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Common Frameworks in Switzerland Cantonal Autonomy in a Confederation

**A Study for the Finance and Constitution Committee of the
Scottish Parliament**

**Zurich University of Applied Sciences (ZHAW)
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Summary & Key points

Since the founding of the modern state of Switzerland in 1848, Switzerland is a confederation of 26 relative autonomous cantons. In contrast to other federations, the Swiss cantons are the units that give competences to the federal level and not the other way around.

The allocation of competences and responsibilities between the three levels of government (national, cantonal and communal) is a complex system, which forms the backbone of Swiss style federalism. As a result of a comprehensive reform project entitled “national fiscal equalization” (NFE), in effect since 2008, a wide range of mechanism for task allocations have been defined more clearly. With the NFE, the federation and the cantons are obliged to revise the actual allocation of responsibilities every four years.

The guiding principles of the NFE are

1. Where possible, tasks should be allocated to one single level of government only.
2. Decisions should be taken as close to the citizens as possible (subsidiarity).
3. Tasks should be always allocated together with the rights to regulate and to source tax funding (fiscal equivalence).
4. Federal laws are often implemented by the cantons giving them the flexibility to adapt the implementation to local context (implementation federalism)

Where a task cannot be allocated to one level only, common frameworks come into play. There are two mayor types of frameworks, the first involving cantons and the federation (joint responsibilities), the second involving only cantons (concordats). The landscape of such frameworks is very diverse and no clear overview or system can be derived from it. However, the following principles guide the negotiation, the supervision, funding and dispute resolution within these frameworks:

1. The Swiss political system is oriented towards consensus. Political actors therefore prefer cooperative to conflictual strategies. In this context the cantonal referendum plays an important role, giving a minority of eight cantons the right to ask for a public referendum on federal acts.
2. The Federation tries to guide the implementation on cantonal level through incentives rather than through penalties.

To coordinate their policy and to strengthen their voice towards the federal government the cantons have installed a number of bodies, like conferences of cantonal ministers. Despite their non-constitutional character, these bodies are highly respected by the federal government since they facilitate the formation of a consolidated view of the 26 cantons. Moreover, the conferences of cantonal ministers play an important role not only in federal policy but also in voicing the interest of the cantonal governments in the context of international negotiations.

Table of Content

Summary & Key points	iii
Table of Content	iv
1. Introduction	1
1.1. The powers of the cantons in Switzerland	1
1.2. Impact of International/EU law on Switzerland	2
2. Types of Common Framework	3
2.1. Collaboration between the cantons and the federation	3
2.2. Joint responsibilities of the federation and the cantons	5
2.3. Concordats	5
2.4. Political Bodies	6
2.5. Negotiating new frameworks	7
2.6. Issues and solutions	7
3. Governance of Common Frameworks	8
3.1. Monitoring, evaluation and performance assessments	8
3.2. Parliamentary oversight	8
3.3. Flexibility	9
3.4. Disputes	9
3.5. Penalties	10
4. Funding of Common Frameworks	11
4.1. Funding principles in the NFE	11
4.2. Funding of joint responsibilities	12
4.3. International treaties	13
5. Policy Making Arising from Common Frameworks	15
5.1. Flexibility of sub-state jurisdictions within common frameworks	15
Bibliography	16
Interviews	17
Figures	18
Appendix	19
Links	19
List of Joint responsibilities analysed by the federal government	19

1. Introduction

1.1. THE POWERS OF THE CANTONS IN SWITZERLAND

The federal Constitution, which has been in force in its basic form since the inception of the Swiss Confederation in 1848, has placed the federal states (cantons) in a particularly strong position from the very beginning. The Swiss cantons are understood to have autonomy, or even (although not unlimited) state sovereignty.¹ This cantonal autonomy and the cantons' equal rights, "as well as their participation in federal decision-making and the duty to cooperate with the Federation and with each other, continue to be deemed the most important centrepieces of the Swiss political system".² In a period of transition lasting from 1798 to 1848, Switzerland had previously changed from a relatively loose confederacy of states to a confederation.³ In 1847, this 50-year process had culminated in a brief civil war (*Sonderbundskrieg*), which resulted in a victory by the liberal over the conservative cantons. The alliance of the victorious cantons refrained from dictating peace conditions, however, and in drafting the federal Constitution of 1848 also considered the needs of the defeated cantons.⁴

According to article 3 of the federal Constitution, the cantons of Switzerland are competent in all areas that are not specifically the competence of the federal government.⁵ A finite list of competences granted to the cantons does therefore not exist.⁶ The main responsibilities of the cantons include, however, the police, the judiciary, construction, education, health care, social services and culture. This high degree of decentralisation is also reflected in the public administration, where 45 percent of all civil servants are employed at the cantonal level.⁶

The competences given to the federal government, however, are listed explicitly in the federal Constitution. Unlike in other countries, the sub-national level therefore transfers competences to the federal level, rather than vice versa.

In the Swiss political system, with strong federalism, the cantons have traditionally always held a high degree of authority, responsibility and political scope. Accordingly, the significance of the political centre at the federal level is limited. Since 2008, the basic principles of subsidiarity and fiscal equivalence have been enshrined in the federal Constitution.⁷ Together with the "implementation federalism", they are the three

¹ Knoepfel, Handbuch der Schweizer Politik, p. 245

² Klöti, Handbook of Swiss Politics, Neue Zürcher Zeitung Publishing, 2007, p.198

³ See: Thomas Maissen, "The 1848 Conflicts and their Significance in Swiss Historiography," in: The Making of Modern Switzerland, 1848 – 1998, pp.3-34.

⁴ Historischer Atlas der Schweiz, Sonderbundkrieg: Folgen, <http://www.hls-dhs-dss.ch/textes/d/D17241.php> Accessed 21.08.2018

⁵ Federal Constitution of the Swiss Confederation, Art. 3: "The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation." ⁶ Ibid.

