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**Local and regional democracy in Switzerland**

Monitoring Committee

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*Summary*

This particularly positive report is based on the second monitoring visit to Switzerland since the country ratified the European Charter of Local Self-Government in 2005. It shows that municipal self-government is particularly deeply rooted in Switzerland. All municipalities possess a wide range of powers and responsibilities and substantial rights of self-government. The financial situation of Swiss municipalities appears generally healthy, with a relatively low debt ratio. Direct-democracy procedures are highly developed at all levels of governance. Furthermore, the rapporteurs very much welcome the Swiss parliament's decision to authorise the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

The report draws attention to the need for improved direct involvement of municipalities, especially the large cities, in decision-making procedures and with regard to the question of the sustainability of resources in connection with the needs of municipalities to enable them to discharge their growing responsibilities. Finally, it highlights the importance of determining, through legislation, a framework and arrangements regarding financing for the city of Bern, taking due account of its specific situation.

The Congress encourages the authorities to guarantee that the administrative bodies belonging to intermunicipal structures are made up of a minimum percentage of directly elected representatives so as to safeguard their democratic nature. The rapporteurs also recommend that the Swiss authorities, in consultation with the cantons, provide for the possibility of extending the scope of the Charter to the cantons. Finally, the Congress calls on the authorities to ratify Articles 4.4, 6.2, 8.2 and 9.5 of the Charter, which are complied with de facto in Switzerland.

1 L: Chamber of Local Authorities / R: Chamber of Regions  
 EPP/CCE: European People's Party Group in the Congress  
 SOC: Socialist Group  
 ILDG: Independent Liberal and Democratic Group  
 ECR: European Conservatives and Reformists Group  
 NR: Members not belonging to a political group of the Congress

## RECOMMENDATION 407 (2017)<sup>2</sup>

1. The Council of Europe Congress of Local and Regional Authorities refers to:

a. Article 2, paragraph 1.b, of Statutory Resolution CM/Res(2015)9 relating to the Congress, which provides that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of Statutory Resolution CM/Res(2015)9 relating to the Congress, which provides that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Congress Resolution 409(2016) on the rules and procedures of the Congress, in particular Chapter XVII on the organisation of the monitoring procedures;

d. Congress Recommendation 219 (2007) on the status of capital cities;

e. Congress Recommendation 285 (2010) on regional democracy in Switzerland;

f. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy [MCL-16(2009)11] in its monitoring activities, as well as the reply given by the Committee of Ministers to Recommendation 282 (2010) [CM/Cong(2011)Rec282 final] encouraging the governments of member States to take account of the aforementioned Reference Framework in their policies and reforms;

g. the explanatory memorandum on local and regional democracy in Switzerland, drawn up by the rapporteurs, Mr Marc Cools, Belgium (L, ILDG), and Mr Dorin Chirtoaca, Republic of Moldova (R, EPP/CCE), following a visit to Switzerland from 23 to 25 January 2017.

2. The Congress notes that:

a. Switzerland acceded to the Council of Europe on 6 May 1963. It signed the European Charter of Local Self-Government on 21 January 2004 and ratified it on 17 February 2005 with the exception of Articles 4.4, 6.2, 7.2, 8.2, 9.5 and 9.7. In Switzerland, the Charter applies only to the “political municipalities” (the first tier of local government). The cantons (the regional tier) are expressly excluded. In the Swiss context, “national” refers to the federal level, “regional” the cantonal level and “local” the municipal level;

b. the Monitoring Committee decided to examine the situation of local and regional democracy in Switzerland and appointed Mr Marc Cools, Belgium (L, ILDG), and Mr Dorin Chirtoaca, Republic of Moldova (R, EPP/CCE), co-rapporteurs, and instructed them to prepare and submit to the Congress a report on local and regional democracy in Switzerland;

c. the monitoring visit took place from 23 to 25 January 2017. During the visit, the Congress delegation<sup>3</sup> met representatives of the national institutions (the Parliament, the Federal Department of Justice and Police, the Federal Department of Home Affairs, the Federal Department of the Environment, Transport, Energy and Communication, the Federal Department of Finance, Swiss Federal Audit Office, judicial institutions (Federal Court), the Ombudsman (at local and cantonal level), various local authorities (City of Bern, City of Zurich, municipality of Oetwil an der Limmat), cantons (Canton of Jura, Canton of Zurich), members of the Swiss delegation to the Congress, the Association of Swiss Municipalities, the Conference of Cantonal Governments, the Swiss Association for the Council of European Municipalities and Regions and the Union of Swiss Towns. The detailed programme of the visit is appended;

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<sup>2</sup> Debated and adopted by the Congress on 20 October 2017, 3rd sitting (see Document [CG33\(2017\)14final](#), explanatory memorandum), co-rapporteurs: Marc COOLS, Belgium (L, ILDG) and Dorin CHIRTOACA, Republic of Moldova (R, EPP/CCE).

<sup>3</sup> The rapporteurs were assisted in their work by Professor André Roux, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.

*d.* the rapporteurs are aware that pursuant to Article 50 of the Federal Constitution the Swiss Confederation guarantees the municipalities the right to self-government within the limits of cantonal law. Consequently, the commitments entered into under the European Charter of Local Self-Government legally bind the Confederation, but it is primarily the cantons' responsibility to ensure the Charter's implementation. Their recommendations will therefore be addressed to the Swiss Confederation as a member of the Council of Europe, but the implementation of these recommendations will also be a matter for the cantons;

*e.* the delegation wishes to thank the Permanent Delegation of Switzerland to the Council of Europe and the secretariat of the Swiss delegation to the Congress for helping with the organisation and the successful conduct of the visit. The rapporteurs also express their gratitude to the country's national, cantonal and local authorities, the Swiss delegation to the Congress, the national associations of local and regional authorities and everyone they spoke to during the visit for their warm hospitality, their readiness to help and the quality of the information provided.

3. The Congress notes the following with satisfaction:

*a.* a high degree of self-government in all Swiss municipalities, although their situation may vary from one canton to another;

*b.* general compliance with the commitments entered into by the Swiss Confederation when it ratified the European Charter of Local Self-Government on 17 February 2005;

*c.* considerable financial autonomy of municipalities, which are in a healthy financial situation with a relatively low debt ratio;

*d.* the active role played by the associations of municipalities, especially the Association of Swiss Municipalities and the Union of Swiss Towns, which enables influence to be exerted on decision making, mainly at cantonal level but also at federal level;

*e.* the fact that direct-democracy procedures, such as popular initiatives, referendums and popular assemblies, are highly developed at the level of the municipalities, with the municipal authorities therefore being under constant public scrutiny;

*f.* the ratification by Switzerland, on 18 July 2017, of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

4. The Congress notes that the following points call for particular attention:

*a.* in practice, the weak direct involvement of municipalities, especially the large cities, in decision making at federal level from the preparatory stage;

*b.* the militia system could impede access to local elective office owing to the difficulties in striking a balance between occupational activities and the responsibilities that go with municipal posts. This means local mandates can only be exercised by certain categories of citizens;

*c.* municipal fragmentation in Switzerland, resulting in inadequate human and financial resources in small municipalities, especially to enable them to cope with increasing responsibilities;

*d.* the issue of the democratic legitimacy of the administrative bodies belonging to intermunicipal structures, to which key municipal responsibilities are transferred and which are not made up of equal numbers of officials and elected representatives;

*e.* the fact that no account is taken in domestic legislation of the special situation of the city of Bern, given its specific character as the seat of the Federal Government and of the Parliament;

*f.* the exclusion of the cantons from the scope of the Charter.

5. In the light of the above, the Congress recommends that the Committee of Ministers call on the Swiss authorities to:

*a.* strengthen the participation of municipal representatives, mirroring the arrangements that apply to cantonal representatives, in expert committees and working groups tasked with drafting legislation at

federal level, and grant the large cities specific status on consultative bodies and in consultation procedures so as to ensure that they represent themselves rather than only being represented by associations;

*b.* start discussions involving the three tiers of government (Confederation, cantons, municipalities) on bringing about improvements to the militia system currently in force;

*c.* continue to encourage mergers between municipalities, especially by providing financial incentives;

*d.* provide for the administrative bodies belonging to intermunicipal structures to be made up of a minimum percentage of elected representatives so as to safeguard their democratic nature;

*e.* determine in a special law the framework and arrangements governing the Confederation's funding of the cost to Bern of hosting not only the Federal Government and Parliament but also foreign embassies and diplomatic representations;

*f.* consider in consultation with the cantons the possibility of extending the scope of the Charter to the cantons, which would further safeguard their powers of self-government in relation to the Confederation;

*g.* consider the ratification of Articles 4.4, 6.2, 8.2 and 9.5 of the Charter, which are complied with *de facto* in Switzerland.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in Switzerland and the accompanying explanatory memorandum in its activities relating to this member State.

## EXPLANATORY MEMORANDUM

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## **1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE**

1. In accordance with Article 2, paragraph 3, of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereinafter “the Congress”) prepares, on a regular basis, country by country reports on the state of local and/or regional democracy in all member States of the Council of Europe and in States which have applied to join the Council of Europe, and ensures, in particular, that the principles of the European Charter of Local Self-Government are implemented.

2. Switzerland signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 21 January 2004 with reservations relating to Articles 4.4, 6.2, 7.2, 8.2, 9.5 and 9.7, and ratified it on 17 February 2005. In application of Article 16, the cantons have been expressly excluded from the application of the Charter, which only applies to the “political municipalities” (the first tier of local government). Cantons (the regional tier) are expressly excluded, therefore. In the Swiss context, “national” refers to the federal level, “regional” the cantonal level and “local” the municipal level.

3. In the field of local and regional democracy, Switzerland has also signed and ratified other Council of Europe conventions, namely the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106, ratified on 3 March 1982 with entry into force on 4 June 1982); the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159, ratified on 1 September 1998 with entry into force on 1 December 1998); and Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities on interterritorial co-operation (ETS No. 169, ratified on 26 February 2003 with entry into force on 27 May 2003).

4. The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) is in the process of being ratified. On 12 June 2015, the Federal Council authorised the Federal Department of Justice and Police to launch a consultation on ratification of the protocol. It transpired from the 37 replies that the majority of the respondents, in particular fourteen cantons, the Association of Swiss Municipalities and the Union of Swiss Towns, supported ratification. On 24 August 2016 the Federal Council sent Parliament a Message calling for the adoption of a draft federal decree approving ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. The Swiss Parliament has authorised the ratification of the Protocol, which is currently subject to an optional referendum (Article 141(1)(d)(3) of the Constitution). The referendum deadline expires on 6 July 2017.

5. Switzerland signed the European Charter for Regional or Minority Languages on 8 October 1993. It was ratified on 23 December 1997 and entered into force on 1 April 1998.

6. Marc COOLS, Belgium (L, ILDG), Rapporteur on local democracy, and Dorin CHIRTOACA, Republic of Moldova (R, EPP/CCE), Rapporteur on regional democracy, were instructed by the Monitoring Committee to prepare a report on Switzerland and to submit it to the Congress. The rapporteurs were assisted in their work by Professor André Roux, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat. The delegation visited Switzerland from 23 to 25 January 2017.

7. During their visit, the Congress delegation met representatives of national institutions (Parliament, Federal Department of Justice and Police, Federal Department of Home Affairs, Federal Department of the Environment, Transport, Energy and Communication, Federal Department of Finance, Swiss Federal Audit Office, judicial institutions (Federal Court), the Ombudsman (at local level), various local authorities (City of Bern, City of Zurich, municipality of Oetwil an der Limmat), cantons (Canton of Jura, Canton of Zurich), members of the Swiss delegation to the Congress, of the Association of Swiss Municipalities, of the Swiss Association for the Council of European Municipalities and Regions, of the Conference of Cantonal Governments and of the Union of Swiss Towns.

8. The detailed programme of the visit is appended to the present report.

9. The present report has been drawn up on the basis of the information received during and after the visit to Switzerland, of the relevant legislation and of other information and documents provided by the

representatives of the Swiss authorities. Information provided by experts, an appropriate bibliography and research have also been used.

## **2. HISTORICAL AND INTERNATIONAL CONTEXT**

### **2.1 Historical context**

10. Article 1 of the Federal Constitution of 18 April 1999 states: "The Swiss people and the cantons (...) form the Swiss Confederation". Cantons and municipalities are the grassroots authorities on which both the federal state and Swiss society are based. Historically, it appears that the municipalities predate the creation of the Confederation and the cantons. They are thus deeply rooted in the country's political traditions, where they play a key role. The Old Confederation operated as a loose alliance of cantons from the early 14<sup>th</sup> century until the late 18<sup>th</sup> century. After Napoleon's armies invaded Switzerland in 1798, a centralised unitary state was imposed under a Constitution establishing the Helvetic Republic. The new regime was short-lived, however, and in 1802 Napoleon was forced to restore the confederal state structures through the Act of Mediation which, together with the Federal Treaty of 1815, essentially marked a return to the pre-1798 order.

11. With the adoption of the Constitution of 1848, Switzerland was transformed into a federal state, although it kept the name "Confederation". The three-tiered system of government has undergone no major changes since. The Swiss federal state was therefore built through a bottom-up process. The federalist approach has allowed Switzerland to safeguard local features, while at the same time enabling it to develop its own national identity. In a country with four linguistic regions (German, French, Italian and Romansh), each culturally and geographically distinct, federalism is seen as the best means of ensuring continued social cohesion.

### **2.2 International context**

12. Switzerland acceded to the Council of Europe on 6 May 1963, becoming the 17<sup>th</sup> country to do so. Switzerland ratified the European Convention on Human Rights on 28 November 1974 and the European Charter of Local Self-Government on 17 February 2005. It joined the United Nations on 10 September 2002 but is not a member of the European Union (EU). After a referendum held in December 1992 rejected membership of the European Economic Area (EEA), the process of integration into the EU came to a halt. In 2000, the Swiss people voted in favour of bilateral agreements with the EU. Switzerland is a member country of the OECD. According to the OECD, it is one of the best performing countries on a whole range of economic criteria, including the OECD Better Life Index. This is due to relatively low unemployment, significant wage growth and relatively even income distribution.

### **2.3 Internal political context**

13. The Swiss Confederation is a parliamentary federal state with a collegial executive. From its earliest days, Switzerland has made intensive use of direct democracy (popular initiatives, referendums), whether at federal, cantonal or municipal level. Switzerland is also a liberal state where considerable importance is attached to protecting fundamental rights. The Federal Constitution of 1999 establishes a comprehensive and coherent list of these rights, which are also enshrined, to varying degrees, in the cantonal constitutions. The Federal Court plays a key role in safeguarding fundamental rights. Since the ratification of the European Convention on Human Rights in 1974, its case law has provided the various Convention rights with a solid underpinning in Swiss law.

14. At federal level, Switzerland has a bicameral parliament. The National Council represents the people and has 200 members elected for a four-year term under the proportional system. The majority system applies on a *de facto* basis in a few cantons. The seats on the National Council are divided up among the 26 cantons in proportion to their population. The Canton of Zurich, which is the most populous, has the greatest number of seats (35) whereas the cantons of Uri, Obwald, Nidwald, Glaris, Appenzell Innerrhoden and Appenzell Ausserrhoden have only one. The Council of States is the representative body of the cantons and has 46 members, most of whom are elected by a majority vote. Whatever the size of its population, each canton is entitled to two seats, except for the six former half-cantons (Obwald, Nidwald, Basel-Stadt, Basel-Landschaft, Appenzell Ausserrhoden and Appenzell Innerrhoden), which each elect just one councillor. The procedure for electing the Council of States is governed by cantonal law. Elections are usually conducted according to the majority system, except in the cantons of Jura and Neuchâtel which use proportional representation.

15. The two councils have identical powers. They deliberate on amendments to the Constitution, pass federal laws, determine for what purposes federal taxes are to be used and oversee the activities of the Federal Council, the federal administration and the federal courts. The last federal elections, held on 18 October 2015, saw a shift to the right in Swiss politics, with the Democratic Union of the Centre and the Radical Liberal Party gaining ground (29% and 16.4% of the vote respectively), while the Socialist Party maintained its position (18.8% of the vote) and the Greens experienced a decline in support (7.1% of the vote).

