

The Congress of Local and Regional Authorities



Chamber of Regions

18th SESSION
CPR(18)2
1st March 2010

Regional democracy in Switzerland

Institutional Committee
Rapporteur: Marjan HAAK-GRIFFIOEN, Netherlands (R, NR¹)

A. Draft Recommendation	2
B. Explanatory Memorandum	7

Summary

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 reaches the conclusion 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 are fully in line with the principles laid down by the Reference Framework for Regional Democracy.

However, the recommendation draws 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.

¹ L: Chamber of Local Authorities/R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: Group European People's Party - Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Member not belonging to any political group of the Congress



A. DRAFT RECOMMENDATION²

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

a. article 2, paragraph 1.b of Statutory Resolution (2000) 1 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. article 2, paragraph 3 of Statutory Resolution (2000) 1 relating to the Congress, stipulating 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. the decision to draw up a monitoring report on regional democracy in Switzerland taken by the Bureau of the Congress at its meeting on 18 September 2008.

2. Recalls that:

a. Switzerland signed the European Charter of Local Self-Government le 21/01/2004 with reservations in respect of Articles 4 para. 4, 6 para. 2, 7 para. 2, 8 para. 2 and 9 para. 5, and ratified it on 17/02/2005. In Switzerland the Charter applies only to the “political communes” (the first tier of local government);

b. the state of local and/or regional democracy in Switzerland has not previously been the subject of a Congress report;

c. the Institutional Committee of the Chamber of Regions instructed Mr Jean-Claude Van Cauwenberghe (Belgium, R, SOC) to prepare and submit to the Congress, as rapporteur, the report on regional democracy in Switzerland. Due to the expiration of Mr Van Cauweberghe's mandate as a member of the Congress, the Institutional Committee, during its meeting of 15 February 2010 appointed Mrs Marjan Haak-Griffioen (Netherlands, R, NR) as a regional rapporteur for Switzerland.

3. Bears in mind that:

a. the content of the report, in accordance with the terms of reference given to the Rapporteur, bears principally on regional (cantonal) democracy in Switzerland, but also embodies references to the organisation of the municipalities and communes;

b. “Regions” within the meaning of the Congress texts, in Switzerland, are the Cantons. Cantons moreover constitute sovereign “states”, which formed the Swiss Confederation or joined it in the course of history. The “Confederation” is the supra-cantonal superstructure of the federal state.

² Preliminary draft recommendation approved by the Institutional Committee of the Chamber of Regions on 15 February 2010

Members of the Committee of the Institutional Chamber of Regions:

H. Van Staa (Chair), Z. Alimpic (alternate: D. Milovanovic), P. Bosch I Codola, L. Caveri, D. Ruseva (alternate), C.M. Do Vale Cesar, S. Eichler, B. Grasset, A. Grytsenko (alternate: T. Demchenko), G. Grzelak, M. Haak-Griffioen, A. Harutyunyan, M. Kebo, O. A. Kvaløy, J. Landberg, I. Loizidou, J.-C. Mairal, G. Pavlidis, H. Pihlajasaari, G. Pieper, M. Pineschi, G. Policinski, C. Radulescu, Y. Rzayeva, V. Salygin, P. Schowtka, D. Shakespeare, V. Storm Rasmussen, A. Turku, S. Ugrekheldze, M. Varnavskiy, P. Volner, K. Whitmore, M.J. Yildiz.

N.B. : The names of members who took part in the vote are in italics.

Secretariat of the Committee: S. Poirel, L. Nikoghosyan, A. Stahl

4. Takes note of the Explanatory memorandum on regional democracy in Switzerland drawn up by the Rapporteur, Mr Jean-Claude Van Cauwenberghe, following an official visit to Switzerland from 25 to 27 May 2009. The Rapporteur was assisted by Mr Jean-Mathias Goerens, consultant (Luxembourg), member of the Group of Independent Experts on the European Charter of Local Self-Government, whom the Congress thanks for his valuable contribution;

5. Wishes to thank the Swiss authorities at the local, cantonal and central levels, the associations of local and regional (cantonal) authorities and the various experts for the information conveyed to the delegation;

6. Considering that it is expedient to describe regional democracy in Switzerland in the light of the Council of Europe norms and principles, notably the Reference Framework for regional democracy noted by the European Ministers responsible for Local and Regional Government during the Ministerial Conference in Utrecht (2009).

7. Notes with satisfaction that:

a. the fundamental principles of regional self-government such as the powers and the undivided responsibilities of the cantons, a stipulated extent of their sovereignty, national solidarity and solidarity among cantons, their participation in the shaping federal policy as regards their representation at the federal level, the existence of cantonal constitutions through their representation at federal level, the principle of cantonal self-government, the ability to conclude agreements between cantons or between canton(s) and Confederation – are affirmed by the Federal Constitution of the Swiss Confederation;

b. Switzerland over the last 20 years has been implementing the “Reform of financial equalisation and apportionment of functions between the Confederation and the cantons” (the “RPT”), completed in 2008. This instrument is intended to govern political and financial relations between the Confederation and the cantons on the one hand and the different cantons on the other. It introduced a clearer apportionment of responsibilities between the Confederation and cantons, and made the financial equalisation system more manageable and fairer;

c. the Swiss cantons enjoy broad fiscal autonomy as regards the level of contribution. Within the limits set by the Swiss Federal Constitution, cantons are free to make the arrangements for tax collection and set tax rates;

d. Swiss cantons are entitled to be consulted on matters of concern to them where a political initiative has been taken at federal level. The Conference of Cantonal Governments, with the task of representing the cantons in dealings with the federal authorities and upholding their common positions under the consultation procedures prescribed by the Constitution, plays a very special role on the Swiss political scene;

e. there are national and regional intercantonal conferences with similar aims. They all perform a specific role and afford the cantons better common advocacy of their interests vis-à-vis the Confederation;

f. the well-developed practice of direct democracy is an essential feature of the Swiss political system. Cantonal autonomy is exercised in this area too, since the cantons have the right to choose for themselves how the citizens may participate in political decisions;

g. Swiss institutions, on federal as well as cantonal level, take appropriately into consideration the rights of minorities, in conformity with norms and principles established by the Council of Europe in this respect.

8. Draws attention to certain specific aspects of Swiss regional policy, viz.:

a. in terms of structures there are plans, already partly implemented, to set up intercommunal institutions at an intermediate level between the canton and the communes, whose form will vary according to whether the area is predominantly rural or urban. The purpose of these institutions is to co-ordinate structural and management activities by means of legislation or agreements and to make up for the inadequacies and weaknesses of local entities, which are often too small to be managed efficiently or too large to be managed by the institutions of a single commune or even a single canton;

b. Switzerland has problems of intercantonal co-ordination, particularly in places and situations where an agglomeration is located on the territory of more than one canton and is undergoing rapid development independently of existing institutional structures, outstripping the pace of adaptation of the political bodies responsible for managing economic and demographic development;

c. the policy on agglomerations is seen as a central concern, and the need for action is deemed significant at all levels (intercommunal, intercantonal and international). This is a particularly sensitive subject, for this awkward issue of communal restructuring lies in an area where identity-related emotions meet the rationality required for efficiency in public services.

9. Expresses its deep concern about possible abuses of the application, without additional safeguards, of Article 139 of the Federal Constitution on popular initiatives, which may contravene the obligations derived from international law.

10. Concludes that:

a. overall, regional democracy in Switzerland is extremely elaborate and highly developed. It is dynamic, lively and progressive, and is experienced directly by citizens. It operates in the context of a federation which arose from Switzerland's historical, geographical, religious and sociological development. It has all the features of an efficient, coherent system enabling this "country of differences" with such a highly complex territorial structure and communities of different languages, cultures and different faiths to live in harmony and relative consensus;

b. various constitutional reforms and the adoption of the RPT have made it possible to adjust the balance of the cantons' powers with the Confederation. The RPT goes well beyond an overhaul of financial instruments deemed to be obsolete and "brings Swiss federalism up to date";

c. regional democracy in Switzerland complies with the democratic principles and the organisational and operational concepts embodied in the Reference Framework for Regional Democracy³;

d. Switzerland's institutional and political organisation is perfectly consistent with the philosophy evolved by the Congress on regional democracy, subsidiarity, devolution and citizen-centred policy, not forgetting the country's distinctiveness in the field of direct and participatory democracy. Closer comparative analysis principle by principle makes the Swiss regional model's conformity to the requirements upheld by the Congress still more apparent:

i. Swiss cantonal self-government and its constitutional existence correspond to Article 1.a of the Reference Framework;

ii. the statement of the need to respect subsidiarity in the Swiss Constitution is true to the preamble of the Reference Framework;

³ Contained in the appendices to the Utrecht Declaration adopted on 17/11/09 by the Council of Europe Conference of European Ministers responsible for Local and Regional Government.

iii. the cantons' wide-ranging competences, which start from the bottom up, cover a great many fields mentioned in Article 1.b of the Reference Framework;

iv. relations with other sub-national territorial authorities, such as cities and municipalities, seem to comply, in ways that differ from one canton to another, with the provisions of the Reference Framework concerning the respect of local autonomy;

v. involvement of the cantons in state decision-making not only affecting their own competences and essential interests but also relating to general affairs of the Confederation, as required by Article 1.d, paragraphs 1-3, of the Reference Framework, is based on numerous institutions and procedures in Switzerland;

vi. supervision of the regional authorities by the state authorities complies fully with the strict limits set by the Swiss Constitution, namely conformity of cantonal decisions with federal constitutional provisions under the aegis of the Federal Court;

vii. the protection of regional self-government provided for in Article 1.e, paragraphs 1-3, of the Reference Framework, is guaranteed by the Swiss Constitution (Article 47) and by direct democracy mechanisms also enabling the population of the cantons to react in the event of an alleged violation;

viii. the right of association and external relations, to which regional authorities are entitled under Article 4, paragraphs 1-3, of the Reference Framework, are applicable because the cantons participate in their own right in international and transfrontier bodies;

ix. self-organisation of regional authorities (Article 2, paragraph 1, of the Reference Framework) is the general principle in Switzerland deriving from cantonal autonomy, under which the cantons are free to organise their functioning and administration within the limits of their competences;

x. regional bodies, which, according to Article 2, paragraphs 2-4, of the Reference Framework, must be democratically constituted, are fully in line with Swiss policy as embodied in both the Federal Constitution and the cantonal constitutions;

xi. the guarantee with regard to cantons' financial resources and all the rules specified in this connection in Article 3, paragraphs 1-4, of the Reference Framework have been in compliance with the principles of real financial autonomy since the RPT reform;

xii. financial equalisation and transfers seem to have been suitably re-organised since the RPT reform, although discussion on the criteria continues and may result in future legislative changes after evaluation. The new Swiss system is in any case consistent in principle with Article 3, paragraphs 5-7, of the Reference Framework.

