



# Local Government in Switzerland

## Responses to Urban-Rural Challenges

edited by

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November 2021

The Country Report on Local Government in Switzerland is a product of the LoGov-project: “Local Government and the Changing Urban-Rural Interplay”.

The H2020-MSCA-RISE-2018 project aims to provide solutions for local governments that address the fundamental challenges resulting from urbanisation. To address these complex issues, 18 partners from 17 countries and six continents share their expertise and knowledge in the realms of public law, political science, and public administration. LoGov identifies, evaluates, compares, and shares innovative practices that cope with the impact of changing urban-rural relations in major local government areas (WP 1-5).

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This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 823961.



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# 1. The System of Local Government in Switzerland

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

## Types of Local Governments

The Swiss model of federalism, based on the principle of subsidiarity, is structured in three layers of political representation, i.e. the Confederation (national government), the cantons and the municipalities. The Constitution of the Swiss Confederation, however, focuses on two layers only, the national and cantonal. In its Article 1 it not only lists the official 26 cantons but also gives them constitutive effect. In Article 3 it sets the rules for the power-sharing arrangements between the Confederation and the cantons: ‘The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.’ However, one must bear in mind that the term ‘competent’ would be more appropriate than ‘sovereign’ to describe the power vested in the cantons. In fact, the cantons have competence on all the tasks and duties that do not fall on the Confederation. But they nevertheless remain subdued to the Confederation, as the majority of the other cantons can impose their will on a canton via a revision of the Swiss Constitution. Indeed, according to the Article 48(a) of the Swiss Constitution, at the request of interested cantons, the Confederation may declare intercantonal agreements to be generally binding or require cantons to participate in intercantonal agreements in the following fields:

- the execution of criminal penalties and measures;
- school education in the matters specified in Article 62(4);
- cantonal institutions of higher education;
- cultural institutions of supra-regional importance; e. waste management;
- waste water treatment;
- urban transport;
- advanced medical science and specialist clinics;
- institutions for the rehabilitation and care of invalids.

The Federal Constitution does not attribute any competence to regulate local government to the national government. The municipalities are therefore created by and subjected to cantonal regulation. Thus, each canton defines the status and the competences of its municipalities in its cantonal constitution and legislation. We therefore differentiate 26 systems of municipalities corresponding to each of the 26 Swiss cantons. Still, one can identify five main types of municipalities:



- the classical political municipalities which are called *commune* in French, *comune* in Italian and *Gemeinde*, *Ortsgemeinde* or *Einwohnergemeinde* in German depending on the cantons. They are the basic general-purpose type of municipality;
- the so-called *bourgeoise* municipalities that have survived from the Middle Age in some cantons. When in 1798 the Helvetic Republic is proclaimed; the cantons are put on an equal footing and the inhabitants of the Swiss territory receive the Swiss citizenship. The original bourgeois do not agree to share the communal properties (lands, forests, etc.) with the new *bourgeoise*. Thus, the *bourgeoise* municipalities keep the control over the communal properties and the political municipalities guarantee the political rights to the new *bourgeoise*. As of today, in the cantons where such *bourgeoise* municipalities remain, they are mainly land owners and service providers (for example retirement houses, subsidized apartments, young offenders' facilities, etc.);
- the ecclesiastical community is the territorial division that is attached to a church and that is often called parish (*paroisse* in French). They are a single-purpose body;
- the so-called scholar commune *commune scolaire* is also a single-purpose body that deals with the school system on a certain territory within the limits assigned by the canton and that does not automatically match with the political municipality. For example, the school program remains a cantonal competence but the decision to build the school or to organize the carriage of school pupils is, to a large extent, delegated to the scholar municipalities;<sup>1</sup>
- other types of municipalities that exist in some cantons.

Finally, one must add that the majority of the Swiss cantons have put in place an intermediary political level between the cantons and the municipalities called the district (*district* in French, *Bezirk*, *Verwaltungsregion*, *Verwaltungskreis*, *Wahlkreis*, *Amtei* or *Amt* in German, *distretto* in Italian). Out of the 26 cantons, only six do not have such a subdivision. These districts are very different from each other but they usually correspond to a group of municipalities. Again, the cantons hold the primary competence regarding their internal organization and scope.

## Legal Status of Local Governments

The constitution framework that prevailed until 1999 did not mention municipalities, unless incidentally. Only the adoption of a new constitution that year ensured that local autonomy was granted constitutional protection.<sup>2</sup> Article 50 reads as follows: (i) 'The autonomy of the communes is guaranteed in accordance with cantonal law.'; (ii) 'The Confederation shall take account in its activities of the possible consequences for the communes.'; (iii) 'In doing so, it

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<sup>1</sup> Nicolas Schmitt, *Local Government in Switzerland: Organisation and Competences* (forthcoming).

<sup>2</sup> Schmitt, *Local Government in Switzerland*, above.



shall take account of the special position of the cities and urban areas as well as the mountain regions.’

The effect of the new provision is limited. The extent of local autonomy remains in the hands of the cantons (‘in accordance with cantonal law’) and each of them thus continues to autonomously define its internal governance system. Only as far as cantonal law provides for municipal autonomy, it is guaranteed by the Federal Constitution. Consequently, municipal autonomy is justiciable and the Federal Supreme Court hears disputes concerning violations of it (Article 189(1)(e)). When it does so, it refers to the cantonal constitution and the cantonal legislative framework to determine the scope of local autonomy and decide whether the canton has impinged on it or not.

If the Article 50(2) of the Constitution constrains the Confederation, while fulfilling its tasks (e.g. military, national highways), to be considerate of municipalities, it does not confer additional jurisdiction on the Confederation. Essentially, this constitutional provision aims at fostering vertical cooperation between the three institutional levels of the Swiss federal structure but without bypassing the intermediary level, the cantons. The article refers specifically to the urban-rural divide and explicitly compels the national government to take account of the special priorities and needs of cities and urban areas on the one hand and mountain regions on the other hand. Among the concrete initiatives, the Tripartite Conference can be mentioned. It will be discussed at length further in the Country Report.

## (A) Symmetry of the Local Government System

As mentioned above, there are 26 systems of local government corresponding to the 26 Swiss cantons. Thus, there are considerable differences regarding the rules that apply to urban local governments (ULGs) and rural local governments (RLGs), etc. For example, the Canton of Zürich has granted a special status to the cities of Zürich and Winterthur. Most cantons, however, are based on a symmetric system and allocate the same tasks and responsibilities to all municipalities, irrespective of their size.

Despite of the wide variety of cantonal local government arrangements, some common features can be identified. Schmitt demonstrates that all municipalities are run by an executive council of five to ten members who are elected by the citizens and who are compelled to take decisions on a collegial basis.<sup>3</sup> While they traditionally are not paid for their work, the elected members of municipalities’ councils in the ULGs tend to be professionals.

As regards legislative power, small municipalities (not to say RLGs) have citizens’ assemblies that meet regularly to pass new laws and/or to elect the executive council members and other authorities. On the contrary, some cantons have compelled larger municipalities (ULGs) to create a parliament, i.e. an elected legislative body *representing* the citizens. As Schmitt notes,

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<sup>3</sup> Schmitt, *Local Government in Switzerland*, above.



the Canton of Fribourg has adopted the Law on the Municipalities (*Loi sur les communes* in French) that requires eight specific municipalities to set up such a parliament while municipalities with over 600 inhabitants are only invited to do so.<sup>4</sup> Smaller municipalities can keep their citizens' assemblies.

Finally, Schmitt puts a light on an interesting paradox: while municipalities still enjoy a large set of competencies and have the right to collect taxes (and set the tax rates), judicial power is not granted to the municipalities. In fact, the lowest judicial level is, in some cantons, the district's judge. Once again, one must look carefully at all the 26 cantonal organizations in order to grasp the subtleties of the local government systems that make Swiss federalism so complex.<sup>5</sup>

## Political and Social Context in Switzerland

If the prominent role and the many responsibilities conferred to the municipalities have long been praised and recognized as a key factor for the success of the Swiss political model, one must note that they tend to lose their luster. In fact, the degree of autonomy enjoyed by the municipalities decreases due to the increasing requirements (land use planning, environmental protection, social aid, waste management, etc.) from the Confederation, the cantons and, to some extent, the people themselves. The democratic pressure (complexity of the legal frameworks, over technical policy fields, procedural overload, etc.) on the municipalities is difficult to manage, especially for non-professional elected representatives and somehow encourages the centralization of the decision-making power and the pooling of local tasks and duties at a superior level.

In the last 30 years, Switzerland has thus witnessed a strong acceleration of the number of amalgamations of its municipalities. From more than 3,200 municipalities in 1999, the number has dropped to approximately 2,200 municipalities in 2018. While the rural municipalities tend to merge, it can be observed that urban municipalities tend instead to agglomerate<sup>6</sup> via different types of inter-municipal agreements. In any case, cantons and municipalities follow their own path with little interference from the national government. Today, approximately two thirds of the Swiss population is concentrated in the cities' centers<sup>7</sup> or agglomerations.

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<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> According to the Federal Office of Statistics, the agglomeration can be defined as follows: An agglomeration is a group of municipalities with a total of more than 20,000 inhabitants (incl. overnight stays in converted hotels). It consists of a dense center and usually a crown. The delimitation of the crown is based on the intensity of the commuter flows.

<sup>7</sup> According to the Federal Office of Statistics, the city-center can be defined as follows: The municipality which, among the central municipalities of an agglomeration, has the highest number of HENs (= sum of inhabitants, work places and overnight stays in converted hotels) is considered as a city-center. In some cases, it is possible for an agglomeration to have several central cities.





According to 2017 data, the 2,212 Swiss municipalities are relatively small, with 1,060 inhabitants on average, but very different in size. The smallest is Corippo with 12 permanent inhabitants and, like many others, spreads on less than 1 km<sup>2</sup>. The largest in terms of territory is Scuol with 438.62 km<sup>2</sup> and the most populated is Zurich with 400,000 inhabitants. Many municipalities being unable to cope with the organizational requirements of today's life (school facilities, firefighter's service, water sanitation, etc.) and finding it difficult to recruit personnel, a strong process of merging local authorities has begun some sixty years ago and has accelerated in the last thirty years.

The four main coalition parties, namely the FDP. The Liberals, the Christian Democratic People's Party, the Social Democratic Party and the Swiss People's Party are all represented at the Federal level and in almost all the 26 cantons. Interestingly, in the urban cities, the traditional political parties are well organized and represented while in the smaller rural municipalities, political parties are less active. The peculiarity of small municipalities where every citizen knows each other means that people vote first for a specific candidate rather than for the parties.

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Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101

Federal Act on Political Rights of 17 December 1976, SR 161.1

Fribourg Cantonal Law on the Municipalities of 25 September 1980, SR 140.1

Loi cantonale fribourgeoise relative à l'encouragement aux fusions de communes [Fribourg Cantonal Law on the Encouragement of Fusions of Municipalities] of 9 December 2010, RSF 141.11

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# Local Responsibilities and Public Services



## 2.1. Local Responsibilities and Public Services in Switzerland: An Introduction

Flavien Felder and Thea Bächler, *IFF Institute of Federalism, University of Fribourg*

The Swiss Federal Constitution provides in its Article 50 that the autonomy of the communes is guaranteed in accordance with cantonal law and that the Confederation shall take account in its activities of the possible consequences for the municipalities. In doing so, it shall take account of the special position of the cities and urban areas as well as mountain regions. This provision does not provide the Confederation with additional competence over the municipalities but rather invites the three institutional levels to intensify the vertical dialogues and to cooperate more efficiently.

In Switzerland, cantonal constitutions and statutory laws govern the legal frameworks in which municipalities operate. Therefore, the federal system is very heterogeneous, and it is difficult to have a clear picture of the municipalities' competencies in all 26 Swiss cantons. One would have to study carefully the legislation of each specific canton to define the degree of autonomy held by each municipality.

The academic literature confirms one general conclusion: the French-speaking cantons tend to be more centralized than the German-speaking cantons.<sup>8</sup> Scholars also point out that, for historical and geographical reasons, municipalities in the Canton of Grisons/Graubünden exercise a high degree of autonomy, while those in the cantons of Basel-City and Geneva enjoy relatively limited self-determination. In fact, the latter two cantons are sometimes called 'canton-city'<sup>9</sup> because of the small number of municipalities and the strong interdependence between the city and the canton. While the Canton of Basel was split in two half-cantons in 1833 (Basel-City and Basel-Country; the former being composed of only 3 municipalities), the Canton of Geneva has 40 municipalities and discussions to merge the municipalities with the Canton of Geneva come up regularly.

Therefore, in general terms municipalities enjoy what can be called a residual autonomy although the precise terminology differs from one canton to the other. They are competent when the local tasks are neither incumbent on the confederation nor on the canton.<sup>10</sup> Among them, taxation, policing, land planning, public roads, environment protection, public education, social aid, naturalization and culture typically lies in the hands of the municipalities although it is not an exclusive competence but usually shared with the cantons and often only

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<sup>8</sup> Stéphane Grodecki, 'Les compétences communales – comparaison intercantonale' in Thierry Tanquerel and François Bellanger (eds), *L'avenir juridique des communes* (Schulthess 2007) 74.

<sup>9</sup> *ibid* 74.

<sup>10</sup> *ibid* 28, 29.



executed by the municipalities. Of all of them, culture is probably the policy field in which municipalities have the most leeway.<sup>11</sup>

As the Swiss federal system typically is the result of independent states coming together to form a confederation, there is certainly no uniform scheme of responsibilities throughout the country. Competencies in the policy fields listed above are neither distributed according to clear criteria nor according to the capabilities of the municipalities, whether rural or urban.

Interestingly, the relative broad municipal autonomy allows them to outsource some services to the private sector, including policing which of course calls into question the monopoly of the state for sovereign issues and challenges the democratic control over security forces.<sup>12</sup>

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Guerry M, 'La privatisation de la sécurité et ses limites juridiques' (2006) 2 La Semaine judiciaire 141

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<sup>11</sup> Grodecki, 'Les compétences communales', above, 74.

<sup>12</sup> Michael Guerry, 'La privatisation de la sécurité et ses limites juridiques' (2006) 2 La Semaine judiciaire 141.



## 2.2. The Allocation of Social Aid by the Municipalities

Flavien Felder and Thea Bächler, *IFF Institute of Federalism, University of Fribourg*

### Relevance of the Practice

Article 115 of the Swiss Constitution states that persons in need shall be supported by their canton of residence. However, the subsidiarity principle allows the cantons to delegate competences to the municipalities and almost all 26 Swiss cantons have delegated this specific competence to the municipalities.<sup>13</sup> Although in this field municipalities do not have a legislative competence *per se* since the laws are adopted at the cantonal level, they have the obligation to enforce them at the local level. Not only can cantons push municipalities to comply with the cantonal legislation but they can also force them to follow the federal guidelines in the field of social aid, without violating the municipal autonomy guaranteed by the Federal Constitution in its Article 50.<sup>14</sup>

Today, social aid is seen as one of the best examples for the relevance of the subsidiarity principle. It is argued that the municipalities are closest to their citizens and know the economic and social reality best, which makes them most competent to deal with situations of poverty and to support persons in need. This has mainly a historic reasoning as the *Heimatorte* used to be in charge for people in poverty since the mediaeval times. Although this traditionally local responsibility has been maintained since then, tension raises because of the increasing financial burden on the municipalities, especially the rural ones. This may lead to a negative competition among municipalities.

This practice is particularly relevant for the report section 5 on intergovernmental relations of local government since smaller municipalities are often encouraged to collaborate. Indeed, they are allowed (and sometimes obliged) to group in ‘social aid regions’ and establish regional social aid services.

The practice is also relevant for the report section 3 on local financial arrangements as the cantons and the municipalities, when negotiating their financial contributions to the inter-municipal equalization fund, want the social assistance burden to be duly taken into account.

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<sup>13</sup> Only the cantons of Geneva, Tessin and Jura have assigned this task to a cantonal administration.

<sup>14</sup> Stéphane Grodecki, ‘Les compétences communales – comparaison intercantonale’ in Thierry Tanquerel and François Bellanger (eds), *L’avenir juridique des communes* (Schulthess 2007) 69.



## Description of the Practice

The purpose of social aid is to ensure the minimum subsistence level and to promote economic and personal independence. It also aims at integrating the people in need, who can neither be supported by their families nor claim other legal benefits. Thus, social aid must not be mistaken with other social insurances that cover a specific risk (health, accident, unemployment, disability, aging, maternity, etc.).<sup>15</sup>

For example, the Canton of Fribourg has 24 regional social services, all established by the municipalities which must collaborate in setting up joint social services. Some cover an urban population, while others are based in rural areas. The municipalities or group of municipalities which create a social service office also set up a social commission which represents the municipality in the field of social assistance. According to Article 20 of the Social Assistance Act (LASoc) of the Canton of Fribourg, the social commission has the last word since it:

- decides on the granting, refusal, modification, abolition and reimbursement of financial aid falling under Article 7; it determines the form, duration and amount;
- takes decisions relating to the social integration contract. It can, by decision, cancel or modify the contract if the person in need does not fulfill their obligations or if the measure proves to be inadequate;
- determines the social aid office to which beneficiaries are connected.

Interestingly, according to Article 32 of the LASoc, the operating costs of the social services are fully borne by the municipalities while the financial assistance and the costs linked to social integration measures are covered to 40 per cent by the canton and to 60 per cent by the municipalities. The financial burden on the municipalities is significant and contributes to political debates on the repartition of competencies among the canton and the municipalities.

Favre points out one difference between urban and rural social services. According to her, within social service offices located in urban municipalities, social workers are more numerous and can work in teams, but they are not always in direct contact with their social commission and their internal organization is usually more hierarchical.<sup>16</sup>

## Assessment of the Practice

It would certainly be interesting to conduct a comparative study of the 26 Swiss cantons focusing on the social aid systems to identify urban-rural divides in greater detail. In 2016, the University of Applied Sciences released a study on the comparison of indicators of social assistance in 14 Swiss cities. According to its authors, urban and peri-urban cities are more

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<sup>15</sup> *ibid.*

<sup>16</sup> Elisa Favre, 'Une comparaison du fonctionnement de l'aide sociale dans six cantons romands' (Artias 2017) 3.



concerned with social aid since the amount of persons in need - namely the ratio between the number of social assistance recipients and the total population - is higher in urban and peri-urban municipalities than in regions that are more rural.<sup>17</sup> Unfortunately, they do not provide any specific recommendations on how to improve the urban-rural interplay.

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<sup>17</sup> Beat Schmocker (ed), 'Comparaison des indicateurs de l'aide sociale de villes suisses' (2016 Report, Berner Fachhochschule 2017) <[https://staedteinitiative.ch/cmsfiles/fr\\_indicateurs\\_aidesocial\\_rapport\\_2016.pdf](https://staedteinitiative.ch/cmsfiles/fr_indicateurs_aidesocial_rapport_2016.pdf)>.



## 2.3. Land Use Planning and the Struggle over Competencies: When the Judicial Power Comes into Play, the Recent Case of Fribourg

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### Relevance of the Practice

As regards land planning organization in Switzerland, the Confederation and the canton provide the principles and pass the laws and the ordinances while the communes are involved in different related fields but are particularly competent in local development planning (*plan d'aménagement local*).

Although the adoption of the local development plans is a local competence, the result of this procedure must comply with the cantonal master plan (*plan directeur cantonal*) which must be written in accordance with the Federal Act on Spatial Planning (SPA) and approved by the Confederation.

The revision of the SPA accepted by the Swiss citizens in 2013, aims at improving the control over the urbanization, at encouraging urban densification and at limiting the number of new building zones in rural areas decided at the local level. The rural municipalities are directly targeted by these new constraints and requirements and it can be said that the rural cantons that typically had a slower economic development compared to more urban cantons are the collateral victims of the revision. But they have no other choice than to limit the development of the built environment if they intend to safeguard their unspoiled landscapes, appreciated for relaxation and tourism. In the meantime, the Swiss population has repeatedly expressed their skepticism regarding the destruction of the countryside.

This practice is of importance for report section 3 on local financial arrangements since it would be interesting to study the impact of this new situation on the inter-municipality equalization formula in the canton. It would also be relevant for the report section 6 on people's participation in local decision-making as it is indisputable that local autonomy in land use planning has declined.