⁶ Knoepfel, 2014, p. 253

⁷ Ch Stiftung für eidgenössische Zusammenarbeit, Monitoringbericht Föderalismus 2014 –2016, Bern 2017, p. 51

key principles characterizing the allocation of tasks between the Federation and the cantons:

1. *The Principle of Subsidiarity*: The Swiss Confederation allocates the responsibilities of the state to various state levels. The decisive factor is the principle of subsidiarity.⁸ It follows the approach of a bottom-up allocation of tasks. In other words, the communes must assume all responsibilities that do not exceed their capacity. The cantons, in turn, assume those responsibilities that cannot be handled by the communes. In addition, they must handle all responsibilities not allocated expressly to the federation. This makes the Swiss cantons important players with political power and responsibility. The federation, finally, only handles those responsibilities expressly allocated to it by the Federal Constitution. A new federal responsibility must be approved by public vote in a constitutional referendum.⁹ For the proposal to be accepted, a majority of the people needs to support it within both, the whole federation and the majority of the cantons (a double majority).
2. *Fiscal Equivalence (Tax system)*: As an important prerequisite of an effective federal system, the cantons must have sufficient funds from tax revenue with which to discharge their responsibilities. In Switzerland, each level of government has its own sources of tax revenue as well as the competence to dispose of tax funds. Swiss citizens not only pay consumption tax, but also federal, cantonal and communal taxes. Amounts vary depending on the financial resources and social policy of the cantons and communes, creating a competitive situation in terms of tax rates, which can be considered an added benefit. Whenever tasks are allocated, the principle to give the relevant level the respective authority and responsibilities applies.
3. *Implementation of federal policies by the cantons (implementation federalism)*: Although not explicitly mentioned in the constitution it was the general understanding that federal law has to be implemented by the cantons. For the federation, this has the advantage of reducing its workload; for the cantons, the advantage lies in liberty to set their own programme priorities. Since 1999 this principle is also assured in the constitution. The liberty of cantons to implement federal law is limited in two ways: First, they have to cover at least part of the costs and secondly they can only move within the boundaries given through the federal law. It is understood that this principle contradicts in some areas the principle of fiscal equivalence.¹⁰

1.2. IMPACT OF INTERNATIONAL/EU LAW ON SWITZERLAND

Although Switzerland is not a member of the EU, its geographic location and its economic interdependence makes the EU and its laws highly important for the Swiss legislation. Switzerland is linked to the EU through over 100 different bilateral agreements. Different studies have found that EU laws either directly or indirectly

⁸ While the principle of subsidiarity has always been practiced in modern Switzerland, the term itself was only included in the Federal Constitution in 2008.

⁹ Wolf Linder, Schweizerische Demokratie, 4th edition, updated, 2017, p. 172. „In the context of the principle of subsidiarity, the literature also discusses the principle of non-centralisation.“

¹⁰ Schweizer Bundesrat, Einhaltung der Grundsätze der Neugestaltung des Finanzausgleichs und der Aufgabenteilung zwischen Bund und Kantonen (NFA), Bericht des Bundesrates vom 12. September 2014 in Erfüllung des Postulats 12.3412 (Stadler Markus) vom 29. Mai 2012 <https://www.parlament.ch/centers/eparl/curia/2012/20123412/Bericht%20BR%20D.pdf>

influence about 50% of Swiss federal law.¹¹¹² In fact, researchers in Geneva found that in the period 1996-2005 the level of EU law in Swiss legislation was about the same as in the Austrian legislation.¹³ This influence does also transcend to the policy areas, which are reserved to cantonal autonomy. Therefore, it becomes crucial for the cantons to be involved in the preparation and negotiation of international treaties by the federal government.

2. Types of Common Framework

Switzerland has a number of mechanisms that can be described as “common frameworks.” These can be divided into two basic groups. The first group consists of joint responsibilities (*Verbundaufgaben*): responsibilities jointly discharged by the federation and the cantons. In order to understand the wider context of these tasks, this paper first focuses on the general allocation of competences and their mechanisms involving the federation and the cantons. The second group comprises agreements between cantons without federal involvement.

2.1. COLLABORATION BETWEEN THE CANTONS AND THE FEDERATION

2.1.1. Development

In Switzerland, the relationship between the federal level and the cantons has changed considerably since 1848. While initially the federation was allocated very few competences, rapid economic development and political tendencies in the period preceding World War II promoted centralisation, resulting in more power for the federal level. Again, in the second half of the 20th century, the federation was given additional responsibilities. This included areas of economic policy as well as social policy, infrastructure policy, and energy and environmental policy. After 1945, competences were divided between the federation and the cantons in most of these new policy areas rather than allocating them to a single state level. A system of cooperative federalism developed as a result.¹⁴

In the course of several decades, complex interdependencies were formed between some federal responsibilities, and there was an overlapping of competences and financial flows, combined with duplication and a lack of clear responsibility and transparency concerning financial transfers.¹⁵

2.1.2. National Fiscal Equalisation

In the 1990s, this complex situation led to a comprehensive reform project entitled “national fiscal equalization” (NFE), which has been in effect since 2008. The aims of the NFE are diverse. Mainly, however, they include disentangling the allocation of tasks between the federation and the cantons and creating fiscal equality between the financially stronger and the financially weaker cantons. The NFE is reviewed every four years.

¹¹ Sabine Jenni, *The Last Gallic Village? An Empirical Analysis of Switzerland’s Differentiated European Integration 1990 – 2010*, DISS. ETH No.

¹² , Zurich 2014 <https://www.research-collection.ethz.ch/handle/20.500.11850/154723>

¹³ Ali Arbia, *The road not taken, europeanisation of laws in Austria and Switzerland 1996-2005*, Geneva : Graduate Institute of International and Development Studies, 2008

¹⁴ Wolf Linder, *Schweizerische Demokratie*, 4th, edition, updated, 2017, p. 174.