11. Recommends that the Swiss authorities take account of the following suggestions with a view to future reforms:

a. consider a structural reform at municipal level and establishing a model for agglomeration structures. This 3rd tier of government seems less fully developed than the others. A restructuring which lends it efficiency, democratic legitimacy and institutional and legal stability appears necessary;

b. guide the future reforms towards a "new regional policy" as understood in Swiss terminology, that is a territorial development strategy. This type of arrangement should permit real "regional governance" and better management of sustainable development from the standpoint of solidarity as well as environmental protection;

c. consider the possibility of making major reforms within communes of, for example, services, intercommunal affairs or revenue, alongside possible restructuring;

d. take steps to ensure that the RPT, due for updating between 2012 and 2015, can be stabilised, since any permanent instability in the mechanisms for equalisation and funding especially is liable to cause disruption of forward cantonal management;

e. make a critical review of the proliferation of intercantonal agreements such as those concluded between the Confederation and the cantons. Analysis of these co-operation arrangements and of the sectors and subjects which they concern would be useful for rationalising them in order to guard against a risk of dispersal and unduly bureaucratic implementation;

f. consider the possibility of finding new institutional foundations for regulating intercantonal agreements and their application, so as to let traditional direct democracy operate, and the elected representatives exercise their full political responsibility, in this respect;

g. participation of the cantons in decision-making at the federal level could be still further enhanced. Various avenues described by legal writers are available here;

h. if tax competition is not to be a permanent source of potential discord, there is a need for balanced regulation representing a halfway house between complete tax freedom and the straitjacket of uniformity. This change needs to be accompanied by greater harmonisation of taxes;

i. as concerns respect of the rights of minorities and the "Question of Jura" recommends to continue the constructive dialogue initiated by the Assembly of Jura to achieve a negotiated solution.

12. Recommends that the Committee of Ministers transmit this recommendation and the Explanatory Memorandum thereto to the Swiss authorities;

13. Recommends that the Parliamentary Assembly take account of these observations and recommendations under its periodical reporting procedure;

14. Recommends that the Swiss authorities responsible for local and regional self-government appoint a high-level federal and cantonal government representative to attend one of the Congress sessions and make a presentation of the progress of local and regional reforms in Switzerland.

B. EXPLANATORY MEMORANDUM

I. Introduction

II. Descriptive part

- II.1 Territorial organisation and regional (cantonal) bodies
 - II.1.a Federal bodies
 - II.1.b Regional (cantonal) bodies
 - II.1.c Local bodies
- II.2 Democratic control and referendums
- II.3 Relations between the different tiers of government
- II.4 The judicial system
- II.5 Distribution of tasks between the cantonal and federal authorities (the RPT reform)
- II.6 Financial and tax policy
- II.7 The contribution of the cantons to the shaping of federal policy
- II.8 Supervision of regional authorities (cantons)
- II.9 Associations of local and regional (cantonal) authorities
- II.10 The cantons' powers in the field of transfrontier and international co-operation
- II.11 Citizen participation
- II.12 Working towards a new form of intercommunal co-operation
- II.13 Minorities

III. Analysis

- III.1 Democracy and cantonal autonomy
- III.2 Switzerland's "Eurocompatibility"
- III.3 Institutions that attract a broad consensus but are a subject of permanent debate
- III.4 Reform of financial equalisation and task-sharing arrangements
- III.5 Intercantonal co-operation
- III.6 Agreements between the Confederation and the cantons
- III.7 Foreign policy and transfrontier co-operation
- III.8 Participation by cantons in the federal decision-making process
- III.9 Supervision of the executive by the legislature
- III.10 Cantonal constitutions
- III.11 Direct democracy
- III.12 Tax competition
- III.13 Financial equalisation
- III.14 Communes and agglomerations

IV. Conclusions

- IV.1 Conformity with the "Reference Framework for Regional Democracy"
- IV.2 Ways forward and future reforms

Appendix 1 - Programme of the visit

I. Introduction

1. In accordance with Article 2.3 of Statutory Resolution (2000)1 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (referred to hereinafter as the Congress) regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. Switzerland joined the Council of Europe on 6 May 1963, thus becoming the 17th member state of the organisation. It signed the European Charter of Local Self-Government on 21/01/2004 and ratified it on 17/02/2005, with reservations relating to Articles 4, para. 4, 6, para. 2, 7, para. 2, 8, para. 2, and 9, paras. 5 and 7. The Charter came into force in Switzerland on 1/06/2005. In the Declaration contained in the instrument of ratification deposited on 17/02/2005, it is stated that, pursuant to Article 13, the Charter will apply in Switzerland to the political communes (*“Einwohnergemeinde”* / *“comuni politici”*).

3. The state of local and/or regional democracy in Switzerland has never been the subject of a Congress report before. The decision to prepare a monitoring report on regional democracy in Switzerland was taken by the Bureau of the Congress at its meeting of 18 September 2008.

4. The Institutional Committee of the Chamber of Regions instructed Mr Jean-Claude Van Cauwenberghe (Belgium, R, SOC) to prepare and submit the report on regional democracy in Switzerland in his capacity as rapporteur. During his work, the rapporteur was assisted by Mr Jean-Mathias Goerens, consultant (Luxembourg), who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and whom the Congress thanks for his invaluable contribution, and by Ms Lilit Nikoghosyan, Co-secretary of the Institutional Committee of the Congress. A Congress delegation visited Bern and Lausanne in Switzerland from 25 to 27 May 2009.

5. Due to the expiration of Mr Van Cauweberghe's mandate as a member of the Congress, the Institutional Committee, during its meeting of 15 February 2010 appointed Mrs Marjan Haak-Griffioen (Netherlands, R, NR) as a regional rapporteur for Switzerland.

6. Notwithstanding the references in the report to the organisation of communes (municipalities), which form the first tier of local government, its main subject is regional democracy.

7. This report gives an overview of regional democracy in Switzerland, identifies the main problems and describes the major changes that are taking place. In the light of Council of Europe principles and standards, particularly the draft European Charter of Regional Democracy appended the Utrecht Declaration adopted by the Council of Europe Conference of Ministers responsible for Local and Regional Government on 16-17 November 2009.

8. To avoid any terminological misunderstanding, it is worth pointing out right at the outset that in Switzerland the “regions” as defined in Congress texts are in fact the cantons. The cantons are, moreover, sovereign “states”, which formed the Swiss Confederation or joined it over the course of time. This Confederation is the Federal State's supra-cantonal superstructure, to which certain functions have been delegated.

9. The concept of “region” within the meaning of the Congress's instruments and terminology is therefore unconnected with the political reality of Swiss cantons. Switzerland does have regions (in a geographical or economic sense, such as metropolitan regions, or health or transport regions) but these are functional concepts, not political structures or entities.

10. This report was drafted on the basis of information collected during the visit to Switzerland by the Congress's monitoring delegation, a survey of all the relevant legislation and other information and documents provided by representatives of the Swiss authorities and the experts. A full list of the persons met during the visit is set out in the appendix.

11. The rapporteur would like to thank the Swiss authorities for their assistance with the organisation of the monitoring visit and with the Congress's appraisal of regional democracy in Switzerland. He would also like to thank all the persons met for giving up so much of their time and taking such a keen interest in the Congress's activities.

II. Descriptive part

II.1 Territorial organisation and regional (cantonal) bodies

12. Switzerland is a federal state covering a total area of 41 284.2 sq km. In 2008, it had a population of 7 701 856. It is made up of 26 cantons with areas varying between 37 sq km (Basle Urban) and 7 105 sq km (Graubünden) and populations varying between 15 500 (Appenzell Innerrhoden) and 1 332 000 (Zurich).

13. What distinguishes the Swiss institutional structure from decentralised unitary states and other federal states is that powers are delegated by the cantons (which, according to the Congress definition, constitute the regional tier of government) to the Confederation. The logical consequence of this is that the Confederation only has powers which are formally assigned to it by the constitution whereas the cantons have full powers and responsibilities provided that they have not been transferred to the federal state.

14. This situation is enshrined in the following articles of the Swiss constitution:

- **Article 3**, which states that the cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution and that they may exercise all rights which have not been transferred to the Confederation;
- **Article 5a**, which states that the allocation and performance of state tasks must be based on the principle of subsidiarity;
- **Article 42**, which states that the Confederation fulfils the duties which are assigned to it by the Constitution, and;
- **Article 43**, which states that the cantons decide what duties they must fulfil within the scope of their powers.

15. Articles 43a and 44 of the Constitution provide further clarification of the principles that apply when state and cantonal tasks are assigned and performed⁴.

16. The Constitution therefore reaffirms the principle of subsidiarity already referred to in Article 5a and establishes the principles of national and intercantonal solidarity, equal access for all citizens to public services and correlation between decision-making power and funding obligations. It should also be mentioned in this connection that Article 47 of the Constitution specifies the principle of cantonal autonomy⁵.

⁴ Article 43a Principles for the allocation and fulfilment of state tasks

a The Confederation shall only undertake tasks that the Cantons are unable to perform or which require uniform regulation by the Confederation.

b The collective body that benefits from a public service shall bear the costs thereof.

c The collective body that bears the costs of a public service may decide on the nature of that service.

d Universally provided services must made be available to everyone in a comparable manner.

e State tasks must be fulfilled economically and in accordance with demand.

Art. 44 Principles

a The Confederation and the Cantons shall support each other in the fulfilment of their duties and shall generally cooperate with each other.

b They owe each other a duty of consideration and support. They shall provide each other with administrative assistance and mutual judicial assistance.

c Disputes between Cantons or between Cantons and the Confederation shall wherever possible be resolved by negotiation or mediation.

⁵ Article 47 Autonomy of the Cantons

The Confederation shall respect the autonomy of the Cantons. It shall leave the Cantons sufficient tasks of their own and respect their organisational autonomy. It shall leave the Cantons with sufficient sources of finance and contribute towards ensuring that they have the financial resources required to fulfil their tasks.

II.1.a Federal bodies

17. The federal tier of Swiss institutions is made up of a bicameral parliamentary system comprising the National Council, which represents the people, and the Council of States, which represents the cantons. Federal bodies also include the Federal Council (the federal government) and the Federal Court.

18. The National Council is made up of 200 elected representatives called “national councillors” (“*conseillers nationaux*”), elected for a four-year term by proportional universal suffrage. Seats are distributed according to the population of the cantons, which also serve as the constituencies for the national elections.

19. The Council of States is the representative body of the cantons and has 46 members (two per canton and one per “half canton”). Its members are also elected for a four-year term by a majority vote in each canton (except in the canton of Jura where a system of proportional representation is applied).

II.1.b Regional (cantonal) bodies

20. In Switzerland, the “regional” bodies within the meaning of the Reference Framework for regional democracy⁶ are the cantons, the sovereign entities from which the Confederation derives its powers. The Swiss Constitution describes the cantons and their constitutions, in Article 51 in particular⁷.

21. The main institutions of the cantons are the cantonal parliament (the Grand Council), the cantonal government (Council of State) and the cantonal judicial authorities.

II.1.c Local bodies

22. The basic democratic units are the communes, which are governed in detail by the constitution and the legislation of the cantons to which they belong. Communes are referred to in Article 50⁸ of the Federal Constitution.

23. There are nearly 2 636 communes in total in the 26 Swiss cantons. Each commune also has a deliberative body and an executive body. In some communes, the deliberative body in certain cantons may be made up of all the citizens. Because cantons are autonomous, the structure of communes and their operating methods vary from one canton to the next.

II.2. Democratic control and referendums

24. As regards scrutiny of the executive by the deliberative assembly, a distinctive feature of the Swiss political system is that in all cantons the executive is elected by direct universal suffrage in the same way as the legislature, and this gives it a legitimacy of its own, which is not dependent on a vote by the assembly. The result is a system of largely consensual relations between the legislature and the executive.

25. A further, very prominent feature of the Swiss political system at all three levels – federal, cantonal and communal – is the institution of the popular initiative (a people’s proposal for the adoption of a piece of legislation) and the referendum (vote reflecting the people’s opinion on a piece of legislation or certain decisions, held spontaneously or on the basis of a request signed by a certain number of citizens). Because of the sovereignty of the cantons, there are also some quite marked differences between the 26 cantons. This report was drafted following extensive contacts with representatives of the cantons of Bern, Jura and Vaud.

⁶ Contained in the appendices to the Utrecht Declaration adopted on 17/11/09 by the Council of Europe Conference of European Ministers responsible for Local and Regional Government.