16. The executive branch is a collegial body. Switzerland's highest executive authority, the Federal Council, consists of 7 members who are elected for 4 years by the two houses of the Federal Assembly, namely the National Council and the Council of States, sitting jointly. The Federal Council governs Switzerland, runs the administration, proposes legislation and implements it. It manages the Confederation's finances, adopting the budget and the state financial statements. It meets once a week and keeps the public informed of its decisions. The Federal Council takes decisions collectively, i.e. by consensus, so that its policies have a greater chance of commanding majority support. The possibility of the use of referendums and popular initiatives in the event of disagreement also makes it necessary to seek consensual solutions. Each member of the Federal Council is in charge of a "department" or ministry. The most recent Federal Council elections took place on 9 December 2015. The President of the Confederation is elected by the Federal Council for one year, from among the seven Councillors. Doris Leuthard is Switzerland's president in 2017.

#### **2.4 Previous reports and recommendations**

17. A report on "Regional democracy in Switzerland" prepared by Marjan Haak-Griffioen (Netherlands) was adopted on 1 March 2010 at the 18th session of the Congress. This report concerns regional (cantonal) self-government in Switzerland, its structure and functioning, the major reforms of recent years, as well as their conformity with European standards and in particular with the new Reference Framework for Regional Democracy. It concluded that in Switzerland, the fundamental principles of regional self-government relating, inter alia, to cantons' full powers and responsibilities, participation in the shaping of federal policy and representation at federal level were fully in line with the principles laid down by the Reference Framework for Regional Democracy.

18. The recommendation, however, drew the Swiss authorities' attention to a few matters which could be the subject of possible reform, such as the institutionalisation of urban area ("agglomération") structures, stabilisation of the financial equalisation system and intercantonal conventions and their application.

### **3. HONOURING OF OBLIGATIONS AND COMMITMENTS**

#### **3.1 The Constitution and ordinary legal framework**

19. The Swiss Constitution, which was completely revised in 1999 (entry into force on 1 January 2000), simultaneously establishes the autonomy, and even the sovereignty, of the cantons (Articles 1 and 3), and the autonomy of the municipalities (Article 50). The latter principle is also enshrined in the cantonal constitutions and legislation. The municipalities exercise general public authority responsibilities and prerogatives regarding a given territory and population. They have general powers to manage all local matters. Naturally, they cannot intervene in responsibilities explicitly assigned to the Confederation or to the cantons. The municipalities are also required to exercise responsibilities that the cantonal or federal authorities delegate to them. Despite this, the municipalities are not a federal law institution, but exclusively an institution of cantonal law. The constitutions and laws of each of the 26 cantons establish the municipalities, determine their structure, remit and resources and lay down the cantonal authority's monitoring and intervention powers. It therefore follows that there is considerable diversity among Swiss municipalities.

#### **3.2 The local government system**

20. There are several types of municipalities in Switzerland. When used without any further explanation, the term "municipality" corresponds to the "political municipality" (*Einwohnergemeinde*), which consists of all the citizens who reside on its territory. In this municipality every citizen is able to exercise their political rights no later than three months after moving there (Article 39, paragraph 4, of the Constitution).



21. In 2016, Switzerland had 2294 political municipalities, which had very different features. Significant differences can be noted in the distribution of the municipalities among the 26 cantons. For example, the Canton of Basel-Stadt has only three, whereas one Swiss municipality in four is located in the cantons of Bern and Vaud. There are also significant differences in the municipalities' territorial expanse and in their socio-economic features. Alongside large municipalities such as Zurich with its 419 000 inhabitants, there are many small municipalities: 48% of Swiss municipalities have fewer than 1000 inhabitants and 240 municipalities have fewer than 100. As a result, there are clear disparities between the municipalities in terms of the financial and human resources available to them. Many small municipalities are heavily dependent on cantonal grants, which may naturally call into question their autonomy.

22. The scope of the Charter is limited to the political municipalities, but there are other types of municipalities:

- *Bürgergemeinden* (citizens' municipalities), which include all those who are citizens of a municipality. The criterion that determines whether a person is a citizen of the *Bürgergemeinde* is therefore not territorial, but personal. Citizenship is a personal right dating back to medieval urban law. This type of municipality normally owns property (buildings, forests, orchards, vineyards, etc.) which it manages itself and from which it derives income that may be distributed among its citizens. Some *Bürgergemeinden* play an active role in the social and cultural field, they: manage hospitals, retirement homes and care homes; distribute study grants; help the unemployed, those with disabilities and drug users; and support libraries and museums. There are significant differences in the structure, powers and activities of the different types of *Bürgergemeinden*. Often the implementation responsibilities fall to the political municipality, so much so that the *Bürgergemeinde* has only one body, the *Assemblée des communiens*, but it does sometimes have its own executive. In Basel and Bern, they even have their own parliaments. In some cantons it is still the *Bürgergemeinde* which confers the right of citizenship as a prerequisite for obtaining naturalisation. This type of municipality does not exist in the cantons of Geneva, Neuchâtel, Nidwalden, Schwyz and Vaud. Some cantons (for example, Fribourg, Glarus and Zurich) have a mixed system, in which there are political municipality bodies that manage *Bürgergemeinde* matters.

- Special-purpose municipalities, otherwise known as specialised municipalities. These are mainly found in the German-speaking cantons. They have powers in a specific field, whereas political municipalities have general powers. Among the special-purpose municipalities particular mention can be made of *Kirchgemeinden* (church municipalities), *Shulgemeinden* (school municipalities) and welfare municipalities.

23. With regard to the political municipalities, two main categories can be distinguished according to their internal organisation, while in all municipalities it is the electoral body which constitutes the supreme municipal administrative entity.

24. The municipalities in the first category have only two administrative entities, the municipal electoral body and the executive council. The name of the latter differs depending on the canton: *conseil municipal* (Bern, Fribourg, Neuchâtel and Valais), *municipalités* (Vaud), *conseil administratif* or *mairie* (Geneva), *Gemeindevorstand*, *Gemeinderat* or *Stadtrat* (in the German-speaking cantons) and *municipio* (Ticino and Grisons). The municipal executive is headed by a president (*syndic*, *maire*, *sindaco*, *Gemeindepräsident*). The other members of the executive often work part time. In addition to municipal administration, the municipal executive prepares draft legislation to be adopted by the parliament or by the municipal assembly (citizens' assembly). It may also issue orders. In general, the municipal executive's competences are set out in municipal regulations.

25. This bipartite structure is the form of organisation in small municipalities (currently numbering approximately 2000). In some cantons, it is the only possible form of organisation that municipalities can take (Uri, Schwyz, Obwalden, Nidwalden, Glarus and Appenzell Innerrhoden).

26. Municipalities in the second category have a tripartite structure, with a third administrative body called a municipal parliament. The title of the municipal parliament varies from one canton to another: *Gemeinderat* (Zurich, Thurgau), *Stadtrat* or *Grosser Gemeinderat* (Bern), *Gemeindeparlament* (Ausserrhoden), *Conseil général* (Fribourg, Neuchâtel, Valais), *Conseil municipal* (Geneva), *Conseil municipal* (Vaud) and *Consiglio municipal* (Ticino, Grisons).

27. This type of tripartite structure is compulsory for municipalities in the cantons of Geneva and Neuchâtel. In the Canton of Vaud, it is compulsory for municipalities with over 800 inhabitants. It also

exists in all the large municipalities of German-speaking Switzerland (except in the six cantons already mentioned) and in Italian-speaking Switzerland, which has around 500 municipalities. Accordingly, most of Swiss people live in a municipality that has a parliament. In addition to the traditional competences of a parliament, namely the adoption of legislation, the municipal parliament supervises the municipal administration, including approving the executive's management report, and adopts the budget and the accounts. It also has financial competence for spending over a specific amount. With regard to spatial planning, it is the parliament's responsibility to adopt land-use plans and building regulations. In some cases, it also exercises executive and administrative powers, such as the appointment of officials or the management of administrative assets.

28. In any event, cantonal and municipal legislation lays down the specific powers and responsibilities of the municipal authorities. The principle of the separation of powers therefore also applies in municipal law.

### **3.3 Status of the capital city**

29. The municipality of Bern has 140 288 inhabitants, the Bern agglomeration 409 000 inhabitants and the metropolitan region 660 000 inhabitants (in September 2016). Since 1848, Bern has been the "federal city" (the *de facto* capital of Switzerland) where the Swiss Federal Government and Parliament are located (under Article 32 of the law of 13 December 2002 on the National Assembly and Article 58 of the law of 21 March 1997 on the organisation of the government and administration). Bern is in a unique political position as the three state levels are represented here: Confederation, canton and municipality.

30. There is no federal law regulating Bern's status as federal city, nor the relationship between this city and the Confederation. The only rules that exist are those that govern security and those concerning the Ecole cantonale de la langue française (the cantonal French-language school) in Bern. In March 2004, the legal department of the Federal Chancellery was tasked with drafting a law to regulate the status of the federal city, but, on 27 October 2004, the Federal Council decided to suspend this work. The city of Bern has a number of responsibilities, particularly in matters of security and maintaining public order, due to the presence of the Government and Federal Parliament on its territory, along with the 91 foreign embassies and diplomatic representations. The corresponding costs are refunded in full by the Confederation, but through one-off payments.

31. The municipality is administratively divided into six districts (*Stadtteile*), each of which consists of several quarters (*Quartiere*). The Municipal Council of the City of Bern – the executive of the city (*Gemeinderat*) – has five members, including the city's mayor. Following the municipal elections held on 27 November 2016, Alec von Graffenried (Verts Liste Libre) became the Mayor of Bern on 15 January 2017. The Parliament of the City of Bern (the legislature, *Stadtrat*) – the city council – consists of 80 members who currently represent 13 parties and 8 fractions. The mayor, the municipal council and the city council are elected every four years. The mayor is elected through a majoritarian system and the two councils through a proportional system.

32. In Bern, there is a children's parliament, made up of children aged 8 to 14 from the city. They meet at least twice a year and are able to vote in order to refer matters they consider important to the municipal council. The rapporteurs are of the opinion that the unique situation of the city of Bern could be better taken into consideration and, for the sake of clarity, a specific law could lay down the framework and arrangements for the Confederation to finance the responsibilities assumed by the city of Bern.

#### 4. ARTICLE-BY-ARTICLE ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER

##### 4.1 Article 2: Constitutional and legal foundation for local self-government

###### Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

33. The previous Constitution of the Swiss Confederation of 1874 included no specific provisions regarding municipalities. The revision of the Constitution in 1999 for the first time recognised municipal autonomy, in a new Article 50, thus giving more visibility and legitimacy to the municipalities as institutions. This article guarantees municipal self-government in accordance with cantonal law (paragraph 1). Therefore, the cantonal constitutions and laws determine the scope and limits of municipal self-government. Generally speaking, the rights enshrined in the Charter are reflected in the legislation on municipal self-government passed by the cantons. In view of the principle of cantonal sovereignty set out in the Federal Constitution, the Confederation is not legally able to force cantons to respect municipal self-government, since it is mainly a cantonal competence. In other words, the commitments entered into on signing the European Charter of Local Self-Government legally bind the Confederation, not the cantons, and yet it is the cantons' responsibility to ensure the Charter's implementation without the Confederation directly intervening through federal laws, for example. The Federal Court, an organ of the Confederation, can order compliance with the principles of municipal self-government if asked to hear an appeal. The cantons must abide by its judgments. It has competence for guaranteeing observance of the requirements of the European Charter of Local Self-Government, which may be invoked before it.

34. On the other hand, the Confederation has full competence for implementing Article 50 of the Federal Constitution, which imposes certain obligations on the Confederation. Article 50, paragraph 2, of the Constitution requires the Confederation to take account of the consequences of its actions for municipalities in general, while paragraph 3 requires it to take into consideration the situation of towns, urban agglomerations and mountain regions in view of their specific situation. Even though it is enshrined in the Federal Constitution, within the limits of cantonal law, municipal self-government is not specifically recognised by all the cantonal constitutions. Those which do so also use differing terminology. Some constitutions refer to "municipal matters" (Article 5, paragraph 2, of the Constitution of Aargau; Article 119, paragraph 1, of the Constitution of Glarus; Article 65 of the Constitution of Grisons; Article 68, paragraph 2 of the Constitution of Lucerne; Article 105 of the Constitution of Schaffhausen; Article 45, paragraph 2, of the Constitution of Solothurn; Article 85, paragraph 1, of the Constitution of Zurich). Others refer to the municipalities' "own field of activities" (Article 71 of the Constitution of Nidwalden; Article 83, paragraph 1, of the Constitution of Obwalden) or even to "local responsibilities" (Article 44, paragraph 2, of the Constitution of Basel-Landschaft; Article 69 of the Constitution of Valais).

35. The delegation was informed of the Federal Council's report of 13 May 2015 on the implementation of Article 50 of the Constitution, which points out that the guarantee of municipal self-government enshrined in the Constitution is not binding and cannot be invoked by municipalities before the Confederation. For the latter, the provision is essentially of political value. However, some Swiss legal specialists maintain that a minimum level of institutional autonomy must be guaranteed to the municipalities by the Confederation. The municipalities can file final appeals to the Federal Court in the event of violations of their rights of self-government (Article 189 of the Constitution). Beyond its great symbolic and therefore political impact, Article 50 of the Constitution reflects the importance acquired by towns and urban areas in Switzerland today. As for the mountain regions, these were already mentioned in the previous Constitution.

36. Furthermore, paragraphs 2 and 3 of Article 50 of the Constitution impose new obligations on the Confederation, because the latter must take municipal interests into consideration as well as the unique situation of towns, urban areas and mountain regions. Since the new Constitution's entry into force on 1 January 2000, the federal authorities have adopted a series of measures in order to implement Article 50 of the Constitution.

37. On 16 October 2002 the Federal Council issued guidelines for the federal administration concerning co-operation between the Confederation, the cantons and the municipalities. Moreover, under Article 141, paragraph 2, of the law of 13 December 2002 on the Parliament relating to the substance of messages from the Federal Council to the Chambers, an “aide-mémoire” on the presentation of these messages was adopted, which contains instructions on presenting the consequences of the Confederation’s activity for the cantons and municipalities, particularly with regard to financial and human resources, and for the towns, urban areas and mountain regions. The law of 18 March 2005 on consultation (Article 4, paragraph 2, c) provides that “the umbrella organisations of municipalities, towns and mountain regions operating at national level” shall be invited to give their opinions during the preparatory work on Confederation acts which affect them. The participation of these organisations in the legislative process, which was already in effect, is therefore now legally guaranteed.

38. Consequently, the rapporteurs consider that Switzerland is in compliance with the requirements of Article 2 of the Charter.

#### **4.2 Article 3: Concept of local self-government**

##### **Article 3 – Concept of local self-government**

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

39. Swiss municipalities are characterised by extreme diversity, not only in terms of size and socio-economic structures, but also in terms of the scope of their autonomy since they are governed by the cantonal constitutions and laws. The latter accord the municipalities own competences, the extent of which varies depending on the canton. The responsibilities most often assumed by the municipalities concern the education sector (nurseries, primary schools and secondary schools), the health sector and the social sector (social assistance, home care services, care for the elderly, responsibilities linked to the social insurance system), water and electricity supplies, waste water and rubbish treatment, public transport, construction (local development planning, building regulations and permits, conservation of the landscape and historic monuments, road networks, and sport and cultural facilities), the local police (fire department, traffic police, regulation of trade and commerce), financial matters (setting the tax rate, drafting the budget, managing municipal property) and citizenship (granting civil rights to foreign residents).