¹⁵ Adrian Vatter, *Das politische System der Schweiz*, Zurich 2016, p. 433.

Article 2 of the Federal Act on Fiscal Equalisation and Cost Compensation lists the aims of the NFE project as follows:

1. strengthening the financial autonomy of the cantons;
2. reducing the differences in financial capacity and in fiscal burden between the cantons;
3. maintaining the fiscal competitiveness of the cantons, both nationally and internationally;
4. ensuring that cantons have a minimum of financial resources available;
5. equalising the excessive financial burden of some cantons due to geographic-topographic or socio-demographic conditions; and
6. ensuring appropriate inter-cantonal cost compensation.

In dividing these responsibilities, the NFE has created four categories. Whenever possible and appropriate, only one level handles one responsibility: either the federation or the cantons. This measure ensures a disentanglement of both the responsibilities and the finances used to fund them. Beside these two allocation options, there is the possibility of collaborating in joint responsibilities, meaning responsibilities that are shared. The fourth possibility involves increased cooperation among the cantons, which is regulated by means of inter-cantonal treaties (concordats). The NFE has therefore also strengthened inter-cantonal cooperation.¹⁶

FIGURE 1: THE FOUR CATEGORIES OF RESPONSIBILITIES UNDER THE NFE

Competence:	Only the Federation	Only the cantons	Joint responsibilities (federation and cantons)	Inter-cantonal collaboration (concordats)
Examples:	National Defence	Police	Execution of penalties and penal measures	Prisons
	National roads and Highways (since 2008)	General damage protection	Completion of the network of national roads.	
	Federal Institutes of Technology: ETH Zurich, EPFL Lausanne	Universities	Higher Vocational Training	Universities of Applied Sciences of Special needs education (HfH)

In other words, the NFE can be said to strive for holistic solutions. All policy and competence areas are discussed and evaluated. Whenever a competence is moved from the federation to the cantons or vice versa, this applies to all cantons equally. There is, therefore, *no* scope for frameworks involving the federation and individual cantons.

¹⁶ See: Neugestaltung des Finanzausgleichs und der Aufgabenteilung zwischen Bund und Kantonen – NFA, issued by the Federal Department of Finance and the Conference of Cantonal Governments, Bern 2007.

In their negotiations concerning the allocation of tasks, the various players follow different interests: The federation, on the one hand, wants to make rules and set standards that affect the whole country. In the ten years since the NFE was launched, centralisation tendencies have again increased.¹⁷ The cantons, on the other hand, want to retain or even expand their competences and their scope for action. Specifically, a main issue is the distribution of power between the various state levels in the Swiss Confederation. However, the possibilities for the pursuit of specific interests are limited because any change ultimately requires the consent of all parties.

The table below shows a percentage overview of the allocation of financial responsibilities between the federation, the cantons and the communes in 2009.¹⁸

FIGURE 2: ALLOCATION OF FINANCIAL RESPONSIBILITIES IN SWITZERLAND (IN PERCENT), ACCORDING TO KNOEPFEL, 2014

Area	Federation	Cantons	Communes	Total
International relations	100			100
Defence	93	3	4	100
National economy	60	20	20	100
Traffic, communication	54	21	25	100
Social security	51	29	20	100
Police and judiciary	10	71	19	100
Public health	4	83	13	100
Education	16	54	30	100
Envir. protection and regional planning	15	16	69	100
Culture, sports, leisure, churches	8	32	60	100
Public administration	23	35	42	100

Improving the allocation of tasks between the federation and the cantons is difficult for two reasons: First, recalculating contributions to compensate financially weak cantons for their lack of required resources regularly leads to political tension between the cantons.¹⁸ Second, reorganising the allocation of tasks has a direct financial impact on various players at different state levels, which can be positive as well as negative. At the heart of the debate is the question as to who decides in what situation and who is to be responsible for funding.

¹⁷ See: "Der Pulverdampf verhüllt die echten Gefahren", in: Neue Zürcher Zeitung, 8 October 2014 and "Die schleichende Zentralisierung muss aufhören", in: Neue Zürcher Zeitung, 24 Auguste 2018. ¹⁸ Knoepfel, Handbuch der Schweizer Politik.

¹⁸ For the purpose of this short introduction, this issue is not followed up any further.

Of particular interest in this context are the responsibilities which are discharged jointly by the federation and the cantons (joint responsibilities), on the one hand, and those that handled jointly by the cantons, on the other.

2.2. JOINT RESPONSIBILITIES OF THE FEDERATION AND THE CANTONS

In Switzerland, responsibilities for which the federation and the cantons share the financial burden are called *Verbundaufgaben* (joint responsibilities). Collaboration between the federation and the cantons in handling joint responsibilities is regulated by the partners involved. Since 2008, funding has been according to a new principle. Instead of individual subsidies of projects as in the period before the NFE, in general lump-sum or global contributions are now granted.

The group of joint responsibilities is relatively heterogeneous and does not form a special group defined by the constitution. Joint responsibilities include

- federal responsibilities (*Bundesaufgaben*) which have been assigned to the cantons (such as cadastral surveying)
- as well as areas of responsibility where the federation only has limited competence or
- where it does not exercise its competence to the full extent (such as agglomeration traffic or the execution of penalties and penal measures).

In 2015, The Federal Council acted on a motion¹⁹ to submit to Parliament a comprehensive analysis of all joint responsibilities, with a view to identify additional areas where disentanglement might be possible. The cantonal governments issued several statements calling for the active pursuit of further improvement in the allocation of tasks and for further disentanglement of jointly funded responsibilities. Currently, the Federal Council is preparing the answer to this motion. A list of all joint responsibilities analysed in this process is attached in the Appendix.

