Based on the Federal Council parameters, which were published on 6 June, FINMA sets out in this information sheet its view of how the Federal Government's parameters should be implemented in a targeted manner.

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Effective crisis instruments for FINMA

What is it about and what is the current situation?

If a systemically important bank is at risk of insolvency, the authorities must immediately create stability, but at the same time immediately avoid the bank's bankruptcy or need for solvency support from the state or nationalisation. This is known internationally as resolution. There will never be complete protection against banking crises. However, this makes it all the more important to have a credible set of instruments so that the "moral hazard" problem – the expectation that a government will ultimately rescue (nationalise) a bank in crisis – is also eliminated.

Even in a crisis that threatens its existence, a bank must first and foremost attempt to avert the risk of insolvency itself by applying its recovery plan. If it fails to do so and reaches the insolvency threshold, FINMA intervenes: It converts debt capital into equity, replaces the management and implements a new business model. This should allow the bank to continue operating and ensure the stability of the financial system. The Swiss National Bank (SNB) and the Confederation can support a bank with liquidity via Emergency Liquidity Assistance (ELA – SNB) or the Public Liquidity Backstop (PLB – Confederation), although the legislative proposal to implement the PLB is currently still undergoing its parliamentary passage and has been suspended.[1] In March 2023, a restructuring of CS was ready to be implemented with the aid of ELA under applicable law and a PLB (on the basis of emergency law).

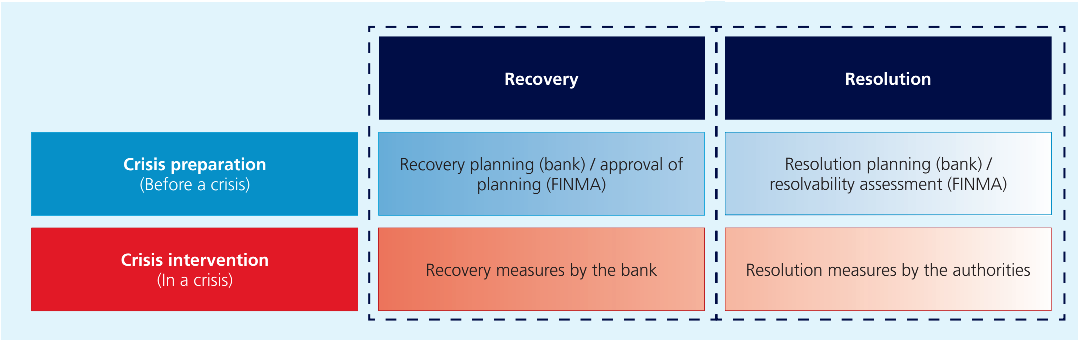
Both recovery and resolution must be prepared and tested by the banks and authorities outside of crises.

Key points

FINMA must be able to act decisively and create stability immediately if a bank reaches the insolvency threshold. This is described internationally as resolution and aims to maintain financial stability while protecting taxpayers. For this to succeed, both the systemically important banks and the authorities must prepare for crisis situations. On a legal level, this requires:

- **Extended** and **legally certain** powers of action – **optionality** in the crisis
- **Mandatory resolution planning for systemically important banks** that is geared towards more optionality in resolution and international financial stability – as an extension of the current emergency planning by systemically important banks
- A **robust set of instruments for FINMA** to address inadequate crisis preparation effectively in the business-as-usual stage – the power to enforce interventions in the structure and business model as well as **surcharges on capital and liquidity requirements** in the event of inadequate crisis preparation by banks

[1] Suspended since March 2025, until the dispatch on the amended TBTF regulation is submitted to Parliament.



Why is there a need for action?

At present, only a restructuring of a bank can be implemented with legal certainty. However, restructuring is only one possible course of action in the context of a resolution. During the CS crisis, FINMA prepared the restructuring of the bank in cooperation with the international partner authorities (see box below). But the statutory framework for restructuring is narrowly defined and FINMA is limited in what it can do. A comparison with the EU, the USA and the UK shows that their frameworks contain more options for action by the banking insolvency authority. In preparation for further, possibly different cases, the resolution options should therefore also be expanded and additionally anchored in legislation in Switzerland, as proposed by FINMA. The legal foundations must therefore be more clearly defined and further developed so that they are better harmonised and, in particular, FINMA's interventions are based on legal certainty.