40. In municipalities without a parliament, municipal citizens elect the members of the executive council and vote on all municipal legislation as well as the municipal budget and accounts. Citizens normally exercise their political rights within the municipal assemblies (*Gemeindeversammlung*), which meet several times a year. Therefore, they directly participate in municipal decision-making along with the members of the executive council. This type of direct democracy is very widespread at municipal level. However, it transpires that citizen participation in these municipal assemblies is often limited. For example, in the municipality of Oetwil an der Limmat (Canton of Zurich), which the delegation of the Congress was able to visit, approximately 1700 citizens have the right to vote (out of 2363 inhabitants), but municipal assemblies are attended by only 60 to 100 people, a fact that may be considered a sign of confidence in the municipal council, which has only five members.

41. In municipalities with parliaments, municipal citizens elect deputies to the municipal parliament. In most cantons, the municipality can choose the electoral system, often opting for proportional representation. The number of members in the parliament varies depending on the population of the municipality. Executive council members are also elected by the citizens, except in Neuchâtel where they can be elected by the parliament. Municipal citizens also participate in direct democracy procedures where these exist (signing requests for a referendum and initiatives).

42. The composition of the municipal electoral body is determined by cantonal law, but a certain degree of autonomy may be left to the municipalities. For their part, the cantons must respect Article 39, paragraph 2, of the Federal Constitution, which provides that political rights are to be exercised in the municipality in which a citizen resides, and paragraph 4 of the same article, which adds that a citizen shall be entitled to vote, notably in municipal matters, no later than three months after moving there. Most cantons make active and passive electoral rights in municipalities (the right to vote and the right to stand for election) subject to the same conditions as those that determine the rights of cantonal citizens: Swiss nationality, age (in the Canton of Glarus the minimum age is set at 16 years old), residence and no deprivation of civic rights. In five cantons (Neuchâtel, Jura, Vaud, Fribourg and Geneva), cantonal law directly grants foreigners the right to vote in municipal matters. In the Cantons of Appenzell Ausserrhoden, Grisons and Basel-Stadt, cantonal law allows municipalities to grant these rights to foreigners, while in the Canton of Thurgau, foreigners are entitled to participate in debates on municipal affairs.

43. The rapporteurs consider that the situation in Switzerland is in compliance with Article 3 of the Charter.

#### **4.3 Article 4: Scope of local self-government**

##### **Article 4 – Scope of local self-government**

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

44. The delegation reiterates that Article 4.4 has not been ratified by Switzerland (see para. 2 of this report above).

45. In principle, the scope of municipal competence is not guaranteed by the cantonal constitutions. These constitutions establish municipal self-government in general terms, but it is very rare that they indicate the areas in which municipalities enjoy autonomy. Municipal competences are set by cantonal laws, with the result that cantonal law-makers are able to modify the distribution of powers between the canton and the municipalities in a way that is unfavourable to the latter, without being considered to have breached the principle of municipal self-government, as long as they do not impinge upon municipal autonomy. Municipalities' competences can be divided into two groups: firstly, the compulsory responsibilities imposed on them by federal or cantonal law, for example, local development planning or municipal regulation of construction projects; and secondly, the responsibilities that the municipalities have decided to assume as neither the Confederation nor the cantons are responsible for them, for example the construction of sports or cultural facilities.

46. The general principle, expressly established by some cantonal constitutions, is that of a general residual competence of municipalities (for example: Article 26 of the Constitution of Aargau, Article 122, paragraph 1, of the Constitution of Glarus). Therefore, in addition to the responsibilities entrusted to them by their respective cantons, or more rarely by the Confederation, the municipalities determine their own competences in several fields coming under the local level of government in accordance with a general residual competence.

47. The municipalities' competences include certain areas of policing, such as the traffic police, combating noise pollution and the regulation of trade and commerce. They also enjoy a certain degree of autonomy in managing public spaces and administrative assets. For instance, in the Canton of Zurich, the municipalities have significant powers regarding the use of public spaces. They can issue regulations and enjoy considerable discretion in such matters. Regulating construction projects (building features) is also mainly a municipal competence. The municipalities also ensure the supply of utilities to construction sites (water, electricity). They are also competent for certain public works (sports facilities, roads, theatres, museums, etc.) and for many industrial and commercial public services (water and electricity supplies, roads maintenance, etc.). The municipalities are also empowered to grant municipal citizenship. Any citizen of a municipality is a citizen of the canton in which that municipality is located and any citizen of a canton is also a citizen of a municipality in that canton (Article 37, paragraph 1, of the Constitution).

48. Municipal self-government also exists in legislative and administrative matters. With regard to legislation, the municipality's law-making powers may be exercised in a field that the cantonal or federal law-makers have not exhaustively regulated. This competence may exist either for the field as a whole, or for a specific sector thereof in accordance with federal or cantonal legislation.

49. A recent comparative study, which takes into consideration seven dimensions of municipal self-government (particularly legal, political, financial and administrative autonomy) and how they are applied in the 26 Swiss cantons, showed that culture is the key variable explaining the difference in local autonomy between the cantons. German-speaking Switzerland is clearly characterised by a higher degree of autonomy than French-speaking Switzerland.<sup>4</sup>

50. Another classification of cantonal decentralisation shows that there are five groups of cantons: firstly, large decentralised cantons (Grisons, Thurgau and Zurich) in which municipal sovereignty is preserved; secondly, small decentralised cantons (Appenzell Innerrhoden, Appenzell Ausserrhoden, Glarus, Schwyz, Obwalden and Nidwalden) that have a political culture which is traditionally conservative and strong local self-government; thirdly, large balanced cantons (Bern, Lucerne, Saint Gallen, Aargau, Uri, Solothurn and Valais) characterised by the prevalence of a Germanic political culture; fourthly, small balanced cantons (Basel-Stadt, Jura, Schaffhausen and Basel-Landschaft); and lastly, the centralised cantons of Geneva, Neuchâtel, Fribourg, Vaud and Ticino, where an egalitarian political culture leads to greater centralisation.

51. It is also apparent from a recent study carried out at the request of the European Commission (*Local Autonomy Index for European Countries, 1990-2014*, Brussels, European Commission), which takes 11 variables, particularly financial variables, into account, that Switzerland, along with the Nordic countries and Germany, is among the countries with the highest local autonomy.

52. Although the principle of subsidiarity is expressly provided for under the Federal Constitution with regard to the relationship between the Confederation and the cantons (Article 5a of the Constitution), the rapporteurs are of the opinion that the distribution of responsibilities between the cantons and the municipalities is a result of historical developments and political power dynamics which vary depending on the canton concerned. Therefore, it is not possible to affirm that the principle of subsidiarity is enforced in a general and systematic way in relations between the cantons and the municipalities.

53. In any event, the rapporteurs consider that the distribution of responsibilities between the cantonal and municipal levels may change over time. For example, after the entry into force of the reform on financial equalisation and the distribution of responsibilities between the Confederation and the cantons (RPT) in 2008, the distribution of competences between the cantons and the municipalities was reconsidered so as to clarify the situation. In addition, the delegation noted that in recent years, an ever-growing number of responsibilities have been transferred from the municipal to the cantonal level. This can be explained not only by the fact that the smallest municipalities are no longer able to execute certain responsibilities, but also because new legal provisions adopted at the federal level have led to developments in cantonal law that are not very conducive to municipal self-government, such as the reorganisation of civil protection in the 1990s, or the protection of minors and adults in the current decade.

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<sup>4</sup> Ladner A. and Keuffer N., 2014. *Local autonomy, a multidimensional concept: how to measure local autonomy, how to explain different degrees of local autonomy and what about its effects?* EGPA Annual Conference, Speyer, Germany.

54. In principle, municipal competences are full and exclusive, but some have been transferred in a context of intermunicipal co-operation. Several scenarios must be distinguished here. Firstly, it is possible that one municipality assumes a responsibility, not just for itself but also for other municipalities (the *commune-siège* (“headquarters municipality” model) based on an affiliation agreement. In addition, some municipalities may jointly assume a specific responsibility; this too is based on an agreement and the municipalities appoint common bodies competent for this purpose. Lastly, several municipalities may jointly decide to transfer the execution of a responsibility to a legal person separate from the municipalities themselves (for example, a union of municipalities).

55. Intermunicipal co-operation concerns in particular sectors such as firefighting, medical care and schools. In some sectors more than 65% of municipalities have an agreement with one or more other municipalities. There is a strongly growing trend to transfer municipal responsibilities to intermunicipal co-operation structures; the small size of most Swiss municipalities’ accounts for their incapacity to fulfil a number of responsibilities independently, due to a lack of sufficient human and financial resources. Some responsibilities are shared between the municipalities and the cantons (education for example).

56. The rapporteurs note, however, that the establishment of a fourth administrative tier, an intermediate level between the municipalities and the cantons to which essential municipal responsibilities are transferred, raises the issue of the democratic legitimacy of the administrative bodies belonging to these intermunicipal structures. While it is true that the municipalities are represented within these bodies, there is no guarantee that the representatives will have been elected. For this reason, the rapporteurs consider that, in this context, it would be preferable to provide that these institutions must include a minimum percentage of elected representatives (for example, 50%) so as to safeguard their democratic nature given the fewer opportunities for direct democratic participation by citizens.

57. The municipalities themselves implement several measures decided at Confederation or cantonal level. With regard to the execution of federal law, municipalities deal with civil status matters, political rights, housing, statistics, civil protection, taxation and environmental protection. As regards cantonal law, they take execution measures particularly in the field of education. They are also responsible for collecting municipal, cantonal and federal taxes. When they are vested by the canton or the Confederation with the mere execution of certain responsibilities, the municipalities have only a small degree of autonomy in practice, their role being limited to that of executing bodies. However, in certain cases municipalities enjoy a margin of autonomy in the enforcement of cantonal or federal law, if higher-ranking law does not lay down detailed rules on the matter concerned and thus leaves the municipalities a greater or lesser degree of discretion.

58. Under Article 50 of the Federal Constitution, the Confederation authorities (Parliament, Federal Council and Federal Administration) are required, in their different activities (legislation, programming, public works, financial decisions, etc.), to evaluate the effects of this activity on the municipalities and to avoid negative effects as far as possible. This requirement is not an obligation to achieve a specific result, but rather a best efforts obligation, a rule of conduct that the federal authorities must endeavour to respect, both in the implementation of the law and in its execution, which leaves Confederation bodies a certain margin of appreciation.

59. The federal authorities must therefore have sufficient information to evaluate the consequences of their actions for municipalities. To encourage the exchange of information and in-depth discussion, there are tripartite working groups made up of representatives from the federal administration, the intercantonal conferences concerned and the associations of municipalities concerned. Such co-operation exists in the social, cultural, health, asylum, immigration, housing, e-government, public transport and regional planning fields. In some more specialised fields, there are also bilateral contacts between directorates of federal offices and the intercantonal conferences, or more rarely, with associations of municipalities.

60. In addition, a Tripartite Conference on Agglomerations (TCA) was established on 20 February 2001. It is a political forum making it possible for the Confederation, cantons, towns and municipalities to work closely together on the implementation of a policy shared by the Swiss agglomerations. The tripartite commission meets twice a year and brings together representatives of the Confederation (Chancellery, Justice, Secretariat for Migration and the Federal Office for Regional Development), members of the Conseil d’Etat, cantonal representatives and representatives of associations of municipalities. Apart from fostering the exchange of information, this conference aims

to increase co-operation within the agglomerations and to resolve certain problems encountered by the latter. Between 2001 and 2014 the TCA focused in particular on strategic planning and the development of the agglomerations policy. It also developed institutional collaboration models and recommendations in specific fields, particularly concerning foreigners and integration. It produced a report on the integration of rural areas in the tripartite collaboration. The TCA does not have any decision-making power. Above all it aims to help the various stakeholders to exchange information, to consult each other and to develop common solutions. It is the only collaboration forum between the Confederation, the cantons and the municipalities which focuses on different political issues. In 2017 the TCA became the "Tripartite Conference" and its scope was extended to rural areas.

61. The rapporteurs note that several consultation bodies also provide a way for municipalities to express their opinions. At Confederation level, the Law on Consultation of 18 March 2005 (Article 4, paragraph 2c) provides that umbrella organisations of municipalities, towns and mountain regions operating at national level shall be invited to give their opinion as part of the legislative process. Therefore, the participation of these organisations in the legislative process is guaranteed by law, and it usually takes place in the form of hearings held as part of the Confederation Parliament's work on proposals affecting municipalities.

62. The rapporteurs note, however, that the municipalities are never directly consulted on an individual basis by the Confederation authorities, although they are able to submit their observations and opinions through the intermediary of the cantons (municipal representatives sit in the cantonal parliament) or through their associations. During the visit, the delegation was informed that large cities such as Zurich would like to be consulted directly, without going through intermediary bodies, in matters such as essential reforms, especially those concerning taxation.

63. In addition, there are consultation procedures for municipalities at the cantonal level. The cantonal authorities carry out the necessary consultations every time it is a question of modifying a law that affects municipalities. Municipal authorities can also file petitions at cantonal level. The municipalities may also come together at cantonal level within associations destined to serve as interlocutor with the cantonal authorities. The delegation was informed about the example of the Canton of Jura, where the Jura association of municipalities has existed since 2009.

64. It emerged from the interviews between the Congress delegation and the representatives of the city of Zurich that the consultations are sometimes considered insufficient. For example, in relation to the business tax reform (which was finally rejected by referendum on 12 February 2017), the city of Zurich considers that the Confederation and the canton did not sufficiently consult the large cities affected by the reform, despite the fact that this reform would have led to a loss of income of approximately 300 million Swiss Francs for the city of Zurich alone (in other words, 10% of its overall resources).

65. The rapporteurs consider that, even though the consultation procedures take into consideration the interests of the municipalities expressed through the Association of Swiss Municipalities or the Union of Swiss Towns, large cities, especially those with more than 100 000 inhabitants (Zurich, Geneva, Basel, Lausanne, Bern and Winterthur) may also have specific interests to put forward in certain areas (taxation, town planning, transport, etc.). It would be desirable that the consultation bodies and procedures grant these large cities a specific status, in other words they should represent themselves rather than being represented by associations which, inevitably, act on behalf of a more general collective interest.

66. In this connection, the rapporteurs consider that, so as to allow the Confederation to pay greater heed to the potential consequences of its actions on the municipalities and to the unique situation of the cities, urban agglomerations and mountain regions (as provided for in paragraphs 2 and 3 of Article 50 of the Constitution), municipal representatives should be more involved, in the same way as cantonal representatives, in the expert committees and working groups tasked with drafting acts at federal level. This integration of municipalities in the decision-making process from the stage of the preparatory work would make it possible to better take into account municipal interests.

67. By way of example, the rapporteurs refer to the close dialogue existing between the three administrative levels regarding regional planning. The Swiss Territory Project approved in 2012 by the federal government, the cantons and the municipalities constitutes a point of reference for cantons and municipalities in regional planning matters. The cantons are competent for drafting a master plan (with a 15-year outlook) that is approved by the Confederation and which, as a result, is binding at all levels, especially with regard to plans which may be adopted at municipal level.



68. The rapporteurs consider that the situation in Switzerland is in compliance with Article 4, paragraphs 1, 2, 3, 5 and 6 of the Charter.

#### **4.4 Article 5: Protection of local authority boundaries**

##### **Article 5 – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

69. Over half of the municipalities have under 1 200 inhabitants, whereas 80% of the municipalities have less than 10 000 inhabitants, meaning that approximately half of the Swiss population live in municipalities. These municipalities are on average among the smallest in Europe, with the exception of those in France, Greece and Iceland. It is obvious that the smaller municipalities are, the more limited their ability to carry out their responsibilities in an autonomous manner. As a result, these responsibilities may be transferred to other municipalities in the framework of intermunicipal co-operation (entailing a loss of fiscal autonomy) or sometimes centralised at the level of the canton. Mergers between municipalities are therefore a relevant alternative.

70. Ideally, the municipalities should be able to implement the majority of their traditional responsibilities (primary education, social aid, water supply and treatment, local roads, fire-fighting services, and so on) autonomously and only rely on co-operation with other municipalities to fulfil a small number of responsibilities. This objective could be reached if Switzerland had between 800 and 1 000 municipalities. The average number of inhabitants per municipality would then be 9 000. The number of Swiss municipalities is expected to decrease by 700 within the next 20 years.