⁷ Article 51 Cantonal constitutions

a Each Canton shall adopt a democratic constitution. This requires the approval of the People and must be capable of being revised if the majority of those eligible to vote so request.

b Each cantonal constitution shall require the guarantee of the Confederation. The Confederation shall guarantee a constitution provided it is not contrary to federal law.

⁸ Article 50

a The autonomy of the communes shall be guaranteed in accordance with cantonal law.

b The Confederation shall take account in its activities of the possible consequences for the communes.

c In doing so, it shall take account of the special position of the cities and urban areas as well as the mountain regions.

II.3 Relations between the different tiers of government

26. Relations between the federal state and the cantons and among the cantons themselves are governed both by constitutional provisions and by various agreements between the Confederation and the cantons and between different cantons.

27. The reform of 2008 (see section II.5 below) established a system of partnership between the Confederation and the cantons based on the idea that, for joint tasks of the Confederation and the cantons, the Confederation will confine itself to devising programme agreements lasting several years, setting strategic objectives which the cantons are expected to implement autonomously and under their own responsibility, while making use, nonetheless, of fixed sums allocated to them by the Confederation.

28. The possibility of agreements between different cantons or between one or more cantons and the Confederation is provided for by Article 48 of the Federal Constitution⁹. The last two paragraphs of Article 48, added as a result of the major reform of 2008 (see below), are designed to encourage improved intercantonal co-operation in modern administrative management. This reform also added Article 48a to the Constitution, under which it is possible, with a view to harmonisation, under certain conditions specified in the article, to make these agreements legally binding¹⁰.

29. Over 700 intercantonal agreements have been introduced to date. Most cover two cantons only, but there are about twenty which cover all 26.

II.4. The judicial system

30. In the judicial field, the cantons are responsible for the organisation of the courts while the Confederation is responsible for matters relating to the application of federal legislation. This latter responsibility is exercised through the highest judicial authority, the Federal Court.

II.5 The distribution of tasks between the cantonal and federal authorities – the RPT reform

31. In the last twenty years Switzerland has implemented far-reaching reforms in this field, culminating in 2008, after constitutional amendments at cantonal and federal level, in a reform of the financial equalisation system and the arrangements for task-sharing between the Confederation and the cantons (the “RPT” reform). The new rules are intended to govern political and financial relations between the Confederation and the cantons on the one hand and the different cantons on the other.

⁹ Article 48 Intercantonal agreements

a The Cantons may enter into agreements with each other and establish common organisations and institutions. In particular, they may jointly undertake tasks of regional importance together.

b The Confederation may participate in such organisations or institutions within the scope of its powers.

c Agreements between Cantons must not be contrary to the law, to the interests of the Confederation or to the rights of other Cantons. The Confederation must be notified of such agreements.

d The Cantons may by intercantonal agreement authorise intercantonal bodies to issue legislative provisions that implement an intercantonal agreement, provided the agreement:

i. has been approved under the same procedure that applies to other legislation;

ii. determines the basic content of the provisions.

e The Cantons shall comply with intercantonal law.

¹⁰ Article 48a Declaration of general application and requirement of participation

At the request of interested Cantons, the Confederation may declare intercantonal agreements to be generally binding or require Cantons to participate in intercantonal agreements in the following fields:

a. the execution of criminal penalties and measures;

b. school education in the matters specified in Article 62 paragraph 4;

c. cantonal institutions of higher education;

d. cultural institutions of supra-regional importance;

e. waste management;

f. waste water treatment;

g. urban transport;

h. advanced medical science and specialist clinics;

i. institutions for the rehabilitation and care of invalids.

A declaration of general application shall be made in the form of a federal decree.

The law shall specify the requirements for a declaration of general application and for a participation requirement and regulate the procedure.

32. To achieve the aims of the reform, which are better and fairer management of public affairs, work will take place on four different fronts:

- disentangling of tasks: clearer division of tasks between the Confederation and the cantons;
- equalisation of resources: targeted adjustment of disparities between cantons with low financial potential and wealthier cantons, combined with the allocation of a minimum grant for each canton;
- equalisation of burdens: relief for cantons bearing heavy financial burdens due to geo-topographical features (mountains) or socio-demographic factors (such as metropolitan tasks, hospital costs, higher education, traffic and public transport);
- determination of joint federal and cantonal tasks and wider co-operation between cantons.

33. As noted above, the Swiss Constitution establishes the principle that the Confederation only has those powers which are specifically assigned to it, while the cantons have a general residual competence. The cantons benefit from the proceeds of federal tax revenue through a financial equalisation system provided for by Article 135 of the Constitution and reorganised in 2008 through the RPT¹¹.

34. Under the rules of the RPT, financial equalisation operates on the two levels of financial capacity (which is based on the cantons' potential tax revenues) and financial needs, and consists of two forms of compensation for special tasks:

- a. geo-topographical equalisation to take account of the special needs of mountain regions with sparse populations and high infrastructure costs;
- b. socio-demographic equalisation to take account of the particular burdens of major agglomerations.

35. As far as compensation for spillover effects is concerned, it is accepted that it should be covered by means of intercantonal measures and that the Confederation should confine itself to making the necessary tools available to ensure fiscal equivalence, it being possible where necessary to take coercive measures to secure the contractual reduction of inequitable disparities.

The reform is regarded as having the advantage of allowing the Confederation to redirect its efforts towards national goals and enabling the cantons to have more freedom and more money for the tasks falling within their competence, which they can handle on their own. As a result, the public should feel closer to the decision-making level and understand more about the decision-making machinery and policy choices.

36. Once the work of "disentangling" tasks and functions was over, these were redistributed between the Confederation and the cantons and a new system of vertical equalisation (between the Confederation and the cantons) and horizontal equalisation (between different cantons) was set up. Many different parameters were taken into account, based in particular on socio-economic and geo-topographical criteria, allowance being made for "cases of necessity" deriving from the fact that the newly adopted rules may have worsened the situation of certain cantons in relation to a particular item of expenditure or revenue. Provision has also been made for a certain ratio between the sums involved in vertical and horizontal equalisation.

¹¹ Article 135 Equalisation of financial resources and burdens

a The Confederation shall issue regulations on the equitable equalisation of financial resources and burdens between the Confederation and the Cantons as well as among the Cantons.

b The equalisation of financial resources and burdens is intended in particular to:

- i. reduce the differences in financial capacity among the Cantons;
- ii. guarantee the Cantons a minimum level of financial resources;
- iii. compensate for excessive financial burdens on individual Cantons due to geo-topographical or socio-demographic factors;
- iv. encourage intercantonal cooperation on burden equalisation;
- v. maintain the tax competitiveness of the Cantons by national and international comparison.

c The funds for the equalisation of financial resources shall be provided by those Cantons with a higher level of resources and by the Confederation. The payments made by those Cantons with a higher level of resources shall amount to a minimum of two thirds and a maximum of 80 per cent of the payments made by the Confederation.

37. One of the main purposes of this reform was to make the system of financial equalisation more manageable, as it had become too complicated. Clarifying tasks was another of its key aims. The RPT has brought far-reaching changes to the distribution of tasks between the Confederation and the cantons. Formerly, there were overlaps but thanks to the reform there is now a clear separation of powers.

II.6 Financial and tax policy

38. Switzerland has direct and indirect federal, cantonal and communal taxes. Federal taxes include direct federal tax, VAT, taxes on tobacco, alcohol and mineral oils, customs and stamp duties, registration fees and road taxes. Total tax revenue is divided among the Confederation (31%), the cantons (41%) and the communes (28%).

39. Within the limits set by the Swiss federal constitution, cantons are free to make the arrangements for tax collection and set tax rates. Cantons are authorised to collect any tax that is not the exclusive responsibility of the Confederation. As a result, cantonal tax legislation and taxation rates vary considerably from one canton to the next.

40. The phenomenon of tax competition between cantons exists and, in principle, no limits are placed on it. The Swiss population seems to set great store by the fact that it has unlimited power to decide on tax levels. Tax harmonisation is a subject of ongoing discussions. There has been a trend towards limiting tax competition, and there have even been some initiatives in that direction, but they have been to no avail.

II.7 The contribution of the cantons to the shaping of federal policy

41. It should be reiterated that Switzerland is made up of 26 cantons, which are sovereign political bodies forming part of the Confederation, and that this in turn is a state body operating by means of powers delegated to it by its cantons, in strict compliance with the principle of subsidiarity enshrined in Article 5a of the Federal Constitution (and in the texts mentioned above in paragraph 15).

42. In accordance with the Constitution and political convention, cantons contribute to the shaping of federal policy through representation, consultation and their right of initiative in legislative decision-making at federal level.

43. Cantonal representation is given institutional form through the existence of the Council of States, which is the upper chamber of the Swiss parliament comprising 46 members from the cantons, in other words, two representatives of each canton, and one from each "half-canton".

44. Consultation of the cantons is organised in accordance with Article 147 of the Constitution, under Title 5, "Federal Authorities", which is entitled "Hearings and Consultations" and provides as follows: "The cantons, political parties and other interested parties are invited to give their opinion during the preparation of important legislation and other large-scale projects, and on important international treaties".

45. By providing that consultation should take place "during the preparation" of legislation, the intention of the drafters of the Constitution was for the cantons to be involved in the actual legislative process at a time when this consultation would have a useful impact, without prejudice of course to the requirement of acceptance of the final text by the Council of States and the right (among others) of the cantons to submit a federal statute to a mandatory referendum on the initiative of eight cantons.

46. The right of initiative of the cantons is enshrined in Article 160 of the Federal Constitution, which provides as follows:

- a. any Council member, faction, parliamentary committee or Canton shall have the right to submit an initiative to the Federal Assembly;
- b. council members and the Federal Council shall have the right to submit motions on business that is under discussion”.

47. A special law “on the participation of cantons” was introduced to regulate the participation of cantons in federal decisions formally and in more detail.

48. In addition to these formal methods of cantonal participation in the life of the federation, there are a number of informal arrangements, albeit ones that are firmly established in practice. They include systematic meetings between the cantonal governments and members of federal bodies from the relevant cantons, hearings of representatives of cantons in the federal parliament, informal intercantonal consultation networks on specific subjects and joint federal and cantonal bodies for the purposes of particular projects.

II.8 Supervision of regional authorities (cantons)

49. Cantons are autonomous and sovereign, subject to compliance with the rules of the Confederation. It follows that scrutiny by federal bodies is exceptional. Checks at federal level on the lawfulness of measures and their compliance with constitutional rules are carried out by the Federal Court, to which such matters may be referred by the Federal Council.

50. Furthermore, in order to ensure that cantonal constitutional arrangements are compatible with federal legislation, cantonal constitutions must be approved by both chambers of the Federal Assembly. It was brought to the delegation’s attention that there was an article in the Constitution of the Canton of Jura which had not obtained federal approval, but this was an exception.

51. The number of meetings of the legislature varies from canton to canton. There are also cases where the legislature sets up commissions of enquiry to increase controls over the executive. On the other hand, under Articles 52 and 53¹², cantons enjoy the constitutional protection of the Confederation.

II.9 Associations of local and regional (cantonal) authorities

52. As mentioned above, Swiss cantons are entitled to be consulted on matters of concern to them where a political initiative has been taken at federal level. To exercise this power, the cantons have set up a highly active representative association whose purpose is to co-ordinate the cantons’ position on the questions concerned and act as their mouthpiece vis-à-vis the federal authorities.

53. The Conference of Cantonal Governments, whose headquarters are in the House of Cantons in the federal capital, is a public-law body set up by means of an agreement negotiated by the 26 cantons and half-cantons. Its task is to represent the cantons in dealings with the federal authorities and, in particular, to enable the cantons to agree on and promote common positions in the course of the consultation procedures provided for by the Constitution.