2.3. CONCORDATS

In Switzerland, cantons can enter into agreements with each other without having to involve the federation. These legally binding inter-cantonal agreements are also referred to as “concordats.”

Concordats have two basic functions: Coordination between cantons in their policy areas and the pooling of resources among cantons. Concordats serve also the purpose to exchange information and lessons learned between cantons. The fact of having concordats facilitates joint representation of interests vis-à-vis the federation.²⁰

Switzerland currently has about 800 concordats, whereby the overwhelming majority is less than 40 years old. Three-fourths of these concordats relate to bilateral issues between the cantons and serve to promote regional integration. They therefore usually only concern two or a few of the 26 Swiss cantons.

¹⁹ Federal Assembly — Swiss Parliament, Motion 13.3363 on the division of responsibilities between the state and the cantons, submitted in the National Council on 12 April 2013

²⁰ Knoepfel, *Handbuch der Schweizer Politik*, pp.135-138

While topics mainly include issues of finance and taxation, concordats have also been signed on educational, scientific and cultural issues. Especially in the field of education, concordats have become an important instrument to coordinate policy among the cantons and setting standards, which in turn limit the liberty of the individual canton.

Since the introduction of the NFE, it has become possible, at the request of 18 out of 26 of cantonal governments, for inter-cantonal agreements to be declared generally binding for all the cantons.

Limitations to concordats exist whenever federal law or federal interests are involved, or whenever the rights of other cantons are involved.

2.4. POLITICAL BODIES

2.4.1. Council of States

The Swiss federal Parliament consists of two chambers with equal powers: the people's representatives sit in the National Council (*Nationalrat*), the large chamber, and the representatives of the cantons sit in the Council of States (*Ständerat*), the small chamber. The Council of States was established to represent the cantons. It consists of two directly elected representatives from each canton.²¹ As opposed to Germany, for example, these are not representatives from the cantonal governments but rather elected representatives who are independent of the cantonal institutions, which is why cantonal governments have less influence on Council of States policies. Cantons often complain that a politicisation of the Council of States has lowered their influence on the federal level. Key topics for the cantons are still a priority for this chamber, nonetheless the increasing dominance of party politics cannot be denied.²²

2.4.2. Conference of the Cantonal Governments

For the above-stated reason, the 26 Swiss cantons agreed in 1993 to establish a coordinating body of their own, the Conference of the Cantonal Governments of Switzerland (CCG) (*Konferenz der Kantonsregierungen (KdK)*), aimed to articulate and coordinate joint interests in order to have more weight vis-à-vis the federation. This move was triggered by the cantons' dissatisfaction with their low involvement in Switzerland's negotiations concerning the European Economic Area (EEA). When the 50.3% of Swiss voted against joining the EEA in December 1992, the cantons felt the need to take a more active role in the federation's (European) policy-making.

The CCG, as well as the conferences of cantonal ministers (see below), are not a constitutional organisation of the federation. Nonetheless they are widely accepted and appreciated by the federation since they also facilitate coordination among the cantons and for the federation (one strong and consolidated opinion of the cantons).

²¹ The former half-cantons only have one representative.

²² Federal Chancellery, *The Swiss Confederation – A Brief Guide*, 2018, p.26: The National Council and the Council of States also handle certain items of business in joint session as the Federal Assembly (Bundesversammlung), for instance when electing the members of the Federal Council and federal court judges. As such, the Federal Assembly is the highest authority in the Swiss Confederation, subject to the rights of the people and the cantons. This is an aspect peculiar to Switzerland: In contrast to other countries, Parliament elects the government and the federal judiciary. Parliamentary decisions are not subject to review by any court.

In the meantime, the CCG, which in 2008 established its headquarters, the House of Cantons, in Switzerland's capital, Bern, has become an important institution in the Swiss political landscape. The House of Cantons harbours the offices of various inter-cantonal governmental and conferences of cantonal ministers as well related institutions.

For its decisions, the CCG requires a quorum of 18 cantonal governments. The federation recognises that this body reflects the interests of the cantons by representing the consolidated position of the 26 cantons. At the same time, the cantons have created an institution that carries some weight, especially considering that, based on a decision by their cantonal parliaments, eight cantons can call a referendum on a federal law.

2.4.3. Conferences of Cantonal Ministers

Switzerland also has 16 conferences of cantonal ministers (*Direktorenkonferenzen*). Each is devoted to a specific policy area, enabling the ministers from all the cantons to meet in order to exchange information and coordinate their interests. The most significant conference of cantonal ministers by far is the Swiss Conference of Cantonal Directors of Education (*Erziehungsdirektorenkonferenz*). It is the only such conference that is based on a concordat. It has the highest budget (in terms of personnel and financial resources) and is authorised to issue its own regulations. Frequently, it is the President of the Swiss Conference of Cantonal Directors of Education who represents Switzerland as the "Minister of Education" in an international context.²³

2.5. NEGOTIATING NEW FRAMEWORKS

2.5.1. Between the Federation and the Cantons

The principles of the NFE and the allocation of tasks were incorporated into the federal Constitution by referendum in 2004. This referendum had been preceded by a ten-year debate involving the federal Council, the two chambers of Parliament, the cantons and the Conference of the Cantonal Governments. The referendum was preceded by an active public debate in which all parties, associations, NGOs, the media and the public participated.

The constitutional provisions were approved in the referendum of 28 November 2004 by a majority of the population (64.4%) and by a majority of the cantons. This gives the principles that were adopted a high degree of democratic legitimacy.

Every four years, the two chambers of Parliament negotiate the compensation payments for the upcoming period based on a report by the federal Council. This bill is usually highly controversial because of the different interests of the financially strong cantons (donors) as opposed to the financially weak cantons (recipients). The main debates take place in the small chamber of Parliament (Council of States), in which the cantons are represented. On the other hand, this issue is also discussed outside Parliament, in the Conference of the Cantonal Governments, and a feasible compromise is usually initiated there.

