

The Expert Commission of 2010 and the progressive component

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The most consequential Swiss departure from Basel was designed by a commission of experts appointed by the Federal Council in November 2009. The rescue of UBS in October 2008, in which the Confederation subscribed mandatory convertible notes and the SNB took over illiquid assets in a stabilisation fund, had shown that the failure of one of the two big banks could not be tolerated. The commission, chaired by Peter Siegenthaler, a former director of the Federal Finance Administration, brought together representatives of the authorities, the banks, the insurance industry and academia. Its final report, published in October 2010, proposed a package of measures on capital, liquidity, risk diversification and organisation.¹

The capital proposal was structured in three layers. The base layer corresponded to the Basel III minimum of common equity. The second layer was a buffer, which the banks could fill partly with contingent convertible capital that would convert into equity when the common equity ratio fell below a high trigger. The third layer, the progressive component, was the most original element. Its size depended on the systemic importance of the bank, measured by its total exposure and its market share in Switzerland. Banks could fill it with contingent capital that would convert at a lower trigger. For UBS and Credit Suisse, the total requirement amounted to about nineteen per cent of risk-weighted assets, of which ten percentage points were to be held as common equity.²

The progressive component anticipated a principle that the Basel Committee and the Financial Stability Board adopted a year later in their framework for global systemically important banks. The international surcharge, introduced in November 2011, also depends on systemic importance, measured by indicators of size, interconnectedness, substitutability, complexity and cross-jurisdictional activity, ranging from

one to three and a half per cent of risk-weighted assets in common equity.³ The Swiss component was larger and could be met with contingent capital, which the international surcharge did not allow. The Swiss and the international approaches shared the idea that the requirements should rise with the damage that a bank's failure would cause.

The amendments to the Banking Act, adopted by Parliament in September 2011, entered into force on 1 March 2012. The details were laid down in the Capital Adequacy Ordinance. The regime was revised in 2015 and 2016, after the Federal Council's first review under the statutory reporting duty. The revision introduced a gone-concern requirement for loss-absorbing capacity in resolution, aligned with the international standard on total loss-absorbing capacity that the Financial Stability Board adopted in November 2015. It also raised the leverage ratio requirements significantly. For the global systemically important banks, the going-concern requirements reached about fourteen per cent of risk-weighted assets and five per cent of the leverage exposure, while the gone-concern requirements were set at a comparable level, subject to rebates for measures that improved resolvability.⁴

What distinguished the Swiss approach was the systematic emphasis on the leverage ratio as a constraint that applies alongside the risk-weighted ratio. Many international observers considered the risk-weighted ratios of the large banks unreliable after 2008, because internal models had allowed some banks to report very low risk weights for large portfolios. The Swiss authorities chose to give both measures equal weight. This choice reflected the experience of UBS, whose trading book losses had wiped out a large part of its equity in 2007 and 2008 although the bank had reported a high risk-weighted capital ratio.⁵

1 Notes

1. Expert Commission on limiting the economic risks posed by large companies (Expertenkommission zur Limitierung von volkswirtschaftlichen Risiken durch Grossunternehmen), final report of 30 September 2010, published in October 2010, chaired by Peter Siegenthaler. To be verified. ↩
2. On the capital proposals of the Expert Commission (minimum of 4.5 per cent CET1, buffer of 8.5 per cent of which up to 3 per cent in high-trigger contingent convertibles, and a progressive component of up to about 6 per cent for the two big banks in low-trigger contingent convertibles, giving a total of about 19 per cent of risk-weighted assets),

see the final report and the dispatch of the Federal Council of 20 April 2011. Figures to be verified. ↩

3. Basel Committee on Banking Supervision, Global systemically important banks: assessment methodology and the additional loss absorbency requirement (November 2011, revised July 2013 and later), and the FSB's annual list of G-SIBs. To be verified. ↩
4. On the revision of the too-big-to-fail provisions of the CAO adopted by the Federal Council in 2016 and in force since 1 July 2016 (going-concern requirement of 14.3 per cent of RWA and 5 per cent leverage ratio for G-SIBs, gone-concern requirement of a corresponding size with rebates, transitional period until 2019), and the FSB's TLAC term sheet of 9 November 2015, see the publications of the Federal Department of Finance, FINMA and the FSB. Figures to be verified. ↩
5. On the losses of UBS in 2007 and 2008, the risk-weighted capital ratios reported before the crisis and the lessons drawn by the Swiss authorities, see UBS, Shareholder Report on UBS's Write-Downs (April 2008), and the report of the Federal Banking Commission on the subprime crisis of 30 September 2008. To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-the-expert-commission-of-2010-and-the-progressive-component