### Description of the Practice

The Article 1 of the Federal Act on Spatial Planning (SPA) reads 'the Confederation, cantons and communes shall ensure that the land is used economically and that building areas are separate from the areas where building is not permitted. They shall coordinate their activities





that have a spatial impact and implement a system of settlements that ensures the desired development of the country. They shall take account of the natural environment and of the needs of the population and the economy'.<sup>18</sup>

The new building zones identified by the municipalities must be sized to meet the needs of the canton for the next fifteen years. Thus, municipalities can no longer decide extensions of the building area on its own competence level, as it was previously the case. Although exceptions are permitted by the new Federal Act on Spatial Planning, the conditions are very strict. All the reserves within the building zones must have been built; the availability of the building land must be guaranteed (deal with the owner is set); all necessary densification measures must have been taken and the coordination with the development of public transport must be ensured. The overarching goal being obviously to prevent the loss of agricultural land and of natural spaces.<sup>19</sup>

The new SPA gave the cantons a period of five years to adapt their own regulations, including the compliance of the cantonal master plans to the SPA. Due to the fact that the last cantonal master plan was approved in 2002, the Canton of Fribourg decided unilaterally to write a fresh new cantonal master plan. In December 2017, a few months before the state council of the canton Fribourg approved its new cantonal master plan, it was decided to assess the local development plans submitted by the municipalities during the last 5 years according to the former master plan (and thus the old SPA that was less binding). Thus, many large building zones proposed by the municipalities were approved by the canton and many construction works started.

This is when the cantonal court came into play. In September 2019, the cantonal court ruled against this operating mode, overturned the decision made by the cantonal office for land use planning and declared 57 local development plans as illegal. The State council of the canton Fribourg appealed to the federal court that confirmed the cantonal court's decision in October 2020. In the meantime, the construction works in the disputed building zones are frozen and the but thanks to a pragmatic and solution-oriented attitude of the majority of the municipalities concerned, 39 municipalities already revised their local development in order to comply with the new SPA. Some municipalities are currently studying the legal actions available against the cantonal Government of Fribourg, the only Swiss canton to find itself in such a problematic position. Other mayors publicly ruled out any resort to justice, acknowledging that the canton had naïvely hoped to simplify the work of the municipalities.

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<sup>18</sup> For an English translation of the Federal Act on Spatial Planning, see <<https://www.admin.ch/opc/en/classified-compilation/19790171/index.html>>.

<sup>19</sup> 'Plan directeur cantonal' (*Etat de Fribourg*, 9 June 2020) <<https://www.fr.ch/daec/seca/sommaire/plan-directeur-cantonal>>.



## Assessment of the Practice

The practice is not only of interest for the lawyers as it deals specifically with the application of public law over time but it also raises many questions regarding the distribution of competencies between the three layers of the Swiss federal organization and brings into light the declining autonomy of the rural municipalities in this specific policy field. The role played by the judicial power in this context is not yet clear as the appeal is pending before the federal court but the case is challenging the trust placed in the administrative authorities by its citizens.

## References to Scientific and Non-Scientific Publications

Legal Documents:

Federal Act on Spatial Planning of 22 June 1979, SR 700

<<https://www.admin.ch/opc/en/classified-compilation/19790171/index.html>>

Federal Act on Rural Property Law of 4 October 1991, SR 211.412.11

<<https://www.admin.ch/opc/fr/classified-compilation/19910253/index.html>>

Scientific and Non-Scientific Publications:

Website of the Canton of Fribourg, <<https://www.fr.ch/daec/seca/sommaire/plan-directeur-cantonal>>



## 2.4. Promoting and Implementing Mobility Schemes in the Agglomeration of Fribourg

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

### Relevance of the Practice

Transport systems have a direct impact on the urban-rural interplay as efficient transport services stimulate social interactions and urban growth while at the same time they generate more traffic and more pressure on the infrastructure, especially in urban centers. Since 2006, the federal government has invested more than CHF 8 billion in agglomeration projects<sup>20</sup> and has implemented already three phases of its Agglomeration Transport Program (ATP) between 2008 and today. Through the ATP, the federal government is providing financial support to the agglomerations with the aim of encouraging coherent planning of transport and urban development. It is thus promoting urban development within the built-up area across municipal, cantonal and national boundaries, and expanding transport services where needed.

A focus on the Agglomeration of Fribourg is relevant because this institution has been very active on this front and has recently formally restructured itself to meet federal expectations and to seek the adhesion of additional rural municipalities in order to enlarge its scope of action.

This practice is related to report sections 4 and 5 on vertical and horizontal collaboration since the AggloFribourg has played an intermediary role between the primary federal level (the federal government), the second federal level (the cantons) and the third level (the municipalities).

### Description of the Practice

In 2017, Swiss citizens and cantons voted the federal decree on the creation of a fund for national roads and agglomeration traffic called FORTA. This fund aims at improving the transport network throughout the country. As a result, the Federal Constitution was amended and its Article 86 now reads: '[a] fund shall be set up to finance the national highways and contributions towards measures to improve the road transport infrastructure in cities and urban areas'. Thus, the federal fund covers not only the national highways but also the mobility projects in the agglomerations. Through the Agglomeration Transport Program, the federal

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<sup>20</sup> 'Programme en faveur du trafic d'agglomération' (*Federal Office of Territorial Development, undated*) <<https://www.are.admin.ch/are/fr/home/mobilite/programmes-et-projets/pta.html#:~:text=Le%20PTA%20permet%20aux%20villes,effets%20sur%20le%20long%20terme>>.



government finances transport projects in cities and agglomerations in which programs foster transport coordination and efficient urban development. Agglomeration programs can therefore be seen as an important pillar of the federal government's agglomeration policy and of sustainable spatial development in Switzerland.

The AggloFribourg, originally created as an innovative supra-communal political institution comprising ten municipalities and later converted into an intermunicipal association in 2020,<sup>21</sup> carries out tasks of regional interest in the following areas: spatial planning, mobility, environmental protection, economic promotion, tourism promotion and promotion of cultural activities. Its mobility strategy includes all modes of transport and it applies throughout the territory of the member municipalities. Even though it indirectly aims at implementing the federal government's criteria in order to secure federal grants, the strategy responds to the challenges posed by urbanization and is adopted in coordination with the development of its territories. Thus, the Agglomeration of Fribourg promotes public transport and soft mobility in order to relieve congestion in critical sectors and to increase the travel capacity of the existing road networks.<sup>22</sup>

On 14 September 2021, the AggloFribourg submitted to the Confederation its Fourth Program of Agglomeration (PA4) for the period 2024-2028. It lists and describes a set of 100 infrastructure measures for a total investment of CHF 140 million during the period 2024-2028. Several measures concern nature and landscape, energy or urbanization but the majority of them are connected to mobility in general and 'gentle' mobility more specifically. It paves the road for an extension of the current public transport network by adding direct lines between its municipalities in order to decongest its center. The PA4 also plans the construction of a new section of its already existing 'gentle' mobility network called TransAgglo in order to encourage a modal shift from private cars to public transport and soft mobility.

## Assessment of the Practice

The study of the mobility programs of the Fribourg Agglomeration is relevant, as this former supra-municipal association has been particularly proactive on this specific theme, even if, according to its critics, its original institutional nature (i.e. supra-municipal) has prevented it from taking more ambitious measures. While public transport has indeed been improved (frequency, number of lines, comfort, prices), the development of bicycle paths or modal mobility could have been more rapid and consistent. Those in favor of a pure and simple

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<sup>21</sup> Directorate for Institutions, Agriculture and Forests, 'Nouvelle loi sur les agglomérations : date d'entrée en vigueur fixée au 1er janvier 2021 et mesures pour garantir la transition' (*Canton of Fribourg*, 10 December 2020) <<https://www.fr.ch/diaf/actualites/nouvelle-loi-sur-les-agglomerations-date-dentree-en-vigueur-fixee-au-1er-janvier-2021-et-mesures-pour-garantir-la-transition>>.

<sup>22</sup> 'Mobilité' (*Agglo Fribourg-Freiburg*, undated) <<https://www.agglo-fr.ch/mobilite>>.



merger of the communes corresponding to the agglomeration's perimeter also criticize it for its slowness and lack of efficiency in this area, among others.

Another recurring criticism is linked to its lack of resources. Indeed, in order to obtain more cantonal and federal subsidies, agglomeration mobility projects must be supported by a larger number of municipalities, particularly rural ones. The fact that this institution was recently (January 2021) transformed into a simple form of inter-municipal collaboration aims, among other things, to increase its scope by including more rural municipalities on the outskirts of the canton's capital. It will be interesting to follow closely the next political developments in the canton following the rejection of the project to merge the communes of 'Grand Fribourg' (September 2021) as well as the reaction of the Confederation to the recently submitted new subsidy application (PA4), which hopes to meet certain federal requirements, although its scope of action has not yet been enlarged since its institutional remodeling.

## References to Scientific and Non-Scientific Publications

Legal Documents:

Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101

Act on Agglomeration of 21 August 2020, RSF 140.2

<[https://bdlf.fr.ch/app/fr/texts\\_of\\_law/140.2](https://bdlf.fr.ch/app/fr/texts_of_law/140.2)>

Agglomération of Fribourg, 'Fourth Program of Agglomeration (PA4)' (2021)

<<https://www.agglo->

[fr.ch/fileadmin/user\\_upload/Fichiers\\_Agglomeration\\_mise\\_a\\_jour\\_des\\_le\\_14-06-](https://www.agglo-fr.ch/fileadmin/user_upload/Fichiers_Agglomeration_mise_a_jour_des_le_14-06-05/Qui_sommes_nous___/Documentation/Plan_directeur_r%C3%A9gional/PA4/PA4_depot_Bern_210915/02_PA4-Fribourg_Mesures.pdf)

[05/Qui\\_sommes\\_nous\\_\\_\\_/Documentation/Plan\\_directeur\\_r%C3%A9gional/PA4/PA4\\_depot\\_Bern\\_210915/02\\_PA4-Fribourg\\_Mesures.pdf](https://www.agglo-fr.ch/fileadmin/user_upload/Fichiers_Agglomeration_mise_a_jour_des_le_14-06-05/Qui_sommes_nous___/Documentation/Plan_directeur_r%C3%A9gional/PA4/PA4_depot_Bern_210915/02_PA4-Fribourg_Mesures.pdf)>

Scientific and Non-Scientific Publications

— 'Le projet d'agglomération de Fribourg 4<sup>ème</sup> génération (PA4) a été déposé à Berne' (*Agglo Fribourg-Freiburg*, September 2021) <<https://www.agglo-fr.ch/pa4>>

Directorate for Institutions, Agriculture and Forests, 'Nouvelle loi sur les agglomérations : date d'entrée en vigueur fixée au 1er janvier 2021 et mesures pour garantir la transition' (*Canton of Fribourg*, 10 December 2020) <<https://www.fr.ch/diaf/actualites/nouvelle-loi-sur-les-agglomerations-date-dentree-en-vigueur-fixee-au-1er-janvier-2021-et-mesures-pour-garantir-la-transition>>



Website of the Agglo Fribourg , <<https://www.agglo-fr.ch/>>



# Local Financial Arrangements



## 3.1. Local Financial Arrangements in Switzerland: An Introduction

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

In Switzerland, all three tiers of government, namely the Confederation, the cantons (states) and the communes (municipalities), have the right to levy taxes to the extent that the Federal Constitution does not limit these public bodies (Article 3 of the Constitution). While the two upper tiers enjoy a full sovereignty, the communes only have a derived sovereignty as their right to levy taxes can be limited by the cantons.

The fiscal autonomy of the communes is rooted in the Swiss federal system. Although one sees a trend towards more centralization of competencies, the principle of subsidiarity is still a pillar of the system: tasks that can be done at a lower political level should be done at a lower level, closer to the people concerned by them. Thus, Swiss communes are not in charge of minor duties only (waste removal) but are also competent for tasks of higher importance such as education, social care, etc. Consequently, the communes levy approximately 20 per cent of the total tax revenue of the three administrative tiers<sup>23</sup>.

In the case of Switzerland, where budgets are highly decentralized, the equalization of resources and the equalization of charges are two tools that help mitigate imbalances among public bodies. These imbalances can be of different natures. For example, the amount of tax revenue can be very unbalanced (i.e. equalization of resources) and the burden of financing public services can be highly unevenly distributed between urban and rural communes (i.e. equalization of charges).

In 2008, Switzerland introduced a fiscal equalization system between the Confederation and the cantons accompanied by an inter-cantonal distribution (subnational level). The Federal Act on fiscal equalization and expenditures compensation entered into force in 2003 and was revised in 2019. Practically, the financial flows are multiple, horizontal and vertical, and the overall system is quite complex. A chart resuming the system is available on the website of the Swiss Federal Department of Finance:<sup>24</sup>

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<sup>23</sup> In 2014, tax revenues (3 tiers) totaled CHF 131 billion: Confederation: CHF 60,6 billion; cantons: CHF 43,5 billion; communes: CHF 26,8.

<sup>24</sup> '2021 fiscal equalization payments in CHF mn' (*Federal Department of Finance*)

<<https://www.efd.admin.ch/efd/en/home/themen/finanzpolitik/national-fiscal-equalization/fb-nationaler-finanzausgleich/grafik-nfa.html>> last accessed 15 February 2020.



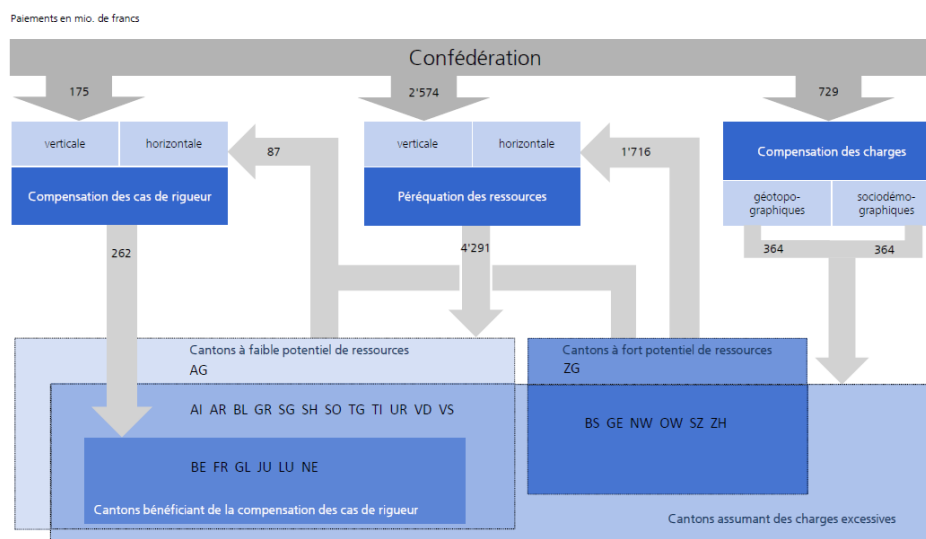


Figure 1: Fiscal equalization system between the Swiss Confederation and the cantons.

At the local level, similar mechanisms are in place within the cantons. As each canton developed its own specific intercommunal equalization system, carrying out a comprehensive survey of the different schemes is a challenging endeavor. In 2013, the think tank Avenir Suisse published an interesting comparative monitoring of all the 26 intercommunal systems.<sup>25</sup> The author underlined that the majority of the intercommunal equalization systems were often unnecessarily complicated, encouraged spending behaviors and thus maintained inefficient municipal structures.

## References to Scientific and Non-Scientific Publications

— 'Debt Brake' (*Federal Finance Administration*, 1 September 2020)  
<[https://www.efv.admin.ch/efv/en/home/themen/finanzpolitik\\_grundlagen/schuldenbremse.html](https://www.efv.admin.ch/efv/en/home/themen/finanzpolitik_grundlagen/schuldenbremse.html)>

— 'National Fiscal Equalization' (*Federal Department of Finance*, November 2019)  
<<https://www.efd.admin.ch/efd/en/home/themen/finanzpolitik/national-fiscal-equalization/fb-nationaler-finanzausgleich.html>>

— 'The Swiss Tax System' (*Federal Department of Finance*, January 2020)  
<<https://www.efd.admin.ch/efd/en/home/themen/steuern/steuern-national/the-swiss-tax-system/fb-schweizer-steuersystem.html>>

<sup>25</sup> Lukas Rühli, *Monitoring des Cantons 5: Le Labyrinthe de la péréquation financière* (Avenir Suisse 2013) 21.



Website of the Swiss Conference of the Cantonal Governments, <<https://kdk.ch/fr/>>



## 3.2. The Intercommunal Equalization System in the Canton of Vaud

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

### Relevance of the Practice

One of the major political goals of the intercommunal equalization systems is to encourage a decentralized occupation of the territory and to find a balance between the urban and rural areas of the canton. The urban center of the Canton of Vaud (the City of Lausanne) and the other secondary urban municipalities (Vevey, Montreux, etc.) are attractive but the rural communes must also be seen as pleasant places to live.

This practice focuses on the intercommunal equalization system in place in the Canton of Vaud since 2011 as a result of new negotiations on the distribution of the competencies between the canton and the communes. It is a relevant practice for the LoGov project on urban-rural divide as local financial arrangements are at the core of intercommunal relations and the main purpose of the system is namely to find a balance between urban and rural municipalities in the canton. For a full list of the purposes, see the Article 1 of the Act on intercommunal equalization (LPIC) of the Canton of Vaud (free translation).

- Article 1: (LPIC) Purposes of the law:
- a. Mitigate the inequalities in tax burden resulting from differences in contributory capacity, while guaranteeing the autonomy of the municipalities in terms of taxation;
  - b. Do not hinder or even favor the mergers of Vaud municipalities;
  - c. Provide municipalities with the resources they need to accomplish the tasks incumbent upon them by contributing to the sustainable balance of their finances;
  - d. Distribute between the *communes* certain charges falling under the canton and the *communes*;
  - e. Compensate the particular charges of the center cities;
  - f. Allocate certain municipal charges among the municipalities, causing excessive disparities between the municipalities.

This practice is certainly also relevant for the other four Working Packages of the LoGov project but more specifically for report section 2 on the local responsibilities and public services and report section 5 on the intergovernmental relations since it provides useful information regarding the financing of the social costs and the so-called thematic expenditures: transport and forest management in the Canton of Vaud.



## Description of the Practice

The State Council of the Canton of Vaud is responsible for implementing the cantonal Act on intercommunal equalization (Article 19 LPIC). Its Service of the Communes and Housing, within the Institutions and Security Department is in charge of its implementation. In addition, the *Union des Communes Vaudoises* (UCV), an association of municipalities<sup>26</sup> created in 1910 to safeguard the competencies of the communes and to promote their interests towards the Canton of Vaud, helps in generating the data and monitoring the system. Gianni Saïta, General Secretary of the UCV and author of the review 'La Péréquation en Questions: 2020'<sup>27</sup> analyses the Article 1 LPIC to explain the whole system. He points out that letters a and c focus on the economic dimension of the equalization system while letter d integrates an additional element to it, namely the social cost that is to be covered by the cantons and/or the communes.<sup>28</sup> Letters e and f add two additional constraints to the system: the socio-demographic characteristic (economic burden on city centers) and the thematic expenses (forest management for example). Finally, point b underlines that transfers must be consistent with the public policy regarding municipal mergers.<sup>29</sup>

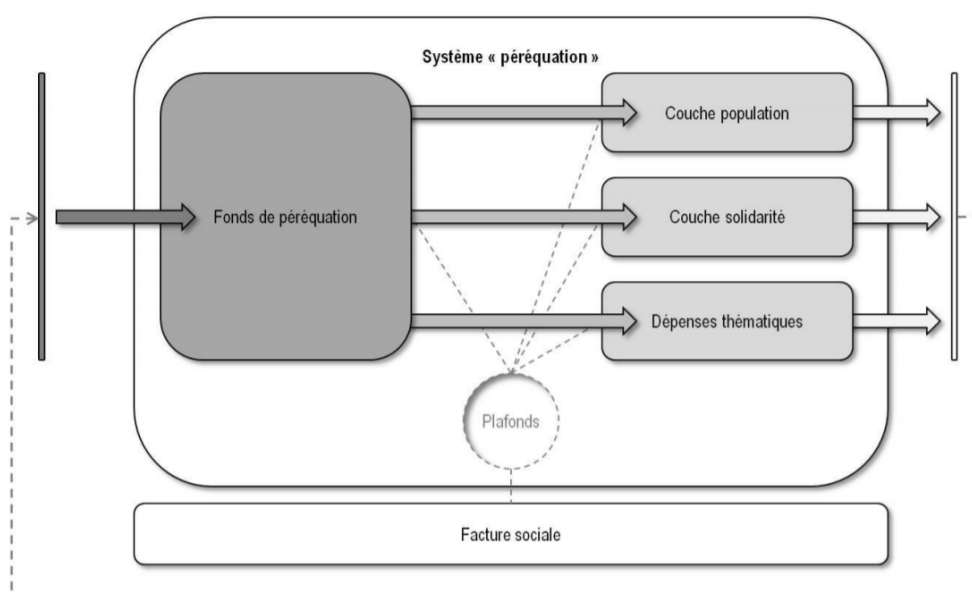


Figure 2: Direct equalization system in the Canton of Vaud.