2.5.2. Among the Cantons

In general concordats come into play if a common solution among different cantons makes more sense than an individual cantonal one (e.g. treatment of hooligans). Also in concordats many stakeholders are involved, therefore it may take years to find a

²³ Knoepfel, Handbuch der Schweizer Politik, pp.135-138

solution that suits all cantons involved. In addition, the cantonal government which negotiates the concordat has to bear in mind that the signed treaty has to pass the cantonal Parliament. Which is not a given thing although the government involves all mayor political parties in the canton.

2.6. ISSUES AND SOLUTIONS

Benefits of the NFE are, that there is more clarity about the allocation of tasks and responsibilities between the federation and the cantons, and it leads to more efficiency and a balancing out of the burden among the cantons. At the same time, the cantons maintain their autonomy to a large extent.

Limitations are that it is not possible (nor is it practical) to disentangle all responsibilities. There will always be some responsibilities that need to be discharged jointly.

A restriction, but possibly also a typical characteristic of the Swiss political system, it that where responsibilities are allocated to the cantons, different approaches will inevitably result. In the best case this leads to solutions the fit best the regional or local needs, in the worst case this could violate the principle of equality before the law (*Rechtsgleichheit*).

One of the biggest challenges is the negotiation of compensation payments by Parliament. These negotiations take place every four years and usually end in a compromise. The political system of Switzerland is designed in such a manner as to require a compromise for a political business transaction to take place.²⁴ Such a result does not favour any party.

Within the NFE project as a whole, further improvement is targeted in individual policy areas and on a case-by-case basis. It is an evolutionary process.

3. Governance of Common Frameworks

3.1. MONITORING, EVALUATION AND PERFORMANCE ASSESSMENTS

3.1.1. National Fiscal Equalisation

Every four years, the Federal Council issues an effectivity report (*Wirksamkeitsbericht*). The report of 2016-2019 on the effectiveness of fiscal equalisation between the Confederation and the cantons comprises 176 pages. According to the Confederation, it provides information on the achievement of the objectives of national fiscal equalisation in the past four-year period and proposes measures for the subsequent period. Specifically, this means that, as defined in Art. 46 of the Ordinance on Fiscal Equalisation and Cost Compensation, the report provides information about:

1. the execution of fiscal equalisation (including data for resource and cost compensation);
2. the annual volatility of the contributions of the financially strong cantons to the horizontal equalisation of resources and the compensation paid to financially weak cantons within the reporting period.

²⁴ See also Chapter 3.4 (Disputes).

Parliament uses the effectivity report as a basis for its debates. In the run-up to the parliamentary debates, the Conference of the Cantonal Governments also expresses its opinion on the results of the effectivity report. In the most recent effectivity report (2018), the Federal Council proposed that this report should be published only every six years; it argued that four years was too short a period for analysis.²⁵

These effectivity reports are freely available to the public and are published on the government website with many additional findings.²⁶

3.1.2. Concordats

The landscape of different forms of concordats is very wide and so is the process of their monitoring. Concordats have to be understood as being more than just treaties between cantons. They can, similar to international treaties also create organisations that will make the implementation possible. For every concordat those processes and organisations can be renegotiated anew and take different forms.

3.2. PARLIAMENTARY OVERSIGHT

A general distinction must be made between parliamentary oversight at the national and the cantonal level.

3.2.1. Institutional Principles

The principles of the NFE and the distribution of tasks are laid down in constitutional provisions and must therefore pass through the national parliamentary chambers. They have also been democratically legitimised by a referendum (see above).

The details of the allocation of tasks are regulated in the corresponding (specialist) laws. The compensation payments connected with the NFE are determined every four years in a federal act. An optional referendum may be held to challenge a federal act passed by Parliament. In addition to the normal requirement of 50,000 individual signatures a public referendum can also be triggered by the cantonal referendum: Eight cantons together can call a referendum against such an act.

Joint responsibilities (*Verbundsaufgaben*) are discussed over the course of several years until a collaboration treaty is signed between the federation and the cantons. This is an elaborate process. The treaty must be approved by the federation and by the cantons, and the Federal Constitution as well as cantonal constitutions and laws may have to be amended.

As already mentioned, collaboration between cantons is regulated by means of concordats. These concordats must be ratified by the cantonal parliaments.

3.2.2. Problems with Parliamentary Involvement at the Cantonal Level

The fact that the cantonal parliaments were able to exert far less influence in the preparation and drafting of treaties on joint responsibilities and on concordats than is usual where cantonal legislation is concerned proved to be increasingly problematic. It is mainly the cantonal government and its administrations that draft and negotiate these treaties, which – similarly to international treaties – happens behind closed doors.

²⁵ Federal Council, Wirksamkeitsbericht 2016–2019 des Finanzausgleichs zwischen Bund und Kantonen, March 2018, p. 15.

²⁶ Federal Finance Administration:

<https://www.efv.admin.ch/efv/de/home/themen/finanzausgleich/wirksamkeitsberichte.html>

Parliaments were confronted with a finalized treaty, which they could, basically, only either accept or reject. As a result, the cantonal parliaments introduced the requirement that the executive has to keep them informed and requested institutionalised forms of participation in the drafting of such treaties. This also includes the establishment of permanent parliamentary support groups.²⁷

3.3. FLEXIBILITY

Der NFE and related institutional agreements are legally binding. They are either decided by the cantonal parliaments in question or even confirmed by referendum. A revision of the principles and a change in the allocation of tasks determined (including joint responsibilities) is time-consuming and requires democratic legitimation. Those elements which need to be adjusted regularly are decided by the Swiss Parliament. Concordats are a more flexible form of common frameworks. They can be formed between two or more cantons and, subsequently, dissolved or amended. They are, however, subject to parliamentary ratification by the cantons involved.

