CENTRE DE DROIT
BANCAIRE ET FINANCIER

Too big to fail

The Financial Stability Board publishes its second report

Par Besart Buci le 11 March 2024

The Financial Stability Board (FSB) welcomes Switzerland's progress in implementing the Too Big To Fail (TBTF) rules, but stresses that there is still work to be done. Its second peer review report of 29 February 2024 covers the period 2022-2023 and targets systemically important banks (SIBs) operating internationally.

The FSB's ten recommendations can be summarised as follows :

1. Increase FINMA's resources quantitatively and qualitatively : in addition to increasing the size of its teams, the FSB recommends a strengthening of expertise to meet the challenges ahead.
2. Strengthening and broadening the supervisory tools available to FINMA : the FSB suggests (i) introducing a senior managers' regime (see p. 30 for the concept), (ii) granting FINMA the power to publish its enforcement procedures and (iii) implementing a framework for early intervention through appropriate measures. Such measures include replacing the board of directors or appointing a provisional administrator.
3. Review by FINMA of its mechanism for using external audit firms to supervise banks : the FSB notes that the fear of jeopardising possible future mandates could dissuade external auditors from reporting to FINMA the weaknesses they have identified in the banks they supervise.
4. Recovery plan : The FSB proposes that the powers to assess the credibility and feasibility of recovery plans should be strengthened. The legal basis for this in Switzerland is art. 64 OB. FINMA should draw up a general policy on the preparation of such a plan.
5. Resolution plan : the FSB recommends strengthening the legal basis enabling FINMA, when drawing up the resolution plan, to require SIBs to change their business practices, structure or organisation in order to remedy a significant obstacle to resolvability.
6. Resolvability : FINMA should publish more information on the resolvability expectations of SIBs and improve readiness for resolution.
7. Clarification of insolvency criteria (art. 25 BankA) : FINMA must be able to act when a company is approaching the point of non-viability.
8. Introduction of a public liquidity backstop (PLB) mechanism (see p. 34 for the concept) in the Swiss legislative framework.
9. Strengthening contingent liquidity arrangements : the FSB recommends that the Swiss authorities ensure that SIBs assess and prepare, both operationally and legally, their ability to provide sufficient guarantees to the SNB and other central banks.

10. Reducing stigma : The FSB suggests strengthening the authorities’ ability to help stabilise a troubled bank by minimising the risk of stigma attached to access to liquidity facilities granted by the SNB, in particular by delaying public disclosure of any information relating to SNB assistance.

Four of the ten recommendations are not entirely new. In its first peer review report in 2012, the FSB already suggested that Switzerland strengthen FINMA’s supervisory capacity. The International Monetary Fund also recommended implementing an early intervention framework from 2019.

Moreover, some of the FSB’s recommendations are in line with the lessons learned by FINMA in its report of 19 December 2023 on the Credit Suisse crisis (for an analysis of this report, see Liegeois, cdbf.ch/1315). In particular, FINMA called for the introduction of a senior managers’ regime, the granting of powers to impose fines and the possibility of communicating openly about enforcement proceedings. The FSB report supports this position. In short, FINMA does not yet have sufficient powers to respond to the TBTF problem.

Recommendation 8 is already being implemented. The Federal Council has adopted the message on the introduction into ordinary law of a PLB mechanism for SIBs. This mechanism was already used when the Necessity Ordinance was adopted on 16 March 2023 (Credit Suisse). The bank was able to obtain a liquidity assistance loan of CHF 100 billion from the SNB, guaranteed by the Confederation. However, this assistance was not enough to restore confidence.

The fact that UBS is now the world’s largest SIB according to the Basel III leverage ratio exposure (a measure of a bank’s size relative to GDP) represents both an opportunity and a major danger for Switzerland. Our small country is faced with a TBTF institution that could turn out to be “Too Big To Be Rescued”. Its rescue would potentially exceed the State’s financial capacity. It is therefore important to take an in-depth look at the situation in order to take the appropriate measures.