<sup>26</sup> In 2020, it represents approximately 90% of the 309 communes of the canton (urban and rural).

<sup>27</sup> The document can be downloaded on the website of the Union des Communes Vaudoises, <<https://www.ucv.ch/thematiques/economie-et-finances/perequations-financieres>> accessed February 2020.

<sup>28</sup> We do not further discuss the letter d as it aims specifically at the financing of the social cost and falls into the category of indirect equalization (the system takes into account the fiscal capacity of the communes but does not include a redistribution mechanism).

<sup>29</sup> Gianni Saïta, 'La Péréquation en questions: 2020' (Union des Communes Vaudoises 2019).



The above diagram represents how the five characteristics of the direct equalization system listed above operate in the Canton of Vaud and how they regulate the financial intercommunal relations.<sup>30</sup> At the entrance of the system, the communes contribute to the equalization fund (*fonds de péréquation*). The financial resources available in the fund are distributed to the communes according to three different layers: the population layer (*couche population*); the solidarity layer (*couche solidarité*) and the thematic expenditures (*dépenses thématiques*). In order to limit redistributions (output) and / or the contributions of municipalities to the equalization fund (input), the legislator puts in place three thresholds, called ‘caps’ (*plafonds*).<sup>31</sup> Finally, a large arrow with dotted lines wrapping the diagram shows that municipalities’ contributions (inputs) to the fund generate the redistributions to other municipalities (outputs).

In 2020, the equalization fund of the Canton of Vaud will reach CHF 727 million (inputs). The redistribution (outputs) can be represented by the following diagram.<sup>32</sup>

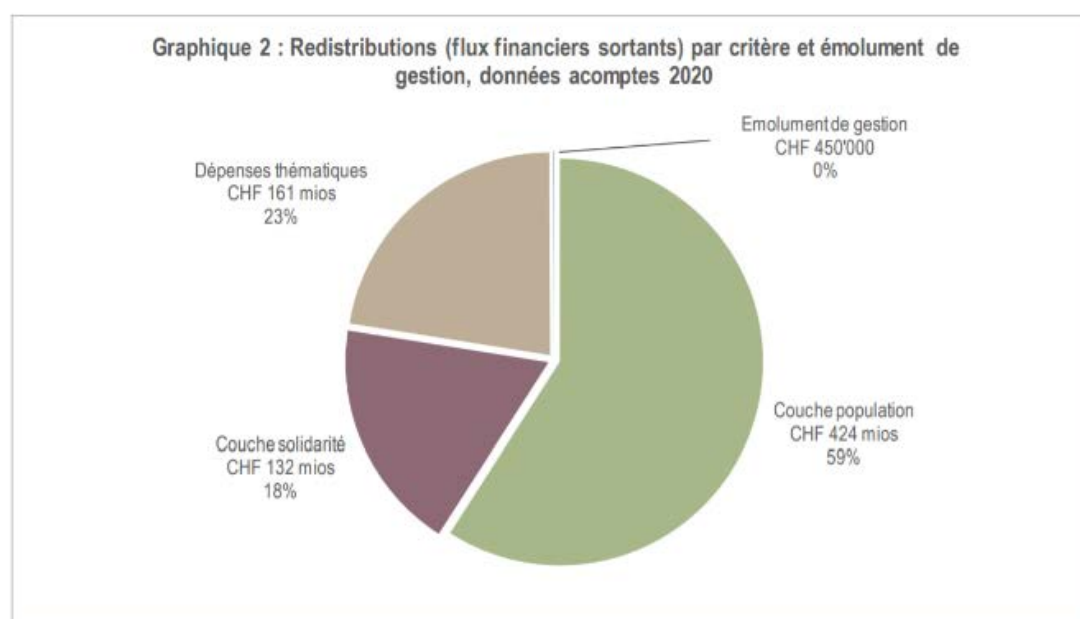


Figure 3: Redistribution of equalization funds in 2020.

The population layer (*couche population*) corresponds to a redistribution formula based on the number of citizens per commune. The basic idea is that a higher density increases the public sector spending. It is typically a way to cope with the challenge of commuters from suburbs to urban-centers.<sup>33</sup>

<sup>30</sup> *ibid.*

<sup>31</sup> The social cost (*facture sociale*) and its calculation belong to the system but are not further discussed here.

<sup>32</sup> Saitta, 'La Péréquation en questions', above.

<sup>33</sup> Saitta, 'La Péréquation en questions', above.



The solidarity layer (*couche solidarité*) relies on the hypothesis that the thinner the financial capacity of the commune, the bigger its difficulty to finance its public services. Therefore, a solidarity mechanism helps the poorer communes to cover the basic public services.<sup>34</sup>

The thematic expenditures (*dépenses thématiques*) are limited to two sectors in the Canton of Vaud: transport and forest management. And this mechanism covers only the management costs of the two sectors (no investment expenditures). The idea is to compensate both the urban-centers that are in charge of the public transports, school transports and road management as well as the rural municipalities that have the duty to manage their forests for the benefit of all.

The equalization caps (*plafonds péréquatifs*) are designed to keep the rich municipalities' contributions to the equalization fund within certain limits that do not unbalance their public finances. First, the equalization efforts (input) cannot exceed a certain tax point (Article 8 LPIC). Second, the municipalities that have a high tax rate can claim compensations if they agree to reduce the tax rates (Article 6 LPIC). Third, the equalization contributions distributed to the poorer municipalities (output) cannot exceed a certain tax point (Article 7 LPIC).<sup>35</sup>

## Assessment of the Practice

If the implicit practice objective is to encourage people to spread out in the whole territory of the Canton of Vaud, the explicit objectives are listed in Article 1 LPIC. One can see that both types of objectives are achieved. Nevertheless, in October 2019, the Court of Audit of the Canton of Vaud released an audit on the intercommunal equalization system and highlighted some dysfunction.<sup>36</sup> In particular, the heterogeneity of the data provided by the communes create equalization bias that must be corrected by a better management of the whole system.

## References to Scientific and Non-Scientific Publications

Cour des Comptes du Canton de Vaud, 'Audit des dépenses thématiques de la péréquation intercommunale et de la gouvernance de l'ensemble du dispositif' (Report no 56, 2017)  
<[https://www.vd.ch/fileadmin/user\\_upload/organisation/cour\\_comptes/1\\_Rapports\\_d\\_audit/56\\_Rapport.pdf](https://www.vd.ch/fileadmin/user_upload/organisation/cour_comptes/1_Rapports_d_audit/56_Rapport.pdf)>

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<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> The document can be downloaded on the website of the Union des Communes Vaudoises  
<[https://www.vd.ch/fileadmin/user\\_upload/organisation/cour\\_comptes/1\\_Rapports\\_d\\_audit/56\\_Rapport.pdf](https://www.vd.ch/fileadmin/user_upload/organisation/cour_comptes/1_Rapports_d_audit/56_Rapport.pdf)>  
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<<https://www.avenir-suisse.ch/fr/publication/le-labyrinthe-de-la-perequation-financiere/>>

Saitta G, 'La Péréquation en questions: 2020' (Union des Communes Vaudoises 2019)  
<[https://www.ucv.ch/fileadmin/documents/pdf/Th%C3%A8mes/03-Economie-et-finances/P%C3%A9r%C3%A9quation/Perequation-en-questions-2020\\_PUB\\_UCV\\_2019-09-30.pdf](https://www.ucv.ch/fileadmin/documents/pdf/Th%C3%A8mes/03-Economie-et-finances/P%C3%A9r%C3%A9quation/Perequation-en-questions-2020_PUB_UCV_2019-09-30.pdf)>



### 3.3. Financial Merger Incentives for Municipalities: A Bottom-up Perspective

Lawrence Zünd and Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

#### Relevance of the Practice

Municipal mergers are a relatively recent topic in Switzerland. Indeed, while the municipal structure has undergone only minor changes since the creation of the federal state, the last thirty years have seen a clear increase in the number of mergers targeting mainly rural municipalities.<sup>37</sup>

This trend can be explained by deep economic and social changes that affect the Swiss municipalities.<sup>38</sup> On the one hand, the multiplication and the complexity of the tasks assumed by municipalities of all sizes require greater professionalization and specialization of the municipal entity, and on the other hand, as they have to cope with an increasing demand by citizens regarding public services, the financial situation of some municipalities has been worsening since the beginning of the 1990s.<sup>39</sup> While larger urban municipalities have enough tax revenue to carry these tasks on their own, smaller and often rural municipalities are reaching their limits. Also, in small and rural municipalities, it is increasingly difficult to find citizens ready to dedicate themselves for the public affairs and to join their municipal council.

If we consider the advantages that fusion proponents present, a merger may then appear as a solution: increased efficiency in the accomplishment of tasks, lower costs by economy of scale, improvement of the supply and quality of municipal services.<sup>40</sup> This has resulted in a growing number of cantons encouraging mergers of municipalities on their territory.<sup>41</sup> This

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<sup>37</sup> Council of State, 'Rapport du Conseil d'Etat au Grand Conseil à l'appui d'un projet de loi portant modification de la loi sur les droits politiques (LDP)' (Report to the Grand Council, 31 August 2015) 2 <[https://www.ne.ch/autorites/GC/objets/Documents/Rapports/2015/15041\\_CE.pdf](https://www.ne.ch/autorites/GC/objets/Documents/Rapports/2015/15041_CE.pdf)>.

<sup>38</sup> Economic and Development Review Committee (EDRC) of the OECD, 'Switzerland' (OECD Economic Surveys 2019) <<http://www.oecd.org/economy/surveys/Switzerland-2019-OECD-economic-survey-overview.pdf>>.

<sup>39</sup> Daniel Kettiger, 'Gemeindefusionen – ein Thema mit vielen Facetten' (PuMAConsult GmbH 2004) 4 <[https://www.kettiger.ch/fileadmin/user\\_upload/Dokumente/Downloads/Kettiger\\_Aufsatz-Gemeindefusion.pdf](https://www.kettiger.ch/fileadmin/user_upload/Dokumente/Downloads/Kettiger_Aufsatz-Gemeindefusion.pdf)>, Council of State, 'Rapport du Conseil d'Etat au Grand Conseil' 3.

<sup>40</sup> Pierre-Alain Rumley, *La Suisse demain* (Presses du Belvédère 2010).

Interview with Daniel Kettiger, 'Fusionen machen es nicht billiger, aber besser' (*Wiener Zeitung*, 27 November 2009) <[https://www.kettiger.ch/fileadmin/user\\_upload/Dokumente/Downloads/interview\\_gemeindefusion\\_wienerzeitung.pdf](https://www.kettiger.ch/fileadmin/user_upload/Dokumente/Downloads/interview_gemeindefusion_wienerzeitung.pdf)>.

<sup>41</sup> Patrick Monay, 'Des fusions de communes à la chaîne' (*24heures.ch*, 2 June 2015) <<https://www.24heures.ch/suisse/fusions-communes-chaine/story/28908718>>.





encouragement can take the form of negative or positive incentives. The Canton of Neuchâtel has a policy of positive incentives, which aims at giving an advantage or reward to municipalities engaging in a process of fusion.

By interviewing local authorities and taking a bottom-up perspective to focus on the municipalities' perception, the study of this practice is relevant for the LoGov researchers as it will allow them to identify and discuss:

- some factors of success / failure of mergers;
- the negotiation processes between reluctant municipalities with different needs and objectives (rural/urban);
- the perception by municipalities of the cantonal assistance they have benefited from;
- the evaluation by municipalities of the provided assistance
- the incentives considered as particularly important for the success of a merger;
- the missing measures that could improve the merger assistance mechanisms and avoid failed mergers.

## Description of the Practice

The Canton of Neuchâtel has a policy of positive incentives that apply equally to urban and rural municipalities. The canton, with its financial and consulting assistance aims at supporting municipalities engaging in a process of fusion. In practice, these incentives primary target the small rural municipalities or small municipalities closely linked to an urban municipality. For example, the three small and rural municipalities of Peseux, Valangin and Corcelles-Cormondrèche are merging with the City of Neuchâtel, formally creating a new Municipality of Neuchâtel as of 1 January 2021.

The system of financial incentives is the most common in Switzerland. Along with Neuchâtel, 15 other cantons have financial incentives: Zurich, Bern, Lucerne, Glarus, Fribourg, Solothurn, Schaffhausen, St. Gallen, Grisons, Argovie, Thurgau, Tessin, Vaud, Valais and Jura.<sup>42</sup>

In the Canton of Neuchâtel, the calculation method necessary for granting financial assistance is clearly defined by law. It is therefore possible for all parties involved to calculate the amount of the total assistance that would be granted by the canton according to the law.<sup>43</sup> This has two main implications for the Canton of Neuchâtel. While, on the one hand, the clear calculation method leaves the canton little room for maneuver when it has to determine the

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<sup>42</sup> See report section 3.1. on Local Financial Arrangements in Switzerland: An Introduction. Reto Steiner and Claire Kaiser, 'Gemeindefusionen aus kantonaler Sicht' (working paper, KPM Bern 2010). [https://www.researchgate.net/profile/Reto\\_Steiner/publication/303541769\\_Gemeindefusionen\\_aus\\_kantonaler\\_Sicht/links/57473a8608ae2301b0b8017a.pdf](https://www.researchgate.net/profile/Reto_Steiner/publication/303541769_Gemeindefusionen_aus_kantonaler_Sicht/links/57473a8608ae2301b0b8017a.pdf).

<sup>43</sup> Law on the Municipal Aid Fund of January 30, 2002 (LFAC NE); Application Regulations for the Law on the Assistance Fund for Municipalities of October 22, 2003 (RALFAC NE); Decree Relating to the Use of the Balance of the Fund Intended for the Structural Reforms of Municipalities of March 29, 2006.



amount of the financial assistance and makes the merger financially more attractive to reluctant municipalities, on the other hand, this clarity offers relative transparency regarding the justification of the financial assistance being granted. The amount of the assistance is calculated by multiplying, for each of the merged municipalities, the amount of 200 francs per inhabitant, weighted by the average relative tax coefficient and the inverse of the average relative tax income of all the merged municipalities.<sup>44</sup> The population taken into account for the calculation is capped at 2,500 inhabitants per municipality.<sup>45</sup> This ceiling can exceptionally be raised to 5,000 inhabitants, for municipalities with more than 10,000 inhabitants.<sup>46</sup>

Financial assistance is allocated according to the need and importance of the project,<sup>47</sup> and can cover both the study costs to evaluate the merger, as well as the subsidization of the merger.<sup>48</sup> There is no right to obtain financial assistance.<sup>49</sup> The Council of State of Neuchâtel decides which municipalities are supported, it determines the amount of this support and sets the conditions for granting the assistance.<sup>50</sup>

The canton also makes available technical and legal assistance to municipalities wishing to merge. With these various measures, the Canton of Neuchâtel aims at supporting all municipal mergers of all size and avoid that the reduced size of some municipalities -and thus their inability to bear with all the costs engaging in a merge can induce- restrains them to engage in this process.

## Assessment of the Practice

The Canton of Neuchâtel encourages the merger of municipalities by providing various types of support. The cantonal assistance, that can be considered either as a means of reducing the

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<sup>44</sup> RALFAC NE Art 17(1) The subsidy granted for municipal merger projects submitted to the population of the municipalities concerned until December 31, 2016 is: a) 800 francs per inhabitant, if the merger has been accepted; b) 600 francs per inhabitant, if the merger has been rejected and a new merger project bringing together at least two municipalities that are parties to the first project is accepted until December 31, 2020.

(2) The subsidy granted for municipal merger projects that do not meet the conditions of the first paragraph is 200 francs per inhabitant.

(3) These amounts are weighted by the average relative tax coefficient and the inverse of the average tax income of all the municipalities concerned. (Translated by author, Law available in French <<http://rsn.ne.ch/DATA/program/books/rsne/htm/172410.htm>>).

<sup>45</sup> RALFAC NE Art 18(1)

<sup>46</sup> RALFAC NE Art 18(2).

<sup>47</sup> Law on the Municipal Aid Fund (LFAC) Art 5 (3). Incentive aid is in principle allocated according to the need and the importance of collaborations or mergers and takes into account, in particular, the tax coefficient and the financial situation of the municipalities concerned. (Translated by author, Law available in French, <<http://rsn.ne.ch/DATA/program/books/rsne/htm/17241.htm>>).

<sup>48</sup> RALFAC NE Art 13(4).

<sup>49</sup> LAFAC Art 3(3).

<sup>50</sup> LAFAC Art 3(1), (2).



costs of the merger or as a form of reward, aims at increasing the number of mergers by making it more attractive to the municipalities. However, for this objective to be reached, the assistance offered by the canton must correspond as best as possible to the needs and expectations of the municipalities that might consider a merger. If the canton is unable to do so, it faces the risk of wasting resources without achieving results.

In general, one can say that the citizens' emotional affection to the independence of their municipality is often a brake on mergers that cantonal incentives cannot overcome without a strong political commitment of the local elected representatives who are really decisive. The example mentioned above of the new City of Neuchâtel after the merging of four existing municipalities (1 urban and 3 rural) is telling as the original project was to merge four additional rural municipalities (Hauterive, St-Blaise, Enges and la Tène). These municipalities rejected the idea of merging with the urban City of Neuchâtel but are now considering a merging together to form a larger rural municipality within the agglomeration of Neuchâtel.

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## 3.4. Third Report Entry: The Intercommunal Equalization System in the Canton of Fribourg

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

### Relevance of the Practice

The State Council of the canton is responsible to organize the management of the financial equalization in due respect of the provisions listed in the corresponding act.<sup>51</sup> In practice, this task is in the hands of the Municipalities Department, which is entitled to conduct the financial and administrative supervision of local authorities (municipalities, inter-municipal associations, agglomerations and legal entities under public law). This department is also responsible for drafting policies aiming at encouraging mergers of municipalities and for dividing efficiently the public tasks between the state and the municipalities. It collaborates with the Prefect, works closely with the municipalities, and offers them different type of services, management tools and trainings. This type of services can be found in all the Latin cantons in a form or another. In general, they are attached to the State Council and financed by the cantonal taxes.

Until 2010, the financial equalization was exclusively indirect, as the cantonal subsidies for municipal expenses and the financial participation of the municipalities in the cantonal expenses were determined according to the financial capacity (calculated, as usual, on the basis of resources and expenses). In 2011, this system was replaced by a radically new system of horizontal equalization of resources and vertical cost compensation of public expenditures aiming at reaching the following objectives.<sup>52</sup>

The objectives of the revised Inter-Municipal Financial Equalization Act adopted by the citizens of the Canton of Fribourg on 7 March 2010 is to partially compensate for the disparities in the fiscal potential of the municipalities<sup>53</sup> and to partially compensate for the financial needs of the municipalities as assessed by a synthetic needs index.<sup>54</sup> In this revised mechanism, one significant improvement lies in the fact that the resource equalization tool does no longer provide for a minimum allocation and functions optimally thanks to a simple, completely symmetrical and linear system.<sup>55</sup> Another significant change relates to the second tool of the equalization mechanism, namely the needs-based equalization which, contrary to what applies in all other cantons, no longer concentrates its financial transfers to structurally weak regions to compensate for the costs of remoteness or difficulties due to topography but favors instead

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<sup>51</sup> Art 18(1) of the Canton of Fribourg Inter-Municipal Financial Equalization Act, SGF 142.1.