3.4. DISPUTES

The Swiss political system is very much geared towards compromise. In a first phase the political actors are forced by the system to unfold their interest. This allows in a second phase to search for a compromise, which is supported by the majority of the actors. The system contains also mechanism to exert a certain pressure on the actors to find a viable solution as otherwise a political situation arises that is not in the interest of most of the actors. This also applies to the various types of common framework. In the relationship between the federation and the cantons, it is the instrument of the cantonal referendum, in particular, that motivates the stakeholders to find a compromise that is as broad as possible. By acting together, eight of the 26 cantons can force a national public referendum concerning an agreement involving the federation and its cantons if they are unhappy about the result of the negotiations. The parties involved generally try to avoid a national public referendum because it is associated with many uncertainties. The prospect of one is often sufficient to get the parties to agree on a compromise.

Discussions involving all stakeholders are held as broad debates within and outside Parliament. The Conference of the Cantonal Governments plays a decisive role, as it is there that a compromise is sought and found among the cantons. However, the Conference of the Cantonal Governments has no competence to decide on the compromise to be reached. This is the responsibility of Parliament.

According to the latest monitoring report by the Swiss foundation for federal collaboration, there are numerous obstacles impeding the effective protection of constitutional rights of the cantons and of federalism because, acts of the Federal Assembly and of the Federal Council cannot be challenged by the Federal Supreme Court.²⁸ The Federal Supreme Court ensures that federal law is uniformly applied and that the boundaries set by federal law are not transgressed in the course of the enactment, application and interpretation of law and the administration of justice. As a result of its rulings, the Federal Supreme Court contributes to the development of law and its adaptation to changing circumstances.²⁹

²⁷ Knoepfel, *Handbuch der Schweizer Politik*, pp.136.

²⁸ Ch Stiftung für eidgenössische Zusammenarbeit, *Monitoringbericht Föderalismus 2014–2016*, p.51.

²⁹ Swiss Federal Supreme Court, *The Third Power within the Federal State*, Lausanne 2016, p.6.

3.5. PENALTIES

The practice of political compromise also has an impact on the question of financial consequences for those involved in the NFE. The federation as well as the cantons prefer cooperative to conflictual strategies.

Nevertheless, for joint responsibilities the federal legislation has a mechanism that allows the federation to retain funds if cantons have not met their responsibilities according to agreed requirements. This mechanism however has hardly been used. The federation tries much more to guide the cantons in their policy by incentivise certain achievements rather than to fiscally punish.³⁰

³⁰ Interview with Paul Winiker, Minister of Justice and Security, Canton of Lucerne, 23.08.2018

4. Funding of Common Frameworks

4.1. FUNDING PRINCIPLES IN THE NFE

The goals of fiscal equalisation are reached by means of a complex system of equalisation payments (see Figure 5).³¹ The total volume of equalisation payments is almost CHF 5.1 billion for 2018, and consists of the following three mechanisms:

FIGURE 3: THE THREE EQUALISATION MECHANISMS:

	Amount (2018, CHF million)	Description
Cohesion Fund	297	Reduces the financial losses of financially weak cantons when switching from the old system to the new fiscal equalization. The Confederation finances two thirds of this, with the rest coming from the cantons based on the number of inhabitants. It is allocated exclusively to the financially weak cantons and has been declining by 5% p.a. since 2016.
Resource Equalization	4,074	Based on the resource potential of the cantons. It is made up of the taxable income and assets of natural persons and the taxable profits of companies. The potential levels are used to divide the cantons into financially strong and financially weak cantons (see Figure 2 below). Financially weak cantons receive freely disposable financial resources from <ul style="list-style-type: none"> • financially strong cantons (horizontal resource equalization) and • the Confederation (vertical resource equalization). Tax competition is maintained in the process.
Federal Cost Compensation	718	Refers to excessive costs associated with geographical/topographic and socio-demographic factors, which, for structural reasons, result in higher costs for the provision of public goods and services. The Alpine cantons have higher costs for infrastructure, winter road maintenance and schools (e.g., school buses), for instance. The centrally situated cantons frequently have an above-average proportion of elderly, poor and foreign people.
Total Volume of Equalization Payments	5,089	

³¹ Federal Department of Finance, *Fiscal equalization payment 2018 in CHF mn*, <https://www.efd.admin.ch/efd/en/home/themen/finanzpolitik/national-fiscal-equalization/fb-nationaler-finanzausgleich/grafik-nfa.html>