71. Municipalities seldom merged prior to 1990, but over the last 25 years they have merged with increasing frequency. In the mid-nineteen-nineties, there were still 3 000 municipalities. Today there are fewer than 2 300. Over the past few years the largest numbers of mergers have taken place in the cantons of Grisons, Jura, Vaud, Schaffhausen, Glarus, Ticino and Neuchâtel. In the Canton of Zurich, the move towards mergers began some five years ago and the number of municipalities decreased from 171 to 168. They will soon number 165. In the Canton of Jura there were 83 municipalities in 2008 and there are now only 57 left (four mergers are currently planned).

72. In the majority of cases, the decision to merge municipalities requires the approval of the inhabitants of the municipalities concerned, with the result that small municipalities can prevent a merger. There are two main reasons for refusing the merger: the inhabitants' sentimental attachment to the municipality's identity (in particular its name) and the fear of municipalities where local taxation is relatively low that the transfer of tax-raising powers to the new municipality will mean higher taxes. The laws of most cantons provide for the possibility of merging municipalities, even against their will, if there is a major regional interest, even if that interest is difficult to prove. In the Canton of Jura, Article 69b of the Law on Municipalities of 9 November 1978 stipulates that the parliament may, by means of a decree, decide to merge one municipality with another. This decision may be taken, by way of exception, when a municipality refuses to merge with one of several other municipalities and it cannot operate autonomously for one of the following reasons:

- a) it depends, on a long-term basis and to a significant degree, on resources that derive from financial equalisation;
- b) it has in the past regularly failed to fill all the posts on municipal bodies;
- c) it depends to a large extent on collaboration with one or several neighbouring municipalities.

The Parliament must consult the municipal councils of the municipalities concerned before taking its decision.

73. In the Canton of Bern, Article 4h of the Law on Municipalities of 16 March 1998 stipulates that its Executive Council is responsible for approving decisions to merge, adopted by the municipalities concerned (voluntary mergers). The Executive Council gives its approval if the merger is in keeping with the law and provided there are no major cantonal interests opposing it. If the Executive Council

has not accepted a voluntary merger of municipalities, the parliament of the canton (the Grand Council) gives its opinion after consulting the municipalities concerned.

74. On a proposal from the Executive Council, the Grand Council can also order that municipalities be merged against their will if the municipality is no longer in a position to autonomously carry out its responsibilities over the long term because it: a) repeatedly presents a balance sheet deficit and there is no possibility in the medium term of redressing the situation; b) can no longer guarantee the ability of its bodies to operate as a result of the on-going inability to fill important offices or administrative posts; or c) does not, for a prolonged period of time, comply with the provisions laid down by the Confederation, the canton or the national churches regarding the execution of important municipal responsibilities (Art. 4,i). The Grand Council must take account, in particular, of the geographical, historical, cultural, economic and financial conditions, as well as of co-operation between the municipalities concerned. Finally, on a proposal from the Executive Council, it may order the merger of more than two municipalities against their will if the majority of the municipalities concerned and of voters approved the merger in a referendum.

75. As the rapporteurs were informed, the cantons generally prefer to use financial incentives to merge, in the form of a reduction in taxes or of grants. For example, in the Canton of Zurich, the 2016 Law on Municipalities provides for a procedure for merging municipalities and the financial incentives to be offered by the canton. Indeed the administrative and financial support of the cantons appears to be decisive where mergers are concerned. All of the cantons which have succeeded in merging municipalities have offered financial incentives, whereas no mergers have taken place in cantons where there is no provision for such incentives. It should also be noted that a revised Constitution of the Canton of Uri was adopted by the population on 22 September 2013, facilitating the merger of municipalities and avoiding the need to revise the constitution each time a merger is to take place: revised Article 67 of this constitution no longer refers to all of the municipalities of the canton by name.

76. It appears that the European Charter of Local Self-Government, and in particular Article 5 providing for the consultation of local authorities prior to any changes in local authority boundaries, is often referred to by the municipalities in the context of merger procedures. Indeed the delegation was informed of a judgment handed down by the Federal Court on 3 June 2016 (ATF 142 I 216), which explicitly refers to Article 5 of the Charter in a dispute concerning the procedure for merging municipalities in the Canton of Ticino (see below).

77. In light of the above information, the rapporteurs conclude that Switzerland is in compliance with Article 5 of the Charter.

#### **4.5 Article 6: Appropriate administrative structures and resources for the responsibilities of local authorities**

##### **Article 6 – Appropriate administrative structures and resources for the responsibilities of local authorities**

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

78. The delegation reiterates that Article 6.2 of the Charter has not been ratified by Switzerland (see para. 2 of this report above).

79. The self-government of the municipalities translates into a right for the municipalities to determine their own administrative structures. They establish their own authorities, determine the number of members on the legislative and executive bodies and choose the system of election. The municipalities' administrative bodies vary greatly, depending on the size of the municipalities. Large towns have a substantial administration, while small municipalities may only have two or three local government officials, often working part-time. As a rule, the administration is divided into directorates (or dicasteries), according to the areas of the municipalities' responsibilities: training, security, planning, roadworks, culture, and so on. The heads of these directorates are appointed by the executive and are answerable to it.

80. The rapporteurs would mention the special role played by the Municipal Secretary. In municipalities where members of the executive exercise their functions in addition to another occupation, the Municipal Secretary has considerable influence on the affairs of the municipality. For example, he or she is responsible for co-ordinating the administration of the municipality, for advising the authorities, and for preparing the working sessions of the executive and legislative bodies and of various committees. Some municipalities have even entrusted the Secretary with the management of the entire administration, making him or her a real *City manager*, responsible for implementing the decisions taken by the executive.

81. There are no standard regulations applicable to staff working for the municipalities. Each municipality is free to recruit staff as it wishes. The municipalities have a wide margin of discretion in this field, with the result that it is not easy to identify standard practices. The staff regulations stipulate the different categories of staff. Officials, for example, are the persons appointed by the executive to work full time or part-time in a specific post for an indefinite period of time. Some Swiss municipalities employ persons on the basis of private law contracts, in particular for missions of limited duration.

82. The municipal council decides on the regulations governing staff working for the municipality and the salary scales, although such regulations are not compulsory. However, there are links between the rules and regulations of the cantons and those of the municipalities, as the latter sometimes adopt some of the rules and regulations applied by the canton. The regulations governing federal officials may also serve as a reference. The Executive Council recruits and appoints municipal staff. It also fixes their salaries and exercises disciplinary authority. The number of staff employed by the municipalities obviously varies considerably according to their size. Municipalities with fewer than 500 inhabitants employ on average two persons in their central administration. In municipalities of over 50 000 inhabitants the municipal administration may employ up to 3 000 staff or even more.

83. It should also be pointed out that voluntary work is a typical feature of social and political life in Switzerland, in particular in the municipalities. It is an important aspect of the services offered by the municipalities but may vary considerably according to the municipalities concerned. Without such voluntary and optional work, the municipalities, in particular the smallest ones would currently be unable to function.

84. The delegation concludes that the situation in Switzerland is in compliance with Article 6, paragraph 1 of the Charter. The rapporteurs underline that Article 6.2, though not ratified, is respected in Switzerland.

#### **4.6 Article 7: Conditions under which responsibilities at local level are exercised**

##### **Article 7 – Conditions under which responsibilities at local level are exercised**

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

85. The delegation reiterates that Article 7.2 of the Charter has not been ratified by Switzerland (see para. 2 of this report above).

86. In view of the large number of municipalities, the number of municipal councillors involved in managing the municipalities is particularly high (some 110 000). The municipalities (like the parliaments of the Confederation and the cantons) function according to the “militia system”, which is a longstanding historical tradition. The militia system means that members of the public volunteer to fulfil public responsibilities or public office, outside of their profession and in an honorary capacity, and receive very little if any payment for their work. This system has the advantage of making citizens responsible for local affairs and avoiding the formation of a caste of professional politicians. In some cantons (such as Uri) the inhabitants are even obliged to fill such posts.

87. Nevertheless, the rapporteurs note that the militia system is currently encountering difficulties, in particular at the level of the municipalities where it is becoming increasingly difficult to find enough candidates to stand for election at local level, because it is proving hard to strike a balance between professional activities and the responsibilities that go with municipal posts. The rapporteurs believe that the militia system may lead to certain socioeconomic profiles being placed at an advantage in terms of access to elective offices.

88. There is a high degree of autonomy in this respect as every municipality is free to decide on its own rules governing the financial compensation that can be granted to local elected representatives for the performance of their duties. It is impossible to harmonise the situation because the cantons do not have authority to intervene in such matters. Although the rapporteurs are aware that neither the Confederation nor the cantons have the authority to intervene directly in a field which is the sole responsibility of the municipalities, we nevertheless think that the three levels of administration (Confederation, cantons and municipalities) should together consider what changes could be made to improve the militia system currently in force, as it has reached its limits.

89. It is the municipalities themselves which decide which functions and activities are incompatible and there is no uniform legislation in this field.

90. In conclusion, the situation in Switzerland with regard to the application of Article 7, paragraph 3, of the Charter is entirely satisfactory. Moreover, the rapporteurs conclude that the situation is more or less compliant with Article 7, paragraph 1. The reason for their reservation here is that this article is closely connected to paragraph 2 of Article 7, which has not been ratified by Switzerland. As Article 7, paragraph 2, relates to appropriate financial compensation, the lack of a guarantee of that compensation may in some cases lead to a status of local elected representative that does not allow the individual concerned freely to exercise his/her functions as guaranteed by Article 7, paragraph 1. Nevertheless, the rapporteurs are unable to comment on non-compliance with Article 7.2 because Switzerland has not ratified it, and have consequently decided to consider Article 7, paragraph 1, separately and therefore to conclude that it is complied with.

#### **4.7 Article 8: Administrative supervision of local authorities' activities**

##### **Article 8 – Administrative supervision of local authorities' activities**

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of responsibilities the execution of which is delegated to local authorities.
- 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

91. The delegation reiterates that Article 8.2 of the Charter has not been ratified by Switzerland (see para. 2 of this report above).

92. Decisions taken by the municipalities, irrespective of whether they are administrative decisions or financial decisions (budgets), are supervised by the cantons. The conditions under which this supervision is carried out are stipulated in the cantonal constitutions and laws; the conditions may therefore vary considerably from one canton to the next. For example, Article 111 of the Constitution of the Jura stipulates that:

- “1 The municipalities are under Government supervision.
- 2 In particular the Government supervises their financial management and the execution of the responsibilities allocated to them by the Confederation and the Canton.
- 3 If the Government notices any irregularities, it takes the measures provided for by law.
- 4 In very serious cases, it may suspend the municipal bodies and replace them by extraordinary administrative arrangements.
- 5 In cases where it is impossible to constitute the municipal bodies, the Government establishes extraordinary administrative arrangements”.

In all cantons, there are specialised supervisory services (Office for the Municipalities, for example, in the Canton of Zurich). Supervision may also be carried out by one or another of the departments of the cantonal government.

93. With regard to administrative decisions, the competent departments examine the lawfulness of the decisions adopted by the municipal councils. If a decision is taken in breach of the laws and regulations of the canton, the cantonal government (State Council) may declare the decision null and void. In principle, the expediency of administrative decisions taken by the municipalities is not subject to scrutiny if the municipality is taking action within its sphere of competence, in other words in matters which come within its sphere of autonomy.

94. This type of scrutiny can however be exercised with regard to the financial choices made by municipalities; the canton and the municipality concerned must then discuss the expediency of such decisions, which might, for example, exceed the fiscal capacity of the municipality. With regard to financial decisions, some cantons impose relatively strict obligations on municipalities, in particular the obligation to balance their budget. This is the case in the Canton of Geneva and in the Canton of Zurich. In the Canton of Geneva, the municipal budget must be balanced. It is possible to run a deficit equivalent to depreciation, provided that the excess is covered by net revenue. In this case, the municipality is obliged to draw up a financial plan to be implemented until the situation is redressed and which must be approved by the ministry. Other than this specific case, if a municipality refuses, without a valid reason, to balance its budget, the cantonal authorities deal with the situation either by reducing expenditure or by increasing surcharges (*centimes additionnels*), which seldom happens in practice.

95. Several cantons have placed restrictions on municipal indebtedness. Specific restrictions of this kind are under discussion in some towns and municipalities. Only two cantons (Geneva and Vaud) have set up a Court of Audit. In the other cantons, supervision of the effectiveness of public expenditure is limited, owing to the lack of adequate supervisory bodies. Supervision of expediency may also be carried out with regard to the decisions taken by the municipalities in performing the responsibilities delegated to them by the cantons. In practice there are seldom disputes as it is considered preferable to have recourse to negotiation and compromise.

96. The rapporteurs conclude that Switzerland is in compliance with Article 8, paragraphs 1 and 3 of the Charter.

#### **4.8 Article 9: Financial resources of local authorities**

##### **Article 9 – Financial resources of local authorities**

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their responsibilities.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8	For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.
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97. The delegation reiterates that paragraphs 5 and 7 of Article 9 of the Charter have not been ratified by Switzerland (see para. 2 of this report above).

98. Swiss municipalities have genuine tax-raising powers and this means that they have a generally satisfactory level of own resources. Some 70% of the revenue of the municipalities is constituted by own resources, which is one of the highest levels in Europe. They are free to use these resources as they wish, provided that the cost of mandatory responsibilities is covered.

99. Where large municipalities are concerned, the financial resources appear, on the whole, to be proportionate to their responsibilities under the cantonal constitutions and laws. On the other hand, the financial resources of small municipalities sometimes prove to be insufficient, with the result that they have to set up intermunicipal co-operation structures or consider merging. Another difficulty encountered by the municipalities is that they are sometimes given an increased number of responsibilities without a corresponding increase in resources.

100. Although the cantons appear to have complete fiscal sovereignty, the municipalities' autonomy is restricted insofar as they can only raise taxes within the limits of the authorisation given to them by the Constitution or the laws of the canton. They therefore have only delegated fiscal sovereignty. The municipalities may either freely determine the rate of their own taxes, or add a surcharge to the basic cantonal tax rates (the system of *centimes additionnels*). The main taxes that exist at the level of the municipalities are income tax and wealth tax, taxes on profits and capital, inheritance and gift taxes, real estate taxes, property taxes, property transfer taxes, business tax and dog licences.

101. The federal law on the harmonisation of the direct taxation of the municipalities and cantons (LHID) adopted on the basis of Article 129 of the Constitution, which came into force on 1 January 1993, gives instructions to the cantonal and municipal lawmakers concerning the principles they should apply in fixing the rules and regulations governing tax liability, the tax-bearing object and the relevant tax periods, as well as the rules of procedure and of criminal law on taxation. The federal law does not contain any provisions concerning tax rates, scales or amounts, as responsibility for fixing these lies with the cantons and the municipalities (Art. 1.3, LHID). The LHID therefore only harmonises the form but not the level of taxation.

102. The tax resources of the municipalities appear to be sufficiently diversified and buoyant to allow the municipalities to fulfil all of their responsibilities. The financial situation of the municipalities is generally satisfactory. The level of indebtedness of the municipalities remains stable and is relatively low. There are very few municipalities in financial difficulties. However, it seems that over the last few years several municipalities or towns have reached their limits of their margin of manoeuvre in financial policy matters and that they have had to introduce cost-saving measures.

103. The cantons can also introduce a system of financial equalisation among the municipalities. Financial equalisation concerns financial transfers between the canton and the municipalities as well as between the municipalities themselves. The majority of the cantons have reorganised their intermunicipal financial equalisation along the lines of the new federal model of financial equalisation, while still taking their own specific needs into account.