<sup>52</sup> Lukas Rühli, 'Monitoring des Cantons 5: Le Labyrinthe de la péréquation financière' (Avenir Suisse 2013) 18 <<https://www.avenir-suisse.ch/fr/publication/le-labyrinthe-de-la-perequation-financiere/>>.

<sup>53</sup> Art 3 of the Inter-Municipal Financial Equalization Act.

<sup>54</sup> Art 9 of the Inter-Municipal Financial Equalization Act.

<sup>55</sup> Rühli, 'Monitoring des Cantons 5', above, 18.



the centers/urban municipalities.<sup>56</sup> This is a paradigmatic shift as far as the urban-rural interplay in the Canton of Fribourg is concerned. As a matter of fact, this tool does no longer primarily compensate the rural municipalities for their 'remoteness costs' or topographic burdens. On the contrary it takes better account of the burdens borne by urban centers.

## Description of the Practice

Two distinct instruments, the resource equalization and the needs-based equalization, are implemented by the Canton of Fribourg to achieve the expected effects of its inter-municipal financial equalization mechanism.

The first instrument, the resource equalization, is based on the fiscal potential of each municipality calculated per capita (or inhabitant), on the basis of eight types of regular municipal taxes:<sup>57</sup> (i) the personal income tax; (ii) the personal wealth tax; (iii) the tax on the profits of legal entities; (iv) the tax on the capital of legal entities; (v) the tax at source; (vi) the tax on capital benefits; (vii) the real estate tax; (viii) a part of the motor vehicle tax. The yields of these taxes are calculated at the rate of the basic cantonal tax or, at a standardized rate, in order to neutralize the effect of the communal coefficients<sup>58</sup> chosen by municipalities. In addition, the reference period corresponds to the three most recent consecutive fiscal years for which published statistics from the Direct Tax Administration Service are available.<sup>59</sup> For example, the 2021 resource equalization is based on the 2016, 2017 and 2018 fiscal years.

This instrument does not require any additional funds, as the amounts are transferred from the contributing to the beneficiary municipalities on the same value date of 30 June. The total annual amount of the levies and payments are thus identical. The overall amount of resource equalization is the result of a choice made by the legislator: the initial amount corresponds to the volume calculated in the previous indirect equalization system. An analysis of previous years' volumes showed that they represented about 2.5 per cent of the overall amount of potential resources in the last year taken into account. This is therefore the percentage that has been fixed in the law<sup>60</sup> and it makes it possible to adjust the amount for resource equalization annually in line with the evolution of tax yields.<sup>61</sup> Rural municipalities that do not have particularly rich taxpayers among their citizens mostly benefit from this instrument. Other rural municipalities which, for historical or geographical reasons, can count on rich taxpayers do not automatically benefit from this instrument.

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<sup>56</sup> *ibid.*

<sup>57</sup> Art 4 of the Inter-Municipal Financial Equalization Act.

<sup>58</sup> *ibid.*

<sup>59</sup> Art 5(2) of the Inter-Municipal Financial Equalization Act.

<sup>60</sup> Art 6 of the Inter-Municipal Financial Equalization Act.

<sup>61</sup> Calculation Method, Annex 1 to the Inter-Municipal Financial Equalization Act, 4.



The second instrument, the needs-based equalization (or cost compensation) targets the municipal expenditure side. In order to measure the differences between the municipalities, it is no longer the expenditure that is directly defined but the specific needs that generate public expenditures by the concerned municipalities. As in the case of resource equalization, the system identifies the financial volume to be allocated to this instrument, how it is to be financed, which municipalities are to benefit and the amount to be allocated to each municipality.<sup>62</sup> To measure and determine the specific needs of the municipalities, the analysts use six criteria for which statistics are available for all municipalities and that are in close correlated relations with municipal expenditures.<sup>63</sup> It is worth noting here that contrary to what had long been the practice, this tool does no longer aim at compensating rural areas. On the contrary, it recognizes the peculiar burden borne by the urban centers that tend to be more densified and to have additional structural needs. Thus, the selected criteria of calculation for this second tool of the equalization mechanism in the Canton of Fribourg are: the population density; the employment rate; the population growth over 10 years; the number of persons aged 80 years and plus; the number of children of compulsory school age<sup>64</sup> and the number of children under 4 years of age. Like the equalization of resources, the criteria for the equalization of needs refer to the statistical data of the three most recent known reference years or, when not available, the data of one or two consecutive years,<sup>65</sup> related to the legal population of the three reference years.<sup>66</sup> For each of the six indicators, an additional calculation is operated resulting on six partial indices. The sum of the partial indices forms the synthetic index of need. The aggregated municipalities' synthetic index of need functions as the reference threshold of 100 points. The municipalities with an index above this threshold have specific needs that have to be compensated. Those municipalities with an index below 100 points have less needs and are not compensated.<sup>67</sup> As seen above, another peculiarity of this instrument is that it is purely vertical. Thus, the compensations are supported by the canton only<sup>68</sup> and to a maximum amount corresponding to the 50 per cent of the total amount transferred under the first instrument, the resource equalization.<sup>69</sup> Contrary to some other cantons and the national equalization mechanism, the Canton of Fribourg does not have a compensation fund for hardship cases.

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<sup>62</sup> *ibid* 5.

<sup>63</sup> Art 11 of the Inter-Municipal Financial Equalization Act.

<sup>64</sup> *ibid*.

<sup>65</sup> Arts 12 and 23 of the Inter-Municipal Financial Equalization Act.

<sup>66</sup> Calculation Method, above, 5.

<sup>67</sup> *ibid*.

<sup>68</sup> Art 14 of the Inter-Municipal Financial Equalization Act.

<sup>69</sup> Art 13 of the Inter-Municipal Financial Equalization Act.



## Assessment of the Practice

The Inter-Municipal Financial Equalization Act of the Canton of Fribourg provides that the financial solidarity system is to be reviewed every four years.<sup>70</sup> Among other, the performance of the instruments and the relevance of the criteria must be tested.<sup>71</sup> The first evaluation report published in 2015<sup>72</sup> has made it possible to adopt minor changes of the system mainly by adjusting it to the new cantonal policies and to the new statistical data. More importantly, this practice demonstrates that rural municipalities (in the Canton of Fribourg and in Switzerland in general) can no longer easily claim financial compensation for their 'remoteness'. A telling example is that of the municipal road as for decades, the general assumption (largely accepted in the political spheres) was that rural municipalities were to be compensated for the expensive municipal roads maintenance. But the system now being based on more technical data proved that urban centers bear a higher burden as far as roads maintenance is concerned. Therefore, the system revised in 2010 allows for a more comprehensive and factual compensation of the municipalities' needs and integrates, in its second instrument, the 6 criteria listed above.

The Municipalities Department is convinced that the system is now more consistent with the needs of the municipalities and of the canton.<sup>73</sup> The law guarantees a very flexible approach that allows regular adjustments to match with the technical needs. This tends to demonstrate that the simplicity of the mechanism based on a bi-directional dynamic (horizontal equalization of resources by the municipalities and a vertical equalization of needs by the state) significantly reduces the political bargains among the municipalities. Technical adjustments recommended by the group of experts in the frame of the periodic review were easily approved and the law was adjusted accordingly.

One last component of the mechanism is yet to be mentioned here: the vertical/state contribution to the system is fixed by the law and cannot go above 50 per cent of the horizontal/municipal contribution to the resource equalization. This clearly prevents excessive demands from the municipalities since an increase of the cantonal contributions to the mechanism automatically results in the doubling of the municipalities' contributions to the equalization of resources instrument. In 2015, the authors of the report decided to maintain the 50 per cent relation.

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<sup>70</sup> Art 20 of the Inter-Municipal Financial Equalization Act.

<sup>71</sup> *ibid.*

<sup>72</sup> B Dafflon, 'Évaluation du système de péréquation financière intercommunale - Rapport du Groupe de travail' (*Etat de Fribourg*, 11 May 2016) <<https://www.fr.ch/diaf/scom/actualites/evaluation-du-systeme-de-perequation-financiere-intercommunale-rapport-du-groupe-de-travail>>

<sup>73</sup> Calculation Method, above, 8.





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# Structure of Local Government



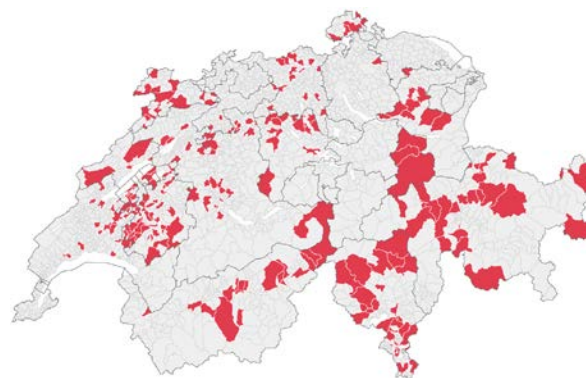
## 4.1. The Structure of Local Government in Switzerland: An Introduction

**Eva Maria Belser, Flavien Felder and Bernhard Altermatt**, *IFF Institute of Federalism, University of Fribourg*

The number of local governments in Switzerland has decreased massively during the last two decades. When the federation in 1848 came into being, it was composed of 25 cantons and 3,203 communes. Three hundred of them disappeared through amalgamation until 2000 (one hundred of them because of a profound structural reform in the Canton of Thurgau). Then, the local government landscape began to change massively. In 2012, the number of municipalities decreased to 2,495, and in 2018, the number went down to 2,222. Currently, a few hundred municipalities are in the process of amalgamation or consider doing so. This process amounts to a total reduction of about one third of communes/municipalities and characterizes an overarching tendency in Switzerland's structure of local government.

The process of mergers is driven either by the communes themselves (bottom-up) or by the cantons (top-down). The Confederation has no competence to interfere with local government structures, or to plan, implement or prevent mergers from taking place.

While some cantons have massively reduced the number of communes, others have not. The great variance between cantons are not due to demographic differences but to different legal regimes and also political cultures. One group of cantons allows for mandatory mergers of communes (but rarely uses the mechanism), a second group financially incentivizes mergers, and a third group leaves the initiative entirely to the communes. The graph to the right illustrates that the process has been unequally distributed across the whole country. Mergers most frequently take place in cantons offering support and financial benefits to interested communes. Major territorial restructuring has taken place in highly fragmented and partly rural cantons, such as Glarus, Ticino, Fribourg/Freiburg, Graubünden/Grischun/Grigioni, and Vaud, smaller ones in most cantons.



■ Fusionierte Gemeinden in der Schweiz 2001–2014  
Quelle: Studie Studerus/Schaltegger, 2016

The graph to the right illustrates that the process has been unequally distributed across the whole country. Mergers most frequently take place in cantons offering support and financial benefits to interested communes. Major territorial restructuring has taken place in highly fragmented and partly rural cantons, such as Glarus, Ticino, Fribourg/Freiburg, Graubünden/Grischun/Grigioni, and Vaud, smaller ones in most cantons.

Mergers equally occur in rural and urban settings but follow completely different motives. In rural environments, they typically respond to financial constraints, difficulties to find adequate personnel and to deliver increasingly complex local services. In urban areas, mergers serve to bring cities, which have grown into spreading agglomerations with surrounding communes, into one political entity and to improve planning and urban development on a scale



corresponding to the social and structural reality. However, numerous planned mergers have failed, mostly due to popular refusal driven by strong local identities or financial considerations.

Because of rapid urbanization and the very different and flexible approaches of cantons to this phenomenon, differences of communes within cantons and between cantons are increasing in many ways. The largest commune of Switzerland, the City of Zurich, has more than 400,000 inhabitants, the smallest one, Corippo in the Canton of Ticino (currently merging with neighboring communes), only 14. In the mountainous Canton of Graubünden/Grischun/Grigioni, more than half of the now 128 communes are populated by less than 1,000 people; in the urban Canton of Basel-City, there are only three communes, one of them a very small municipality. The great differences amongst the communes, with respect to population, area, as well as human and financial resources, are a challenge to the symmetric structure of federal Switzerland.

Inter-municipal cooperation plays a crucial role. It is usually based on inter-municipal treaties, which are bilateral or multilateral, and often lead to the establishment of inter-municipal institutions and associations. While the democratic deficit of these structures is often deplored, communes confirm that inter-municipal cooperation is becoming increasingly important. It is practiced in order to profit from scale effects and to prevent further centralization of competences at the cantonal level. Most Swiss communes cooperate in the field of population protection, fire services, health services, education, water and sewage as well as waste disposal; more than half of all communes seek partnerships in the field of social aid and assistance to the elderly as well.

To the surprise of most observers, recent research has questioned the efficiency of communal mergers in certain respects. Researchers have been able to show that the process of merging municipalities itself is costly and, in most cases, does not immediately produce the expected cost-saving effects. This is presumably because many merging communes have already strongly cooperated before their union and realized the cost-saving potential before merging. The research results question whether cantons should continue to strongly incentivize amalgamations or not.<sup>74</sup>

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<sup>74</sup> See Christoph Schaltegger and Janine Studerus, ‘Gemeindefusionen ohne Spareffekt’ NZZ (14 March 2017).



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## 4.2. How the Agglomeration of Fribourg-Freiburg Created (and Buried) a Fourth Tier of Government

Eva Maria Belser and Bernhard Altermatt, *IFF Institute of Federalism, University of Fribourg*

### Relevance of the Practice

The process of creating the formally constituted Agglomeration of Fribourg was legally made possible with the adoption by the Canton of Fribourg, in 1995, of the innovative Law on Agglomerations (LAgg) that allowed for the creation of a fourth tier of government. Following years of increasing collaboration in areas of common interest, a group of 10 municipalities, recognizing the need for more cooperation, agreed to formalize their collaboration and to delegate their competences in the following fields: regional planning including mobility; economic promotion; promotion of tourism and of cultural activities. Aiming at a sustainable development and a mutual understanding, the institution of the politically constituted Agglomeration also promotes Fribourg's regional bilingualism insofar as it includes the bilingual capital-city, one German-speaking commune and the majority of the city's French-speaking neighboring municipalities.

Nine of the ten united communes in the Agglomeration of Fribourg also participate (with additional municipalities) in a merging process which has taken up speed and is heading for a consultative vote among the population in 2021. It would be highly interesting to develop on this example and compare it with other similar examples of communes cooperating in inter-communal structures or formal agglomerations and engaged in parallel merging processes.

The study of this practice is relevant for the LoGov researchers as it will allow to identify and discuss:

- factors of success or failure of communal mergers and agglomerations;
- the set of rules of inclusion/exclusion of members, in particular rural municipalities;
- the extent to which the processes reinforce or decrease the centralization of power;
- if agglomerations compete or even threaten the legitimacy of communes and cantons;
- if agglomeration processes concern only the urban areas or if there are examples in rural areas.

### Description of the Practice

Originally, the citizens of five municipalities (Belfaux, Corminboeuf, Marly, Villars-sur-Glâne and Fribourg) required, in 1999, the creation of the agglomeration of Fribourg encompassing the



City of Fribourg and the other four neighboring municipalities. In reaction to this formal request, the Canton of Fribourg initiated the idea of opening the circle to five other municipalities that also were in direct connection with the capital City of Fribourg. A consensus was reached and the decision was taken: the process of creating the agglomeration of Fribourg would take onboard not 5 but 10 municipalities (Grolley, Granges-Paccot, Düdingen, Tavers and Givisiez joined the initial group).

For 6 years, between 2002 and 2008, the constitutive assembly drafted the articles of association of this yet to create new political institution. In the meantime, the project raised the interest of other municipalities while others decided to withdraw from the process. The constitutive assembly integrated Avry and Matran in 2008 and accepted the withdrawing of Grolley in 2007 and Tavers in 2008. As of today (2021), the geographic composition and the political dimension of the agglomeration of Fribourg has remained unchanged.



Figure 4: The agglomeration of Fribourg.<sup>75</sup>

Once the constitutive assembly had finalized the statutes of the new Agglomeration, the citizens of each municipality were invited, on 1 June 2018, to vote on their adoption. 72.5 per cent of the voters approved them while one municipality out of ten rejected them.<sup>76</sup>

<sup>75</sup> Graph taken from the website of the agglomeration of Fribourg, <[agflo-fr.ch/de](http://agflo-fr.ch/de)>.

<sup>76</sup> Agglomération de Fribourg, 'Naissance de l'Agglomération de Fribourg' (*agflo*) <<https://www.agflo-fr.ch/>>.



## Assessment of the Practice

Since its entry into force, the Agglomeration of Fribourg has sought to optimize the resources available and has invested in projects and infrastructures that serve the whole region instead of single municipalities. In doing so, the participating communes have adopted three so-called 'agglomeration projects' and have received financial support from the Confederation through the national Agglomeration Policy.

The objectives seem to have been partially met. As a forum aiming at bringing municipalities closer and fostering cooperation in specific areas of public policy (such as culture), the Agglomeration of Fribourg can certainly be seen as a success. Nevertheless, more complex and top-ranking projects such as favoring so-called «slow mobility» and extending public transportation have moved on more slowly. In addition, the institutional structure and the limited size of the agglomeration are subject to political discussions. Specifically, the Canton of Fribourg has adapted the governing legislation (Law on Agglomerations) in order to include a greater number of structurally linked communes. This adaptation will necessitate a major reform of the Agglomeration's institutional design, including with respect to its democratic governance guaranteed, thus far, by an autonomous layer of executive and legislative bodies.

Furthermore, the Canton of Fribourg has long encouraged the full merger of the municipalities involved in the agglomeration with the City of Fribourg in order to create a larger urban center<sup>77</sup>. With the aim of fostering the merging process and enlarging the agglomeration with the absorption of additional, more rural, municipalities, the cantonal parliament has decided in 2020 to modify the Law on Agglomeration (LAgg) which since 1 January, 2021 is no longer a fourth tier of government but a traditional inter-municipal association. Thus, both the incentives of the federal authorities (via the national Agglomeration Policy) and the incentives of the cantonal authorities (via the promotion of communal mergers) have put the Agglomeration of Fribourg under institutional, structural and procedural pressure.

It remains to be seen whether this dynamic will continue if the Confederation does no longer support the Agglomeration of Fribourg unless it complies with the broader territorial definition included in its national Agglomeration Policy and when the mergers of all (or some) of the participating municipalities will change the basic institutional make-up of the agglomeration.

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Schaltegger C and Studerus J, 'Gemeindefusionen ohne Spareffekt' *NZZ* (14 March 2017)

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<sup>77</sup> The consultation vote that took place in September 2021 in 9 municipalities was very clear with the population of 6 out of 9 municipalities that soundly rejected the merger project.





Federal Statistical Office, 'Swiss Official Commune Register'  
<<https://www.bfs.admin.ch/bfs/fr/home/bases-statistiques/agvch.html>>



## 4.3. Merging of Local Governments to Form the New Municipality of Fribourg

Lawrence Zünd, Flavien Felder and Bernhard Altermatt, *IFF Institute of Federalism, University of Fribourg*

### Relevance of the Practice

Regardless of their size, municipalities face challenges that go beyond their municipal borders, for instance in the fields of mobility, economic development or water management. This is why municipalities in Switzerland have woven a complex network of inter-municipal collaborations (associations of municipalities, inter-municipal agreements or the Agglomeration of Fribourg described above). One reason that led to the creation of the politically constituted Agglomeration of Fribourg was that it would – at least temporarily – serve as a body of cooperation until the merger of the participating communes in a new municipality ‘Grand Fribourg’ became reality.

The Agglomeration of Fribourg has enabled progress in the areas of mobility, land development and management, culture, tourism and the economy. Its capacity for action was however considered by many as limited by the institutional design which effectively inserted a fully constituted fourth layer into the classic decentralized Swiss state structure of three tiers (federal state, cantons, communes), while other communal competences remained within the autonomous governance of each single commune. Proponents of a full merger argue that uniting the municipalities would remove the disadvantages of this double-limitation, strengthen governance, accelerate the capacity of public authorities to act, avoid the often long and tedious decision-making processes, increase transparency and ensure a faster implementation of political decisions.