¹² Article 52 Constitutional order

a The Confederation shall protect the constitutional order of the Cantons.

b It shall intervene when public order in a Canton is disrupted or under threat and the Canton in question is not able to maintain order alone or with the aid of other Cantons.

Article 53 Number and territory of the Cantons

a The Confederation shall protect the existence and territory of the Cantons.

b Any change in the number of Cantons requires the consent of the citizens and the Cantons concerned together with the consent of the People and the Cantons.

c Any change in territory between Cantons requires the consent both of the Cantons concerned and of their citizens as well as the approval of the Federal Assembly in the form of a Federal Decree.

d Inter-cantonal boundary adjustments may be made by agreement between the Cantons concerned.

54. It was founded in 1993 and, although, as the Congress delegation has ascertained, it is mentioned neither in the Federal Constitution nor in the cantonal constitutions, it plays a very special role on the Swiss political scene. Every six months, a list of subjects is handed to the Conference, on which it is asked for an opinion, and the subjects cover a large number of fields including both foreign and domestic policy. The Conference can be described as a political lobbying organisation, representing the 26 cantons on the basis of an intercantonal contract.

55. In addition to this body, there are national and regional intercantonal conferences with similar goals, such as exchanging information, co-ordinating the cantons' activities and upholding common interests. On national level there exist also associations of municipalities, like the Swiss Union of Cities and the Association of Swiss communes. Within the cantons, there are even intercommunal associations, which have comparable roles and are consulted on local government issues.

II.10 The cantons' powers in the field of transfrontier and international co-operation

56. Responsibility for Swiss foreign policy is shared by the federal and cantonal levels. In principle foreign affairs are the responsibility of the Confederation but federal legislation does authorise cantons to engage in international and transfrontier co-operation with authorities in other countries. The cantons are also consulted when foreign policy decisions are made and international treaties are negotiated, and they may also negotiate international treaties in their own fields of competence.

57. The importance of these foreign policy prerogatives and powers that derive from the sovereignty of the cantons is underscored by the emphasis placed on them in the Federal Constitution, which includes the following specific articles on the subject:

- **Article 54** – Foreign relations¹³
- **Article 55** – Participation of the Cantons in foreign policy decisions¹⁴
- **Article 56** – Relations between the Cantons and foreign states¹⁵

II.11 Citizen participation

58. In Switzerland direct participation by citizens in politics has a very special place and significance, but is considered “perfectly normal” by every Swiss citizen. Amendments to the federal and cantonal constitutions must be approved by the electorate via a referendum and can be initiated by popular initiative.

59. Other federal, cantonal and communal legislation may be challenged by popular initiative through referendums, which may be requested by a relatively small proportion of the population. Referendums are of course present in some cantons and municipalities in either mandatory or optional forms. Lastly, in the Cantons of Appenzell and Glaris, legislative decisions are generally adopted by the people's assembly (*Landsgemeinde*).

¹³ Article 54 Foreign relations

a Foreign relations are the responsibility of the Confederation.

b The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful co-existence of peoples as well as the conservation of natural resources.

c It shall respect the powers of the Cantons and protect their interests.

¹⁴ Article 55 Participation of the Cantons in foreign policy decisions

a The Cantons shall be consulted on foreign policy decisions that affect their powers or their essential interests.

b The Confederation shall inform the Cantons fully and in good time and shall consult with them.

c 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.

¹⁵ Article 56 Relations between the Cantons and foreign states

a A Canton may conclude treaties with foreign states on matters that lie within the scope of its powers.

b 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.

c 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.

60. Furthermore, under some cantonal constitutions, communes may choose between the system of an elected council and a direct form of local governance in which each interested citizen may take part in assembly meetings and hence contribute directly to local legislation. These matters are governed by various relevant cantonal and communal provisions.

II.12 Working towards a new form of intercommunal co-operation

61. In terms of structures, reference should be made to the plans, already partly implemented, to set up intercommunal institutions at an intermediate level between the canton and the communes, whose form will vary according to whether the area is predominantly rural or urban. The purpose of these institutions is to co-ordinate structural and management activities by means of legislation or agreements and to make up for the inadequacies and weaknesses of local entities, which are often too small to be managed efficiently or too large to be managed by the institutions of a single commune or even a single canton. Efforts are being made to take account of difficulties stemming from economic and functional realities with which existing administrative structures can no longer cope because they were designed in a different historical context and are ill-adapted to present needs.

62. For example, at cantonal level, the Canton of Bern, through amendments to the cantonal constitution and its legislation on the communes, has set in motion the establishment of an intermediate body between the canton (or the "region" within the meaning of the Council of Europe's instruments) and the communes (or local authorities). This body, known as a "regional conference", is described in Article 110a of the cantonal constitution as "a communal law authority designed to secure the regional co-operation of communes on a binding legal basis", to be set up by a joint decision of the electorate and the communes.

63. The tasks of these "regional conferences" include drawing up regional master plans (for transport and town planning). Cultural policy and regional responsibilities are defined in accordance with the legislation on regional policy. Communes can also delegate other tasks to the new institution, which has its own decision-making and financial management bodies.

64. As well as organising intercommunal co-operation, Switzerland is attempting to resolve its problems of intercantonal co-ordination, particularly in places and situations where an agglomeration is located on the territory of more than one canton and is undergoing rapid development independently of existing institutional structures, outstripping the pace of adaptation of the political bodies responsible for managing economic and demographic development. Solving this problem is politically complex because of the political and legal reality of cantonal sovereignty, which make it difficult to implement binding solutions and take binding decisions.

65. The solution to these problems is beginning to take shape in the form of a body called the "Intercantonal urban forum" (*Plateforme d'agglomération intercantonale - PAI*). This is an intercantonal body which is planned to have similar tasks and operating methods to the bodies for intracantonal co-operation between communes described above.

66. It should also be mentioned at this point that there is a trend towards mergers of communes. In principle mergers are decided by communes of their own free will and cannot be imposed on them.

II.13 Minorities

67. Switzerland is a quadrilingual country, with linguistic and hence ethnic minorities in many of its cantons. The delegation discussed this issue with federal representatives and elected representatives from the Cantons of Bern, Graubünden and Jura.

68. It emerged that cantonal constitutions make suitable provision for the protection of these minorities. It became clear for instance that the relevant provisions ensure that minorities are properly represented on cantonal bodies through the distribution of constituencies and measures reserving posts for minorities on various bodies. Under the constitution of the Canton of Bern for instance, one of the seven members of the cantonal government must represent the Bernese Jura, in other words the canton's French-speaking minority.

III. Analysis

III.1 Democracy and cantonal autonomy

69. Regional democracy in Switzerland is extremely elaborate and highly developed¹⁶. It is dynamic, lively and progressive, and is experienced directly by citizens. It operates in the context of a federation which arose from Switzerland's historical, geographical, religious and sociological development. "The federation is half-way between the most decentralised form of state organisation, the alliance, and the most centralised, the unitary state. Switzerland has been, in turn, an alliance, a confederation and a federation"¹⁷.

70. It has all the features of an efficient, coherent system enabling this "country of differences" with such a highly complex territorial structure to live in harmony and relative consensus. "Switzerland has been imbued with federalism since the beginning of its history and is made up of a mosaic of regions, languages, cultures and mentalities, which would have been inconceivable in a centralised country. It is still cited as an example today when it comes to reconciling diversity within regions and regional identity"¹⁸. In 1944, Werner Hägi, the Zurich constitutionalist, said that "Switzerland will be federalist or will be nothing". These words, which, as we were reminded, "even Napoleon understood", are still entirely valid today. As R. Rhinow points out, "the principle of federalism offers a suitable response to the co-existence of differing linguistic, cultural and religious communities, upland and lowland regions, urban, suburban and rural areas, together with a varied range of political and social groupings arising from history, and it allows these aspects to be incorporated into the federal state"¹⁹. "One of the strong points of Swiss federalism compared to other systems in the world is its very great depth of historical perspective. It is now over seven centuries since the Federal Pact of 1291. That has created habits and a state of mind enabling the system to renew itself without imploding"²⁰.

71. Under Article 47 of the Constitution, the Confederation is required to respect the autonomy of the cantons. This implies that "the Confederation must resolve differences of opinion and attitude through partnership and refrain from attempting to impose its will. The Confederation must also avoid interfering with the autonomy of the cantons on issues of self-determination, organisation and finances. In this respect, Article 47 can be regarded as a principle of political action"²¹.

72. Article 44 of the Constitution states that the Confederation and the cantons must support each other in the fulfilment of their duties and co-operate with each other. "Paragraph 1 reflects the federalist idea of solidarity between the Confederation and the cantons and a view of federalism as a partnership between the cantons themselves and between the Confederation and the cantons"²².

¹⁶ In Swiss public law, regions can be regarded as subdivisions of cantons or groupings of communes. For the purposes of this report and in accordance with the generic term used by the Council of Europe, region refers to the level immediately below central government.

¹⁷ Switzerland's official name is the "Swiss Confederation" but the country is actually a federation. The name has been inherited from the time when the country actually was a Confederation, before 1848. "*Institutions politiques suisses*", Vincent GOLAY, p.44, *édition LEP*.

¹⁸ "RPT" reform. Information leaflet on the new financial equalisation plan, circulated on 24/11/04, *Edition DFF et CDC*, p.4.

¹⁹ "*Le Fédéralisme suisse*" ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "*Le savoir suisse*", *Presses polytechniques et universitaires romandes*, p. 61.

²⁰ "*Le fédéralisme*", François Saint-Dieu. Ed. infolio, 2005, p.63.

²¹ Regula Kägi Diener, St.Galler Kommentar zu Art.47, Rz 7

²² Blaise Knapp, St.Galler Kommentar zu Art.44 Abs. 1 BV, N7.

III.2 Switzerland's "Eurocompatibility"

73. Before taking the analysis further and making a few comments and recommendations, it is worth stressing that although the Swiss people have twice refused to join the process of European integration (in referendums in 1992 and 2001), the Confederation has increasing numbers of bilateral agreements with the European Union. For example, seven agreements were signed in Luxembourg in 21 June 1999 (on free movement of persons, technical barriers to trade, public procurement contracts, agriculture, air and land transport and research) and approved by referendum on 22 May 2000. Nine other agreements were signed in Luxembourg on 26 October 2004 (on co-operation, judicial systems, the police, asylum and immigration; taxation on savings, anti-fraud measures, processed agriculture products, the environment, statistics, the media, education, vocational training and youth, and pensions). Only the Schengen/Dublin agreement has been approved by popular vote²³.

74. As one of our interviewees said to us, "there is a paradox here, as Switzerland wants to be 'Eurocompatible', but it does not want to join!". In this connection, it can also be emphasised just how much Switzerland's regional system aligns it with the European standards to which all the regions with legislative powers in the European Union subscribe.

III.3 Institutions that attract a broad consensus but are a subject of permanent debate

75. Switzerland's truly regional institutional set-up is generally the subject of a consensus, and famously so. "Switzerland is a country of minorities in that its citizens find themselves alternately in the majority or the minority, and this has instilled an understanding of the need both to protect minorities and to respect majority positions"²⁴. This appears to be an accurate description of the situation, but it is also true that the Swiss federal system, as in all federal states, is the subject of a debate on the changing relationships between its different components, their interdependence and what is considered to be an excessive leaning towards centralisation on the part of the federal government.

76. It was at a meeting with the representatives of the cantons at the House of Cantons that we heard condemnation of "the state's historical propensity to centralise" and the development of "a federalism of execution, based in particular on earmarked grants", all in a context influenced by globalisation and Europeanisation, epitomised by the practice of bilateral agreements.

