

Credit Suisse

A CEP and a commission of experts are not enough

Par Urs Zulauf le 25 May 2023

All the players involved – CS/UBS, FINMA, the Swiss National Bank and the Federal Department of Finance – should begin by themselves examining the takeover of CS by UBS ordered by the authorities. This would provide a starting point and framework for parliamentary clarification, and facilitate a fact-based Swiss and international discussion on the regulation and supervision of globally systemically important banks such as the future UBS.

A necessary update

The takeover of CS by UBS, ordered by the authorities, financially supported by public funds and made possible by the emergency law of March 16 and 19, 2023, rightly raises many questions and requires some clarification.

Only then will it be possible to make a sound assessment of whether there are constellations in which a systemically important bank can be dissolved without state support in the event of a crisis. This is the only way to seriously assess whether the resolution instruments created after the 2011 banking crisis and extended in 2015 and 2021 are appropriate. Only then will it be possible to judge whether FINMA, in particular, should and could have intervened differently or earlier with the SC. Only then can the authorities' handling of the crisis be assessed on the basis of facts.

CEP and expert commissions...

In mid-May 2023, the Commissions de Gestion (CdG) of both chambers voted in favor of setting up a parliamentary commission of inquiry (CEP) to “examine the behavior of the authorities in the context of the CS crisis”. Parliament will probably follow this recommendation at its summer or autumn session. The central question would be “whether the action taken by the federal authorities was legal, appropriate and effective”.

In May 2023, the Federal Council set up an expert commission on banking stability. Independent of the authorities, it is tasked with “conducting a strategic reflection on the role of the banks and the framework conditions of the state with regard to the stability of the Swiss financial center”, and to report back to the FDF by August 2023. Its reflections should help the Federal Council to “evaluate the TBTF regulatory framework” provided for in Art. 52 BL by April 2024, and to assess the numerous proposals for overhauling regulation and supervision.

... not enough to deal with facts and causes

In my opinion, however, neither the CEP nor the expert commission set up by the Federal Council are sufficient to adequately establish the facts and causes. The Federal Council's expert commission does not have this task from the outset. Nor would it be able to do so within the three-month deadline for submission of its report.

The CEP is an instrument of parliamentary oversight of the federal authorities and administration. It cannot examine the operations and actions of the SNB, which is also not part of the decentralized federal administration. Still less can it investigate the causes of the SC crisis. While the CEP can hear private individuals, it cannot investigate the processes, actions, omissions and erroneous developments of a private bank. The fact that this bank is systemically important and supervised by FINMA does not change this.

Memory work for all concerned...

A CEP and a commission of experts are not enough to shed light on the CS crisis. As was the case after the support given to UBS in October 2008, and as is currently the case in the USA after the liquidation of two banks with government backing, all players are called upon to contribute.

CS's problems were at the root of the takeover by UBS, ordered by FINMA, the SNB and the Federal Council, and of the state support based on emergency law. They are the cause of all the consequences for the bank's customers, creditors, employees, shareholders and the Swiss financial center.

The Board of Directors of CS Group AG or, after the forced merger, of UBS, therefore has a moral, if not legal, obligation towards interested stakeholders to analyze, or have analyzed, the causes of CS's bankruptcy. As in 2008 and 2010 after the UBS rescue, the results should be made available to the public.

An independent investigation by FINMA would also be welcome, as was the case in 2008 and 2009 after the UBS bailout.

It could expose and comment on CS's problems and their causes, which made the March 2023 measures necessary. It could also explain how it has monitored CS since around 2015, what measures it has taken to stabilize CS and why it could not have intervened earlier and more massively. Thirdly, it could outline its preparations for a liquidation of CS and explain why, in its 2022 resolution report, it concluded in April 2023 that CS could be liquidated, whereas it considered this option unfavorable a month earlier.

Finally, it could explain whether, and if so, on the basis of what information, including discussions with foreign supervisory authorities and reflections, FINMA decided in March 2023 not to conduct reorganization or bankruptcy proceedings.

After the public support given to UBS in 2008, the Swiss National Bank did not publish an in-depth self-assessment, unlike the SFBC/FINMA. It should be different today. There is no reason why the SNB cannot also address this issue in a report to be published. This would enable the SNB to explain the development of liquidity support to the SC for all currencies, including the US

dollar. The SNB could also explain how and whether cooperation with FINMA and the FDF worked in managing the crisis, and what could be improved.

In its report, the Federal Department of Finance could describe the development of the regulation of globally systemically important banks at the level of law and, above all, ordinance, including interactions with the authorities and the big banks in this respect. In particular, the interactions with domestic and foreign authorities since 2022 should be presented with regard to the SC. In addition, it is of great public interest to know exactly how the preparations for the crisis went from at least mid-2022 onwards.

Memory work and regulation in parallel

To put it mildly, the CS has not put up a good show. There are indications that the same may be true of the authorities' monitoring and crisis management. All parties concerned now have the opportunity to reflect on what happened. But they should begin to do so soon.

Moreover, the discussion on regulation can be conducted in parallel. There is no need to wait for the results of the clarifications. But it would be a good idea for the relevant issues to be dealt with properly before setting the "final" course for the regulation and supervision of UBS and other globally systemically important banks. Regulation doesn't have to be based on facts, but that doesn't hurt.

Finally, the treatment of the UBS crisis by all the players involved would provide a basis for a POC, which could and should take cognizance of it, question it or judge it.

Long version of this commentary (in German)

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