Due to the fact that the municipalities are the smallest administrative and political units in Switzerland, the municipality final decision on merging or not with neighboring communes is generally in the hands of the municipalities respectively its population or voting citizens. Local populations remain in most cases very attached to their municipal identity. Hence, every merger needs to be well negotiated and justified in order for it not to be rejected by the local population in the final vote (happening most often either by way of a citizens’ assembly or a vote at the poll).

The study of this practice focuses on a merger between urban and peri-urban municipalities. It is complementary to the merger between rural municipalities which are also incentivized in Switzerland, highlighting the differences in needs and objectives depending on the rural/urban



condition. This study is relevant for the LoGov researchers as it will allow them to identify and discuss:

- some factors of success / failure of municipal mergers;
- the negotiation processes between reluctant municipalities with different needs and objectives (rural/urban);
- the extent to which the phenomenon increases or decreases the centralization of power;
- the non-centralization of services after a merger in order to avoid creating center-periphery/rural-urban disparities.

## Description of the Practice

The merger project in the 'Grand Fribourg' area aims to unite the municipalities of Avry, Belfaux, Corminboeuf, Fribourg, Givisiez, Granges-Paccot, Marly, Matran and Villars-sur-Glâne. With more than 75,000 inhabitants, the merged City of Fribourg would become the ninth most populated municipality in Switzerland, behind Zurich, Geneva, Basel, Lausanne, Bern, Winterthur, Lucerne and St-Gallen. This would allow the Municipality of Fribourg to be one of the ten Swiss municipalities regularly consulted by the Federal Council and the Federal Administration.<sup>78</sup> In addition, Fribourg would be the biggest bilingual municipality in Switzerland in terms of population.

According to the proponents of the merger, the concept of merger contains strong measures in favor of mobility, employment and protection of minorities. By improving infrastructure and public transportation, an important aim of the merger is to increase the connectivity between rural/urban areas and improve their integration into a well-functioning peri-urban space. For instance, one affirmed objective is to ensure that any user is connected to any point of the urban network in less than fifteen minutes by 2026, with a bus every 7.5 minutes anywhere on the territory of the merged municipality. Coordinated land-use and town-planning should enable more sensible densification, increase biodiversity and bring urban and rural areas closer together.<sup>79</sup>

Originally, nine municipalities expressed their willingness to participate in the process. In January 2017, the municipal councils of Corminboeuf, Givisiez, Friborg and Marly asked the

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<sup>78</sup> Art 2(1). The consultation procedure has the aim of allowing the cantons, political parties and interested groups to participate in the shaping of opinion and the decision-making process of the Confederation.

Art 2(2). It is intended to provide information on material accuracy, feasibility of implementation and public acceptance of a federal project. (Federal Act on the Consultation Procedure, unofficial translation available on <<https://www.admin.ch/opc/en/classified-compilation/20032737/index.html>>).

<sup>79</sup> For further details on the proposed investment measures, the allocation of the 320 million francs, as well as examples of financial assistances in other cantons, please see the report of the Council of State of the Canton of Fribourg: <[https://www.fr.ch/sites/default/files/2020-01/fr\\_de\\_RGC\\_2017-DIAF-9.pdf](https://www.fr.ch/sites/default/files/2020-01/fr_de_RGC_2017-DIAF-9.pdf)>.



Council of State (executive) of the canton to initiate the merger process. The cantonal government consulted with the other municipalities in the perimeter of the Agglomeration of Fribourg (s. above) and included those that expressed their interest in joining the project (Avry, Belfaux, Granges-Paccot, Matran, Villars-sur-Glâne). The municipalities of Pierrafortscha, Grolley, Neyruz and La Sonnaz, which also had expressed their interest but which were not members of the Agglomeration of Fribourg, obtained an observer status in the Constitutive Assembly of Grand Fribourg.

At this stage, the precise modalities of the merger were not decided, but only the general goal of a future merger.<sup>80</sup> Once the principle had been accepted by all municipalities (by way of a decision by the communal executive or legislative body), a directly elected constitutive assembly drew up a merger agreement including basic decisions on services, infrastructures, political and administrative organization, taxes etc. The merger project, validated in January 2020, described in detail the services, organization and the financial framework proposed for the new municipality resulting of the merger. Due to the complexity of the merger in 'Grand Fribourg', a consultative vote was planned for September 2021. It was believed to serve as the basis for deciding which communes would withdraw of the process and which would continue to work on the merger project. The proponents of the merger process consider that is not be considered as imposed from the top for several reasons: First, the initial kick-off to the process came from the communes themselves; second, the smaller municipalities were well represented in the constitutive assembly (26 of the 36 delegates came from periphery/rural municipalities, the rest from the center-town); and third, every commune can withdraw after the consultative vote.

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<sup>80</sup> The Federal Constitution does not address the process of merging between municipalities. The process of fusion is defined by the constitution of the cantons. The cantonal constitution of every canton contains its own version of this law, aiming, on the one hand, at encouraging the fusion of municipalities, and on the other hand, at regulating step by step the process of fusion. Even if all cantons have their own specific procedure that might slightly vary, all follow a similar trend which is: a) the proposition of a merger; b) the approval of the merger principle; c) the elaboration of the merger agreement; d) the approval of the merger agreement (vote and ratification). For further details, see the laws on the fusion of municipalities in the constitutions of different cantons.

Canton of Geneva: <[https://www.ge.ch/legislation/rsg/f/s/rsg\\_B6\\_12.html](https://www.ge.ch/legislation/rsg/f/s/rsg_B6_12.html)>

Canton of Fribourg: <[https://bdlf.fr.ch/app/fr/texts\\_of\\_law/141.1.1](https://bdlf.fr.ch/app/fr/texts_of_law/141.1.1)>

Canton of Vaud:

<<https://prestations.vd.ch/pub/blv-publication/actes/consolide/175.61?key=1595944132530&id=65ba423d-0032-4454-9440-8f9961118399>>;

<[https://www.vd.ch/fileadmin/user\\_upload/themes/territoire/communes/fusions/fusion\\_guide/Guide\\_entier\\_fusions\\_version\\_juillet\\_2019.pdf](https://www.vd.ch/fileadmin/user_upload/themes/territoire/communes/fusions/fusion_guide/Guide_entier_fusions_version_juillet_2019.pdf)>

Canton of Neuchâtel:

<[https://www.ne.ch/autorites/DFS/SCOM/Pages/Fusion\\_reforme\\_structures\\_des\\_communes.aspx](https://www.ne.ch/autorites/DFS/SCOM/Pages/Fusion_reforme_structures_des_communes.aspx)>

Canton of Bern:

<[https://www.jgk.be.ch/jgk/fr/index/gemeinden/gemeinden/gemeindereformen/fusion/ratgeber\\_fuer\\_gemeindefusionen.html](https://www.jgk.be.ch/jgk/fr/index/gemeinden/gemeinden/gemeindereformen/fusion/ratgeber_fuer_gemeindefusionen.html)>.



Surprisingly, the results of the consultative vote that took place on 26 September 2021 were very clear with only three out of nine municipalities voting in favor of the merger project. It is not clear what will happen to the 'Grand Fribourg' merger project. Only time will tell. Among the various options, a merger of three communes is still possible, although unlikely. A strengthening of the existing agglomeration (which has meanwhile become a simple association of municipalities) is more likely but will have to expand geographically and include additional rural municipalities. In any case, the road to the merger of the peri-urban municipalities with the urban municipalities is still long and full of pitfalls.

## Assessment of the Practice

The planned merger of Fribourg with its neighboring communes (which also cooperate with the center-city in the Agglomeration of Fribourg) has met with certain resistances.<sup>81</sup> After the election of a constitutive merging-assembly in 2016, the nine participating municipalities have drafted a preliminary convention which was rejected by the majority of the municipalities in September 2021. As it appears, the processes of direct-democratic decision-making are playing a specific role in this example of Swiss reform of local governance.

The case of the merger in 'Grand Fribourg' shows:

- the difficulty of balancing the interests of very different communes (urban and peri-urban) in a common process;
- the challenge of instituting a constructive dialogue on procedural and material aspects of the merger (how do we decide? and what do we decide? e.g. what tax-rate do we envision?);
- the particular situation of a clearly dominating center-town in relation to its surrounding communes which also vary in size, financial capacity and structural composition;
- the limited influence of regional and cantonal authorities on the process of negotiating a merger on the communal level (financial incentives can only help up to a certain point where questions of local identity and material interests take precedence again);
- the particular importance of democratic decision-making which can bring legitimacy to a merging process, but can also become a factor slowing it down or stopping it altogether.

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<sup>81</sup> 'Accueil' (*fusion-non*, undated) <<http://www.fusion-non.ch>> ; 'L'heure des hausses d'impôts a sonné' (*La Liberté*, 15 February 2013) <<https://www.laliberte.ch/news/regions/l-heure-des-hausses-d-impots-a-sonne-28145>>; 'Fusions de communes' (*fusionite.ch*, undated) <<https://www.fusionite.ch>>.



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Law on the Encouragement of Fusions of Communes (LEFC) of 9 December 2010, RSF 141.1.1  
<[https://bdlf.fr.ch/app/fr/texts\\_of\\_law/141.1.1](https://bdlf.fr.ch/app/fr/texts_of_law/141.1.1)>

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<<https://www.admin.ch/opc/en/classified-compilation/20032737/index.html>>

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<[https://www.ge.ch/legislation/rsg/f/s/rsg\\_B6\\_12.html](https://www.ge.ch/legislation/rsg/f/s/rsg_B6_12.html)>

Council of State of the Canton of Fribourg, 'Rapport 2017-DIAF-9 du Conseil d'Etat au Grand Conseil sur la demande de contribution financière complémentaire formulée par l'assemblée constitutive en vue de la fusion du Grand Fribourg' (2019)  
<[https://www.fr.ch/sites/default/files/2020-01/fr\\_de\\_RGC\\_2017-DIAF-9.pdf](https://www.fr.ch/sites/default/files/2020-01/fr_de_RGC_2017-DIAF-9.pdf)>

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— 'L'heure des hausses d'impôts a sonné' (*La Liberté*, 15 February 2013)  
<<https://www.laliberte.ch/news/regions/l-heure-des-hausses-d-impots-a-sonne-28145>>

— 'Fusions des communes' (*Etat de Fribourg*, last updated 9 June 2020)  
<<https://www.fr.ch/diaf/scom/sommaire/fusions-de-communes>>

Canton de Neuchâtel, 'Fusions des communes' (*ne.ch*, undated)  
<[https://www.ne.ch/autorites/DFS/SCOM/Pages/Fusion\\_reforme\\_structures\\_des\\_communes.aspx](https://www.ne.ch/autorites/DFS/SCOM/Pages/Fusion_reforme_structures_des_communes.aspx)>

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<[https://www.jgk.be.ch/jgk/fr/index/gemeinden/gemeinden/gemeindereformen/fusion/ratgeber\\_fuer\\_gemeindefusionen.html](https://www.jgk.be.ch/jgk/fr/index/gemeinden/gemeinden/gemeindereformen/fusion/ratgeber_fuer_gemeindefusionen.html)>



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Website of Grand Fribourg, <<https://grandfribourg.ch/>>

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Website of fusionite, <<https://www.fusionite.ch>>



## 4.4. Merging of Local Governments: The Rural Municipalities of the Val-de-Travers, Neuchâtel

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### Relevance of the Practice

In Switzerland, the municipality is the closest political and administrative unit of the federal system. While it is the municipality that ensures the proper functioning of the direct democracy, the municipalities are not protected by the federal law. It is in fact each and every canton that develops its own specific legal framework regarding its municipalities.

The Canton of Neuchâtel had not experienced any mergers of municipalities during the 20<sup>th</sup> century since the Municipality of La Coudre joined the City of Neuchâtel on January 1, 1930. However, from 2000 to 2019 the canton has seen the number of its municipalities fall by 50 per cent since, from 62 to 31. Two important mergers occurred in the mountainous valleys of the canton, namely the creation on 1 January, 2009, of the Val-de-Travers and Val-de-Ruz. Both had an undeniable ripple effect by sparking other projects, as they brought together a very large number of municipalities merged in a single operation.<sup>82</sup>

The study of this practice focuses on a merger between mainly rural and mountainous municipalities and, by comparing it to the merger of urban/peri-urban municipalities in an additional practice, it will highlight the differences in needs and objectives aimed at depending on their rural/mountainous/urban condition. The study of this practice is relevant for the LoGov researchers as it will allow them to identify and discuss:

- some factors of success of the merger after an unsuccessful attempt;
- the negotiation processes between municipalities with different needs and objectives (rural/urban);
- the extent to which the phenomenon increases or decreases the centralization of power;
- the non-centralization of services after a merger in order to avoid creating a center-periphery/rural-urban disparity.

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<sup>82</sup> 'La commune pionnière de Val-de-Travers (NE) fête ses dix ans' (*swissinfo.ch*, 2 August 2019)  
<<https://www.swissinfo.ch/fre/la-commune-pionniere-de-val-de-travers--ne--fete-ses-dix-ans/45136454>>.





## Description of the Practice

The Canton of Neuchâtel, in its new Constitution of September 24, 2000, guarantees the existence of municipalities by providing that no merger of municipalities can take place without the consent of all the concerned municipalities and encourages the merger of municipalities.<sup>83</sup> On December 3, 2001, the Grand Council adopted the law on the municipal aid fund (LFAC) in order to encourage inter-municipal collaboration and mergers of municipalities by means of incentive measures. On March 29, 2006, the Grand Council adopted a decree authorizing the Council of State to use the remainder of the fund intended for municipal structural reforms, amounting to 20 million francs, to grant aid for mergers or other forms of collaboration between the municipalities.<sup>84</sup>

This situation, a canton supporting municipalities to merge combined to an important inflow of capital now available to support eventual mergers, has led many municipalities to consider the reform of their structures and merge. After a first unsuccessful trial that aimed at merging eleven municipalities, nine municipalities of the Val-de-Travers (namely the municipalities of Môtiers, Couvet, Travers, Noiraigue, Boveresse, Fleurier, Buttes, Saint-Sulpice and Les Bayards) adopted on September 13, 2007, their merger agreement. The General Councils of every municipality then endorsed this agreement on December 10, 2007, and followed by the population of the nine municipalities, which accepted the merger by referendum on February 24, 2008.

## Assessment of the Practice

The Municipality of Val-de-Travers has acquired an important dimension in the Canton of Neuchâtel that the former municipalities did not have. According to the Council of State, the structural gains from the merger have made it possible to reduce the overall level of local taxation and to develop new services (reception structures, youth center, learning center, networking of parents and commuters active in the municipality). Supporter of the merger, the Council of State considers that it improved equity in an increasingly interconnected territory and enabled the creation of a common living space through the adoption of harmonized rules

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<sup>83</sup> Art 91(1) The existence of the municipalities and their territory are guaranteed.

(2) The state encourages mergers of municipalities.

(3) However, no merger or division of municipalities, nor any cession of territory from one municipality to another, can take place without the consent of the affected municipalities.

Translated by author, Constitution of Neuchâtel available in French, <<http://rsn.ne.ch/DATA/program/books/rsne/htm/101.htm>>.

<sup>84</sup> Council of State of the Canton of Neuchâtel, 'Rapport du Conseil d'Etat au Grand Conseil à l'appui d'un projet de décret soumettant au vote du peuple l'initiative législative populaire cantonale "L'or de la BNS pour l'avenir et l'innovation"' (Report to the Grand Council, 4 July 2007)

<[https://www.ne.ch/autorites/GC/objets/Documents/Rapports/2007/07024\\_CE.pdf](https://www.ne.ch/autorites/GC/objets/Documents/Rapports/2007/07024_CE.pdf)>.



and taxes, the abolition of inter-municipal structures, the control gained back by the new municipality over tasks formerly entrusted to external or inter-municipal structures and finally the professionalization of structures making it possible to better cope with the growing complexity of municipal affairs. For the supporters of the merger, merging municipalities, when it is done following a real social project and not only mechanically, makes it possible to support the canton's prosperity. A last observation is that this successful merger has favored merger projects in many other areas of the canton, around the City of Neuchâtel, in the Entre-deux-Lacs, in La Béroche, in Rochefort / BrotDessous, in the Mountains and on the West Coast.<sup>85</sup>

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<sup>85</sup> Council of State of the Canton of Neuchâtel, 'Rapport du Conseil d'Etat au Grand Conseil à l'appui d'un projet de loi portant modification de la loi sur les droits politiques (LDP)' (Report to the Grand Council, 31 August 2015)  
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Kettiger D, ‘Gemeindefusionen – ein Thema mit vielen Facetten’ (PuMAConsult GmbH 2004) <[https://www.kettiger.ch/fileadmin/user\\_upload/Dokumente/Downloads/Kettiger\\_Aufsatz-Gemeindefusion.pdf](https://www.kettiger.ch/fileadmin/user_upload/Dokumente/Downloads/Kettiger_Aufsatz-Gemeindefusion.pdf)>



# Intergovernmental Relations of Local Governments



## 5.1. Intergovernmental Relations of Local Governments in Switzerland: An Introduction

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It is not possible to make generalized statements on the relations between canton and municipalities for all of Switzerland. In the Swiss federal system, the cantons (and not the Confederation) determine the status and role of municipalities. Each canton has its own way to organize relations with municipalities, allocate competences and organize municipal finances. Thus, intergovernmental relations differ largely among the cantons. Because of historic and cultural reasons, the cantons of the French speaking part have a more centralistic approach, while municipalities in the eastern and central part of Switzerland show a more decentralized structure when it comes to the allocation of tasks. Our examples mainly refer to the Canton of Berne and its relation to the Bernese municipalities. The canton is perceived as a bridge builder between the German and the French speaking cantons and their traditions. Regarding municipal autonomy it might be considered as a kind of Swiss average. The Canton of Berne is one of the biggest cantons in terms of territory as well as the number of residents (around 1 Mio, 16.3 per cent foreign passport holders according to the census of 2018). The City of Berne is the capital of the canton as well as of the Swiss Confederation. Socially and politically, the canton is quite heterogeneous: relatively big urban and peri-urban areas are coupled with reasonably big rural and mountainous areas that are thinly populated. Around 10 per cent of the residents are mainly speaking French, the big majority are German speakers. All these elements make the Canton of Berne an interesting object of observation.

In Switzerland there is hardly any public task that is exclusively performed by municipalities, without any central steering or co-financing, and the distribution of responsibilities is constantly evolving. In all important policy areas there is a sharing of competence that requires a cooperative set-up between cantons and municipalities at various levels. As a rule, the canton focuses on the adoption of the legal framework, establishes a control system and exercises oversight. With the increasing mobility and the evolving complexity of public tasks it is not surprising that generally, the central competences are increasing and the scope of action of municipalities tend to be decreasing. The principle of subsidiarity (Article 5(a) of the Federal Constitution) is providing (federal) orientation for the allocation of competences, stating that tasks should be performed as close to the population as possible. Thus, the primary schools, social welfare, local spatial planning, public security, local transport, water supply and waste management are most often in the competence of municipalities – but there are still many federal and cantonal rules and standards that are to be considered by municipalities.

Financial equalization is an important pillar of the Swiss political system, allowing for financial collaboration and cooperation among cantons and municipalities. At the level of the Confederation it focuses on the equalization of resources as well as the equalization of financial



burdens between cantons. The same idea of equalization is also applied at cantonal level, between municipalities. Regarding the allocated tasks, the cantonal regulations hardly make any difference between municipalities that, in terms of inhabitants, tend to be bigger in urban areas and smaller in rural areas. The cantonal specifications and standards are the same, the cantonal controlling and oversight does not differentiate between urban or rural, big or small municipalities. However, the Canton of Berne is contributing to the financing of municipal tasks in many respects. The cantonal share is calculated according to the constitutional principle of 'financial equivalence': The canton pays what it is commissioning. For example, the canton has adopted a relatively dense regulation concerning the salaries of primary teachers, the curricula and the required lessons for primary schools – thus, the canton pays 70 per cent of the salary expenses for primary school teachers. The rest of the salary expenses are financed by the municipalities, through their own tax income.