77. Nor is this assessment disputed by the federal authorities, as demonstrated by a Federal Finance Department document which acknowledges that there is a "growing accumulation of decision-making and financial powers at Confederation level while the cantons are increasingly becoming mere executing bodies"²⁵.

78. Various constitutional reforms (including that of 1999) and the adoption of the RPT would seem to have made it possible to redress the balance of powers between the cantons and the Confederation. There has also been much discussion of Switzerland's territorial organisation, fuelled by various government surveys and academic studies.

79. According to the final report of a committee of experts appointed to review regional policy and come up with new ideas, besides addressing the issue of rural areas, "the new regional policy is also based on towns and agglomerations which act as driving forces for the development of Switzerland as a whole"²⁶.

²³ "Les institutions politiques suisses". Op.cit. p.84 and 85.

²⁴ Le Fédéralisme suisse ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "Le savoir suisse", Presses polytechniques et universitaires romandes, p. 62.

²⁵ Memorandum from the general finance department on "the reform of financial equalisation and the distribution of tasks in force since 1/1/08".

²⁶ New regional policy (NPR). Summary of the final report of 6 February 2003.

80. In a report on Switzerland's territorial organisation in 2002, the OECD noted that fragmentation was the most striking feature of the Swiss federal state and continued as follows: "In fact [the] economic and social life of the 21st century rests on a late 19th century territorial structure. The functional organisation of the country overlaps with its politico-territorial structure, creating various gaps and inconsistencies in political decision-making. This is particularly apparent in urban areas..."²⁷. It is worth pointing out in this connection that there is a move towards giving more formal political power to cities, bearing in mind that three-quarters of the Swiss population live in urban areas.

81. A survey conducted in all the cantons in 2003 revealed that "practically all the cantons regard the policy of agglomerations as a key issue and it is felt that there is a major need to act on this at all levels (intercommunal, intercantonal and international level)"²⁸. Discussion of this point will be resumed below in the section on communes and agglomerations.

III.4 Reform of financial equalisation and task-sharing arrangements

82. The RPT, which was described unreservedly in many press articles as "the biggest reform of federalism" since the foundation of the federal state, was one of the major subjects of the delegation's discussions. Its four goals (clear separation of tasks between the Confederation and the cantons, simplification of financial relations between the Confederation and the cantons, new forms of intercantonal co-operation and financing of joint tasks, and a new financial equalisation system) go well beyond an overhaul of financial instruments deemed to be obsolete and "update Swiss federalism", thus bearing much hope for the future.

83. The reform "was based on the idea that decentralised state services are more effective because they satisfy the preferences of the population better than a centralised system... Centralising approaches generally reflect a lack of sensitivity to regional diversity"²⁹. It introduced a clearer division of tasks between the Confederation and cantons, thus making it possible to eliminate overlaps. Of twenty areas which were dealt with jointly prior to the reform, seven are now the sole responsibility of the Confederation while eleven have been "cantonalised".

84. Although the reform is still rather too recent to be appraised entirely objectively, there was already some reaction to it, which the delegation duly noted. It is difficult at this stage to gauge the overall extent of the criticism that was expressed, concerning for example the new distribution of powers, which some considered to be generally unfavourable to the cantons because of the prospects of social and demographic change, which would increase the budgetary impact of some of the powers assigned to the cantons, together with the problems of threshold effects. Everyone recognises that the main shortcomings of the existing equalisation system lie in the confusion between the goals of efficiency and power-sharing, too much centralisation in the transfer system despite the cantons' considerable autonomy, and the inefficient way in which transfers are organised in spheres where there are a large number of regulations. It is true that the earmarking of federal grants for specific purposes and the setting of their amounts according to costs had already attracted frequent criticism.

85. Others answered this by saying that some of the powers that had been reassigned to the Confederation such as old age and 'survivors' insurance and invalidity insurance would also cost more in the future. These opposing arguments would appear to bear out the assertion that the reform will have a cost-neutral impact.

86. It goes without saying that the ideas reproduced above, which we collected in the course of our interviews, are personal opinions, and it is difficult for us to assess properly how representative they are in this report.

²⁷ OECD Territorial Reviews, Switzerland, 2002.

²⁸ Report of the tripartite technical working group (1/03/2004), "recommendations on urban areas", p. 15.

²⁹ "Le Fédéralisme suisse" ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "Le savoir suisse", Presses polytechniques et universitaires romandes, p. 19.

87. Nonetheless, as Ms Esther Maurer, a member of the Swiss delegation to the Congress, pointed out to us, it should be kept in mind that the RPT has serious shortcomings, particularly the fact that as far as equalisation is concerned, there are in fact 8 “paying” cantons and 20 “receiving” ones. This means that the former can always be placed in a minority position, and this moreover is what led to the decision not to fix a ceiling on the level of redistribution through equalisation. Ms Maurer also pointed out that the RPT has prompted cantons that can be certain of benefiting from redistribution to reduce taxes.

88. In any case, the always sensitive issue of the proportions of federal and cantonal contributions will be reviewed every four years by the Federal Chambers on the basis of an analytical report. In one year’s time, therefore, the financial transfers for the period 2012-2015 will be discussed again and there is no doubt that this will give rise to a discussion on the measures to be adopted to reconcile the position of the “beneficiary” cantons and those that already consider themselves “hard done by”.

III.5 Intercantonal co-operation

89. While, when it first began, co-operation between cantons was mainly intended for the purpose of information exchange and the coordination of certain public policies for which cantons were responsible, “the experience of the past few years has shown that the efficiency of cantons’ activity vis-à-vis the Confederation depends on co-operation between cantons and on better coordination”³⁰.

90. As explained in the descriptive part of the report (part II), (national or regional) intercantonal conferences, which are as varied as they are numerous, are allowed by Article 48 of the Constitution. All play a particular part, either making possible better joint defence of cantons’ interests vis-à-vis the Confederation, or bringing certain cantons together so that they can work together in a given sector.

91. Co-operation in these contexts was, overall, described to us as broadly positive, although it does always entail “a risk of cantons’ united front breaking down and of bureaucratisation and technocratisation of the system as elected representatives and the people are deprived of their power by technical conferences”. This is at least the picture conveyed to us.

92. It should be remembered that it is for the government, in its general role representing the canton, to shoulder its responsibilities, as intercantonal conferences are “but a tool that the governments may use in the context of their responsibilities”³¹. “The lack of political will and the egocentricity of certain cantons, lack of confidence, a fear of loss of influence and power, and, in some cases, the disparities between cantons participating in an agglomeration are likely to impede the creation of intercantonal co-operation structures”³².

93. Also discussed is the matter of whether the Conference of Cantonal Governments should have legal personality, something hitherto not deemed to be desirable. More generally, those to whom we spoke feel that co-operation between cantons strengthens Swiss federalism by, in a way, through their interlinkage, preventing unitarian recentralisation of the country. Yet others take the view that this “brings a risk of the development of a fourth institutional tier lacking democratic legitimacy”³³.

94. The Constitution also provides, in Article 48, that the Confederation may, at the request of the cantons, give binding force to intercantonal agreements or oblige the cantons to accede to these, in a number of specific fields³⁴.

³⁰ “The participation of intercantonal conferences in federal decision-making”, *Cahier de l’IDHEAP* 235/2008, p.3.

³¹ Simon Affoler, op cit, p.111.

³² Report of the tripartite technical working group (29/05/2006), op cit, p.38.

³³ *Cahier de l’IDHEAP*, op cit., p.111.

³⁴ Sentence enforcement, some aspects of the education system, cantonal institute of higher education, supra-regional cultural institution, waste management, water treatment, transport in urban areas, state-of-the-art medicine and hospitals, integration and care institutions for persons with disabilities.

95. Furthermore, the cantons will be able to empower cantonal bodies to legislate, provided that these bodies were set up in the context of a democratic procedure (Article 48 (4) of the Constitution). This new paragraph thus makes possible the delegation of legislative powers to intercantonal bodies to a greater extent than previously. "At the same time, clear legal limits are codified, which largely coincide with the criteria laid down by the Federal Court for legislative delegation"³⁵.

96. "These new kinds of co-operation between cantons should", according to Arnold Koller, former President of the Confederation, "prevent centralisation [...] thus we see emerging, on a contractual basis, new and flexible areas for co-operation, as well as new methods of governance through networks of co-operative activities and projects"³⁶.

97. These institutional innovations seem to have been received with a degree of scepticism according to some of the people to whom we spoke, who take the view that "the mechanism is difficult to apply, since 18 cantons have to request it, and the approval of both chambers of the Federal Assembly is needed. Let us not lose sight of the fact that "this in a way infringes the sacred principle of cantonal autonomy" and that "there is a danger of the Confederation becoming the instrument of the dominant cantons, rather than defending the minority cantons". The argument raised against this is that the necessary support of 18 of the 26 cantons does nevertheless require a definite majority.

98. It also needs to be emphasised, as some of those to whom we spoke did, that the Framework Agreement on Intercantonal Co-operation accompanied by equalisation of burdens (ACI)³⁷, was a huge qualitative and financial step forward.

99. The ACI not only regulates the principles and procedures of intercantonal co-operation with equalisation of burdens, but also provides the basis for intercantonal co-operation agreements in the fields to which Article 48a of the Constitution refers. The Agreement provides for two kinds of co-operation with equalisation of burdens: the setting up of joint bodies and the acquisition of services. Provision is of course made for various mechanisms for decision-taking, supervision, equalisation of burdens and dispute resolution.

III.6 Agreements between the Confederation and cantons

100. Over the years, notwithstanding strict compliance with the rules of subsidiarity as laid down in Article 43 of the Constitution³⁸, co-operation between the Confederation and the cantons has intensified. It needs to be pointed out that the cantons implement federal law, and that they may reach agreement with the Confederation on objectives and then introduce programmes which receive financial support from the Confederation.

101. However, paragraph 3 of Article 46 of the Constitution³⁹ states that the federal legislature must show restraint. There are now hundreds of agreements between the Confederation and the cantons covering a huge range of subjects. The country has moved on from a system in which the Confederation dictated projects to one in which projects are discussed with the cantons. Some people would argue that this is a move in the right direction, towards subsidiarity, but that it brings with it rampant bureaucracy.

³⁵ Report of the tripartite technical working group, op cit, p.18.

³⁶ Forum of the Federations. Paper presented to the international conference on federalism held at Mont-Tremblant in October 1999.

³⁷ Adopted on 24/06/2005 by the Conference of Cantonal Governments.

³⁸ "The Confederation shall only undertake tasks that the Cantons are unable to perform or which require uniform regulation by the Confederation."

³⁹ "The Confederation shall allow the Cantons all possible discretion to organise their own affairs and shall take account of cantonal particularities."

III.7 Foreign policy and transfrontier co-operation

102. Swiss federalism is no exception to the general rule that internationalisation is increasingly affecting State structures. Foreign policy is of course first and foremost a matter for the Confederation. The cantons therefore have a justified wish to be associated with that foreign policy, an association formalised through the adoption of a specific federal law⁴⁰. Summing up, we might say that there is in this respect, first of all a mutual duty to inform, consult, and even involve the cantons when their responsibilities are affected. This practice of involving the cantons in decision-taking is, furthermore, regularly adopted nowadays in sectoral negotiations with the European Union.

103. In pursuance of Article 56 of the Constitution, the cantons may also conclude treaties with foreign states in matters which are within their remit, provided that these treaties are not contrary to the law and interests of the Confederation or to the law of any other canton. Before concluding a treaty, cantons must inform the Confederation thereof. Cantons may deal directly with lower-ranking foreign authorities, but when their partners are the central authorities of a foreign state, their relations with that foreign state must be conducted by the Confederation.

