the agreement. The LPA was signed on 9 June 2023. After reviewing the portfolio of non-core assets, UBS concluded that the LPA was no longer necessary and voluntarily terminated it on 11 August 2023. UBS paid the Swiss Confederation a total of CHF 40 million for having established the LPA.

The overall rescue package also included a public liquidity backstop (PLB) by the Swiss Confederation to allow the SNB to provide liquidity support to Credit Suisse in the amount of up to CHF 100 billion. Of this, CHF 70 billion was drawn on 20 March 2023. UBS also voluntarily terminated this loan on 11 August 2023, thereby relieving the Confederation of these financial risks as well. By 31 July 2023, CS had expensed a commitment fee and a risk premium of CHF 214 million, of which CHF 61 million was to the SNB and CHF 153 million to the Confederation.

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

The SNB's ELA+ liquidity assistance, which is based on Article 3 of the emergency ordinance and secured by means of preferential rights in bankruptcy proceedings, was also a key source of support. On 17 and 19 March 2023, the SNB granted a total of CHF 100 billion, of which CHF 50 billion was actually drawn

The public sector thus made available a total of CHF 257 billion. According to the SNB, it provided actual liquidity assistance of CHF 168 billion. The federal budget was not negatively impacted by the termination of the guarantee agreement and the PLB.

12. Other general aspects

Involvement of other federal bodies

Federal Department of Justice

The FOJ is the federal government's specialised agency and service centre for legal matters. It reviews all draft legislation, including Federal Council emergency ordinances, to ensure that they are constitutional and lawful, as well as consistent and compatible with applicable national and international law (preventive legal review).

The FOJ was consulted in relation to the CS matter on four occasions: first, at the technical level between October and November 2022 regarding the drafts of an emergency PLB ordinance; secondly by including the head of the FOJ when the Federal Council's finance committee carefully considered the PLB option at the end of November 2022 (see 6.3.4), thirdly on the evening of 15 March 2023 during the acute stage of the crisis, and fourthly over the weekend of 18/19 March 2023, also during the acute stage of the crisis (see 7.2.3 and 7.2.4). On 7 March 2023, i.e. before the acute crisis had come to a head, the CFC had decided to consult the FOJ again on certain issues going forward. Overall, however, the FOJ was only consulted intermittently and with little lead time. On certain topics, the consultation was therefore only very cursory.

The involvement of the FOJ enabled a much more detailed report, submitted to the Federal Council in autumn/winter 2022, on the advantages and disadvantages of the various options being considered as well as on alternatives to enacting an emergency PLB ordinance. From the PlnC's perspective, the FOJ should have been involved in certain aspects on a more ongoing basis or at an earlier stage (see 14.2.1). At the same time, the CS crisis has shown that the FOJ is unable to assess key technical points on its own. Instead, it must rely on the expertise of the specialised authorities and their clear assessments. Given the importance of the FOJ's involvement under the rule of law, the PlnC calls on the Federal Council to ensure the FOJ's early and ongoing involvement when enacting emergency ordinances and to ensure that the FOJ's positions are brought to the attention of the Federal Council in a suitable manner (see 14.2.1).

Competition Commission

In principle, the extra-parliamentary Competition Commission (COMCO) is in charge of examining and authorising mergers of companies that are subject to reporting requirements. FINMA can assume this role in the interests of protecting creditors, but must then ask COMCO for its statement. This was the case with the merger of CS and UBS (see 7.2.3). COMCO was first notified of the potential merger on 17 March 2023. COMCO was unable to examine the matter in sufficient detail at such short notice and therefore agreed to transfer authority over to FINMA.

In its statement on the merger published in September 2023, COMCO identified a need to examine whether the CS merger enabled UBS to obtain or expand a dominant market position in six markets. In its final decision, FINMA found that further evaluations were not needed, as the work undertaken had been equivalent to a thorough evaluation by COMCO (see 8.2.1).

The PlnC regrets that COMCO's expertise could not be included in the negotiations and preparation for the merger. However, the situation was constantly evolving, making it difficult to assess in hindsight when the ideal time for such involvement would have been (see 14.2.3). At the same time, the PlnC feels that there is a need for clarity regarding what 'creditor protection' entails and when COMCO should be involved (see 14.2.3).

Partial revision of the Parliament Act

During the PlnC inquiry, it became apparent that several provisions of the applicable Parliament Act relating to the PlnC needed to be clarified or even amended (see 14.4). For this reason, the PlnC has decided to introduce a parliamentary initiative. Clarification or amendment of existing legislation is mainly required with regard to the following:

- a. the position of the Federal Council under Article 167 of the Parliament Act (in particular the right of the Federal Council to express an opinion as well as the special position held by the representative of the Federal Council);*
- b. the rights of the persons concerned under Article 168 of the Parliament Act;*
- c. the use of work carried out by other commissions (in particular the two parliamentary Control Committees);*
- d. the obligation of secrecy under Article 169 of the Parliament Act;*
- e. the right of the PlnC to obtain information from independent or autonomous bodies;*
- f. keeping minutes of PlnC meetings;*
- g. consultation with the persons interviewed when preparing the draft report.*

This parliamentary initiative will be forwarded to one of the two Control Committees for further action, as it pertains to oversight.

13. Action required from the perspective of the PlnC

The PlnC has identified a need for optimisation and action in terms of both enforcement and legislation. To this end, it has adopted a total of 20 recommendations for the Federal Council and submitted six postulates, four motions and one parliamentary initiative (see list of recommendations and parliamentary initiatives).

With its recommendations and parliamentary initiatives, it addresses a number of topics in terms of enforcement. First, it sees a need for improvement in the implementation of financial market oversight and audit oversight law and a need for action regarding cooperation between the various authorities involved in financial market stability as well as other specialist authorities. The PlnC also sees a need to optimise the flow of information within the Federal Council, the handover of sensitive dossiers to a new head of federal department, and traceability of the deliberations of various

committees. Risk management and early crisis detection are also covered in the recommendations.

In terms of legislation, the PInC sees a need for adjustments or reviews regarding the future design of TBTF regulations, the limiting of alleviations to capital and liquidity requirements, the risk of bank runs in the digital age, remuneration systems, the structure of shareholder rights, and competencies with respect to auditing. The complete list of recommendations and proposals can be found at the end of the full report. The PInC also refers to its concluding remarks in Chapter 15.