Today, municipalities with low financial capacities would not be able to finance their tasks by their own tax income. Thus, a horizontal equalization scheme has been developed. This scheme is mainly alimeted by payments of well-off municipalities but the canton is also contributing funds. The payment scheme for equalization of resources is meant to allow for an adequate (but not full) equalization of standards among municipalities, independent of their financial capacities. In addition, the equalization of burdens aspires to balance specific burdens on the municipalities that are caused by social demography, geographical challenges (for example, the cost of an extensive water supply or road system in a thinly populated rural area), or specific tasks of urban centres (*Zentrumslasten*). The equalization payments are calculated based on a cantonal law and decided upon by the cantonal government, taking into account a very differentiated set of parameters that is adjusted regularly. The equalization system in the canton of Berne has grown over the years into a complex body of horizontal and vertical, direct and indirect, general and sectorial mechanisms. The impact of the equalization scheme on the canton and (urban and rural) municipalities is regularly evaluated and assessed in the light of the context dynamics, and adjustments are frequently thematized and discussed in the political debate..

Every Swiss municipality is participating in intermunicipal cooperation in multiple ways and forms and obtains services from third parties. From the political point of view as well as from the accountability perspective, there is hardly any difference whether the (public) task is performed by the municipality itself, in cooperation with other municipalities or by third parties. In the Canton of Berne, in average, around half of the municipal budgets are spent by own activities, around a third of the budgets go to legally autonomous bodies owned by the municipalities (such as associations of municipalities, or shareholder companies owned by municipalities), and one sixth of the budget is spent for buying services from third parties. Smaller and even medium size municipalities have difficulties to perform their tasks according to the required quality standards and the cooperation with other municipalities or the private sector allows them to improve their professional performance. However, in many cases, cooperation is not cheap – it will not lead to lower costs as it is often hoped for.



Intermunicipal cooperation is mainly organized in two legal forms: the association of municipalities and the assignment of one municipality to perform tasks of others. The association of municipalities is a legally autonomous municipal body that is foreseen by the cantonal municipal law. Individual municipalities commission this body to fulfill a certain task. The association is organized in a legislative and an executive body and acts according to a set of rules that must be adopted by the participating municipalities. Essential changes to the delegated tasks or the funding parameters cannot be adopted by the majority within the association against the will of participating municipalities. This form of cooperation has proved itself many times. However, the challenge is that the steering of the associations is often mediated through individual representatives in their decision-making bodies, there is often a certain self-reinforcing momentum, and municipal authorities have difficulties to have their voices as owners heard. The second legal form is the contracting of one municipality to fulfill tasks on behalf of other municipalities. The advantages of the association (for example, the participation of the delegating municipalities in decision-making processes) can also be reflected in the contract. The advantage of this form is that the fulfillment of the task is embedded in an existing municipal set-up and can profit from existing professional structures and administrative services. While these forms of intermunicipal cooperation are ruled by public law, municipal tasks are often also delegated to companies that are formally under private law, for example joint-stock companies or cooperatives that run a regional sports facility on behalf of various municipalities. Here again, the steering and the ensuring of accountability can be challenging. Increasingly, the participating municipalities do no longer engage in the steering boards of such companies but are agreeing among themselves on an owner strategy that they then commission to the private company for execution.

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## 5.2. The Association of Bernese Municipalities: Representing Municipalities in the Cantonal Decision- Making

Erika Schläppi, *Ximpulse GmbH*

### Relevance of the Practice

The question whether and how the interests of municipalities are taken into account in political decision-making processes of the cantonal as well as at the Confederation level is of high relevance, for urban as well as rural municipalities. The cantonal level is key for defining the scope of action of the municipalities in Switzerland, the intergovernmental relations, the structures, tasks, standards for municipal services, the funding systems and equalization schemes. Thus, for municipalities, influencing the decision-making in the cantonal parliaments and governments, raising their voice in administrative processes as well as in the broader public is very important. The Association of Bernese Municipalities is an example of making urban and rural municipalities join forces to defend the municipalities' common interests in relation to the cantonal authorities that are regulating and overseeing municipal activities.

### Description of the Practice

The Association of Bernese Municipalities has been representing the interests of Bernese municipalities for almost 70 years. 98 per cent of the municipalities are members of the association which is fully funded by membership fees. It is important to mention that the association is regulated by private law and has no official public status per se. The association's aims are to represent the interests of Bernese municipalities vis-à-vis the Canton of Berne. It strives for keeping municipal autonomy and is committed to an adequate distribution of tasks between the canton and the municipalities as well as to adequate funding systems. It also provides support services on behalf of its members.

At the annual meetings of the Association's general assembly a board is elected that is carefully balanced in terms of political parties, regional representation, gender, urban and rural areas, and the two official languages of the canton. The board and the director take decisions based on principles that should ensure the legitimacy, credibility and capacity of the association to speak on behalf of Bernese municipalities. Among these principles, political neutrality is important. To ensure such neutrality, the Association's board incorporates representatives of all parties but avoids being instrumentalized by political parties. It does not take any position



in regional politics and is not engaged in political debates around specific tasks. It refrains from taking position in conflicts among municipalities, emphasizing that the political authorities (the cantonal parliament and the government) are better legitimized to take decisions and action on diverging interests. Instead of taking positions the association aspires to constructively balance different interests (between rich and poor, urban and rural, big and small municipalities, German speakers and French speakers), build on always existing common interests and denominators and find acceptable solutions for all municipalities. According to its principles the association engages for more scope of action of municipalities – and for less operational involvement and influence of cantonal authorities that blur accountability lines and demotivate local authorities. The association gets orientation and guidance from the constitutional principles that enshrines subsidiarity, fiscal equivalence, accountability and financial equalization and admits that a financial balance has to be established also between the canton and the municipalities.

Following these principles, the association engages in many activities related to political decision-making in the Canton of Berne. It seeks to convey clear messages and address conflictual issues while investing in partnership relations and confidence with cantonal authorities. It closely cooperates with the cantonal supervisory bodies to establish models of municipal laws and regulations that take the cantonal legal framework fully into account. It takes position on cantonal draft laws and regulations and policies that involve municipal interests, be it in formalized consultation procedures (that are very common in Switzerland) or in more informal settings. For example, in 2019, the association has taken part in about 40 consultation processes regarding draft of laws and policies in a variety of domains, from local security issues to childcare, from land zoning to biodiversity. The fact that the board members are active local politicians but also part of the cantonal political scene and often members of the cantonal parliament, makes the association even more effective in influencing cantonal politics.

Providing useful services to members helps the association anchoring itself in the municipal scene, keeping touch with municipal practice, and being ahead of problems. The association regularly organizes public information meetings and hearings, to inform municipalities about important reforms and plans and building opinions. It regularly makes surveys to find out about the positions of municipalities. Legal advice and support services are provided to members. Together with other associations and educational facilities, the association is engaged in professional education and training of municipal staff and capacity building of local politicians. It particularly invests in supporting the municipalities in their role as a public employer.

## Assessment of the Practice

The Association of Bernese Municipalities is considered to be a successful lobbying organization representing municipal interests in the cantonal political debate. Its deliberate



policy of balancing interests, integrating all relevant political parties, conveying clear messages but investing in confidential relations with the powerful cantonal counterparts, has made the association a very influential player. This is also because of the high representation of mayors in the association as well as in the cantonal parliament – an important leverage for the association.

The focus on common interests of municipalities – instead of feeling squeezed between conflicting positions – has helped the association to raise a strong voice of all municipalities on issues of municipal concern. In this logic, the association must refrain from taking position either for urban or rural interests that might seriously hamper its credibility as a representative of Bernese municipalities at large. The converse example can be seen at national (Swiss) level: Two associations are representing municipal interests, on the one hand the Swiss Cities' Association representing urban interests, on the other hand the Swiss Association of Municipalities, representing small and medium municipalities from peri-urban and rural areas. The two associations have different political orientations – the Swiss Cities' Association tends to have a more left-wing and green orientation, while the Swiss Association of Municipalities tends to be more conservative. Thus, on many political topics at Swiss level, the municipal voice is divided, and the two associations are openly fighting each other wherever urban or rural interests are at stake.

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## 5.3. Intergovernmental Cooperation between Cantonal and Municipal Authorities: The Issue of Primary Education in the Canton of Berne

Erika Schläppi, *Ximpulse GmbH*

### Relevance of the Practice

The allocation of powers, tasks and responsibilities for services and corresponding funding systems are key features of effective local governance. In practice, competences and tasks can rarely be allocated exclusively to one level of government in a way that the responsible authorities can decide on the tasks without any involvement of the other levels. The legal frameworks, tasks and competences are closely interwoven. While the de-bundling of tasks makes politically sense particularly for ensuring clear accountability lines, the idea of a clear-cut separation of powers and tasks between cantonal and municipal authorities must remain an illusion. In the reality of the Canton of Berne, shared responsibilities between the cantonal and municipal authorities are rather the rule than the exception, and this implies complex systems of vertical cooperation. The case of primary education (as an issue of competence that is shared between all levels of Swiss governance) illustrates this need for vertical and horizontal cooperation. This practice example shows how this is organized in the Canton of Berne and its rural and urban municipalities.

### Description of the Practice

The allocation of powers and tasks between cantons and the Confederation follows Article 3 of the Federal Constitution: The cantons have original or residual powers, and the Confederation has only powers that are explicitly attributed to it by the Constitution (Article 42). General principles for the allocation of tasks are enshrined in Article 43 of the Federal Constitution: The Confederation only undertakes tasks that the cantons are unable to perform or which require uniform regulation by the Confederation (principle of subsidiarity). The collective body that bears the costs of a public service may decide on the nature of that service. This principle, called 'financial equivalence', is particularly important in the Swiss federal system where the three State levels (including municipalities) have their own taxing powers and are, in principle, responsible for covering the costs of the services within their competence with their own means. Universally provided services must be made available to every person in a comparable manner. Finally, State tasks must be fulfilled economically and in accordance with demand (efficiency and responsiveness). Although the Cantonal Constitution of Berne



does not mention these principles enshrined in the Federal Constitution, they are also guiding the allocation of tasks between the canton and the Bernese municipalities and the management of municipal services. Explicitly, the Cantonal Constitution only mentions that the municipalities are fulfilling the tasks that are attributed to them by the canton and the Confederation (Article 112), and that the cantonal law grants the municipalities as much freedom of action as possible (Article 109(2)).

While vocational education and higher education are shared responsibilities between the cantons and the Confederation, primary school education is a cantonal competence, however with federal standards to be respected (Article 62 of the Federal Constitution). The cantons must ensure the provision of an adequate basic education that is available to all children. Basic education is mandatory and is managed or supervised by the state. Primary education at state schools is free of charge. Where harmonization of school education (on specific topics) is not achieved by means of coordination among cantons, the Confederation shall issue regulations to achieve such harmonization.

Within this federal framework, in the Canton of Berne, primary schools are a shared responsibility of the canton and the municipalities. The Primary School Act refers to the obligatory schooling of children from 5 to 16 years of age. It provides a complex intergovernmental set-up of responsibilities between cantonal and municipal authorities, with no formal differentiation between urban and rural areas. The main features are set out as follows.

The cantonal authorities define contents, objectives and general conditions for primary schools and ensure a comparable offer for all municipalities (Article 50). They set the principles and standards of primary education (objectives, duration, curriculum, rights of students and parents, forms of education, teaching material, etc.).

The municipalities are 'in charge' of the primary schools. Several municipalities can join forces in a municipal association to provide school services jointly, or municipalities contract another municipality to deliver school services for them. They are to ensure that every child can attend primary school (Article 5). The municipalities are responsible for concretizing the contents and objectives of the primary public school, implementing the services, evaluating the results and reporting to the canton (Articles 50-51).

Municipalities are responsible for the construction, maintenance and operational management of school facilities and their equipment, according to cantonal regulations (Article 48). Municipalities decide on the creation and abolition of school classes and the introduction of facultative classes, with the approval of the cantonal authorities who can provide general regulations on these issues (Article 47).

At municipal level, the schools are organizational units within the municipal administration. They are usually overseen by a school board and managed by a school directorate (Article 23) responsible for pedagogic guidance and administrative management. School boards are



responsible for ensuring school attendance of all children, anchoring the school in the municipality, providing strategic guidance and fulfilling other tasks, particularly in the context of teachers' employment (Article 35).

The canton is responsible for quality assurance and gives quality feedback to the municipalities. Regional school inspectors are responsible for advice to municipal authorities as well as cantonal oversight (Article 52). The cantonal authorities have a duty to communicate with and inform municipalities and public schools about trends and developments in school organization as well as cantonal support offers (Article 54).

The teachers' personnel costs are jointly financed in the ratio of 70 per cent (canton) to 30 per cent (municipalities) (Article 24 Law on the Equalization of Finances and Burdens FILAG, regulating vertical and horizontal equalization). Infrastructure and operating costs are borne by each municipality. It is estimated that the total costs of the primary school are funded in a ratio of approximately 50 per cent (canton) to 50 per cent (municipalities), in urban as well as rural areas. However, geographical and socio-demographic factors tend to make burdens higher for rural and smaller municipalities, since the rate of children per resident is higher in rural areas, and class sizes tend to be smaller, resulting in higher numbers of teachers per students. In addition, it is more difficult for small rural schools and their teachers to respond to the increasing technical standards (for example, on digitalization). On the other hand, urban schools are facing other challenges and costs, mainly due to the higher diversity of population which may result in a need for specific measures, e.g. for the speakers of foreign languages.

Financial equalization alleviates the financial impact on financially weak municipalities. The direct financial equalization system provides support to weak (rural) municipalities with low financial capacities and relatively high burdens, while the support is funded by financially strong municipalities, mostly urban or peri-urban. In addition, according to Article 24a of the cantonal Law on Equalization of Finances and Burdens, the canton provides additional support for municipalities that are facing specific costs for their primary schools. This additional contribution is depending on various factors such as the linguistic situation of the municipality, the topography, the settlement structures and the student/resident ratio.

Horizontal cooperation on primary schools is often practiced by rural municipalities with a low number of residents, challenged by the high-quality standards for schools and low municipal resources. In many cases, bigger municipalities that are considered to be regional centers offer school services also for surrounding municipalities, particularly for upper school grades. Inter-municipal cooperation takes place in the form of (legally independent) associations of municipalities for providing school services jointly, or municipalities are simply contracted to provide services on behalf of other municipalities. In urban settings, municipalities are big and strong enough to organize their primary schools effectively and cost-efficiently, without any need for horizontal cooperation.

To manage complex interactions around joint responsibilities in a constantly evolving context, vertical cooperation between cantonal authorities and municipalities are needed at various



levels. The Covid-19 crisis has particularly shown that vertical cooperation processes are important to ensure that municipal interests are taken into account in assessing upcoming needs, formulating policies, arranging and re-arranging funding systems, developing practical guidance for schools and teachers, evaluating results as well as addressing related challenges. Extensive consultation practices of cantonal authorities, at political, financial as well as technical level, allow for taking into account various stakeholders' views – among them the municipalities and their association – in all stages of processes, from the beginning to the end, when the cantonal authorities envisage the revision of laws and regulations, develop practical guidance or change the financial scheme. For example, the digitalization of public education is a topic that obviously involves the competences of cantonal and municipal authorities. Representatives of the municipalities and the Association of Bernese Municipalities are participating in the working groups and commissions dealing with the issue, from the beginning to the end of the informal and formal processes for developing strategies and guidance. Other examples include the debate around new teaching material for learning French – an issue intensively debated in and between the canton and the municipalities. Or in the extraordinary situation of Covid-19, the guidance for enhanced sanitary protection in public schools has been developed and communicated jointly.

## Assessment of the Practice

The allocation of tasks and their funding as well as the ways of intergovernmental cooperation are a constant topical of political debate, the allocation of municipal competences is very dynamic and never finished. The complex set-up of responsibilities, tasks, funding structures, advice and oversight works well in the field of primary education, if and when the main communication and cooperation challenges are well addressed. The cantonal strategies and policies can be responsive to the realities on the ground if and as far as authorities know about the operational challenges that municipalities and schools are facing in urban, peri-urban and rural settings. A constant exchange of information, formal as well as informal communication processes vertically and horizontally (between municipalities) are needed.

The funding system works well overall but its aspiration to balance burdens and financial capacities of municipalities and respond to the principle of financial equivalence is ambitious and needs constant attention. If tasks are re-defined or re-distributed, or if demographic realities (including urban-rural trends related to specific burdens and financial capacities of municipalities) are changing, the funding system must be re-adapted. The general funding system of primary schooling does not differentiate between urban and rural municipalities. Both rural and urban municipalities are facing challenges that can heavily impact on the costs. While rural municipalities have a lower number of students as well as higher costs for quality services in less densely populated spaces, urban municipalities tend to have a more diverse population and may be required to offer additional support for students. The complex financial equalization system is addressing the specific burdens in various ways. Nevertheless, many





small, rural and financially weak municipalities have engaged in cooperation schemes with other municipalities with a view to respond to the general quality standards for primary schools in a cost-efficient way.

The roles of cantonal and municipal stakeholders and the respective accountability lines must be understood by everyone. The distinction between steering and implementing, advising and supervising is not always clear-cut and needs constant communication and often, even re-negotiation. The scope and limits of cantonal oversight on municipal implementation is particularly challenging. For example, the cantonal authorities and the school inspectors tend, with their responsibility to regulate, advise and supervise, to get closely involved in operational and implementing responsibilities. This can blur accountability lines, since, within their legally enshrined tasks, the municipal authorities are accountable towards the municipal structures and not towards the cantonal department of Education and Culture.

A variety of spaces and processes exist for municipalities and the Association of Bernese Municipalities to contribute constructively to political, financial and technical decision-making on primary education at cantonal level. However, such constructive participation depends on the human resources and technical knowhow that can be made available at the level of the association – also balancing the variety of views among municipalities, urban and rural, small and big.

The possibilities to require a popular vote (referendum) for new or revised laws helps to build political pressure, also on behalf of municipal interests. Nevertheless, successful lobbying requires a lot of human resources and an extensive political network that can be activated by the municipalities. The fact that many members of the cantonal parliament are (or: were) municipal counsellors or mayors and know the municipal challenges from their own experience, helps lobbying cantonal decision-making to a large extent.

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## 5.4. The Regional Conference of Municipalities, a Regional Cooperation Mechanism in Different Urban-Rural Settings

Erika Schläppi and Kelly Bishop, *Ximpulse GmbH*

### Relevance of the Practice

In the Canton of Berne municipalities of a certain geographical area have the possibility to establish a regional cooperation mechanism (RCM), the 'Regional Conference', with the purpose of delivering more effectively on tasks that are transferred to them by the municipalities or by the canton. This entry shows the practice of two regional conferences, one representing a more urban and the other a more rural setting. The practice explains a mechanism of municipal cooperation. It also relates to the institutionalizing of intergovernmental relations between the local and the cantonal level and decision-making among municipalities, in a specific kind of association.

### Description of the Practice

The historical delimitations of municipalities often do not correspond to the dynamics of functional spaces that are emerging due to increased mobility or changing economic patterns. The need for regional cooperation among municipalities that are sharing common interests and challenges has been recognized for some decades, particularly in the area of zoning and traffic management. In the form of a voluntary association, municipalities united for making regional arrangements and cooperating on zoning issues. To promote more binding forms of cooperation, the cantonal authorities created a regional structure for municipalities willing to engage in regional cooperation, the regional conferences of municipalities. Their geographical perimeter is decided upon by the cantonal government, after consultation of the municipalities. The legal aim of the conferences is to efficiently fulfil tasks of the implied municipalities.<sup>86</sup> The conferences are separate legal entities that can take autonomous decisions within their competences and have the power to take binding decisions. They are established through a decision by the municipalities within the given perimeter with a majority vote (both the population and the municipal authorities of the concerned municipalities need to vote in favor).

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<sup>86</sup> Art 137 of the cantonal Law on Municipalities.



The cantonal law includes a list of mandatory tasks that the regional conferences are responsible for – if and when such a conference is established. In accordance with special legislation, they are responsible for regional structure, overall transport and settlement planning and their mutual coordination, regional cultural promotion and regional tasks in the area of regional policy. The municipalities can assign the conference with additional tasks within the scope of municipal duties.