104. As Fabrizio Taschetta, from the Borders and Neighbourhood Law Section of the FDFA's Directorate of International Public Law⁴¹ says, "There is good reason to say that the Confederation has its own interest in active participation by the cantons in foreign policy, both in the context of their direct relations with foreign authorities and through their association with its own policy in this sphere. In fact, whenever cantonal responsibilities are affected, it is appropriate to involve the cantons in the discussion speedily, which can but strengthen the Confederation's negotiating position. This is all the more necessary for the fact that, in a good many cases, international commitments require domestic implementation, which is a matter for the cantons".

105. In this context, transfrontier co-operation has also developed significantly, initially on the basis of standard intergovernmental agreements on various neighbourhood issues, such as protection of the environment, shipping, fishing, use of hydraulic power, rail and road transport, urban and rural development, civil protection and taxation of the residents of border areas with "intergovernmental boards" playing a leading role.

106. Following Switzerland's rejection of accession to the European Economic Area (6/12/1992), border cantons expressed a wish to involve the Confederation more in efforts to strengthen transfrontier co-operation.

107. "The Federal Council's liberal practice has for years enabled the cantons to arrange their transfrontier relations in the most independent possible manner ... Swiss law requires close co-operation between the Confederation and cantons in respect of all transfrontier co-operation issues. Thus the cantons may deal directly with lower-ranking authorities, i.e. local or regional authorities. This usually occurs in order to resolve neighbourhood problems of a practical nature 'within a region'⁴².

III.8 Participation by cantons in the federal decision-making process

108. In any federal state, the federal entities may play an active part in the shaping, or even definition, of federal policy. Switzerland is not - far from it - an exception to this rule. The cantonal representatives to whom we spoke did confirm the desire to do so, which, according to Swiss political observers, is being increasingly affirmed, as the internationalisation of issues weakens some of the barriers dividing federal from cantonal responsibilities and requires vigilance on the part of the cantonal authorities.

⁴⁰ Federal law on the participation of cantons in the foreign policy of the Confederation, in force since July 2003.

⁴¹ *In Le rôle des cantons dans la politique étrangère suisse* (The role of cantons in Swiss foreign policy), a memorandum handed over during the meeting with the delegation.

⁴² Memorandum of the Cross-border Co-operation Unit of the FDFA on cross-border co-operation involving Switzerland, p.4.

109. This is why ratification by the Confederation of the European Charter of Local Self-Government was the subject of a major debate at the Conference of Cantonal Governments, which passed on numerous comments to the federal government. "For a number of years now, cantons have nevertheless been saying that they are not consulted enough and that the positions which they adopt are not sufficiently taken into account"⁴³.

110. A framework regulation (2002) now defines the principles and processes of such consultations. Its third principle states that "the Confederation shall register the position passed on by the Conference of Cantonal Governments or by a Conference of Cantonal Directors as the cantons' position, provided that this position is designated as such and has the support of 18 cantonal governments. A canton shall retain the right to express a differing opinion".

111. Among the difficulties experienced by cantons seeking effectively to influence federal decisions, the following were mentioned to us: the cantons' differing interests and their often diverse positions, the consultation periods often kept short by the federal authorities, the fact that the cantons' opinion does not relate to the final draft, which the federal parliament may of course have amended, and the inadequacy of technical/political assistance especially in small cantons.

112. We were told that "the cantons intervene too early or too late, before amendment by parliament or after the draft has been finalised". There are certainly procedures for "prior" and "subsequent" consultation which are designed to compensate for these factors, but these are not spared criticism in relation to their legitimacy and transparency. It should also be said that the cantons can be called to give evidence by the parliamentary committees of both chambers of the Federal Assembly.

113. Does the Council of States, the members of which represent the people of the cantons, and not the cantonal governments (the situation differs from that in Germany), relay cantonal feelings more efficiently to the federal level? The Council of States was described by those we met, as "the chamber of small cantons", one "losing out as the Conference of Cantonal Governments gains in influence".

114. Cantons nevertheless play a crucial role in that a referendum may be launched, not only by 50,000 citizens, but also by eight cantons, requiring the people to vote on federal legislation, certain federal decrees and certain international treaties. While this "political weapon", this "barrier to the federal usurping of power" is little used⁴⁴, it nevertheless constitutes a serious threat which enables the cantons to increase their capacity to make their views known on federal policy, particularly during consultation procedures.

115. The *dialogue confédéral* (between the federal government and the Conference of Cantonal Governments), which takes place twice a year, affords an opportunity for officials of the Confederation and of the cantons not only to consider issues of common interest, but also to adjust relations within the country's complex system of institutional arrangements. Mention should also be made of the Conferences of Cantonal Directors, which regularly bring together the cantonal directors responsible for specific sectors (justice, transport, health, etc) with a view to coordinating cantons' policies and practices. The responsible Federal Councillor (Minister) is invited to attend these meetings.

116. It is ultimately what some writers describe as "participatory federalism" which, due to the increasingly tangled distribution of duties between Confederation and cantons, not forgetting communes, necessitates greater co-operation between the tiers of authority from the policy-making to the implementation stage. A parallel may be drawn between such vertical co-operation and the horizontal co-operation between cantons (cf section III.5) sometimes referred to as "conference-based federalism", the allusion being to the regular meetings that are held of cantons' governments (CdC) and the meetings of senior officials (directors) of cantons.

⁴³ *Cahier IDHEAP*, op cit., p.2.

⁴⁴ It was first used by the cantons in 2003 against a fiscal package, which was rejected by the people as well as the cantons on 16 May 2004.

III. 9 Supervision of the executive by the legislature

117. During our visit, when we asked people about the nature and effectiveness of cantonal legislatures' supervision of cantonal governments, we were told that, while, as in many other countries, there was in fact a relative "imbalance" between a government "of professionals assisted by civil servants, with on the other side 'semi-professional' members of parliament", it should not be forgotten that each of the two institutions "had its own direct democratic legitimacy, both being directly elected by the people".

118. Other factors are the nature of cantonal governments, generally being made up of representatives of several parties⁴⁵ chosen on the basis of a majority system⁴⁶, with MPs from the majority torn between "upsetting" their ministers and "supporting them politically". Particularly active supervision of the executive takes place in the parliamentary committees of cantonal assemblies, as well as in committees of enquiry.

119. Cantonal assemblies cannot adopt a motion of no confidence in their Council of State (government). The only exception is the canton of Ticino, whose constitution allows 20,000 citizens (i.e. 1/10 of the electorate) to dismiss the whole Council of State during the period between one election and a year before the next one is due.

120. Summing up this point, which needs to be viewed with a degree of political subjectivity, some members of cantonal assemblies acknowledged that parliament exercised "rudimentary supervision" of the government, while some of the members of the Council of State (Ministers) whom we met did not share this opinion, considering that parliamentary supervision was more than active.

121. On the other hand, a democratic deficit criticised by some people to whom we spoke as well as by ourselves occurs in respect of intercantonal agreements and State/canton agreements negotiated by "a few friends putting their heads together", "pre-adopted" by a conference of cantonal directors or of members of cantonal governments and subsequently "approved" by them. The role of cantonal parliaments, which can then only block such agreements without amendment, is thus very limited. "If intercantonal agreements increasingly superseded federal orders, this development would undeniably weaken democracy. The decision-making process in the Confederation guarantees that any decision by the parliament elected by the people is public and very much transparent, that the people plays frequently its part through initiatives or referendums, that the substance of legislation is influenced by the consultation procedure enabling numerous social and economic circles to intervene, and that all solutions adopted may be amended at any time"⁴⁷.

III.10 Cantonal constitutions

122. Cantons play a major part in regional self-government, and each has its own constitution, requiring approval by the people. As explained in part II, the Confederation protects the constitutional system of the cantons and guarantees its existence, except where any elements of a cantonal constitution appear to contravene federal law. Such a situation, however, is exceedingly rare: only the Canton of Jura has had its constitution rejected for having referred to the possibility of taking in any other part of the Canton of Bern.

123. It should also be added that, if there is no supervision of the constitutionality of federal legislation, this is "because a legislative decision taken by the 246 members of federal parliament and the people has greater legitimacy than a decision by a court".

⁴⁵ The government of the Canton of Bern includes representatives of 5 parties, for example.

⁴⁶ Only the Cantons of Ticino and Zug elect their governments on a proportional basis.

⁴⁷ "Le Fédéralisme suisse" ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "Le savoir suisse", Presses polytechniques et universitaires romandes, p. 78.

III.11 Direct democracy

124. The institutionalisation and intensive practice of direct democracy are another fundamental feature of Switzerland's political system. As described in part II, in all their cantonal diversity, the popular initiative and referendum remain linchpins of the functioning of the Confederation and its cantonal and communal components.

125. This complex system of "democratisation of democracy" has, of course, been criticised for a long time, more outside the country than inside. It is accused of all kinds of things: from requiring too long a period for the approval of legislation to making voting issues complex, often beyond public comprehension, and entailing generally turnout rates below half of the population (40 to 45%), and at best of cases above 50%. The system is also sometimes accused of enabling political leaders to avoid responsibility for their decisions, using the result of a democratic vote as their excuse. It was emphasised that, especially where "important" decisions are concerned, much greater numbers of voters turn out for referendums. On occasions when turnout is low, the institutions tend to take the view that failure to participate in the vote signifies tacit agreement to the project concerned.

126. Without any qualms, Micheline Calmy-Rey, Federal Councillor for Foreign Affairs and former President of the Confederation in 2007, responds to this criticism by saying that "in Switzerland, the people - regarded as 'sovereign' - has the last word and bears political responsibility. But this by no means absolves the government from responsibility, since it has to adopt a position, divulge its decisions and engage in intensive dialogue with the public. That, too, is a way of exercising political responsibility". In her view, direct democracy helps to give legitimacy to the political system and the policy decisions taken by the government and in parliament. "It is absolutely impossible, in Switzerland, to introduce a policy against the will of the population. No politics can take place without the people"⁴⁸.

127. It should be noted that cantonal independence is also expressed in this area, for cantons have the right to make their own decision on how their citizens can participate in political decision-making. Some cantons even have financial referendums on whether or not to approve major expenditure.

128. The cantonal tier seems to lend itself more to popular initiatives than the federal level: "At the national level, only 9% of all popular initiatives have been successful, whereas the proportion in the cantons is 23%"⁴⁹. We can add the fact that aliens too may be enfranchised at cantonal level⁵⁰, and the voting age may even be reduced to 16⁵¹. "This is the necessary insight – drawn from experience – which contains the secret of the land of the contented losers." Fine words, but accurate ones as well, for the reference is to a "form of democracy which aims to involve as large a number of players (political parties, trade unions, minorities, social groups) in the political process as possible and to reach decisions by consensus. [...] also the government must look for compromise solutions which will satisfy all the important political groups capable of launching a referendum"⁵².

III.12 Tax competition

129. This is still a controversial subject, much discussed, and on which contrasting views are taken. Firstly, it should be pointed out that, where the cantons' financial autonomy is concerned, "the Confederation shall help to ensure that the cantons have sufficient financial resources to perform their duties, not only those for which they are directly responsible, but also those delegated to them by the Confederation"⁵³.

⁴⁸ Guidebook to Direct Democracy, pp.6 and 8.

⁴⁹ Guidebook to Direct Democracy, op cit, p.56.

⁵⁰ As is the case in the Canton of Neuchâtel.

⁵¹ As is the case in the Canton of Glarus.

⁵² Guidebook to Direct Democracy, op cit, p.233.

⁵³ First message on RPT, FF 2002.2322.

130. In principle, "financial federalism", and tax competition in particular, offer people another way of restricting State power: they can choose between communities on the basis of the services provided and their taxation rates⁵⁴. "The cantons and, to a lesser degree, communes enjoy wide-ranging financial independence unmatched anywhere else in the world, where taxes and the preparation of budgets are concerned. This has its price, however. It has to be accepted that rates will differ".