104. In the Canton of Geneva, there is a system of horizontal financial equalisation with regard to the income tax applied to natural persons between the municipalities where they work and those where they live. Moreover, the weaker the latter are in financial terms, the larger the share of cantonal taxes they receive. Where the taxation of legal entities is concerned, the municipalities only receive the *centimes additionnels* they have voted in respect of 80% of cantonal taxes, the remaining 20% being subject to taxation at the average municipal rate, the proceeds of which are distributed every year among all of the municipalities, in light of their financial capacity. The latter also serves to allocate a number of cantonal grants (vertical financial equalisation). For example, only the financially weak municipalities receive grants for the construction of school buildings and in some cases sports facilities.

105. The cantonal authorities and the municipalities agree on the arrangements for the equalisation and redistribution of resources. The latter are consulted not only on the establishment of the financial equalisation system but also on its evolution according to procedures which may vary between cantons.

106. Unlike the share of their revenue which the municipalities are free to use as they wish, grants are allocated for a precise objective: operating assistance for a specific body, or financial assistance in building a particular facility. The same applies to compensatory payments paid to a local public authority for a service of benefit to the entire region: For example, the Canton of Geneva pays the City of Geneva an annual sum of 13 million Swiss francs to maintain its roads. The grants received by the municipalities in the Canton of Geneva concern annual operational responsibilities: civil protection instruction and equipment, the fire and rescue services of the City of Geneva, sports events and equipment, and notably land improvements, without forgetting the cantonal share of some 15 million Swiss francs granted to the joint municipal out-of-school activities service; payment of sums due for services provided on behalf of the confederation (civil protection) or from other municipalities (the state transfers to the City of Geneva the sums paid by the other municipalities for the fire and rescue service); investments such as schools, sports facilities and public civil protection shelters; financial assistance with investments, federal grants from the State of Geneva, for public civil protection shelters for example.

107. Civil protection provides an example of a mechanism of multiple transfers in respect of both operational and investment budgets. Federal legislation makes cantonal assistance a condition for payments to the municipalities; this explains why the money is first paid into the cantonal budgets and then transferred to the municipalities. The latter may therefore receive operational grants and investment grants from both the Confederation and the canton at the same time, and sometimes even compensatory payments for a particular service. On the other hand, while they receive these five categories of grants for civil protection activities, they must also participate in the financing of mandatory private shelters built by private individuals.

108. In principle, authorisation to borrow, which is decided by a vote of the municipal council, must first be approved by the cantonal government. Loans must be used only to part finance investments, since the municipality must ensure sufficient self-financing of its amenities. As for sources of borrowings, the municipalities apply for bank loans. In the Canton of Geneva, for example, the municipalities can borrow from the *Banque Cantonale de Genève*, of which they and the Canton of Geneva are majority shareholders. Large municipalities may issue public debt. Others get together with the local authorities of other cantons to issue such debt. Given the positive conditions of the Swiss capital market, the Swiss municipalities do not in principle borrow from other countries.

109. The rapporteurs consider that Switzerland complies with Article 9, paragraphs 1, 2, 3, 4, 6 and 8 of the Charter.

#### **4.9 Article 10: Local authorities' right to associate**

##### **Article 10: Local authorities' right to associate**

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out responsibilities of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

110. So long as they abide by cantonal legislation, municipalities are free to decide on the forms of co-operation that they wish to establish. Intermunicipal co-operation (or collaboration) is very common in Switzerland and is being used more and more to carry out responsibilities. Thus every municipality in Switzerland collaborates with other municipalities in about ten fields on average. The most common fields for collaboration are firefighting, health care, school education, sewage, care and support for the elderly, refuse, social security and water supply. Co-operation often involves costly, infrastructure-intensive responsibilities that small municipalities in particular have trouble managing on their own.

111. Intermunicipal co-operation is an alternative to merging municipalities. It is a way for municipalities to improve their efficiency whilst keeping their identity and autonomy. In practice, however, insufficient democratic legitimacy and the complexity of co-ordinating different intermunicipal organisations stand in the way of this solution.

112. In the Swiss cantons, intermunicipal co-operation has developed mainly through two instruments of public law:

- The intermunicipal agreement, in particular, which lays down methods of co-operation for a specific purpose for action in a single field (education, water or energy supplies, land-use planning).
- The intermunicipal consortium, a body governed by public law, which is intended for joint performance of one or more public responsibilities.

113. On 23 September 2009 the Parliament of Jura amended its Law on Municipalities to allow the establishment of urban consortia. Municipal consortia are often used to manage intermunicipal matters (transport, schools), but it seems that the way in which they are managed is not very democratic, since the municipalities are represented on consortia management bodies by representatives who are not necessarily members of the elected body.

114. Other co-operative bodies also exist for urban centres. For example, the Canton of Bern, after amending its constitution and Law on Municipalities, has established an intermediate institution between the canton and the municipalities that is known as a “regional conference”, an “authority governed by municipal law for the purpose of regional co-operation among municipalities on a binding legal basis” (Article 110a of the cantonal constitution), which was set up pursuant to a joint decision by the electorate and the municipalities. The role of a regional conference is to prepare regional structure plans (transport, urban development). Cultural policy and regional responsibilities are determined according to the legislation on regional policy. Municipalities can also delegate other responsibilities to the new institution, which has its own decision-making and financial-management bodies.

115. Co-operation can also be pursued through “metropolitan conferences”, as is the case in Zurich, where the metropolitan conference brings together on a voluntary basis 120 municipalities and eight cantons around Zurich. This private-law body has a board and two chambers (one for the municipalities and one for the cantons) that meet twice a year. This metropolitan conference represents shared interests and can initiate joint projects for transport, the environment and social and economic development, which can then be implemented by the authorities concerned.

116. The rapporteurs note that municipalities are able to join forces to protect their common interests.

117. The Union of Swiss Towns, founded in 1897, protects the interests of Switzerland's towns and urban municipalities, providing them with various services. For a long time, municipalities with more than 10 000 inhabitants were considered to be towns. In December 2014, the Federal Statistical Office provided a new definition based on population density, employment and overnight stays. With the new definition, Switzerland has 162 statistical towns. 84% of the population live in these towns and the urban areas surrounding them. Membership of the Union of Swiss Towns is open to municipalities with at least 5000 inhabitants that, by tradition and as a result of their development, are urban in nature (a cantonal capital, for example). The Union of Swiss Towns has 130 members. Cities such as Zurich and Geneva, but also urban areas such as Meyrin and Riehen and smaller towns such as Burgdorf and St Moritz, all belong to it. The Union of Swiss Towns thus represents some three quarters of the Swiss population. These areas also account for 84% of the country's economic activity.

118. The Union of Swiss Towns regularly participates in the Confederation's consultation procedures, sits on the Confederation's expert commissions and constantly liaises with the federal administration, Parliament and the parliamentary committees. The Association of Swiss Municipalities was founded in 1953 and now covers over 70% of all the municipalities in Switzerland. Its main aims are to strengthen municipal self-government and the municipalities' capacity for self-management and to protect the interests of Swiss municipalities in the federal state by seeking to influence federal legislation. To assist municipalities with their daily responsibilities, the Association of Swiss Municipalities offers various services: auditing of annual accounts and special audits; preparation of financial plans and financial analysis; training for municipal officials and authorities, etc.

119. It should also be reiterated that the Tripartite Conference on Agglomerations (TCA) is an important forum for dialogue between Switzerland's various institutional levels. Supported by the Confederation, the Conference of Cantonal Governments, and associations of towns and municipalities, the TCA adopts mutually agreed positions on important policy matters. In 2017 its field of action was extended to rural areas, and it has thus been renamed the “Tripartite Conference”.

120. Lastly, municipalities in the same canton can join forces to facilitate dialogue with the canton. Thus in 2009, for example, municipalities in Jura established the Association of Jura Municipalities (AJC). This important partner allows regular contact between the cantonal authorities and the



AJC committee and assembly on issues of current concern involving both the canton and the municipalities.

121. Municipalities can forge co-operative ties with other municipalities in other cantons provided that this is allowed by cantonal law. Co-operation with municipalities in neighbouring countries may also be instituted, but only if the cantons to which the Swiss municipalities belong are authorised by federal legislation to enter into agreements with entities abroad.

122. In general, cross-border co-operation is growing in importance. It should here be noted that the Karlsruhe agreement signed on 23 January 1996 between Switzerland, Germany, France and Luxembourg has considerably facilitated this co-operation at the local level by allowing municipalities and associations of municipalities in the cantons concerned to sign agreements directly with authorities in neighbouring countries, particularly for transport.

123. The rapporteurs consider that Switzerland is in compliance with Article 10 of the Charter.

#### **4.10 Article 11: Legal protection of local self-government**

##### **Article 11: Legal protection of local self-government**

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

124. If a municipality considers its autonomy to be infringed, it has various remedies at both the cantonal and federal levels. At cantonal level, remedies vary from one canton to another. Generally, however, municipalities are able to use the administrative courts. At the federal level, municipalities can bring a constitutional claim before the Federal Supreme Court if their autonomy is violated (Article 189, paragraph 1(e), of the federal constitution and sections 82, 89.2c and 95c of the Federal Supreme Court Act of 17 June 2005). Article 189, paragraph 1(e), of the federal constitution provides that the Federal Supreme Court shall hear disputes concerning violations of “the autonomy of the municipalities and other cantonal guarantees to public-law institutions”.

125. Actions for violation of municipal self-government can be brought not only by “political municipalities” but also by citizens’ municipalities (“*communes bourgeoises*”) and by special-purpose municipalities. Individuals, on the other hand, cannot plead a violation of municipal self-government as a cause of action in itself; they can plead it only as a preliminary question, in support of other grounds, if they hold, for example, that a cantonal decision encroaching on a municipality’s authority also restricts their constitutional rights or that the act that they are challenging as the principal issue also infringes municipal self-government. Appeals brought by municipalities against cantonal decisions are admissible if the latter affect the municipalities as holders of public authority, in their exercise of self-government, or in their very existence. The Federal Supreme Court can find in favour of a municipality if it is satisfied that the impugned decision affects the municipality in a field in which it is self-governing and in a manner prohibited by cantonal law.

126. The Federal Supreme Court has been led to determine a minimum standard for local self-government that would be applicable in each of the 26 cantonal legislations. Following the position adopted in 1967 (Federal Supreme Court, *Gemeinde Volketswil* judgment, 93 I 154) the scope of municipal self-government no longer depends on the nature of the powers exercised (own powers or delegated powers) or how the cantonal authority supervises these powers. A municipality is self-governing in all the fields in which cantonal law allows it “fairly significant decision-making authority” although the adequacy of the measures that it takes on the strength of this authority may be subject to review. In other words, a municipality is self-governing if it is free to make its own choices, on its own authority, on the basis of options that it determines itself. This judicial test of municipal self-government thus seems to be quite broad and likely to ensure definite protection of municipal self-government by the Federal Supreme Court.

127. In general, however, it should be said that potential disputes between cantons and municipalities are usually settled politically rather than in the courts. The European Charter of Local Self-Government can be cited by municipalities in support of an appeal to the Federal Supreme Court. The rapporteurs note that in a ruling of 3 June 2016 (TF 14/38), the Federal Supreme Court made specific reference to the Charter (Article 4.6 and Article 5) to uphold an appeal against a proposal to amend

the constitution of the Canton of Ticino to allow amalgamation of municipalities (Locarno and seventeen others). This appeal was made on the ground that the citizens of the municipalities concerned had not been consulted beforehand. The rapporteurs welcome this recognition of the Charter by a Swiss domestic court, since this once again shows a genuine acknowledgement of international law, which is a real problem in other member States.<sup>5</sup>

128. In conclusion, the situation in Switzerland complies with Article 11 of the Charter.

#### **4.11 Article 12: Undertakings**

##### **Article 12: Undertakings**

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
  - Article 2,
  - Article 3, paragraphs 1 and 2,
  - Article 4, paragraphs 1, 2 and 4,
  - Article 5,
  - Article 7, paragraph 1,
  - Article 8, paragraph 2,
  - Article 9, paragraphs 1, 2 and 3,
  - Article 10, paragraph 1,
  - Article 11.
- 2 Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
- 3 Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

129. Switzerland signed the European Charter of Local Self-Government on 21 January 2004 without ratifying Articles 4.4, 6.2, 7.2, 8.2, 9.5 and 9.7. The rapporteurs nevertheless believe that compliance with the requirements arising out of these articles would not pose any major problems if the articles were ratified, since the current situation of local self-government in Switzerland is likely to meet these requirements fully, albeit with the (partial) exception of Article 7.2, which provides that local elected representatives shall be given appropriate financial compensation for exercise of their office. Such compensation is however important to guarantee for everyone the access to elective function and the real exercise of responsibilities that go with these posts by elected representatives and not mainly by administrative structures.

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<sup>5</sup> See Congress report (CG32(2017)19final) *Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016)*.

## 5. SITUATION OF REGIONAL DEMOCRACY (CANTONS)

130. In Switzerland the “regional” structures are the cantons. The 26 cantons constitute the foundation of the federal state, which emerged out of their union. Together they form the Swiss Confederation (Article 1 of the Constitution). They are the cantons of Zurich, Bern, Lucerne, Uri, Schwyz, Obwalden, Nidwalden, Glarus, Zug, Fribourg, Solothurn, Basel-Stadt and Basel-Landschaft, Schaffhausen, Appenzell Ausserrhoden and Appenzell Innerrhoden, St Gallen, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva and Jura. Their areas vary between 37 km<sup>2</sup> (Basel-Stadt) and 7105 km<sup>2</sup> (Graubünden) and their populations between 15 500 (Appenzell Innerrhoden) and 1 482 003 (Zurich). On the one hand they are self-governing entities with equal rights, making up a distinctive legal order, with self-governing structures and their own powers. On the other hand, as the foundation of the federal state, they are institutions of the Confederation and thus contribute to shaping the latter’s decisions.

### 5.1 *Exclusion of cantons from the scope of the European Charter of Local Self-Government*

131. Firstly, the rapporteurs wish to point out that the cantons as a whole were rather dubious about the idea of the Confederation ratifying the European Charter of Local Self-Government, since they considered themselves sovereign states making up the federal state, which meant that their internal organisation, including the organisation of the municipalities, came under their sovereign authority. Insofar as performance of international obligations was a matter for the federal state alone, the cantons feared that the definition of municipal self-government might be taken out of their hands and be made part of federal law.

132. Furthermore, the cantons disagreed that the Charter should apply to them, considering that their self-government was already adequately protected by the Constitution and fearing that their sovereignty would be restricted by the requirements arising out of the Charter. In reality, cantonal self-government is clearly sufficiently developed already and fully satisfies these requirements. The rapporteurs nevertheless point out that extending the Charter to the cantons would not create any new obligations for the latter but would instead safeguard their self-government in relation to the Confederation. During the consultation procedure, the government of the canton of Zurich said it did not support the extension of the Charter to the cantons because of the specific character of their constitutional organisation. Also during the consultation phase, in a letter dated 30 May 2017 the Conference of Cantonal Governments said it disagreed with the rapporteurs and opposed the extension of the Charter to the cantonal level in view of “the characteristics of the cantons as sovereign territorial authorities”.

133. It emerged from the Congress delegation’s meetings with the federal authorities and particularly the Federal Department of Justice and Police that the Confederation did not in principle see any objections to the Charter being extended to the cantons, but given the Swiss approach to relations between the Confederation, cantons and municipalities, such a proposal would have to come from the cantons and municipalities themselves.

### 5.2 *Constitutional autonomy*

134. Cantonal self-government is an essential element of the sovereignty vested in the cantons by the federal constitution (Article 1 and Article 3). This self-government is also expressly recognised by the constitution (Article 47, paragraph 1: “The Confederation shall respect the autonomy of the cantons”). The federal constitution also provides that the Confederation shall leave the cantons sufficient responsibilities of their own and respect their organisational autonomy. Lastly, the Confederation shall leave the cantons sufficient sources of finance and contribute towards ensuring that they have the financial resources required to carry out their responsibilities (Article 47, paragraph 2). Under Article 3 of the federal constitution, “The cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution.” The cantons’ constitutional autonomy is therefore far from absolute. It is restricted by certain provisions of the federal constitution such as Article 51, which requires every canton to adopt a democratic constitution and that this constitution be approved by the people and revisable if the majority of the electorate so request. Article 191b, paragraph 1, provides that cantons must establish judicial authorities to judge civil and public law disputes as well as criminal matters.