The cantonal Law on Municipalities and the related regulations also frame the organizational structure and decision-making processes but give some leeway for individual approaches of the regional conferences. The main decision-making body is the regional assembly consisting of the mayors of the concerned municipalities. The mayors have weighed voting powers which gives bigger municipalities a greater say. There are possibilities to ask for a referendum on some selected decisions of the regional assembly, and to take an initiative to submit an issue to the assembly. The Executive Board and the Head Office are the executing organs of the conference, which is funded by contributions of both participating municipalities (according to the number of inhabitants) and the canton (based on an ordinance or specific contracts). The regional conference has no direct tax income.

The Canton of Berne is geographically, socio-economically and demographically not homogenous. In terms of urban and rural settings, it consists mainly of three types of areas: a relatively big urban/peri-urban area around the major cities of the canton<sup>87</sup>, a large area of agricultural farmland and a mountain area. This entry looks at two regional conferences that have been established over ten years ago. While both conferences include urban as well as rural municipalities, it can be said that Bern-Mittelland is characterized by a more urban or peri-urban setting, while Oberland-Ost is characterized by a small agglomeration as a regional center and two smaller regional centers (Meiringen and Brienz) surrounded by rural communities. The Regional Conference of Oberland-Ost belongs to the mountainous rural area that is mainly living from extensive farming and tourism and consists of 28 municipalities. The size of the conference's perimeter takes up 21 per cent of the (land) area, 5 per cent of the population and 4 per cent of the workplaces of the Canton of Berne. In contrast, the Regional Conference of Bern-Mittelland refers to a more urban/sub-urban area around the capital of Switzerland and the canton, the City of Berne, and consists of 77 municipalities. 40 per cent of the population of the canton live in this area and 50 per cent of the workplaces are provided here. The main economic activities are within the service delivery, industrial and the public administration sector.

The topics and areas of competences of the two regional conferences and the way they are dealing with the issues, are similar. The Regional Assembly of Bern-Mittelland has formed

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<sup>87</sup> Classified by the Federal Office of Statistics as areas of urban character ('Räumliche Typologien' (*Federal Statistical Office*, undated)

<<https://www.bfs.admin.ch/bfs/de/home/statistiken/querschnittsthemen/raeumliche-analysen/raeumliche-gliederungen/raeumliche-typologien.html>> accessed 27 July 2020, according to criteria such as population density, size and reachability as well as socio-economic criteria.



commissions for each mandatory sector of competence and sub-commissions are dealing with specific topics such as economy and regional politics. The Regional Conference of Oberland-Ost has formed commissions in the following areas: Public transport, landscape, traffic and spatial planning and ADT (quarry, landfill and transportation), and energy. The area of regional development and the culture divisions are directly under the management of the executive board.

In the framework of the cantonal regulations, both regional conferences have issued their own regulation on organizational procedures but in terms of content they are largely the same. Both have detailed rules on the composition of the executive board (*Geschäftsleitung*). The regulation for Bern-Mittelland foresees that the composition of the executive board should be balanced taking into account the size of the municipality, its geographical location, the political party and gender of the person to be elected (Article 23). Furthermore, the regulation also mentions that the rural area of the (mainly urban and peri-urban) region must be represented in the executive board. The more rural counterpart for Oberland-Ost does foresee a balanced representation of the various municipalities and lists how many representative members per sub-region (group of municipalities) should be part of the executive board (Article 22). It, however, does not include a reference to political party or gender as seen in the one for Bern-Mittelland.

Both regional conferences have a thematic focus on urban/rural regional planning with different challenges at stake. On the one hand, Oberland-Ost has an agglomeration area around Interlaken, one of the few agglomerations in the mountain region. The agglomeration Interlaken consists of several municipalities and faces particular challenges due to being an alpine city and tourist destination. In Bern-Mittelland there is also a focus on the agglomeration and rural area surrounding the bigger cities.

Another important focus for both regional conferences lays on regional development. Swiss and cantonal regional policies provide targeted support for rural and agglomeration areas, focusing on strengthening the competitiveness of the regions and increasing their value. Both conferences support the design of projects and their funding requests to the canton and submit own projects for funding. A regional development strategy has been established in Oberland-Ost, and the regional conference has the task of a coordinator between the different actors of the region implementing the strategy, in addition to its mandatory tasks. Regional development contributions have been channeled through the regional conferences mainly in the area of tourism, renewable energies and innovative offers in social or cultural areas, but less for industrial projects.

## Assessment of the Practice

Looking at this practice, we can see that, first, for small (rural) municipalities, inter-municipal cooperation – with neighbors or at the regional level – can be a way to ensure an adequate



level of services and quality and can be an alternative to mergers. According to their purpose, the regional conferences are adequate structures to help municipalities fulfil duties where regional coordination is needed to take regional dimensions into account. They can focus on specific issues that are deemed particularly important for the whole region. However, it seems that in both regional conferences, a regional identity is still to be developed.

Second, the regional conferences also serve to some extent to coordinate the interests and common concerns of municipalities of a certain region and defend these interests in cantonal politics and for accessing cantonal and federal regional development funds. Rural areas and small municipalities in peripheral regions might face particular challenges in communicating with the cantonal authorities, which can be overcome by joining forces in the regional conferences. Generally, the regional conferences provide a platform for regional exchange and decision-making and thus serve as a bridge among the municipalities of the regional conference, the canton, public administration and private companies. In contrast, urban municipalities often have direct connections to authorities and private companies and may be less interested in the regional coordination.

Third, the two regional conferences that we looked at have different demographics, geographical settings, and socio-economic conditions. They have both urban, peri-urban and rural areas whose differing interests and concerns have to be balanced by the regional conferences internally, in their strategic focus and in their decision-making processes. Both regions are well aware of and address the diversity within the region. Both regions include spaces that are more marginalized than others and in need of additional economic and political support and promotion.

Fourth, in the regional conference model, regional interests are expressed and framed mainly by the municipal mayors of the regions. Space for public participation is clearly narrower than in municipal decision-making, although the impact of regional planning and zoning on municipal life might be relatively high.

Fifth, while letting municipalities decide whether they want to establish a regional conference or not, the cantonal law provides a clear guidance on the structure, mandatory competences and decision-making processes of these regional conferences. This leaves space for increased cooperation among municipalities. However, the incentives for municipalities to cooperate in the form of regional conferences does not seem to be big enough for all, since only three regional conferences out of six regional perimeters have materialized in the last 10 years (two rejections by referendum and one region still without a referendum process).

Sixth, although smaller municipalities may profit from the services offered by the regional conferences, the mode of weighed voting can make them hesitant to join the regional conference. They may fear to be overruled by bigger municipalities and their interests. On the other hand, urban centers may not always have a keen interest in regional cooperation and joining forces with weaker partners, as they may be strong enough to defend their position directly.



Seventh, it has been questioned whether the perimeters of the regional conferences are appropriate for its various topics. The 70 municipalities forming the regional conference Bern-Mittelland have commonalities and differences – depending on the topic at stake. What might be an appropriate perimeter for cooperation on traffic planning, might not be adequate for regional development.

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# People's Participation in Local Decision-Making



## 6.1. People's Participation in Local Decision-Making in Switzerland: An Introduction

Erika Schläppi and Kelly Bishop, *Ximpulse GmbH*

The Swiss federal system is characterized by a strong orientation towards power sharing, concordance and compromise. Participation is seen as a means of integrating a diversity of views in decision-making, thus contributing to making state authorities at all levels accountable and responsive to its citizens, improving the quality of decisions taken and mitigating possible resistance, deepening legitimacy and credibility of State authorities, and managing conflicts and tensions between various groups.

To make participation effective, people need political space as well as access to information. The freedom of expression and information is guaranteed by the Swiss constitution (Article 16 of the Constitution). While citizens use various channels to inform and express their opinions, the media is a key contributor in forming an open public debate and serves as an important platform for information sharing and ensuring transparency (Article 17 of the Constitution). The Federal Act on Freedom of Information in the Administration seeks to promote transparency with regard to the mandate, organization and activities of the administration and grants the public access to official documents and information (Article 1 Freedom of Information Act). On cantonal and municipal levels there are similar laws and regulations.

The right to participation in political decision-making is a key feature of the Swiss federal system at all levels. The Swiss Constitution guarantees political rights including the 'freedom of the citizen to form an opinion and to give genuine expression to his or her will' for all levels (Article 34(2) of the Constitution, Article 136 of the Constitution). The exercise of political rights is regulated at federal level for federal matters only (Article 39(1) of the Constitution) while the cantons regulate their exercise at cantonal and municipal level. In the framework of cantonal law, municipalities enjoy 'autonomy' (Article 50 of the Constitution) which in principle includes the way how political processes in the municipalities are organized. In the 26 cantons laws and regulations differ in terms of space left to municipalities to design their own participatory approaches. Formal participation rights are usually reserved for Swiss citizens who are resident in the community at stake (political domicile) (Article 39(2) of the Constitution).

In the Swiss semi-direct democracy, the elected (representative) parliaments and (cantonal and local) governments are coupled with elements of direct democracy. The main instruments of popular participation include the following:

The popular initiative is a powerful tool for citizens, political parties and interest groups to influence the political agenda: At the federal level a constitutional amendment can be demanded with the signature of 100,000 Swiss citizens (see Articles 138ff of the Constitution). When an initiative is disposed, it is discussed by the government and the parliament. They take formal positions on the initiative, which may involve an alternative proposition. Initiatives and



counter-proposals must then be submitted to the popular vote. At cantonal and local level, the popular initiative can be used to propose laws and acts as well. The process that leads to popular votes varies among the cantons and municipalities.

**Mandatory and optional referenda:** At federal level, parliamentary decisions on amending the Federal Constitution, accessing organizations for collective security or supranational communities, and extra-constitutional emergency federal acts must be put to the popular vote (mandatory referendum, Article 140 of the Constitution). With the signature of 50,000 citizens or by the request of 8 (out of 26) cantons, new federal legislation or amendments to legislation can be called for a referendum (Article 141 of the Constitution). At cantonal level, the referenda systems are diverse and often include important administrative acts (such as important decisions on financial expenses, budgets, etc.). At municipal level, what is put to vote, depends on the municipal statute decided by the municipality. The instrument of referendum broadly impacts on the way how political decisions are taken: Swiss authorities at all levels often tend to seek broad majorities for their decisions to avoid a vote.

In smaller rural municipalities (particularly in the German speaking area) main decisions are often taken in citizen's assemblies where all residents of the respective municipality who are Swiss citizens can participate. In conformity with the cantonal law and municipal statutes, the assembly takes legislative, administrative and financial decisions that are mostly submitted by the municipal executive. In other (bigger and urban) municipalities, a municipal parliament is representing the citizens, mostly complemented with a referendum system allowing citizens for direct impact.

Various types of formal and informal consultation processes ensure that the different views of stakeholders are taken to account from the beginning and integrated into political processes – often to mitigate the risk of a referendum that may skip the final decision in the end. At federal level, the government is obliged to invite the cantons, the political parties and interested groups to 'express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties' (Article 47 of the Constitution). Parallel provisions can be found in the cantonal constitutions. Some federal and cantonal laws and regulations foresee specific consultation procedures in particular domains that affect cantonal and/or municipal decision-making in particular. Municipal consultations refer to many policy fields such as spatial planning, local development strategies, infrastructure projects, environment and energy issues, tourism, traffic issues, or municipal amalgamation processes. Such consultations can take many forms (e.g. hearings, exchange platforms, round tables, information campaigns, etc.). They may target the broad public or specific groups that are perceived by the authorities as potential supporters or spoilers. Some municipalities have established specific consultation processes that involve neighborhood residents in decision-making when they are particularly affected by the matter at stake. Individual processes are foreseen in many municipalities to incorporate specific stakeholder groups on particular topics (Children and youth, parents, elderly people, non-Swiss residents).



The right to petition is guaranteed by the Swiss Constitution as well as established at cantonal and municipal level.

In general, the new media have changed the ways how people express their opinion, communicate among interest groups and with the authorities. New forms and collaborative methods of participation have developed in recent years that complement more traditional forms of participation, particularly at municipal level. Recent research suggests that the executive is increasingly perceiving participation as a means of improving governability in complex and politically fragmented situations. The often relatively low numbers of citizens that are participating also suggest that these new forms are not broadening but deepening participation by targeting certain citizens and groups that are already engaged in political processes.

All these formal instruments invite stakeholders and citizens to participate but in reality, they may not be accessible for marginalized groups, and many of them formally exclude non-citizens. Individual activists and specific interest groups often invent their own spaces and forms to influence the political agenda and the decision-making processes at all levels (e.g. public manifestations of different kinds, protests and 'strikes', media campaigns, citizens' gatherings). In many cases, these 'invented' forms are in one way or another related to more formal instruments such as initiatives and referenda.

## References to Scientific and Non-Scientific Publications

### Legal Documents:

Federal Constitution of the Swiss Confederation, SR 101

Federal Act on Political Rights (PRA), SR 161.1

Federal Act on the Consultation Procedure (Consultation Procedure Act, CPA), SR 172.061

Federal Regulation on the Consultation Procedure (*Verordnung über das Vernehmlassungsverfahren (Vernehmlassungsverordnung, VIV)*), SR 172.061.1

Federal Act on Spatial Planning (Spatial Planning Act, SPA), SR 700

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## 6.2. Participation in a Road Development Project in Albisrieden/Zurich

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### Relevance of the Practice

This practice is an example of a participatory process relating to a road development project in an urban neighborhood. The process includes informal and formal participatory elements throughout the planning and implementation phases. It involves local political authorities, technical services, citizens, interest groups and the private sector in a variety of roles and shows the interplay and linkage between formal and informal mechanisms of participation in an urban setting.

### Description of the Practice

Albisrieden belongs to Switzerland's largest City, Zurich, and together with Altstetten is part of district (*Kreis*) 9, which is the largest of the 12 districts of Zurich. At the end of 2018 Albisrieden counted 22304 inhabitants. In 2014 25.6 per cent of the residents were foreign nationals. Most foreign nationals are Germans, followed by Italians and Portuguese.

In 2009, when the renovation of the road superstructure as well as the tram lines were due, the Engineering Office wanted to take the opportunity to improve the utilization of the space along the main road of Albisrieden. The Engineering and Waste Disposal Department Zurich (*Tiefbau und Entsorgungsdepartement Stadt Zürich*) and the Engineering Office (*Tiefbauamt*) of the City planned to make changes to the main road, which lies in the heart of the district. There are numerous shops, restaurants and a post office on this road, which is also used by a bus and a tram line. According to the Communal Structure Plan Transportation (*Kommunaler Richtplan Verkehr*), this road belongs to the pedestrian zone.

#### The Legal Background

The procedure is predominately laid out in the Cantonal Act on Roads of Zurich (*Strassengesetz* (StrG), LS 722.1). According to Article 12(2) of the Cantonal Act on Roads of Zurich, the City Council is responsible for drawing up new municipal road projects (Article 48 Cantonal Act on Municipalities (*Gemeindegesezt* (GG), LS 131.1) and Articles 48 ff Communal Statute (*Gemeindeordnung* (GO), LS 101.100)). Article 71 (b) GO assigns the construction and maintenance of roads to the Engineering and Waste Disposal Department Zurich (*Tiefbau und Entsorgungsdepartement Stadt Zürich*). Article 13 of the Cantonal Act on Roads of Zurich



foresees the participation of the public before a decision on project funding is made. This can be done by a public orientation meeting (*Orientierungsversammlung*) or a tabling of the project (*öffentliche Auflage*) and the public can comment on the project proposal. Further Article 16 of the Cantonal Act on Roads of Zurich envisages that the project proposal is publicly tabled for a formal objection procedure, which is set out in Article 17 of the Cantonal Act on Roads of Zurich.

The competences for financial decisions on project proposals are further laid down in Article 104(1) GG and Articles 41(c) GO as well as Article 105 GG and Articles 39 (c) Rules of Procedure of the City Council (*Geschäftsordnung des Stadtrats*, AS 172.100).

### **Participation in the First Stage of Project Planning**

Between autumn 2009 and July 2013 the City Engineering Office (*Tiefbauamt*) together with the Traffic Service Department (*Dienstabteilung Verkehr*) elaborated a project plan for the new road. In a first step, the City Engineering Office assessed the needs of the residents and other interest groups (e.g. the local public transport company) in order to develop a first project idea. Of course, the project was also bound to many other legal and policy requirements at the federal, cantonal and municipal level.

Members of City Parliament suggested to involve the residents in an early stage of the project, because they anticipated some tension between the different interest groups. The City Council usually decides to have public information meetings if the project entails major changes and if they anticipate that there are various divergent interests at stake. In this case, the City Council decided to invite the public to an information meeting on 4<sup>th</sup> December 2012. All the local residents were invited along with other interest groups, such as the Business Association of Albisrieden as well as Protection and Security Zürich (*Schutz und Rettung Zürich*) and the school board (*Schulpflege Schulkreis Letzi*). In addition to the first information meeting, the City invited citizens and representatives of interest groups to four roundtables, with a view to discuss conflicting and converging issues and find compromises among the key stakeholders. During the phase between 2012 and 2013 it was possible to compromise on various issues, however, even after these roundtables the Business Association of Albisrieden did not agree with some key features of the project.

### **Participation in the Decision-making on the Project**

After the technical planning process was completed and the project proposal was established the second phase of participation took place. The power to decide on the main parts of the funding of the project is with the City Parliament. According to Article 13 of the Cantonal Act on Roads of Zurich the project proposal was publicly tabled on July 5, 2013 for comments, which practically coincided with a formal petition of the Business Association of Albisrieden.



On July 3, 2013 it launched a petition urging the executive authorities to give up the project.<sup>88</sup> The petition had been signed by 3,200 residents.

The City Council answered to this Petition on 4<sup>th</sup> December 2013. It did not agree with the view of the petitioners and addressed each point of concern in detail and explained why it does not agree. The City Council rejected the petition and referred to the possibility of objecting to the finalized project according to Article 16 and Article 17 of the Cantonal Act on Roads of Zurich once the project would be submitted to the objection procedure (see below). In accordance with Article 13(2) of the Cantonal Act on Roads of Zurich a detailed report states the replies to the arguments that were brought forward at this stage (*Einwendungen*), which have not been considered in the finalization of the project.

Later, two members of the City Parliament handed in a postulate (according to Articles 44 *Gemeindeordnung* (GO), LS 101.100, City Statute) with a view to again counter the arguments of the Business Association and urge the City Council to finalize the project taking up the views that were, according to them, coming out of the participatory process that had taken place (see Postulat Pascal Lamprecht (SP) and Markus Baumann (GLP), 20 April 2016, GR no 2016/135). Mr. Lamprecht, one of the authors of the postulate, explained their motives as follows: ‘in our view, the petition of the Business Association of Albisrieden did not reflect the wider opinion that had been expressed during the round tables. Nevertheless, they were able to mobilize a lot of people and gathered 3200 signatures. We wanted to counterbalance this by handing in a postulate and make sure that what had been agreed and discussed during the round tables during the informal participation process was adequately reflected in the final plans of the project’.

Because of the petition and remaining disagreement between the various interest groups the head of the Engineering and Waste Disposal Department Zurich decided to hold an additional round table with selected members of the District as well as members of the City Parliament, in order to discuss the still existing differences and to find a solution. Based on these discussions the project proposal was again revised. The City Parliament that is competent for financial decision of this size then took the funding decision, under the reservation of the formal objection procedure that still has to determine the final shape of the project.

### **Participation in the Objection Procedure**

According to Article 16 StrG the detailed project was publicly tabled in its revised version from 31 March to 2 May 2017 for the objection procedure. This involves the stakeholders that are directly concerned by and have a legally protected interest in the project (e.g. neighbors). Within the 30 days appeal time period, there were 13 objections against the project that are still pending. The decision on implementing the project will be taken by the City Council after

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<sup>88</sup> See Engineering Office, ‘Petition Against the Planned Restructuring of the Main Road of Albisrieden’ (Extract of the Protocol of the City Council of Zurich from 4 December 2013, 1088).





the objections have been considered and the finalized project plans have been adapted accordingly.