131. Some (right-wing) political leaders consider that this faculty to vary tax rates needs to be preserved in order to enable cantons and communes to apply different rates and thus to pursue different policies. Notwithstanding genuine problems caused by "spillovers and free riders", "there are more advantages than drawbacks in allowing healthy tax competition" in some people's view, and "the egalitarianism which prevails in many European countries is absent in Switzerland".

132. In contrast, (left-wing) political and trade union leaders who favour redistribution of income have said that they were shocked by the continuing fiscal competition between cantons, made more bearable only by the RPT. A constitutional initiative designed to level out fiscal differences within a range 20% higher or lower than the national average has been started (involving an obligation for cantons above and below this figure to adjust their rates of taxation).

133. Clearly, the main differences of opinion separate those who prefer efficiency, growth and better safeguards of individual freedoms from those who, without denying the need for these things, give priority to social justice and the redistribution of income.

134. The formal harmonisation to which Article 129 of the Constitution refers does not relate to the setting of tax rates themselves, but to a single definition of procedures and tax liability⁵⁵. Substantive harmonisation, on the other hand, implies the unification and adoption of tax rates, exempted sums and deductions, in such a way as to abolish or greatly restrict competition. It is on this basis that the Federal Court rejected a digressive fiscal system proposed by one canton. As Werner Wuthrich says, "Since independence and sovereignty at every political level still represent fundamental values to the people, and as the people rejects effective fiscal harmonisation, the complex financial equalisation system is crucially important. It reduces fiscal injustice and strengthens intercantonal and interregional cohesion. The same applies to equalisation between communes".

III.13 Financial equalisation

135. The aforementioned effects of tax competition and the great disparity between regional resources made it necessary a long time ago to set up a financial equalisation mechanism. However, the financial disparities between cantons have been found to be growing, and the system to lack any transparency⁵⁶.

136. The effects of the RPT, which came into force on 1/01/2008, and is based in particular on the new Article 128.4 of the Constitution⁵⁷, are considerable in respect of both the distribution of duties and financial equalisation, with a view to dealing with these "defects". In consequence, the Confederation now contributes a sum which, in 2009, was 1.8 billion Swiss francs to what is known as a "vertical" equalisation fund for the cantons. For their part, the cantons with potentially large resources inject 1.3 billion Swiss francs for the purposes of "horizontal" equalisation, while the Confederation contributes 682 million Swiss francs. The reform also provides for two equalising mechanisms, one where burdens are excessive for "geo-topographical" reasons and the other where the excessive burdens stem from "sociodemographic" conditions.

⁵⁴ "Le Fédéralisme suisse" ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "Le savoir suisse", Presses polytechniques et universitaires romandes, p. 34.

⁵⁵ "The Confederation shall set out principles on the harmonisation of the direct taxes imposed by the Confederation, the Cantons and the communes; it shall take account of the efforts towards harmonisation made by the Cantons. Harmonisation shall extend to tax liability, the object of the tax and the tax period, procedural law and the law relating to tax offences. Matters excluded from harmonisation shall include in particular tax scales, tax rates and tax allowances."

⁵⁶ *Réforme du fédéralisme suisse : une quête d'efficacité* (Reform of Swiss federalism: in search of efficiency), Centre d'Etudes de l'ULB, p.2.

⁵⁷ "The tax shall be assessed and collected by the Cantons. A minimum of 17 per cent of the gross revenue from taxation shall be allocated to the Cantons. This share may be reduced to 15 per cent if the consequences of financial equalisation so require."

137. It did not take long for the new equalisation mechanism to come in for criticism. Some people, for instance, take the view that the simulations on which the RPT was based, as they were carried out in 2001, are already out of date, and that an effort should be made to update the chosen criteria.

III.14 Communes⁵⁸ and agglomerations⁵⁹

138. Switzerland's communes are not strictly speaking covered by this report, which focuses on regional institutions. However, in a situation paralleled in many federal states, local institutions answer to the cantonal authorities, so this subject does need to be addressed.

139. Communes' autonomy, under Article 50 of the Constitution, "shall be guaranteed in accordance with cantonal law". This results in different rules according to canton and, within each, according to communes' size, the structure of their deliberative body and executive authority, and their processes of direct democracy.

140. "According to the constant case-law of the Federal Supreme Court, a commune shall benefit from protection of its autonomy in every field which cantonal law does not regulate comprehensively, but leaves wholly or partly in the communal ambit, thereby conferring on the authorities of communes considerable freedom of action. Thus the scope of communal autonomy depends first and foremost on the interpretation of higher law. The Federal Court has to date never recognised a core communal autonomy guaranteed by federal law, and independent of cantonal law"⁶⁰. "This autonomy, albeit less often referred to, is increasingly found to have gone out of existence, with communes' room for manoeuvre in most fields already being limited to a considerable extent, or even cut to nothing, by higher law, by optional intercommunal co-operation or by objective constraints"⁶¹.

141. The third tier of authority in the federal state, a very active one which is very much to the fore in people's lives, the communal level accounts for one third of the income and expenditure of the Confederation. There is another application here of the principle of subsidiarity as described by the federal government's message: "The principle of subsidiarity must not apply only to relations between the Confederation and cantons, but also encompass relations between every tier of the state, including the communes"⁶². And it is a fact that, since the complete revision of the Constitution in 1999, towns and cities have become fully-fledged partners of the Confederation. The autonomy of the communes and the existence of cities, urban areas and mountain regions are explicitly referred to in the Constitution (Article 50).

142. "As time went by, the emergence of ever more complex tasks requiring new financial resources led several communes, in the 90s, to restructure or merge in order to save money. While, initially, communes' were only responsible for managing communal assets and providing welfare assistance, modern society has required them to take on more responsibilities, which inevitably have a cost. The world of the communes is not standing still. Huge changes are under way. "Some people say that it deserves an RPT of its own".

143. As stated in the memorandum from the Union of Swiss Cities, referred to again below, communes are currently considering many questions, which they are also putting to the leaders of the Confederation and the cantons. It should be noted that Switzerland is a country of towns and cities. Almost ¾ of the country's population lives in cities and urban communes, where no less than 84% of Switzerland's economic activities take place, in the interest and for the well-being of the whole country, of course. But while the Confederation is required to take into consideration "the special position of the cities and urban areas", towns and cities are insufficiently integrated into the political process. They suffer from the discrepancy between socioeconomic reality and political structures.

⁵⁸ Communes are designated by different terms in different cantons.

⁵⁹ According to the report of the tripartite technical working group (1 March 2004) (p.9), "urban area is regarded as synonymous with region".

⁶⁰ Report of the tripartite technical working group (1 March 2004), op cit, p.10.

⁶¹ Report of the tripartite technical working group (1 March 2004), op cit, p.10.

⁶² First message on RPT, op cit.

144. Population trends over recent decades have gone hand-in-hand with strong expansion of the major agglomerations. The traditional structures of federalism (which date from the mid-19th-century) are no longer appropriate to these new authorities, or, to put it differently, political structures no longer correspond to "functional areas". Several questions arise. How do democratic practices reflect the population's feelings about social and economic changes? How can decision-taking processes be judiciously geared to the kind of problems that arise? How can Switzerland remain competitive in the international context?

145. In order to answer these questions, and many others, the Union of Swiss Cities has tabled a draft National Research Programme (PNR) with the State Secretariat for Education and Research. The Federal Council should take its decision towards the beginning of 2010.

146. "In a country with so many urban areas, a large proportion of the population frequently moves between different communes, cantons or even countries. [...] However, in legal terms, each person only belongs to the commune where he or she lives, exercises his or her political rights and pays taxes. [...] The multiplicity of places where people live, spend time, work, obtain education, engage in leisure activities, etc, entails a 'lack of fiscal equivalence': the circle of beneficiaries of public services is not identical with the circle of decision-makers and taxpayers"⁶³. This analysis, confirmed to us as accurate, inevitably gives rise to discussion about the restructuring of municipal political space, the creation of an agglomeration and the supra-communal level.

147. This is a particularly sensitive subject, for this awkward issue of communal restructuring lies in an area where identity-related emotions meet the rationality required for efficiency in public services. Intercommunality, mergers, agglomerations are all ways of moving beyond communal borders, often restricted because they have come down to us from the past and its "extreme and highly miniaturised federalism"⁶⁴. The number of communes in Switzerland has declined from 3,205 in 1850 to 2,636, with a total of 68 separations and 370 mergers⁶⁵.

148. Within the Confederation, and depending on canton, every argument has its supporters, but all seem to agree on the inevitability of reform. This is at least the impression given by the message from the President of the Union of Swiss Cities, Dr Marcel Guignard, who said, "At the start of this 21st century, the Swiss federalist system faces major challenges: political structures are no longer always in line with 'functional areas'; many problems can be solved only between the Confederation, cantons and communes and require a pooling of the forces of several institutional levels".

149. Furthermore, it is certainly the case that, where political and historical conditions for implementing this process do not exist, and in order to prepare the ground, thinking on the scale of agglomerations is the best way of finding a speedy solution to certain problems, such as the costs associated with centrality, which are a heavy burden for the largest cities. There is therefore fertile ground here for real changes, which certain cantons have in fact already made.

150. "While Swiss federalism offers numerous advantages, its subtlety also brings with it some disadvantages, felt first and foremost, and more acutely because they have existed for a long time, in agglomerations; these stem mainly from the fact that political structures no longer cover areas of social and economic activity"⁶⁶. This whole subject is discussed in terms of "Switzerland's fourth institutional tier", a tier which is, as such, not really wanted.

151. Looking beyond the creation of agglomerations and the policy of merging communes, already referred to above, we also need to look at the issue of territorial reform, "a subject previously taboo at cantonal level"⁶⁷.

⁶³ "Le Fédéralisme suisse" ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "Le savoir suisse", Presses polytechniques et universitaires romandes, p. 129.

⁶⁴ *Baustelle Föderalismus*, published by Avenir Suisse, p.31.

⁶⁵ "Le Fédéralisme suisse" ("Swiss federalism"), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection "Le savoir suisse", Presses polytechniques et universitaires romandes, p. 69.

⁶⁶ Report of the tripartite technical working group (29/05/2006), op cit, p.35.

⁶⁷ *Le fédéralisme suisse*, op cit, p.68.

152. Regionalisation as a response to cantons' limits is, of course, not a new idea, for there have been some - often failed - attempts in the past to change cantons' borders through mergers. An attempt was once made to reunify the two cantons of Basle. The creation of the Canton of Jura (1978), followed by the transfer of the district of Laufon and the commune of Vellerat (1996) from one canton to another, are both regarded as "historic exceptions", and they did give rise to "strong emotional reactions".

153. Thus a certain amount of scepticism is justified as to the possibility of redrawing the cantonal map, as there is more resistance resulting from emotional barriers than from pragmatic argument, special interests or inertia in the face of change. On the other hand, the creation of regions⁶⁸ is an idea, which is making a strong return to political debate, although this is a complex subject, as is evident from the title of the chapter in *Le fédéralisme suisse*, which is headed *Casse-tête des régions* ("The headache of the regional issue").

Thus a recent study (Blöchliger, 2005) endeavours to overcome the problem of the economic weaknesses of the most decentralised and fragmented country in the world through the introduction of six large metropolitan regions and three large rural regions, restructured as independent, decentralised, open, flexible functional regions of varying sizes. These would have the powers of local and regional authorities, such as fiscal sovereignty, and their size would be appropriate to their duties.