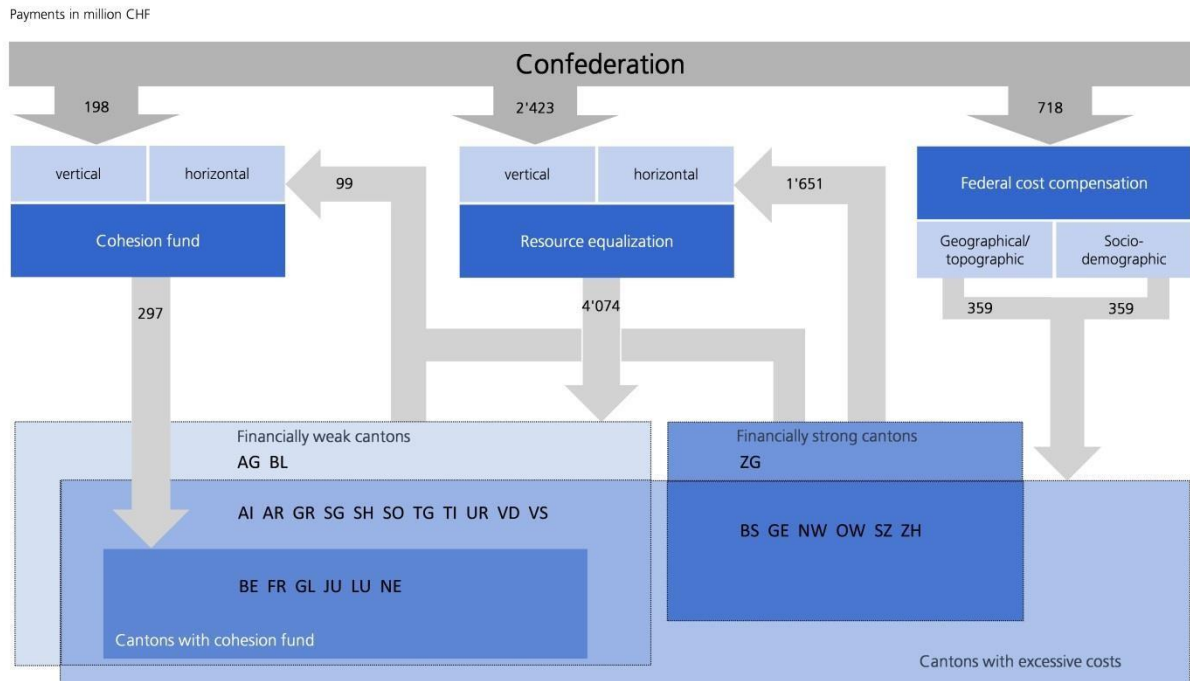
As shown in Table 4 below, the term “fiscal equalisation” (*Finanzausgleich*) is used differently in Switzerland than it is in Germany or Austria. In both neighbouring countries, the income of the federal states and communes is largely determined by foreign sources, i.e., by the central government or the federal state.³²

FIGURE 4: THE TERM „FISCAL EQUALISATION”:

The meaning of the term “Fiscal Equalisation” in:		
Switzerland	Germany	Austria
Equalisation of differences in resources and burdens among cantons or communes. This is <i>subsequent</i> redistribution of revenue gained.	Broad definition, which generally includes the distribution of expenditure and revenue between state levels. This is referred to as "secondary active financial equalisation," the aim of which is "to level out as many differences as possible in terms of resources and burdens."	

The money is redistributed vertically from the Confederation to the cantons and horizontally among the cantons. Cost compensation is borne entirely by the Confederation. The financially strongest cantons are (in alphabetical order) Basel City (BS), Geneva (GE), Nidwalden (NW), Obwalden (OW), Schwyz (SZ), Zug (ZG) and Zurich (ZH).

FIGURE 5: OVERVIEW OF SWISS NATIONAL FISCAL EQUALISATION



³² Lukas Rühli, *Irrgarten Finanzausgleich: Wege zu mehr Effizienz bei der interkommunalen Solidarität*, Avenir Suisse, 2013: According to Avenir Suisse, the Swiss think tank, where the local authorities hardly bear any responsibility for their expenditures and revenues, the resulting disparities might largely be compensated by the higher state level. Member states and communes, however, are becoming decentralised executive bodies of the central state. This has little to do with autonomy, let alone Swiss sovereignty.

4.2. FUNDING OF JOINT RESPONSIBILITIES

The implementation of the NFE did not only aim at disentangling the allocation of tasks between the federation and the cantons, it was also expected, that the remaining joint responsibilities could be organised more efficiently. According to the second NFE effectivity report, such efficiency gains have only been achieved in the area of national roads and highways. Despite the reforms with the NFE, the funding of joint responsibilities is still a controversial issue, particularly in the areas of social security and public health. Given the mixing system where tasks and responsibilities are (still) not clearly disentangled, there is a risk of disincentives and wrong decisions since costs can partially be passed on to another level. For this reason, discussions on a reform of the NFE, asking for a NFE 2 have already started in the last few years.

4.3. INTERNATIONAL TREATIES

4.3.1. International treaties and cantonal authority

The NFE directly affects the allocation of tasks between the federation and the cantons. While most policy areas are within the national sovereignty of Switzerland, international negotiations do not affect them directly, but certainly indirectly. Two cases must be distinguished here: There are situations where only the competences of the federation are affected by international negotiations. Negotiations and the assessment of consequences for federal responsibilities are the responsibility of the federal government. However, there are also situations where international negotiations by the federation affect the much more extensive competences of the cantons. For example, in 1999, the Swiss government signed the Bologna Process. This had a considerable effect on the academic structure of Swiss universities, which are the competence of the cantons. Because foreign policy, and thus negotiating treaties, is the responsibility of the federal government, it results in a serious challenge for the Swiss cantons.

The federal Constitution allows the cantons to participate in the decision-making process of the federation: Art. 45 of the federal Constitution regulates general participation, in particular legislation, while Art. 55 specifically enshrines the participation of the cantons in foreign policy. The federation is, therefore, obliged to attach particular attention to claims by cantons that their competences are affected. In the preparation of international negotiations, early involvement by the cantons is particularly important. Only in this way can the cantons participate effectively in foreign policy projects that affect their responsibilities or key interests.

4.3.2. Reform in 2013

In actual fact, however according to the cantons, this has hardly ever happened before 2013, which is why the cantons asked the federation to strengthen their participation rights in matters of foreign policy. Their demands include state-internal reforms by the Federal Council to enable the cantons to maintain their autonomy against the background of progressing European integration and globalisation. In particular, the cantons wanted the Confederation to adapt the existing legal framework to enable cantonal interests to be taken into account more easily.

The main aim was to ensure that the federal level (Federal Council, Parliament and administration) has a comprehensive duty to provide information. Secondly, a standard deadline of three months should be set for the submission of cantonal comments on government proposals. This period is only to be shortened in cases of urgency justified in writing. Thirdly, cantonal statements on European policy projects concerning

cantonal competences should be given more weight. At the same time, however, the government's ability to act in matters of European policy should not be disproportionately restricted.