## Assessment of the Practice

A number of conclusions can be made from this practice. First, a variety of participatory processes are available at different stages of a construction project, starting with the assessment of needs, project design, planning to the funding decision and the judicial appeal procedures against the project decision. These procedures are time consuming. In the present case, several years will have been passed from the project idea to the finalized project.

Second, while public participation procedures invite all citizens to participate, the reality is usually different, also in the present case: Only a small number of already engaged or specifically concerned citizens effectively participated in public hearings or submit their opinions. Is this affecting the legitimacy of the result? Or is the possibility to participate enough?

Third, the participatory process involves interest groups that differ in their political weight. The Business Association of Albisrieden is a well-connected and established local organization, which was able to use the instruments in their favor, gather a large number of signatures to support their position. The formal petition right of the Association and the possibility to engage in the formal participation process gave them leverage. Some members of the City Council tried to counterbalance this weight, on behalf of the interests of their own constituency – and for the sake of equal participation. The City Council lastly takes the responsibility to decide on the project and balance the (possibly contradicting) interests of participating groups.

Fourth, the formal instruments of participation forced the authorities from the beginning to take up the interests of the Business Association, in order to avoid a formal objection of the Association later in the process, which can cost time and money. In general, the formally established participation processes seem to have influenced the authorities' decision to give greater consideration to informal participation at the very beginning of the project. These gave the public various entry points (invited spaces) into the project development process.

Fifth, space for participation was available in various forms at different stages of the process, so citizen groups did not feel obliged to 'invent' more spaces. Sixth, the City Council is relatively independent of cantonal or federal authorities to decide how they include citizens and/or directly concerned residents in the participation process, allowing them to adapt their approach to the perceived needs of the particular case. The judicial appeal procedure (open for directly concerned residents) ensures that the legal framework is respected.

Seventh, participatory processes may have a negative effect on the accountability of elected decision-makers who can always say that their project was ineffective because it had to take



up bad ideas that they are not responsible for. Eight, communication and information are key to participatory processes, particularly on complex projects.

Representation and legitimacy are a key challenge for formal and informal participation processes: Who is invited to participate? How are group representatives selected? Who is effectively taking part? This is even more an issue in more closed forms of participation: In the present case, the local authorities invited a certain selection of citizens and interest groups to the round tables, without transparent selection criteria.

## References to Scientific and Non-Scientific Publications

Legal Documents:

Cantonal Act on Roads of Zurich (*Strassengesetz*, StrG), LS 722.1

Cantonal Act on municipalities (*Gemeindegesezt*, GG), LS 131.

Rules of Procedure of the City Council (*Geschäftsordnung des Stadtrats*), AS 172.100

Directive of the City Council of Zurich to the Municipal Council (*Weisung des Stadtrats von Zürich an den Gemeinderat*), GR no 2018/433 of 14 November 2018 <[https://www.gemeinderat-zuerich.ch/Geschaefte/detailansicht-geschaefft/Dokument/395b57d5-acf4-4016-a347-0a27ae73cea6/2018\\_0433.pdf](https://www.gemeinderat-zuerich.ch/Geschaefte/detailansicht-geschaefft/Dokument/395b57d5-acf4-4016-a347-0a27ae73cea6/2018_0433.pdf)>

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## 6.3. Participation in the Development of the City Charter of Biel/Bienne

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### Relevance of the Practice

This practice is an example of a participatory process relating to the development of a new City Charter (municipal statute). The process shows the advantages and limitations of (new) informal participatory tools aimed at inclusiveness (e.g. including youth, socio-economic disadvantaged groups or non-citizens) in an urban setting and the close interaction with established formal elements of representative democracy in the municipality at stake. The practice also shows the interest in innovative forms of political participation and the anchoring of such practices in formal legal texts.

### Description of the Practice

The City of Biel/Bienne located in the north-west of Switzerland is part of the Canton of Berne, which is a bilingual canton. Biel/Bienne is the largest bilingual City in Switzerland. 57 per cent of the population are German speakers and 43 per cent are French speaking. In total Biel/Bienne counts 54,456 habitants (31.12.2016<sup>89</sup>). 33.2 per cent are non-citizens, around 17 per cent are under 18 years old, both groups are without the formal right to participation in the political decision-making process. The City of Biel/Bienne launched the revision of the City Charter (*Totalrevision der Stadtordnung* also 'City Charter') in 2017. The aim of the exercise was to align the Charter to the revised cantonal legal framework, taking into account the evolving demographic situation of the city and adapt the vision of the city's development.

The process was designed within the relevant federal, cantonal and municipal legal framework. Swiss municipalities have a constitutionally guaranteed right to autonomy, within the scope defined by cantonal and federal law. For Bernese municipalities, the canton determines the basics of the organization of the municipalities (Article 11 of the Cantonal Constitution). The total revision of the City Charter must be submitted to a mandatory referendum (popular vote) in the municipality (Article 116(1) of the Cantonal Constitution). The City Charter must include the principles of the organization, responsibilities and participation of the citizens (Article 51

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<sup>89</sup> Barbara Brechbühl and others, 'Statistik der Schweizer Städte 2018. Statistiques des villes suisses 2018' (Schweizerischer Städteverband/Union des villes suisses 2018) <[https://staedteverband.ch/cmsfiles/stst\\_2018\\_web.pdf](https://staedteverband.ch/cmsfiles/stst_2018_web.pdf)> accessed 6 April 2020.



of the Law on Municipalities), and it must be approved by the responsible cantonal authorities (Article 56 of the Law on Municipalities).

In addition, Article 12(1)(a) of the current City Charter of Biel/Bienne confirms that the total revision of the City Charter falls under the jurisdiction of the citizens of Biel/Bienne. The City Parliament however first approves the final version of the revised City Charter based on the draft submitted by the municipal council, the municipal executive before it is submitted to the citizens for their final say.

The municipal government (municipal council) saw the total revision of the City Charter as a project of big political importance. Before the start of the revision process a few fundamental questions were discussed and clarified by a core-group (*Kerngruppe*) consisting of two members of the municipal council, the President of the Supervisory Commission of the City Parliament, the City Chancellor as well as four senior members of the public administration and a legal expert. The core-group developed 20 working hypotheses that the revision process should follow. One of the hypotheses stated that the participation of private persons and new forms of political participation should be considered to be included into the new City Charter. The City Parliament then discussed and decided on the proposed structure of the project, which foresaw five project phases. The extent to which the public should be involved in the revision process was not entirely undisputed. Some members of the City Parliament did find the suggested participatory process too complicated and experimental. They were worried about the influence it would have on the content of the new City Charter and how the raised expectations could negatively affect the political decision-making process at a later stage of the process. The City Parliament nonetheless approved the financing credit of CHF 340,000 for the anticipated project on 16 March 2017.

Phase 1 was aimed at creating a basis for the participative phase of the revision process. The 20 working hypotheses were used as guidelines to frame and outline 13 questions, which could be discussed within a wider participation process. In this first phase, a group of experts from the areas of law, political science and municipal fiscal law were commissioned to give their expert inputs. Factsheets were prepared for the municipal council which submitted them to the Special Commission of the City Parliament. The inputs of the special commission fed into the final version of the Factsheets on 20 December 2017, framing formally the participation of the public in the second phase of the revision process.

The focus of phase 2 was the broad and interactive participation of the public, with the aim of including groups that are not included in the formal decision-making process, largely due to their lack of citizenship. With the support of an external opinion research institute (GFS Bern) the participation process was structured into various steps. The factsheets formed the basis for a direct dialogue as well as an online input dialogue, both for gathering substantial qualitative inputs. The direct dialogue consisted of four (two German and two French) dialogue groups, which took place in February 2018, where members of the special commission presented the factsheets. The members of the dialogue groups were selected at random by



lottery among the inhabitants of Biel/Bienne. 59 per cent of the selected persons did attend the group dialog sessions. The main inputs referred to the desired increase of participation rights on municipality level. In addition, the promotion of political participation of youth and non-citizens was raised. The dialogue groups also discussed solutions or new forms and instruments that would be beneficial in promoting substantive political participation. The aim of the indirect online dialogue was to reach inhabitants that prefer to give their opinion in an accessible and low threshold level form. Simultaneously an online-social-media-influencer campaign was launched. The aim of the process was to have as much participation and dialogue with people living in Biel/Bienne as possible, collect different views and opinions, as well as to increase inclusion of people without formal voting rights. The influencers were expected to motivate inhabitants in their networks to participate actively. The social media inputs were structured to get answers to specific questions as well as additional ideas and opinions of the participants. In April 2018 a structured questionnaire was sent out by mail to 4,000 people living in Biel/Bienne, which also were selected by random. 1,233 questionnaires were returned.

Based on the results from this phase, the municipal council defined benchmarks for the elaboration of the first draft of the new City Charter. Several of the identified public benchmarks that came from the public participatory processes related to political participation: Improving provision on public information, increasing political participation of non-citizens, anchoring bilingualism in participatory processes. The benchmarks stemming from the administration project groups and the parliament were not specifically aimed at political participation but included inputs to financial principles and questions of competences between legislative and executive organs.

In phase 3 a first draft of the City Charter was elaborated. Experts drafted a first version based on the benchmarks defined by the municipal council. In various workshops together with the municipal government and the special commission of the parliament the draft was written and incorporated into the drafting procedure that is legally foreseen for the revision of the City Charter, with various readings of the text in the City Parliament. The municipal council passed the draft on 30 January 2019 and issued a commentary of the draft.

Phase 4 consisted of the formal consultation process. On 5 February 2019 the municipal council's draft and the commentary were presented to the public at a public information event. The two documents together with a questionnaire were sent to political parties in Biel/Bienne, civil society organizations and associations, economic and workers' unions, district organizations as well as religious communities (*Kirchgemeinden*). Interested people got the documents directly at the information event and were able to access them online. The questionnaire also referred to political participation. One question asked whether the proposed new participation rights were deemed useful and effective and whether there were ideas for additional participation forms. The second one asked whether the administration should consult the public on certain issues and which proposed option they would prefer. Half of the consulted organizations as well as some citizens sent their comments on the first draft



of the revised City Charter. The replies were made public online. The results of the formal consultation process confirmed, among other things, that there was an overwhelming agreement that new participation forms should be included in the City Charter. Private persons as well as organizations also had additional ideas of how other forms of participation rights could be included into the City Charter.

Based on the consultation inputs the draft was amended in two additional readings by the municipal council. After the first reading, the revised draft was handed over to the cantonal Office for Municipalities and Spatial Planning (*Amt für Gemeinden und Raumordnung*), for preliminary legality check, based on Article 56(1) of the cantonal law on municipalities. This preliminary approval tries to make sure that the draft that the citizens will vote on, will also be approved by the Office once it has been accepted by the citizens. On 13 September 2019 the cantonal Office concluded that there were no legal reservations towards the draft. Some minor comments were taken up into the draft in the second reading by the municipal council, the rest of the draft remained the same.

The municipal council submitted the draft of the new City Charter to the City Parliament in autumn 2019. Many amendments were proposed.<sup>90</sup> Due to the Covid-19 pandemic, the discussion was delayed. In light of the high number of amendments, the (newly elected) City Parliament decided in December 2020 to refer the draft back to the municipal council for examination and preparation of proposals. It is currently uncertain when the new City Charter will be put to the vote of the citizens of Biel/Bienne and when it will enter into force.

## Assessment of the Practice

Looking at this practice in the context of an urban municipality, we can see that participation was a means for collecting inputs from citizens to make the process more responsive to their needs. Informal and formal participative instruments provided substantial ideas into law-making and political decision-making. Informal and formal participation can be combined successfully and lead to substantive results, if the overall working processes are clearly structured and framed, fitting into the overall system of decision-making.

Informal instruments work out fine, if the formal processes of law-making provide the space needed, if they are duly respected and if the political stakeholders are open for such inputs. The benchmarks of the broad participatory process of the first phase were taken up into the formal law-making process by the city's legislative and executive authorities, without legal obligation to do so. However, due to a variety of reasons, the city charter could not be adopted in one legislature as it was planned. The newly elected parliament does not feel as committed to the procedure as the previous parliament, and the momentum could be lost. 'Informal' does

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<sup>90</sup> 'Auszug aus den Verhandlungen des Stadtrates' (Secretariat of the Municipal Council) <[https://www.biel-bienne.ch/public/upload/assets/8384/15\\_16\\_%2820.u.21.11.19%29\\_d\\_def.pdf](https://www.biel-bienne.ch/public/upload/assets/8384/15_16_%2820.u.21.11.19%29_d_def.pdf)> accessed 26 March 2020.



not mean ‘unstructured’ – to the contrary: Informal processes should be prepared and structured carefully. The contribution of a variety of external experts in framing the process and facilitating dialogue between citizens and the authorities was crucial in this case, able to coordinate, facilitate and sequence the various participative instruments according to their specific purposes and limits. Informal and formal participative processes are time and resource intensive but if well sequenced, transparently structured, well designed and managed, they can lead to innovative results and increase credibility, responsiveness and legitimacy of city authorities.

Different participation tools and instruments (such as information hearings, dialogue meetings, on-line discussions, public surveys, social media campaigns etc.) have different aims. It is important to be clear about the purpose, the target groups, the use of the expected results from the beginning, and balance the various tools and instruments accordingly in the working process.

Moreover, we can see that approaching specific groups and stakeholders can be challenging: How to get their views? Who is representing and speaking for them? Who can bring innovative ideas? A thorough analysis of the power dynamics at play is important to ensure inclusivity. A combination of different formats and channels are useful to get the views of different groups.

Framing and managing expectations of people involved in the participatory process is vital to avoid frustration, since political participation does not mean ‘my opinion is the only that will count’. The space for local decision-making is often not as broad as citizens may expect. In addition, the final decision on the formal adaptation of the new City Charter is left to the democratically elected City Parliament/municipal council as well as the municipal vote (open to all citizens but not all of the people that were involved in the participation process of the development stage in phase 2).

The informal participation brought new ideas on (formalized) political participation to the political system and materialized in a legal change of formal participatory practices in the City of Biel/Bienne.

Finally, we can see that digital channels can be helpful to tap into new groups that traditionally would not participate in the process. Consulted experts emphasized that on-line instruments and social media are often used by interest groups to quickly build up political pressure, while many authorities are not yet experienced with these phenomena.

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## 6.4. Citizen's Participation in Decision-making on Public Investment: Public Pool in Rural Area (Huttwil, Canton Berne)

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### Relevance of the Practice

This practice is an example of a participatory process relating to a renovation project of a public pool in a rural town. The process shows the advantages of an informal participatory tool aimed at understanding the public's interest in and create majority support for a renovation project of a public space. It underlines the linkage and interaction between formal and informal participation forms. The citizens' formal competence to decide on the expenditure for the municipal investment (through the municipal assembly and even a possible voting by ballot) influenced the municipal government's openness towards incorporating a variety of public interests at the very beginning and during the project development.

### Description of the Practice

Huttwil is a municipality in the Canton of Berne with around 5000 inhabitants and an area of 17.24 km<sup>2</sup>. According to the Swiss statistics Huttwil is classified as intermediary, with urban as well as rural characteristics. 13.74 per cent of the people living in Huttwil are non-citizens. The public swimming pool of Huttwil was built in 1922 and renovated in the Eighties. The old public pool did not fulfill the legal safety requirements anymore and needed renovation. The municipality is the owner of the pool, the Swimming Pool Association its operator.

It was clear from the beginning that the renovation of the pool would be too costly to be decided by the municipal council (the executive organ) or even the municipal assembly (the legislative organ) only. The Organizational Ordinance of the Municipality of Huttwil foresees in Article 4 that the residents of Huttwil (the Swiss citizens domiciled in Huttwil) decide on financial expenditures over CHF 1.5 million by ballot voting (referendum). Article 6 provides that the municipal assembly (an assembly of all citizens, where all Swiss citizens domiciled in Huttwil are invited to participate) decides on expenditures that are over CHF 500,000 to 1.5 million. For expenditures between 100,000 and CHF 500,000 the municipal council's decision is subject to a facultative referendum: If 5 per cent of Huttwil residents are requiring it by their signature, a public ballot is organized. According to Article 16, the municipal council can decide on expenditures that amount to less than CHF 100,000 independently.



In 2015, the municipal government conducted a public survey to find out what Huttwil citizens thought about the renovation needs of the public pool. The questions ranged from general on the state of the public pool, to more detailed ones on the opinion about specific necessary improvements. The public was asked to rate the importance of certain amenities of the pool, such as a diving tower, water slide or a kids' pool. Each question had set answers listed which could be rated according to one's importance. Every question included the possibility to add one's own idea concerning the question. 586 answers were handed in and showed that there was a broad interest in maintaining and renovating the existing public pool. This confirmed and motivated the municipal council to prepare for the renovation project. Later, in early summer 2018, the idea of building a new public pool in another location of the town ('CAMPUS') together with a private partner was brought up by a local citizen's group. However, the municipal council decided in November 2018 to continue to favor the renovation of the existing pool and proposed to the municipal assembly of Huttwil to approve two financial expenditure decisions, a first one for planning the renovation in detail and a second one on investments for the urgent and provisional reparation of the existing pool.

At the municipal assembly's session on 30 January 2019, the participating citizens discussed the two options (renovation vs. new pool) in terms of size and quality of the infrastructure, the location, security issues and costs in detail. Various stakeholder groups took the floor and stated their opinion. Finally, the municipal assembly voted on the proposals and concluded that the municipal council would be allowed to spend a specific amount for planning the renovation, and another amount for the urgent reparation of the heating system of the existing pool. It was also decided that the private group that initiated the CAMPUS project would develop their own plan regarding the new pool and calculate the public expenditure that would be implied. Lastly, the assembly held that the municipality would decide which option they preferred, based on accurate information on the public expenditure implied, by public ballot on 9 February 2020.

During 2019, the two construction plans were developed, with cost estimations for the municipal budget. The municipal council informed the Huttwil citizens in detail about the possible two projects and the implied expenditures for the municipality at a public meeting on 14 January 2020. In addition, the municipal council published detailed information online in January 2020. The municipal council did not issue a recommendation or preference for either of the projects and respected the decision of the municipal assembly to let the citizens vote on the two options. The public ballot took place on 9 February 2020. The vote turned out in favor of the less expensive renovation option and against the privately initiated option which would have been more expensive and would even have led to a raise in municipal taxes. The overall cost of the renovation of the public pool will be CHF 5 million with additional yearly costs of CHF 350,000 (operating cost incl. depreciation and interest).



## Assessment of the Practice

Looking at this practice, we can see that the initial public survey made Huttwil citizens participate in the needs' assessment. This served as an indicator to the municipal government on how important the public pool was in the community. The ideas and concerns of the public could be taken up from the beginning of the project, making it responsive to the expressed needs.

In smaller, rural communities the municipal assembly is an important arena for political deliberations and offers possibilities to discuss and develop jointly options that are innovative, beyond the narrow space of formal political participation which is focusing on 'yes' or 'no'. Particularly for more urban settings (mostly with municipal parliaments), consulted experts stressed, however, that the authorities must keep the responsibility and task to design concrete projects and doubted whether the design and planning of a concrete investment project should be left to a citizen's group, taking to account the complexity of the legal and financial framework for such projects.

Moreover, we can see that through the formal rights of participation (in the municipal assembly, or by ballot voting), local authorities are forced to take citizen's opinions seriously and – formally or informally - open up to new ideas coming from citizen's groups.

The public debate around a common endeavor – even if the debate is controversial – strengthens the credibility of political processes and lastly the legitimacy and acceptance of municipal authorities. The effective use of participative instruments helps increasing the citizen's sense of belonging to the municipality.

Letting the resident citizens decide on the two options, being aware of the expenditure involved and the consequences on municipal taxes, helps the municipal government justify and confirm its decision and brings broad legitimacy and acceptance towards the public investment. If the participatory processes are perceived by citizens as appropriate and well done, the final decisions are broadly accepted and it can be expected that they will not be questioned any more during the implementation phase. Thus, investing time and resources in sound participatory processes may result in economies in the implementation phase.

## References to Scientific and Non-Scientific Publications

Legal Documents:

Cantonal Law on Municipalities (*Gemeindegesezt* (GG)), BSG 170.11

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This project has received funding from  
the European Union's Horizon 2020 re-  
search and innovation programme under  
grant agreement No 823961.