154. What advantages may be expected of such - institutionalised or contractual - territorial reform? In very simplified terms, attention may be drawn to economies of scale in many fields, greater international competitiveness, greater social justice, fiscal harmonisation, a reduction in disparities, better democratic participation, a strengthening of federalism, better protection of minorities, and more effective environmental protection covering a wider area.

IV. Conclusions

IV.1 Conformity with the "Reference Framework for Regional Democracy"

155. Regional (cantonal) democracy in Switzerland complies with the democratic principles and organisational and operational concepts embodied in the "Reference Framework for Regional Democracy" (RFRD), which is appended to the Utrecht Declaration adopted on 17/11/2009 by the Council of Europe Conference of Ministers responsible for Local and Regional Government.

a. Switzerland's institutional and political organisation is fully in line with the Congress's philosophy regarding regional self-government, subsidiarity, decentralisation and politics at the grassroots level, not forgetting the particular importance of participatory democracy in Switzerland.

b. Overall, both Part II (description) and the comments contained in Part III (analysis) reveal a similarity of political outlook between the ideas of the Congress on self-government and active, modern regional democracy and the Swiss political standards developed at these levels of cantonal authority.

c. A more detailed comparative analysis, principle by principle, shows even more clearly the conformity of the Swiss regional model with the requirements upheld by the Congress:

i. Swiss cantonal self-government and its constitutional basis comply with Article 1.a of the Reference Framework;

ii. the statement of the need to observe subsidiarity in the Swiss Constitution is consistent with the preamble of the Reference Framework;

⁶⁸ In the "Swiss" sense of unique entities organised on a trans-cantonal basis to deal with economic, financial or spatial planning concerns.

iii. the cantons' wide-ranging competences, which start from the bottom up and cover a great many fields (culture, language, development, education, training, social welfare, public transport, balanced spatial development, natural resources, biodiversity, sustainable development) are consistent with Article 1.b of the Reference Framework;

iv. relations with other sub-national territorial authorities, such as cities and municipalities, seem to comply, in ways that differ from one canton to another, with the provisions of the Reference Framework, one requirement of which (Article 1.c, first paragraph) is compliance with local self-government as defined by the European Charter of Local Self-Government, ratified by Switzerland on 17/02/2005. Switzerland's instrument of ratification specifies, in accordance with Article 13, that the Charter applies to political communes;

v. involvement of the cantons in state decision-making not only affecting their own competences and essential interests but also relating to general affairs of the Confederation, as required by Article 1.d, paragraphs 1-3, of the Reference Framework, is based on numerous institutions and procedures, extending even to the sphere of international relations;

vi. supervision of the regional authorities by the state authorities complies fully with the strict limits set by the Swiss Constitution, namely conformity of cantonal decisions with federal constitutional provisions under the aegis of the Federal Court;

vii. the protection of regional self-government provided for in Article 1.e, paragraphs 1-3, of the Reference Framework, is guaranteed by the Swiss Constitution (Article 47) and, more generally, by direct democracy mechanisms also enabling the population of the cantons to react in the event of a presumed violation;

viii. the right of association and external relations, to which regional authorities are entitled under Article 4, paragraphs 1-3, of the Reference Framework, are applicable because the cantons participate in their own right in international and transfrontier bodies;

ix. self-organisation of regional authorities (Article 2, paragraph 1, of the Reference Framework) is the general principle in Switzerland deriving from cantonal autonomy, under which the cantons are free to organise their functioning and administration within the limits of their competences.

x. regional bodies, which, according to Article 2, paragraphs 2-4, of the Reference Framework, must be democratically constituted, are fully in line with Swiss policy as embodied in both the Federal Constitution and the cantonal constitutions. The requirements of accountability of the executive to the legislature and protection of the status of elected representatives are satisfied by the political standards prevailing in the cantons;

xi. the guarantee with regard to cantons' financial resources and all the rules specified in this connection in Article 3, paragraphs 1-4, of the Reference Framework have been in compliance with the principles of real financial autonomy since the RPT reform;

xii. financial equalisation and transfers, although long-standing practices, seem to have been suitably re-organised since the RPT reform, although discussion on the criteria continues. The new Swiss system is in any case consistent in principle with Article 3, paragraphs 5-7, of the Reference Framework.

IV.2 Ways forward and future reforms

156. As with all political systems, there is room for further improvements in Switzerland. Despite the very positive assessment that can be given to this country from the dual standpoint of regional (cantonal) self-government and participatory democracy, as stated in this report, problems remain and acceptable practical solutions have yet to be found to certain concerns.

157. In the words of Denis de Rougement, “federalism is based on a love of complexity”. Switzerland certainly meets the definition. There is no doubt that “this federalism of integration, which links living political units to a higher level and which is sustained by the permanent tension of autonomy between stability and flexible re-organisation”⁶⁹ will be capable of meeting these new challenges.

158. The first issue which we feel should mobilise the energies of decision-makers and arouse public interest is that of municipal reform (e.g. mergers) and structures of agglomerations. This third tier of government seems to have made less progress than the others towards the kind of restructuring that will guarantee its efficiency, democratic legitimacy and institutional and legal stability.

159. This is also what is at stake in the bold “new regional policy”, in the Swiss terminological sense, i.e. a spatial development strategy, deemed necessary by numerous interviewees. This type of structure should permit real “regional governance” and better management of sustainable development both from the standpoint of solidarity and from that of environmental protection. The overall aim will be to reconcile the sometimes diverging interests of the different players involved in such a reform.

160. Concurrently with possible restructurings accepted by the population, it may be necessary to go further in undertaking major intracommunal reforms concerning, for example, services, intercommunal relations or taxation.

161. The RPT, which is due to be updated for the period 2012-15, will need to be stabilized without any major upheavals because any permanent instability of, for example, equalisation or funding mechanisms is likely to cause disruptions in cantonal future planning.

162. Questions might also be asked about the increasing number of intercantonal agreements⁷⁰ and about those concluded between the Confederation and the cantons. Admittedly, this type of co-operation, with its potential for increasing efficiency and improving services to the citizens, is made necessary by the nature of the country’s political and geographical division. Having said that, it may be necessary to analyse these co-operation arrangements and the sectors and topics covered by them in order to rationalise them, regroup them and change the way they are co-ordinated, to avoid any lack of democratic control over their adoption and any risk of excessive bureaucracy in their implementation. More fundamentally, it may be necessary to find a new institutional basis governing these decisions and their execution, allowing traditional direct democracy to operate at this level and elected representatives to exercise full political responsibility in this regard.

163. Although extensive provision is made for cantonal participation in decision-making at federal level, it could be further developed. Legal writers have already explored various possibilities.

164. If tax competition is not to be a permanent source of potential discord, there is a need for balanced regulation representing a halfway house between complete tax freedom and the straitjacket of uniformity. This change needs to be accompanied by greater harmonisation of taxes.

⁶⁹ “Le Fédéralisme suisse” (“Swiss federalism”), René L. Frey, Georg Kreis, Gian-Reto Plattner, René Rhinow in the collection “Le savoir suisse”, Presses polytechniques et universitaires romandes, p. 62.

⁷⁰ 733 at the last census.

Addendum

Following the visit to Switzerland in May 2009 by rapporteur Jean-Claude Van Cauwenberghe and the drafting of this report, an important event has marked the political landscape in Switzerland: on 29 November 2009, the Swiss population accepted by 57.5% of the votes cast a popular initiative calling for a ban on building new minarets on Swiss territory. This decision has initiated, in Switzerland and abroad, a wide debate on the advantages and drawbacks of direct democracy.

The rapporteur, having closely followed these developments, proposed an amendment to the draft Recommendation, submitted to the Institutional Committee on 15 February 2010 (see item 9 of the Recommendation).

In between, on January 14, 2010, the Rapporteur received a letter from Philippe Receveur, Swiss member of Congress, providing information specifically on the current state of affairs regarding the "question of Jura". In view of this letter, but also discussions that the Congress delegation had conducted during its visit, the rapporteur also proposed a second amendment to the Recommendation (see item 11.*i* of the Recommendation).

The two amendments proposed by the rapporteur have been accepted by the Institutional Committee while approving the Recommendation and its Explanatory Memorandum on 15 February 2010.

Appendix 1

Programme of the visit

Monitoring report on regional democracy in Switzerland Official visit (Bern, Lausanne, 25-27 May 2009)

Composition of the Congress delegation:

Mr Jean-Claude VAN CAUWENBERGHE (Belgium, R, SOC), Rapporteur
Chair of the ad hoc Working Group on “Regions with legislative powers” and the Congress’s Reflection Group on Regionalisation

Mr Jean-Mathias GOERENS, Consultant (Luxembourg)
Member of the Group of Independent Experts on the European Charter of Local Self-Government

Ms Lilit NIKOGHOSYAN, Co-Secretary of the Institutional Committee, Secretariat of the Congress

25 May 2009 - Bern:

Federal Department of Foreign Affairs:

Dr Claude Altermatt, Minister, deputy head of division, Head of Council of Europe and OSCE Section
Mr Sylvester Bors, Political Division 1, Council of Europe and OSCE Section
Mr Fabrizio Taschetta, deputy head, Borders and Neighbourhood Law Section

Swiss delegation to the Congress:

Mr Dario Ghisletta, Chair of the Swiss delegation, alternate, communal council of Bellinzona
Mr Philippe Receveur, Minister for Health, Social Affairs and Human Resources, member of the government of the Canton of Jura
Mr Sylvester Bors, Secretary to the delegation

Conference of Cantonal Governments:

Mr Roland Meyer, acting Secretary General and Head of External Policy of the Conference of Cantonal Governments
Mr Thomas Minger, Head of Internal Affairs Service
Ms Dorothee Ecklin, member of the CDLR

Representatives of the Council of States, the upper chamber of the Federal Assembly:

Mr Theo Maissen (Graubünden) and Mr Werner Luginbühl (Bern), members of the Council of States
Mr Daniel Zehnder, secretary of the Swiss delegation to the PACE

Meeting with Mr Remo Galli, former member of the National Council, honorary doctor

26 May 2009 – Bern:

Representatives of the Canton of Bern:

Mr Christoph Neuhaus, member of the Council of States, Director of Justice, Municipal Affairs and Ecclesiastical Affairs
Mr Christoph Miesch, head of the Bureau for Municipal Affairs and Spatial Planning
Mr Daniel Arn, Director of the Association of Bernese Municipalities
Mr Gerhard Engel, Deputy Secretary General of the Directorate of Finance of the Canton of Bern
Mr Michel Schwob, Vice-Chancellor, State Chancellery

Meeting with:

Prof. Bernhard Ehrenzeller, Professor of Public Law at the University of St Gallen, member of the Group of Independent Experts on the European Charter of Local Self-Government

Federal Department of Justice and the Police:

Prof. Luzius Mader, Deputy Director, Federal Bureau of Justice
Dr Robert Baumann, lawyer, Federal Bureau of Justice, member of the CDLR

Federal Department of Finance:

Mr Gérard Wettstein, Financial Equalisation Unit

27 May 2009 – Lausanne:

Representatives of the Canton of Vaud:

Mr Jean-François Bastian, member of the Council of States with responsibility for the new Constitution and the RPT reform
Mr Denis Decosterd, Head of the External Relations Department of the City of Lausanne
Mr Pascal Rattaz, Head of Planning and Financial Solutions Division
Mr Norbert Zufferey, Bureau of External Affairs, in charge of European and transfrontier affairs
Mr Simon Affolter, Bureau of External Affairs, in charge of intercantonal affairs

Meetings with:

Mr Laurent Wehrli, member of the Congress, member of the municipal council of Montreux (Vaud), member of the Grand Council of the Canton of Vaud
Mr Philippe Receveur, Minister for Health, Social Affairs and Human Resources, member of the government of the Canton of Jura