Legal certainty is essential for this type of crisis intervention, as it strongly interferes with the rights of shareholders and creditors in order to protect the financial system and the Swiss economy from the risk of contagion. FINMA's scope of action and powers must therefore be explicitly defined in legislation. At present, however, instruments such as the sale of a bank or parts thereof when the insolvency threshold is reached cannot be combined with existing measures such as recapitalisation by converting debt capital into equity in a legally certain manner. The principles and any claims of shareholders and creditors are not clearly defined.

The **requirements** for **crisis preparation** are currently not geared towards crisis intervention **options**. In addition, FINMA has too few options to increase the resilience of an institution if it identifies deficiencies in crisis preparation.

Commentary: Crisis preparation and intervention in the case of Credit Suisse

The CS crisis demonstrates the difference between abstract planning work and concrete crisis management.

The bank's measures in autumn 2022 were largely based on its recovery plan. However, they did not have the desired effect. FINMA had regularly pointed out the weaknesses of the plan to the bank in advance, but there was no legal basis for enforcing supervisory measures to remedy the shortcomings at an early stage.

From October 2022, FINMA prepared for the restructuring of CS in close coordination with the international and national partner authorities. In particular, this included an internationally coordinated trial run in November 2022. Thanks to these efforts, the restructuring of CS in March 2023 was available to the authorities as an orderly, prepared and internationally agreed TBTF-compliant variant. The Financial Stability Board (FSB) and later also the Parliamentary Investigation Committee (PInC) confirmed this in their reports (FSB: October 2023; PInC: December 2024)

The sale of CS to UBS as part of a restructuring was also examined, but the associated legal uncertainties were considered comparatively too great. For this reason, but also in order to have more flexibility in the event of future crises, FINMA considers the further development of crisis instruments and requirements for crisis preparation to be crucial.

How does FINMA envisage the actual implementation based on the Federal Council parameters?

FINMA proposes the following amendments with regard to crisis intervention and crisis preparation:

Crisis intervention

In a crisis intervention, FINMA applies Section 11 of the Banking Act. It must be amended in such a way that the **three internationally proven resolution strategies** – (1) restructuring and continuation of the bank, (2) solvent market exit of the bank and (3) sale of the bank (or of parts thereof) – are founded on legal certainty when the insolvency threshold is reached **(optionality)**. In the event of an intervention, the option with the best prospects of maintaining (international) financial stability will be chosen. The **measures in the resolution package,** i.e. recapitalisation, partial sales of assets and liabilities, transfer of parts of the bank to a bridge bank, dismissal and appointment of governing bodies and interventions in the organisational structure, should be **able to be combined in a legally certain manner** regardless of the resolution strategy chosen. The provision on compensation for original shareholders (in the sense of before resolution) needs to be amended.

Crisis preparation

The **requirements** for crisis preparation must **be aligned** with the aforementioned **resolution strategies and powers of FINMA** in a crisis intervention:

- The **resolvability assessment** must be extended to domestic systemically important banks and explicitly geared towards safeguarding financial stability and maintaining Swiss systemically important functions. Each systemically important bank should draw up a resolution plan that sets out the implementation of possible resolution strategies. The previous emergency plan can therefore be incorporated into the resolution plan.
- **In the event of inadequate crisis preparation – both in recovery and resolution planning –** FINMA should be able to order specific measures (e.g. for structural disentanglement) and also impose **capital and/or liquidity requirements** as long as these measures have not been implemented.

What else needs to be considered?

The current crisis preparation rules described above only apply to **systemically important banks.** The US banking crisis of 2023 showed that even banks **that are not classified as systemically important** by conventional standards can jeopardise financial stability in the event of a crisis. Accordingly, **the crisis instruments for such banks should also be expanded proportionally,** otherwise the only remaining insolvency measure available to the authorities under ordinary law is bankruptcy liquidation. FINMA has considerable doubts, particularly with regard to several medium-sized banks, that a bankruptcy could be implemented without further jeopardising financial stability.