Initially, the Federal Council was reluctant to respond to the demands of the cantons. A certain improvement has been noted by the latter in recent years, although it is slow and only concerns certain areas. Noteworthy is a partial improvement of the Consultation Procedure Act and individual valuable policy areas, such as European policy. In addition, the cantons are involved more actively than before in the negotiation processes of the federation. They now have the right to participate in the negotiations rounds directly. The right to participation and information still has to be actively enforced by the cantons, however. Their greatest challenge is their goal to achieve more involvement in the whole process of foreign policy negotiations (including exploration and non-formal stages of negotiation).

This concern is important to the cantons because they fear that a lack of understanding about federalism in the EU will lead to a strengthening of the trend towards centralisation in Switzerland in the medium to long term. The cantons feel that the constitutional allocation of tasks between the federation and the cantons is alien to most European states and the EU, giving rise to the assumption that the federation is responsible for all areas and is thus their exclusive negotiating partner. This entails the risk that the federation will actually acquire all powers, including those of the cantons.

4.3.3. The Role of the CCG

The Conference of the Cantonal Governments plays an important role in this context. It is the central provider of information to the cantons, particularly with regard to the direction of Switzerland's foreign and European policy. For this purpose, an agreement was reached with the federal government that CCG employees will be integrated into the federal administration. For example, one CCG representative works in the Directorate for European Affairs of the Ministry of Foreign Affairs, in the Justice and Police Department and in the Swiss Mission in Brussels.³³ They have full access to the data of the national administration. Their task is to evaluate information according to its relevance for the cantonal governments and to advise them concerning the CCG.³⁴

The CCG Services working group continues to pursue the intensified efforts of the federal government with a view to concluding free trade agreements as well as updating and further developing existing free trade agreements with third countries outside the EU - either bilaterally or within the framework of EFTA. Cantonal representatives also participated as observers in the meetings of the EFTA Regional Forum.³⁶

³³ Mr. Roland Krimm, who represents the cantons in Brussels has held this position for 15 years and is considered to be one of the most senior experts on Swiss-EU relations in Switzerland.

³⁴ Interview with Roland Mayer, Head Foreign Policy, Conference of the Cantonal Governments of Switzerland (CCG) ³⁶ CCG annual report of 2017, p. 22.

5. Policy Making Arising from Common Frameworks

5.1. FLEXIBILITY OF SUB-STATE JURISDICTIONS WITHIN COMMON FRAMEWORKS

As mentioned at the beginning, the cantons are the very foundation of Switzerland's political system. Significantly, there is no list of cantonal competences, unlike in the case of the federation, whose powers must always be based on a federal law. The cantons are therefore responsible for all policy areas that have not been explicitly allocated to the federation. This mechanism is similar to the division of competences between Member States and central institutions within the EU. This leaves them a comparatively high degree of flexibility within their policy areas.

As discussed above also within joint responsibilities the federal government leaves the cantons a degree of flexibility to adapt to local conditions. This is often done through program agreements and financing.

However the new distribution or reallocation of joint responsibilities is relatively inflexible process, firstly, because a large number of stakeholders (the federation and its 26 cantons) is involved and, secondly, because the change processes take a long time. Changing a joint responsibility requires extensive dialogue and a joint decision. It is more common for adjustments to take place at the funding side.

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Winiker, P., Interview with Minister of Justice and Security, Canton of Lucerne, Conducted by Dr. Florian Keller on 23.08.2018 in Lucerne.

Figures

Figure 1: The four categories of responsibilities under the NFE	4
Figure 2: Allocation of financial responsibilities in Switzerland (in percent), according to Knoepfel, 2014	4
Figure 3: The three equalisation mechanisms:	11
Figure 4: The term „Fiscal Equalisation“:	12
Figure 5: Overview of Swiss national fiscal equalisation	12

Appendix

LINKS

National Fiscal Equalization (NFE):

<https://www.efd.admin.ch/efd/en/home/themen/finanzpolitik/national-fiscal-equalization.html>

Fiscal equalization payment 2018:

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

NFE Effectivity Reports

<https://www.efv.admin.ch/efv/de/home/themen/finanzausgleich/wirksamkeitsberichte.html>

Conference of the Cantonal Governments: <https://kdk.ch/>

LIST OF JOINT RESPONSIBILITIES ANALYSED BY THE FEDERAL GOVERNMENT

- 1 Homeland security and preservation of historical monuments
- 2 Musical education
- 3 Individual health insurance premium reduction
- 4 Financing nursing care
- 5 Hospital financing
- 6 Health, people and animals
- 7 Supplementary benefits AHV and IV
- 8 Family allowances
- 9 Family allowances agriculture
- 10 Contributions to private organisations for old-age and disability assistance
- 11 Start-up financing for childcare to supplement family care
- 12 Financing public pension funds
- 13 Execution of sentences
- 14 Restructuring of the asylum sector
- 15 Integration of foreigners in the area of specific integration promotion
- 16 Implementation of the Civil Protection and Civil Protection Strategy 2015+
- 17 Official Surveying and PRLR Cadastre
- 18 Sports promotion (compulsory sports at school)
- 19 Regional policy
- 20 Unemployment insurance: job placement and labour market measures

- 21 Labour Market Controls Posting of Workers Act
- 22 Labour Market Controls Illegal Employment Act
- 23 Training contributions (scholarships and training loans)
- 24 Vocational training
- 25 Regional passenger transport
- 26 Financing and expansion of railway infrastructure (FABI)
- 27 Financing road infrastructure
- 28 agglomeration programmes
- 29 Building programme (partial earmarking of the CO2 tax)
- 30 Programme SchweizerEnergie
- 31 Energy supply
- 32 Nature and landscape protection, (forest) biodiversity and wildlife
- 33 Hazard prevention including protection forest
- 34 Higher education



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