135. Moreover, while federal legislation does not, in theory, affect the organisation of cantonal powers, the cantons are nonetheless required to implement federal law (delegated federalism). It is true that the Confederation must allow the cantons all possible discretion and take account of their

particularities (Article 46, paragraph 3, of the federal constitution), but when the cantons are responsible for implementing federal legislation, the Confederation often tells them which bodies and procedures are necessary for the task. This means that in the field of delegated federalism, federal legislation may affect cantons' administrative organisation and administration of justice.

136. The rapporteurs also wish to emphasise that under Article 56 of the federal constitution: "A canton may conclude treaties with foreign states on matters that fall within its jurisdiction. Such treaties must not conflict with the law or the interests of the Confederation, or with the law of any other cantons. The canton must inform the Confederation before concluding such a treaty. A canton may deal directly with lower ranking foreign authorities; in other cases, the Confederation shall conduct relations with foreign states on behalf of a canton."

### **5.3 Administrative autonomy**

137. The institutional framework of the 26 cantons varies considerably. Each has its own constitution. The latter defines the political institutions and their activities and must not be contrary to federal law (Article 51 of the federal constitution). The cantons are self-governing and free to decide their own structure of government. A canton's executive body generally consists of five to seven members. With a few exceptions, being a member of the Council of State (cantonal government) is a full-time activity. Unlike what happens at federal level, members of this council are directly elected by the people, usually by the first-past-the-post system. The only exception is the Canton of Ticino, which uses a system of proportional representation. As a rule, each member of a cantonal government heads a department. The government acts as a collegial authority, without any particular rights being attributed to its president, who in most cantons changes every year, apart from the chairing of government meetings.

138. In most cantons there are as many cantonal authority departments as there are members of the government. Its administrative units are usually called offices (*Ämter*). The size of the authority and its method of working vary between the large urban cantons and the small outlying ones. While the cantonal authorities (including cantonal institutions) of Geneva, Vaud and Zurich employ over 25 000 people, seven cantons have a workforce of under 2 000. The introduction of "new public management" (NPM) in the 1990s and 2000s, based on the principle of efficiency, led to reform in a large number of cantonal authorities.

139. Every canton has its own parliament with law-making powers and supervisory functions, the extent of which varies between cantons. Cantonal parliaments comprise between 49 (Appenzell Innerrhoden) and 180 members (Zurich). The members of these unicameral parliaments are elected democratically. Compared with the national parliament, cantonal parliaments play a lesser role. This is explained by the fact that, apart from the members of the Federal Council, the cantons' executive authorities are elected directly by the people and are therefore separate from the parliaments. Another reason is that the most significant instruments of direct democracy at the cantonal level restrict the cantonal parliaments' power to legislate. In two Swiss cantons, Appenzell Innerrhoden and Glarus, there still exists a *Landsgemeinde*. The *Landsgemeinde*, a sovereign assembly of the canton's eligible voters, is held once a year. It is the canton's highest legislative authority. It elects the Council of State and senior officials and passes new laws.

140. Some cantons are divided into districts. These districts exist in 16 of Switzerland's 26 cantons. Their role will vary according to canton. In general, they are used solely for the purposes of judicial administration, with each district having just one court. In the Canton of Grisons, districts do however have their own tax-raising powers and political sovereignty. A district contains a certain number of municipalities (from just one to 83 in the Jura-Nord Vaudois district), except in the Canton of Appenzell Innerrhoden, where the districts are the smallest subdivision. Ten cantons are not subdivided into districts. For historical and practical reasons, seven have never been: Uri, Obwalden, Nidwalden, Glarus, Zug, Basel-Stadt and Geneva (all these cantons cover small areas). The district system has also been abandoned by the cantons of Appenzell Ausserrhoden (in 1995), Schaffhausen (in 1999) and St Gallen (in 2002). In the Canton of Bern, replacement of the 26 districts by ten administrative districts was approved in 2006 and implemented in 2010. The new cantonal constitution of Lucerne, adopted in 2007, also resulted in abolition of the districts. In the Canton of Grisons, the number of districts was reduced from 39 to 11 in 2001 and in the Canton of Vaud from 19 to 10 in 2008.

141. The rapporteurs wish to highlight the fact that direct democracy is more advanced in the Swiss cantons than at the national level. One basic difference arises out of the much wider possibilities offered by referendums. While at the national level they are a means of responding to laws and

constitutional amendments, at the cantonal level they can be used to challenge specific administrative decisions by the parliament. Optional or mandatory referendums for public expenditure mean that recurring investment or a one-off major investment is submitted for approval by the electorate. It is also possible to amend laws at the cantonal level through a request for a referendum.

#### **5.4 Operational autonomy**

##### **5.4.1 Division of powers between Confederation and cantons**

142. Cantons enjoy their own powers under the federal constitution (Article 3). Article 5a of the constitution posits that the principle of subsidiarity is to be observed in the allocation and performance of state responsibilities. Article 42 of the constitution provides that “the Confederation shall fulfil the duties that are assigned to it by Federal Constitution”.

143. It follows from these provisions that, in principle, the Confederation can exercise only those powers conferred on it by the federal constitution (conferred powers), while the cantons have a general clause of competence (own powers); under Article 43a, paragraph 1, of the federal constitution, the Confederation undertakes responsibilities that the cantons are unable to perform or which require uniform regulation. When public authorities are faced with a new state task, it is normally the responsibility of the cantons. Allocating a new power to the Confederation therefore means amending the federal constitution. It should here be noted that some two thirds of the 160 or so amendments to the constitution made since 1874 have been for the purpose of allocating new powers to the Confederation (civil law and criminal law in 1898, land-use planning in 1969, environmental protection in 1971, energy in 1988, and protection of the alpine area from the negative effects of traffic in 1994, for example). However, some proposed amendments have been rejected for fear of excessive centralisation (culture in 1986 and 1994, agriculture in 1994 and family policy in 2013).

144. Express federal powers are derived mainly from the federal constitution and more specifically Chapters 2 and 3 of Title 3 (Articles 54 to 135). Some provisions of the constitution make reference to particular fields of state activity considered by their nature to be the responsibility of the federal state (armed forces; currency; central bank; postal services and telecommunications; customs and foreign trade; acquisition and loss of nationality; promotion of ties with Swiss citizens abroad; air, river and space navigation; radio and television; immigration and right of asylum). A number of specific fields of activity are also covered: cinema; construction of second homes; hunting and fishing; business activity; insurance; gambling; etc.

145. The Confederations’ powers can also be defined with reference to achieving a particular goal, such as protection of flora and fauna, environmental protection, animal protection, economic protection, consumer protection, protection against disease, protection of human dignity, of the person and of the family in the fields of assisted reproduction and genetic engineering, and protection of genetic diversity of species. The goal may also be to provide an incentive: for scientific research, participation in sport, or film production in Switzerland, for example. Lastly, sundry articles of the federal constitution entrust the Confederation with the task of standardising certain branches of law (labour law, social insurance law, civil law and civil proceedings, and criminal law and criminal proceedings).

146. Federal laws passed under powers vested in the Confederation by the federal constitution are usually implemented by the cantons as provided for in Article 46 of the constitution (implementation of federal law). This is the case, for example, in the fields of aid for the elderly and people with disabilities (Article 112c, paragraph 2) and tax law (Article 128, paragraph 4). If the federal constitution provides no guidance, federal law will specify responsibility for implementing federal legislation (the Confederation, cantons, or both).

147. In the light of the foregoing, the rapporteurs have found that, within their sphere of competence, the cantons have independent law-making powers enabling them to determine the content of their laws freely.

##### **5.4.2 Disentanglement of powers**

148. The division of powers between the Confederation and the cantons as provided for by the federal constitution means that some fields are subject to mainly federal regulation (customs and currency, for example) while others are more or less the sole responsibility of the cantons (public works, education, building regulations). However, even in the Confederation’s fields of “exclusive competence”,

the cantons can have delegated powers (for national and civil defence, for example). Moreover, within their own sphere of competence the cantons are never entirely at liberty to regulate a field, since their powers are circumscribed by the federal constitution in Article 51 and must also take due account of basic rights. Thus the cantons adopt development plans and issue planning permission but in accordance with federal principles concerning land-use planning, environmental protection and guarantee of ownership.

149. In practice, today's federal State is marked by an increasing overlap of federal and cantonal powers. The centralisation in which federalism has gradually resulted has meant less decision-making autonomy and a reduced field of action for the cantons. At the same time, the share of financial transfers from the Confederation to the cantons has been growing steadily, increasing the latter's financial dependence on the federal State.

150. In order to counteract this trend, a significant reform was adopted on 28 November 2004 with the aim of changing the allocation of responsibilities between the Confederation and the cantons and overhauling the system of financial equalisation. This was the first major reform of federalism since 1848. The reform of the allocation of responsibilities and the financial equalisation system, which came into effect on 1 January 2008 affected 27 articles of the federal constitution, and one of its key objectives was to "disentangle" the tasks of the Confederation from those of the cantons. Without prejudice to the rule enshrined in Article 3 of the Constitution, the aim was to apply the principle of subsidiarity (Article 5a of the federal constitution). Broadly speaking, this principle means that a higher level of the state takes on a task only if that task cannot be carried out effectively at a lower level. Article 43, paragraph 1, of the federal constitution here provides that "the Confederation only undertakes tasks that the cantons are unable to perform or which require uniform regulation by the Confederation".

151. This reform has consequently remodelled many of the provisions on division of powers between Confederation and cantons by specifying the respective areas of action for the federal and cantonal authorities. Thus Article 58, paragraph 3, of the federal constitution states that deployment of the armed forces is the responsibility of the Confederation, while Article 86 makes construction, maintenance and operation of motorways a matter for the Confederation, with no financial contributions from the cantons. In the field of social insurance, Articles 112 to 112c of the Constitution introduces a detailed division of tasks between federal and cantonal authorities.

152. Of the 53 tasks that used to be jointly financed by the Confederation and the cantons, in the end only 21 were split off and clearly reassigned. Tasks have not been divided optimally between Confederation and cantons, even with the coming into effect of the reform in 2008. The centralisation tendency has continued, as has the confusion of tasks between Confederation and cantons, so that the allocation of responsibilities ought really to be clearly redefined (together with their funding). Since the reform, the number of joint tasks has begun to grow again and the trend to centralisation has persisted. In particular, the Confederation's "contributions" (financial transfers from the Confederation to the cantons for performance of joint tasks) have increased from 7.76 billion Swiss francs (in 2008) to 9.56 billion Swiss francs (in 2014). These sums greatly exceed the payments made by the Confederation for financial equalisation in the narrow sense (3.18 billion Swiss francs). Today the cantons believe that the process of improving task- and cost-sharing between the Confederation and the cantons must continue. They have begun a review of all the tasks and fundamental responsibilities of the Confederation and the cantons. The federal parliament has also asked the Federal Council to undertake an assessment of the tasks shared between the Confederation and the cantons and note for each whether it should remain a joint task or whether it should be transferred in full to the federal state level.

153. The reform of the division of responsibilities between Confederation and cantons has also led to a clearer formulation of the federal authorities' obligation to ensure that the cantons are self-governing. Article 47, paragraph 2, of the federal constitution provides that the Confederation shall leave the cantons sufficient tasks of their own and respect their organisational autonomy. Similarly, they must be given sufficient sources of finance to ensure that they have the financial resources required to carry out their tasks.

## **5.5 Financial autonomy**

154. The rapporteurs note with satisfaction that on the whole the financial situation of the cantons would appear to be satisfactory. Their level of resources is sufficient for them to finance their devolved responsibilities, and their level of indebtedness is fairly low (10% of GDP).

### **5.5.1 Extent of financial autonomy**

155. The cantons enjoy considerable financial autonomy. Firstly, they can set their own taxes and, secondly, they are free to spend their resources as they see fit. Including in their Constitutions, the individual cantons can also establish debt limitation mechanisms that apply to cantonal and municipal finances.

156. The trade-off for this autonomy is that there are sometimes major differences between the financial capacity of the cantons or a degree of tax competition, given that each of the 26 cantons in Switzerland has its own tax law and can therefore decide its own taxes on income and wealth, profits and capital, inheritance, capital gains on property, or any other taxable item. Under the federal Constitution certain taxes can only be collected by the Confederation. However, the latter can only levy taxes expressly provided for under the Constitution.

157. The freedom of the cantons to shape their own tax laws was restricted somewhat by the adoption in June 1977, by the population and the cantons, of an article of the Constitution on the harmonisation of direct taxes on income and wealth, on profits and capital (Article 129 of the Constitution). Subsequently, in keeping with this constitutional mandate, and after approximately 8 years of discussions, including four years of parliamentary debate, on 14 December 1990 the Federal Chambers passed the Federal Law on the Harmonisation of Direct Cantonal and Communal Taxes (LHID), a framework law which came into force on 1 January 1993.

158. In accordance with this constitutional mandate (Article 129, paragraphs 1 and 2 of the Constitution), the law contains no provisions regarding tax rates, scales and amounts, given that the power to set them lies with the cantons. Consequently, the harmonisation resulting from the LHID is purely one of form, not substance. It is aimed at cantonal and municipal lawmakers and lays down the principles they must apply when legislating on tax liability, the purpose of taxation, and taxation over time, as well as the rules of procedure and criminal law in tax matters. However, it is the cantons that are responsible for determining tax scales, rates and relief (Article 1, paragraph 3, LHID). Similarly, the LHID does not address how the tax authorities are organised, a matter for the cantons, since each canton has its own distinctive state and administrative structure.

### **5.5.2 Financial equalisation**

159. Financial equalisation is essential for the autonomy of the cantons. Without it, some of them might no longer be able to carry out their responsibilities under federal law, and their existence would be threatened. For example, the Canton of Jura relies on financial equalisation for nearly a fifth of its revenue. Financial equalisation is also essential for tax competition, which enables each canton to choose the system that suits it. Tax competition can only work if a system such as financial equalisation ensures the cantons are placed back on a relatively equal revenue footing. Without such equalisation, tax harmonisation within Switzerland would be inevitable.

160. Prior to 2008, as many as 53 responsibilities were co-financed by the Confederation and the cantons. It was impossible to separate financial equalisation from how the responsibilities were shared out. In the context of many shared responsibilities, the Confederation would set the amount to be paid to the cantons in grants according to their financial strength. This system of indirect financial equalisation was complicated, non-transparent in that it was impossible to calculate the total amount of funds re-distributed, and difficult to manage.

161. The reform of financial equalisation and apportionment of responsibilities between the Confederation and the cantons (the "RPT") came into force in early 2008. Its main aim was to reduce the differences between the cantons in terms of their financial capacity and tax burden, given that the number of cantons receiving funding far outweighed the number of those contributing. With the entry into force of the RPT, financial equalisation has been separated from the distribution of responsibilities. Since 2008, equalisation takes the form of direct transfers of non-earmarked funds. It is based on income compensation, funded by the Confederation (between 55.5 and 60 %) and cantons (between 40 and 44.4 %), and expenditure compensation, funded by the Confederation.

162. Equalisation of resources is based not on actual tax revenue but on potential tax revenue, in other words the creation of value they are able to exploit from a tax perspective. This potential is based on the total taxable income and wealth of private individuals and taxable corporate profits. The actual fiscal policy of a canton therefore has no direct influence over the financial transfers to or from

that canton in the context of financial equalisation, and fiscal autonomy is thus guaranteed. Financial equalisation is co-funded by the Confederation (vertical equalisation) and the cantons with high revenue potential (horizontal equalisation), of which there are currently 6. In this way, the Confederation and financially strong cantons allocate resources to the weak cantons, which are then free to use the resources as they see fit. The transfer of funding to cantons with low revenue potential is gradual. Compared with the Swiss average, the amount transferred to these cantons is more, proportionately, than their potential revenue "deficit". The amount paid by the high potential cantons is proportionate to their "surplus" in relation to the Swiss average.

163. By virtue of the federal law on financial equalisation and compensation for expenditure, after financial equalisation each canton must have a level of resources per inhabitant equivalent to at least 85 % of the Swiss average. Every four years, the Federal Council presents a report to Parliament on the implementation and effectiveness of the financial equalisation exercise. According to the second report for the period 2012 to 2015 after equalisation all of the cantons had attained the minimum 85 % prescribed by law. The financial allocation set aside for financial equalisation is decided every four years by the Federal Parliament. In 2015 Parliament decided to reduce it by 165 million francs per year for the 2016-2020 period.

164. Compensation for expenditure is based on criteria over which the cantons have no direct influence, such as, with respect to geographical and topographical criteria, the altitude of the places inhabited, the slope of the land or population density, and, with regard to socio-demographic criteria, the percentage of welfare recipients, the share of inhabitants over the age of 80, or urban indicators. The Confederation funds some of this expenditure. Whereas compensation for expenditure incurred as a result of geographical and topographical factors offsets expenditure incurred by the outlying cantons due to their low population density and particular characteristics, compensation for expenditure incurred as a result of socio-demographic factors primarily benefits urban cantons, compensating them for the particular expenditure they incur as a result of the structure of their population, or their function as an urban centre. During the consultation procedure, the Union of Swiss Towns informed the rapporteurs that approximately 14% of socio-demographic expenditure was covered, in contrast to more than 35% of geographical and topographical expenditure. According to the Union of Swiss Towns, this imbalance is due to the fact that the same sum is allocated to the two rebalancing budgets, even though the expenditure calculated for the towns and urban agglomerations is significantly higher than for the mountain regions and, as shown by the March 2014 RPT evaluation report, this imbalance has increased since the introduction of the RPT.

165. This reform has reinforced the financial autonomy of the cantons, insofar as the share of non-earmarked transfers out of the total volume of funds transferred from the Confederation to the cantons has gone up considerably to nearly 40 % today. As for reducing disparities between cantons in terms of their financial capacity and fiscal burden, the result is less clear-cut. Furthermore, there has been no reduction in financial transfers between the Confederation and the cantons since the RPT came into force. On the contrary, there has even been a slight increase. It is only the specific earmarking of certain transfers that has been stopped completely.

166. The cantons with high revenue potential are keen to reduce their contribution to Swiss solidarity. A working group set up under the aegis of the Conference of Cantonal Governments has been tasked with proposing changes to the equalisation system. Based on the working group's conclusions, the Conference of Cantonal Governments will shortly be addressing recommendations to the Federal Council with a view to the next assessment report on the effectiveness of the financial equalisation system. According to the project currently under discussion, financial resources used for the equalisation exercise would no longer be decided by the political authorities but would depend solely on any change in the revenue potential of the weakest canton. For example, compared with the current system, this could mean an 11 % reduction in the amount paid to the weakest canton, the Canton of Jura.

167. However, even the current system of equalisation has not managed to reduce the very great disparities between the strongest and weakest cantons. Between 2008 and 2017, the revenue index of the strongest canton, the Canton of Zug, rose from 215.4 to 264.1 whereas the index of the weakest canton, currently the Canton of Jura, fell over the same period from 68.8 to 65.1.

168. The Federal Audit Office (Contrôle Fédéral des Finances, CDF), a certified independent body that oversees the Confederation's finances, scrutinises how financial equalisation and expenditure compensation are calculated within the meaning of the Federal Law of 3 October 2003 on Financial Equalisation and Expenditure Compensation, as well as the data supplied to that end by the cantons



and federal services concerned (Federal Law on the Federal Audit Office of 28 June 1967, Article 6.j). In practice, an average of 6 cantons are subject to verification in any one year.

169. The Federal Audit Office also has a financial oversight role in respect of federal funds allocated to the cantons and municipalities, in particular to pay for infrastructure projects. It should be noted here that vertical financial equalisation accounts for only part (approximately 16 %) of the financial transfers from the Confederation to the cantons. The rest is invested mainly in the urban regions, which often have high revenue potential, in the form of grants allocated to the Federal Institutes of Technologies, universities, health and social services, transport sector, etc.

## **5.6 Relations between the Confederation and the cantons**

### **5.6.1 Consultation**

170. The Constitution expressly states that the cantons must be consulted:

a. when their interests are affected (Art. 45 of the Constitution: "In the cases specified by the Federal Constitution, the Cantons shall participate in the federal decision making process, and in particular in the legislative process. The Confederation shall inform the Cantons of its intentions fully and in good time; it shall consult the Cantons where their interests are affected.")

b. on foreign policy matters (Art. 55 of the Constitution: "The cantons shall be consulted on foreign policy decisions that affect their powers or their essential interests. The Confederation shall inform the cantons fully and in good time and shall consult with them. The views of the Cantons are of particular importance if their powers are affected. In such cases, the cantons shall participate in international negotiations in an appropriate manner"). The Federal Law on the Participation of the Cantons in the Foreign Policy of the Confederation (LFPC) of 22 December 1999 stipulates that "the essential interests of the cantons are affected in particular when the foreign policy of the Confederation concerns important tasks carried out by the cantons" (Article 1, paragraph 2). It also states that "the participation of the Cantons in the foreign policy of the Confederation is based on the mutual exchange of information" (Article 3, paragraph 1). The Federal Council must take the positions adopted by the cantons into account. They are particularly important in areas affecting cantonal powers. Whenever the Federal Council deviates from the positions of the cantons it must notify them of the main reasons for doing so (Article 4, paragraph 3). If cantonal powers are affected, the Confederation must involve cantonal representatives in the drawing up of the negotiating mandates and, as a general rule, in the negotiations (Article 5, paragraph 1).

c. more generally, during the drafting process in respect of laws, bills, or major treaties. Article 147 of the Constitution provides that "The Cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties". The Federal Law on the Consultation Procedure of 18 March 2005 lays down the general principles governing the consultation procedure under Article 147 of the Constitution. It applies to consultation procedures launched by the Federal Council, a department, the Federal Chancellery, a federal government entity or parliamentary committee. The purpose of consultation is to establish "whether a project of the Confederation is factually correct, feasible, and likely to be accepted" (Article 2, paragraph 2). It should also be stressed that the cantons generally maintain direct and regular contacts with their members in the Swiss Parliament in order to represent their cantonal interests.

171. Consultation of the Cantons by the authorities of the Confederation involves the cantonal governments represented by the Conference of Cantonal Governments set up in 1993 to ensure more account is taken of cantonal interests in the context of federal policy. Twice a year, delegations of the Federal Council and the Conference of Cantonal Governments meet to engage in a confederal dialogue. There are also many contacts with the federal administration. Co-operation with the Federal Parliament can also be seen as essential, providing an opportunity for the Conference of Cantonal Governments to present the position of the cantons in hearings before parliamentary committees. Through the Conference of Cantonal Governments, the cantons can have their say at federal level every time cantonal interests are at stake. This strengthens the position of the cantons within the national political institutions.

172. For example the Conference of Cantonal Governments played an important role during the process to reform the system of financial equalisation and apportionment of responsibilities between the Confederation and the cantons (the "RPT") which came into force in 2008. Moreover, the RPT led

to the establishment of stronger vertical co-operation between the Confederation and the cantons based on a non-hierarchical partnership. According to the cantons and intercantonal conferences, the rights of the cantons to be involved in the federal legislative process have not always been sufficiently respected, as is apparent from the “Monitoring federalism” report (2011–2013) published in June 2014 by the Foundation for Confederal Co-operation which gives the example of the energy policy decided by the Federal Council in 2011. The cantons would also like to be more involved in the Confederation’s European policy.

173. During the visit, the rapporteurs were told that most wishes expressed during hearings were granted.

### **5.6.2 Co-operation**

174. According to Article 44 of the Federal Constitution “(T)he Confederation and the cantons shall support each other in the fulfilment of their duties and shall generally co-operate with each other. They owe each other a duty of consideration and support. They shall provide each other with administrative assistance and mutual judicial assistance. Disputes between Cantons or between Cantons and the Confederation shall wherever possible be resolved by negotiation or mediation.” The cantons are the main partners of the Confederation in terms of both helping to shape measures developed at the level of the Confederation and implementing and assessing them (Article 3 of the Guidelines for the federal administration concerning co-operation between the Confederation, cantons and municipalities adopted by the Federal Council on 16 October 2002).

175. Article 46 of the Federal Constitution provides that “(T)he Cantons shall implement federal law in accordance with the Constitution and federal legislation. The Confederation and the Cantons may together agree that the Cantons should achieve specific goals in the implementation of federal law and may to this end conduct programmes that receive financial support from the Confederation. The Confederation shall allow the Cantons all possible discretion to organise their own affairs and shall take account of cantonal particularities.”

176. Primary responsibility for carrying out many of the responsibilities of the Confederation (environment, civil law, migration, etc.) lies with the cantons. The rapporteurs consider that the cantons have to comply with increasingly strict qualitative and quantitative instructions which can have financial, organisational and staffing repercussions. In principle, the cantons receive no compensation for implementing federal laws and must ensure the necessary administrative resources are available. The only compensation they receive is for the cases expressly provided for under the Constitution or by law. It would appear that the actions imposed by the Confederation are a growing burden for the cantons, draining their financial and human resources. Various joint responsibilities are carried out in the context of a close partnership between the Confederation and the cantons, particularly with respect to integration policy. Carrying out joint responsibilities can pose a risk for the cantons insofar as budgetary savings decided by the Confederation may mean expenditure is transferred to the cantons.

177. Some reforms decided at the level of the Confederation can also put the cantons under financial pressure. This has been the case, for example, with the new system in place for funding health care and hospitals. Accordingly, over the past few years cantonal budgets have come under increasing pressure as a result of the cantons’ implementation of federal law.

178. The system of “programme agreements” between the Confederation and cantons has led to the introduction of a funding system based on block grants that leave the cantons more freedom to manage their own spending throughout the four-year contract period. The programme agreements also involve a procedure that allows the cantons to negotiate the level of the grants.

179. The rapporteurs are of the opinion that the constantly changing financial burden-sharing arrangements between the Confederation and the cantons may be debatable. For example, the reception of migrants is mandatory for the cantons and they receive financial compensation for it from the Confederation, but such compensation is in the form of a lump sum, which is sometimes not sufficient to cover the costs.

180. From Confederation’s standpoint, the co-operation between the Confederation and the cantons between 2011 and 2013 can be described as excellent. Any tension between them was minimal, in particular thanks to the relatively favourable economic situation and satisfactory level of tax revenue. From the point of view of the cantons, a review of the principle whereby they have to bear the cost of

implementing federal law, with the result that the Confederation would have to finance more of the responsibilities within its field of competence, would improve the financial situation of the cantons and in so doing strengthen their autonomy.

### **5.6.3 Conflict resolution**

181. According to the federal Constitution "Disputes between Cantons or between Cantons and the Confederation shall wherever possible be resolved by negotiation or mediation" (Article 44 of the Constitution). However, there is no function of federal mediator responsible for resolving such disputes, and nor does the Federal Parliament have any specialist committee that decides on questions pertaining to the distribution of powers. Nonetheless, the cantons are involved in a consultative capacity in the drafting process in respect of federal laws affecting their powers, and the results of this consultation are made public and commented upon in the government's written submission to Parliament ("Message of the Federal Council").

182. For its part, the Swiss Federal Court can scrutinise cantonal acts to check that they do not impinge on the competences of the Confederation. However, by virtue of Article 191 of the Constitution, federal acts do not come within its jurisdiction (apart from regulatory norms, i.e., ordinances of the federal government adopted under federal law). Consequently, the cantons cannot apply to the Court for a constitutionality ruling on a federal law. In reality, under the Swiss tradition of semi-direct democracy, where every law passed by the Federal Parliament can be put to a referendum, the reasoning is that, in effect or implicitly, the population has the final say.

### **5.7 Intercantonal relations**

183. The cantons co-operate with each other in many areas. Their co-operation involves various bodies and procedures:

- Intercantonal conferences are an opportunity for elected members of cantonal governments to meet and discuss subjects of common interest (conference of cantonal finance directors, conference of cantonal judicial and police directors, conference of cantonal education directors, etc.). Such consultation and co-operation bodies can be used to negotiate intercantonal agreements and also represent the interests of the cantons in their dealings with the federal authorities.

- The Conference of Cantonal Governments (CdC) is a representative body founded on 8 October 1993 to further co-operation between the 26 cantons within their realm of competence, coordinate activities and keep the cantons informed about dossiers at the level of the Confederation that concern them. It acts as an interface between the Confederation and the cantons on foreign policy dossiers and important national policy dossiers.

- By virtue of the Federal Constitution (Article 48 of the Constitution), as well as the cantonal constitutions, the cantons can enter into agreements with each other with a view to harmonising their policies (e.g. in the education sphere) or developing co-operation activities (e.g. in the field of hospitals, universities, police forces). Following the 2008 reform of financial equalisation and apportionment of responsibilities (the "RPT"), Article 48 of the Constitution which lays down the framework conditions for concluding intercantonal agreements has been amended. Paragraph 4 now provides that the cantons may by intercantonal agreement authorise intercantonal bodies to issue legislative provisions that implement an intercantonal agreement, whereas new paragraph 5 stipulates that the cantons must comply with intercantonal law. These new provisions establish a firmer basis for intercantonal co-operation. Furthermore, new Article 48a of the Constitution provides that, at the request of interested cantons, the Confederation may declare intercantonal agreements to be binding or require cantons to participate in intercantonal agreements in 9 fields. The intercantonal agreements concerned may be concluded in the following fields: the execution of criminal penalties and measures, school education, cantonal institutions of higher education, cultural institutions of supra-regional importance, waste management, waste water treatment, urban transport, advanced medical science and specialist clinics, and institutions for the rehabilitation and care of invalids.

184. It should be noted that the compensation paid for expenditure incurred in respect of the duties provided by Article 48a of the Constitution has virtually doubled since the RPT came into force in 2008. This reflects an increase in intercantonal co-operation.

185. In recent years plans for territorial reform at cantonal level were aimed at merging some of the cantons in the interests of more efficient administration, faster political decision-making, and a pooling

of financial and human resources. Even now, however, any change in cantonal territorial boundaries seems highly unlikely because the cantons are all strongly attached to retaining their sovereignty and identity. The main priority for the moment is to strengthen intercantonal co-operation. So far, any attempts to merge cantons have been a resounding failure, as illustrated by the project to merge the cantons of Geneva and Vaud which was massively rejected by voters in 2002, and the vote held in 2014 on whether or not to give the go-ahead to a merger of Basel-Stadt and Basel-Landschaft, when the more rural Canton of Basel-Landschaft was clearly against the launch, with the result that nothing came of the “yes” vote by the more urban Canton of Basel-Stadt.

### **5.8 *Limits to cantonal autonomy***

186. First of all, concerning cantonal powers, the delegation noted that the federal laws affecting the powers of the Confederation necessarily limit the powers of the cantons, insofar as the latter are not allowed to adopt or apply any rules that go against federal laws. However, a federal law does not necessarily withdraw all power from the cantons, given that federal laws may be partial or incomplete, leaving cantonal rules to fill the gaps left by federal legislation. The cantons may therefore continue to have temporary powers.

187. In addition, the Federal Constitution sometimes expressly limits the legislative powers of the Confederation to the adoption of general principles in a given field (framework laws). Where that is the case, the cantons retain the power to adopt detailed regulations (e.g. on regional development, water protection, forest conservation, energy savings, fiscal harmonisation). Sometimes, although it entrusts powers to the Confederation, the Federal Constitution also confers a particular responsibility on the cantons, such as that of providing an adequate basic education available to all children (Article 62, paragraph 2), establishing a conciliation procedure or a straightforward and speedy court procedure to protect consumers (Article 97 paragraph 3), or granting tax exemptions to institutions of the Federal Old-Age, Survivors' and Invalidity Insurance or the occupational pension scheme (Article 111, paragraph 3).

188. Lastly, the cantons can be entrusted with specific responsibilities under federal law. The Confederation can adopt guidelines and instruct the cantons on how they are to carry out their delegated powers. When delegating a power to the cantons, however, the Confederation must respect their constitutional autonomy, as well as the principle of the separation of powers. It is the constitution of the canton entrusted with the delegated power which designates the bodies authorised to exercise it. Usually it is the cantonal legislature.

189. Secondly, the oversight or scrutiny exercised by the Confederation over the cantons also limits their autonomy. There are several facets to this oversight. Firstly, the Confederation scrutinises cantonal laws. They must be approved by the Confederation which, in so doing, must ensure that they comply with federal provisions. By virtue of Article 61b, paragraph 1 of the Government and Administration Organisation Act (LOGA) of 21 March 1997, if a federal law so provides, the cantons must submit their laws and ordinances to the Confederation for approval, without which they are not valid. In the absence of any dispute, approval is given by the departments (ministries), whereas in the event of a dispute the Federal Council may have to decide (Article 61, paragraph 2 and 3, LOGA).

190. Furthermore, Article 48 of the Federal Constitution provides that intercantonal agreements must not be contrary to the law, to the interests of the Constitution, or to the rights of other cantons, and that the Confederation must be notified of such agreements. Article 56 of the Constitution, for its part, provides that the cantons may conclude treaties with foreign states on matters that lie within the scope of their powers, but such treaties must not conflict with the law or the interests of the Confederation or with the law of any other Cantons. Cantons must inform the Confederation before concluding such a treaty.

191. It is very rare that the cantons apply to the Federal Court to uphold their rights. Conflicts of power or any other dispute between the Confederation and the cantons, or between the cantons themselves are traditionally resolved by negotiation and mediation rather than by legal action. Moreover, no case can be brought before the Federal Court against acts of the Federal Assembly or Federal Council (Article 189, paragraph 4 of the Constitution). Thus, whereas the Confederation can challenge the cantons before the Federal Court when their laws contravene federal law, the cantons are not authorised to take their case to the Federal Court when the federal lawmaker fails to respect the power-sharing arrangements under the Constitution.

192. In view of the above, the rapporteurs are of the opinion that the constitutional rights of the cantons are not fully protected.

## CONCLUSIONS

193. The rapporteurs are of the opinion that municipal autonomy is particularly strong in Switzerland and that the commitments entered into by the Swiss Confederation when it ratified the European Charter of Local Self-Government on 17 February 2005 have been generally respected.

194. Local self-government is enshrined in the Federal Constitution. By virtue of Article 50 of the Federal Constitution, the autonomy of the municipalities is guaranteed in accordance with cantonal law. It is therefore the cantonal constitutions and laws that determine the form and substance of the municipalities' autonomy. Generally speaking, the rights set out in the Charter correspond to the self-government frameworks established by the cantons for the municipalities. However, the Confederation itself has full responsibility for implementing Article 50 of the Federal Constitution, which subjects it to certain obligations.

195. The rapporteurs note that despite the differences between them in terms of the extent of their autonomy, all Swiss municipalities enjoy wide-ranging municipal powers, on top of which they are also responsible for carrying out cantonal, and, more rarely, federal duties. They also enjoy fairly extensive financial autonomy, reflected in the power entrusted to them to set their own taxes. The rapporteurs noted with satisfaction that on the whole the financial situation of Swiss municipalities would appear to be healthy, with a relatively low level of indebtedness.

196. The rapporteurs welcome the fact that the municipalities are able to influence decision-making, mainly at cantonal level but also at federal level through their associations, in particular the Association of Swiss Municipalities and the Union of Swiss Cities. Furthermore, on the whole the population thinks very highly of municipal structures which provide high quality services, and citizens have a great deal of trust in the municipal authorities. Direct democracy procedures, such as popular initiatives, referendums, and popular assemblies, are highly developed at the level of the municipalities, with the municipal authorities therefore being under constant public scrutiny.

197. Although from a legal standpoint the autonomy of the municipalities has been strengthened, notably as a result of its recognition at federal level under Article 50 of the Constitution, the rapporteurs observed a number of shortcomings in practice, which are moreover highlighted in the Federal Council's report of 13 May 2015 on implementation of Article 50. These are due to the difficulty the municipalities have managing certain responsibilities, in particular the growing demands placed on enforcement bodies (for example, protection of children and adults), the difficulties of filling militia posts, and functional management of the growth in built-up areas spread over several municipalities, or even cantons.

198. The municipalities currently have to cope with huge responsibilities, and ultimately it is not clear whether they will be able to reinforce their autonomy still further. There is a growing tendency for municipal tasks to be transferred to intermunicipal co-operation structures. The rapporteurs consider that this limits the autonomy of the municipalities involved in these structures, even if the restriction is voluntary on their part. Another consequence of this trend is that citizens have fewer opportunities for direct democratic democracy. It is to be noted, however, that 11 of the cantons have introduced a right to hold a referendum within all associations of municipalities. Six of the 11 have also introduced the right of initiative.

199. Another difficulty observed by the rapporteurs is that the municipalities are being entrusted with more responsibilities all at once without, for many of them, a parallel increase in their resources.

200. The rapporteurs have the impression that the main limit to municipal autonomy is due to the large number of small municipalities, with municipal fragmentation in Switzerland among the most acute in Europe. Given that the human and financial resources of small municipalities are insufficient, the rapporteurs can but note a tendency towards centralisation, with municipal tasks being transferred to intermunicipal co-operation structures or even to the cantonal level (e.g. care services, fire-fighting services). In order to overcome municipal fragmentation, a trend towards mergers of municipalities has developed in recent years and looks set to intensify in future, encouraged by financial incentives decided by the cantons.

201. The rapporteurs note that the long-standing militia system is currently experiencing problems. In their opinion a study involving all three tiers of government (Confederation, cantons, municipalities) could be carried out with a view to improving the current system which seems to have reached its limits.

202. Concerning consultation procedures, the rapporteurs think it would be a good idea for major cities, which may have specific interests to defend in certain areas (taxation, urban planning, transport, etc.), to have special status in consultation bodies and procedures, in other words for them to be able to represent themselves rather than be represented by associations which are bound to defend a more general collective interest. The rapporteurs also recommend that, mirroring the arrangements that apply to cantonal representatives, municipal representatives should be more involved in expert committees and working groups tasked with drawing up federal acts.

203. Better account could also be taken in Swiss legislation of the special status of the city of Bern. For example, in the interests of clarity, a special law could be drafted to define the financial framework and conditions governing the Confederation's funding of the cost to Bern of hosting not only the Federal Government and Parliament but also foreign embassies and diplomatic representations.

204. Switzerland is not bound by Articles 4.4, 6.2, 7.2, 8.2, 9.5 and 9.7 of the Charter. The delegation is of the view that the current situation as regards local self-government in Switzerland meets all the requirements of the articles of the Charter not yet ratified by Switzerland, with the (partial) exception, however, of Article 7.2 which provides that local elected representatives must receive adequate financial compensation for carrying out their mandate. The rapporteurs therefore suggest that these reservations be lifted.

205. The rapporteurs point out that the Charter only applies to the municipalities in Switzerland. In this context, they are fully aware that the cantons have been expressly excluded from the scope of the Charter, at their request, for fear of limits to their sovereignty and owing to their refusal to be equated with "regions" when their status as States is enshrined in the Constitution. Nonetheless, having noted that Swiss cantons enjoy a high degree of autonomy, as guaranteed by the Constitution, as well as extensive powers, the rapporteurs are of the opinion that broadening the scope of the Charter to include the cantons would in no way challenge their sovereignty and, on the contrary, would protect their autonomy vis-à-vis the Confederation.

206. With regard to the additional Protocol, the rapporteurs welcome the approval by the Swiss Parliament of the possibility for Switzerland to ratify this instrument and encourage the Swiss authorities to finalise ratification in the near future.

**APPENDIX - Programme of the monitoring visit to Switzerland**

**CONGRESS MONITORING VISIT TO SWITZERLAND**  
**Bern, Zürich and Oetwil an der Limmat**  
**(23-25 January 2017)**

**FINAL PROGRAMME****Congress delegation:**Rapporteurs:

Mr Marc COOLS	Rapporteur on local democracy Chamber of local authorities, ILDG <sup>6</sup> First Deputy Mayor, Uccle (Belgium)
Mr Dorin CHIRTOACA	Rapporteur on regional democracy Chamber of Regions, EPP/CCE <sup>7</sup> Mayor of Chişinău (Republic of Moldova)

Congress Secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee
Ms Svitlana PEREVERTEN	Co-secretary to the Monitoring Committee

Consultant:

Mr André ROUX	Member of the Group of Independent Experts on the European Charter of Local Self-Government (France)
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Interpreters:

Ms Séverine VITALI	23-25 January 2017
Ms Astrid KRUEGER	23-24 January 2017
Ms Viola MAND	25 January 2017

The working language of the meeting will be French. Interpretation from and into German will be provided.

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<sup>6</sup> ILDG: Independent Liberal Democrat Group in the Congress

<sup>7</sup> EPP/CCE: European People's Party Group in the Congress

**Monday 23 January 2017**  
**Bern**

**Joint meeting with the members of the National Delegation of Switzerland to the Congress, the Conference of cantonal governments, the Association of Swiss Municipalities and the Swiss Union of Cities and Towns:**

• **Swiss delegation to the Congress:**

- **Mr Beat HIRS**, Head of the Swiss delegation to the Congress, Gemeindepräsident of Rorschacherberg
- **Mr David ERAY**, Minister of environment, Republic and Canton of Jura, Vice-president of the Swiss delegation to the Congress
- **Ms Marie GARNIER**, State Councillor of the Canton of Fribourg
- **Mr Dario GHISLETTA**, Councillor of the city of Bellinzona (alternate)
- **Mr Laurent WEHRLI**, Syndic of the community of Montreux and National councillor
- **Ms Lelia HUNZIKER**, President of municipal council of the city of Aarau
- **Ms Christine CHEVALLEY**, Syndic de Veytaux

• **Conference of cantonal governments:**

- **Dr. Sandra MAISSEN**, Secretary general of the Conference
- **Mr Roland MAYER**, Deputy secretary general, Head of foreign policy division of the Conference
- **Mr Luca GOBBO**, Deputy Cantonal Liaison Officer in the Directorate for European Affairs, Representative of the Conference

• **Swiss Union of Cities and Towns:**

- **Mr Martin TSCHIRREN**, Deputy Director of the Swiss Union of Cities and Towns

**City Council of Bern:**

- **Mr Alec von GRAFFENRIED**, Mayor of Bern
- **Dr. Jürg WICHTERMANN**, Chancellor/Chief Administrative Officer of the City of Bern

**Meeting with the representatives of the Republic and Canton of Jura:**

Government:

- **Ms Nathalie BARTHOULOT**, President of the Government and Minister of Interior
- **Mr David ERAY**, Vice-president of the Government and Minister of Environment

Parliament:

- **Mr Frédéric LOVIS**, President of the Parliament
- **Ms Anne FROIDEVAUX**, President of Christian Democrats group
- **Ms Murielle MACCHI-BERDAT**, President of Socialist group
- **Mr Damien LACHAT**, President of the Swiss People's Party
- **Ms Géraldine BEUCHAT**, President of the Independent Social Christian party (PCSI)



**Federal Department of Justice and Police and Federal Department of Home Affairs:**

- **Prof. Dr. Luzius MADER**, Deputy Director, Federal Office of Justice
- **Mr Robert BAUMANN**, Senior Advisor, Federal Office of Justice, member of CDDG
- **Ms Stéphanie CATTANEO ANDREY**, Substitute of the Head of the Section culture and society, Federal Office of Culture, Federal Department of Home Affairs

**Federal Department of the Environment, Transport, Energy and Communications (DETEC):**

- **Ms Maria LEZZI**, Head of the Federal Office for Spatial Development
- **Ms Silvia JOST**, Responsable affaires internationales, Office fédéral du développement territorial

**Tuesday 24 January 2017  
Bern**

**Swiss Federal Audit Office:**

- **Mr Michel HUISSOUD**, Director

**Swiss Parliament:**

- **Mr Heinz BRAND**, President of the Political Institutions Committees (National Council) CIP
- **Ms Ruth LÜTHI**, Deputy Secretary of CIP
- **Ms Marija STOSIC**, University intern, International relations, secretariat of the national delegation of Switzerland to PACE

**Lunch at the invitation of Mr Ivo BISCHOFBERGER,  
President of the Council of States:**

- **Mr Heinz BRAND**, President of the Political Institutions Committees (National Council) CIP
- **Mr Claudio FISCHER**, Ambassador, Head of International and multilingualism, Parliamentary Services
- **Ms Marija STOSIC**, University intern, International relations, secretariat of the national delegation of Switzerland to PACE

**Federal Department of Finances:**

- **Mr Ueli MAURER**, Federal Councillor
- **Mr Peter SCHWENDENER**, Vice-Director, Section Fiscal Policy, Fiscal Equalisation, Financial Statistics FP, Federal Finance Administration
- **Mr Werner WEBER**, Head of fiscal equalization division, Federal Finance Administration
- **Ms Daniela STOFFEL DELPRETE**, Ambassador / Diplomatic Adviser, Swiss Federal Department of Finance FDF

**Swiss Federal Supreme Court:**

- **Ms Monique JAMETTI GREINER**, Judge, Federal Supreme Court, Substitute member of Switzerland to the Venice Commission

**Independent Expert:**

- **Prof. Dr. Reto STEINER**, Managing Director of the Swiss Institute for Public Management, Bern, Full Member of the Group of Independent Experts
- **Prof. Andreas LADNER**, Director, Swiss Graduate School of Public Administration, Lausanne, Alternate Member of the Group of Independent Experts
- **Dr. Claire KAISER**, Scientific Collaborator at the Swiss institute for Public Management, Bern

**Wednesday, 25 January 2017  
Zürich, Oetwil an der Limmat**

**Joint meeting with the Ombudsman of the Canton of Zurich and  
Ombudswoman of the City of Zurich:**

- **Mr Bernhard EGG**, Substitute Ombudsman of the Canton of Zurich
- **Ms Claudia KAUFMANN**, Ombudswoman of the city of Zurich

**Canton Council of the Canton of Zurich:**

- **Mr Rolf STEINER**, President of the Canton Council of the Canton of Zurich
- **Ms Karin EGLI-ZIMMERMANN**, first Vice-president
- **Ms Yvonne BÜRGIN**, Second Vice-president
- **Mr Moritz VON WYSS**, Head of parliamentary service
- **Mr Christian GYGER**, Public relations officer

**City of Zürich:**

- **Ms Corine MAUCH**, Mayor of the City of Zürich
- **Mr Roger BARTHOLDI**, President of the City Parliament of Zurich
- **Mr Peter KÜNG**, Vice-President of the City Parliament
- **Mr Jürg SCHEIDEGGER**, Head of the Departemental Secretariat of the Finance Department
- **Mr Christof MEIER**, Head of the Integration Office
- **Ms Christina WANDELER**, Deputy Head foreign affairs office

**Government Council of the Canton of Zurich:**

- **Mr. Beat HUSI**, Cantonal Chancellor
- **Mr Arthur HELBLING**, Head, Office of Municipalities, Department of Justice and Home Affairs
- **Mr Basilius SCHEIDEGGER**, Head, Finance Administration, Department of Finance
- **Ms Luzia LEHMANN**, Head, Office of External Relations, Chancellery
- **Ms Seline FISCHBACHER**, Deputy Head, Office of External Relations, Chancellery

**Municipality of Oetwil an der Limmat:**

- **Mr Paul STUDER**, Mayor (Gemeindepräsident)
- **Mr Erwin BÜHLER**, President of the Audit Commission (RPK-Präsident)
- **Mr Pierluigi CHIODINI**, Municipal Secretary (Gemeindeschreiber)