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# THE SWISS REFORM OF THE ALLOCATION OF TASKS: THE CONVENTIONS-PROGRAMS AS A NEW PARTNERSHIP MODEL FOR VERTICAL COOPERATION?

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**Abstract:** This research examines the impacts of the Swiss reform of the allocation of tasks which was accepted in 2004 and implemented in 2008 to “re-assign” the responsibilities between the federal government and the cantons. The public tasks were redistributed, according to the leading and fundamental principle of subsidiarity. Seven tasks came under exclusive federal responsibility; ten came under the control of the cantons; and twenty-two “common tasks” were allocated to both the Confederation and the cantons. For these common tasks it wasn’t possible to separate the management and the implementation. In order to deal with nineteen of them, the reform introduced the conventions-programs (CPs), which are public law contracts signed by the Confederation with each canton. These CPs are generally valid for periods of four years (2008-11, 2012-15 and 2016-19, respectively). The third period is currently being prepared. By using the principal-agent theory I examine how contracts can improve political relations between a principal (Confederation) and an agent (canton). I also provide a first qualitative analysis by examining the impacts of these contracts on the vertical cooperation and on the implication of different actors by focusing my study on five CPs - protection of cultural heritage and conservation of historic monuments, encouragement of the integration of foreigners, economic development, protection against noise and protection of the nature and landscape - applied in five cantons, which represents twenty-five cases studies.

**Keywords:** Conventions-programs, allocation of tasks, federalism, public contracts

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## Introduction

This article analyzes the impact of task allocation reform on the vertical cooperation between the Swiss federal government and the cantons. This reform, which was accepted on 28 November 2004 by sixty-four percent of the people and twenty and one-half cantons and implemented in 2008, is arguably the most significant reform of Swiss federalism since its inception. The aims of the reform are to “re-assign” the responsibilities between the federal government and the cantons, and to make the implementation of public policies financially more efficient, under the so-called “new equalization scheme” (“*Neuer Finanzausgleich*”; NFA). The public tasks were redistributed, according to the leading and fundamental principle of subsidiarity<sup>1</sup>. Enacted were twenty-seven changes in constitutional articles and more than thirty modifications of laws (Braun, 2009). Seven tasks came under exclusive federal responsibility; ten came under the control of the cantons; and twenty-two “common tasks” were allocated to both the Confederation and the cantons. For these common tasks, it wasn’t possible to separate the management and the implementation. In order to deal with nineteen of them, the reform introduced the Conventions-Programs (CPs), which are public law contracts signed by the Confederation with each canton, based on the provision of global or block grants. These CPs are generally valid for periods of four years (2008-11, 2012-15 and 2016-19, respectively). The third period is currently being prepared. In purpose, vertical collaboration would be reorganised around new common tasks, leaving less power at the federal level and providing more power for the cantons (Cappelletti *and al.*, 2014). The new balance thus would work as a partnership model.

The article’s main purpose is to provide a first qualitative analysis on the impact of these CPs on the vertical cooperation. It provides a brief explanation on the reasons that prompted the government to reform the system and will introduce these conventions-programs. It then addresses to what extent the CPs meet the objectives of the reform, and describes the study methodology to include data from different sources, e.g., interviews with heads of cantonal offices<sup>2</sup>, official documents of the Confederation, and peer-reviewed articles.

The article is structured as follows.

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1 Art. 3 of the 1999 Constitution. The principle of subsidiarity aims at determining the level of intervention that is most relevant in the areas of competences shared between the Central State and the Member States.

2 Department of the Nature and landscape of the canton of Geneva, Department of the Economic Promotion of the Canton of Vaud, Head of internal service Conference of Cantonal governments and responsible nature and landscape of the Federal office for the Environment, Department of Cultural Heritage and Historic Preservation of canton of Valais and Department of Noise and Sound Insulation of cantons of Vaud, Geneva and Valais.

First, the problems are raised by being given historic and actual contexts of the division of competences between the Confederation and the cantons. Second, a theoretical framework is developed for the principles of the reform that allows a better understanding of the *general* effects of the reform and the *specific* effects of the CPs on the institutional cooperation. Important theories are defined, such as Public choice, transaction costs, and Principal-agent theories. The CPs' contents, procedures and applicability in the field are described. Third, a methodological section explains the theoretical dimensions used for the assessment of the CPs and the choice of the 25 cases studies, followed by a section containing the research questions and the hypotheses. Fourth, the results are discussed and analysed. Then the CPs are evaluated, and the hypotheses are tested. Finally, different fundamental arguments are discussed to explain why the system of the CPs is not optimal today and needs a complete rethinking. Concluding remarks and a discussion of the results of the allocation of tasks are presented.

## 2. Context and Problems

To understand national and regional relations in Switzerland, it is helpful not only to look at the structure and the organization, but also to have a brief look back at history. Switzerland's existence as a modern federal state dates back to 1848, when the cantons and their citizens accepted the new Federal Constitution, which guarantees status, autonomy and a degree of sovereignty to each institutional entity (Frey *and al.*, 2005). The national state has been unified thanks to a federalist system and a strong decentralization. The Swiss Federal model separates state power in three institutional levels ("power-sharing"): federal, cantonal and communal. Switzerland can best be described as a "bottom-up" type of cooperative federalism that leaves considerable policy, scope, and fiscal competences to the symmetric federal units (Ladner, 2015). Because the cantons could not handle all public duties, they gradually consented to give up some of their rights. Nevertheless, the competences of the federal authorities remained rather limited, and the residual powers remaining in the hands of the cantons<sup>3</sup> were preventing the political system from being too centralized (Ladner *et al.*, 2013). However, the apparent institutional stability of Swiss federalism since 1848 has long masked a hidden centralization of power both at the national (at the expense of the cantons) and cantonal level (at the expense of communes), in what Braun (2009) names the "creeping centralization" process that began after the Second World War. The reform of the allocation of tasks entailed a complete overhaul of re-assignment of competences and fiscal equalization between Confederation and cantons (vertical dimension), as well as among the cantons themselves (horizontal dimension) (Vatter and Wälti, 2003).

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<sup>3</sup> Residual competences: capacity of the municipality or the cantons to take care of a public activity, which is not claimed by higher authorities and not attributed by the Constitution.

Over time, the number of public tasks increased significantly and led to interwoven policy structures that became difficult to manage, as they resulted in an entanglement of responsibilities and competences (*Politikverflechtung*). As implementation of public policies was non-transparent and non-institutionalized, this led to irresponsible expenditure behavior and problems of spillovers (Braun, 2009 and Fleiner, 2002). Because the federal government had gained more and more powers - co-determination rights in many tasks areas, which were originally attributed to the cantons – in the early 1970's, it began to increase its debt while the cantons stabilized theirs, even though it remained high<sup>4</sup>. The Confederation progressively transferred its financial resources to the cantons responsible for the implementation of tasks. The 1980s marked the beginning of an economic crisis, which ultimately led the federal authorities to take austerity measures<sup>5</sup> and transfer its financial obligations to the cantons (Frey *and al.*, 2005). The cantons have become overwhelmed by the implementation and execution of tasks, and hence unable to finance and perform their own tasks. "It was increasingly argued that, when regulation, financing and implementation of a policy do not coincide, the system becomes sub-optimal" (Ladner, 2015). In the early 1970s, the media started describing the difficulties, the delays or even the non-execution of tasks by the cantons as a "crisis of implementation" (*Vollzugskrise*). The concept of executive federalism was strongly condemned and began to take on a negative connotation (Wälti, 2001). In this way, federalism seemed to create inter-dependencies and contradictions between actors: the Confederation required that the cantons execute the public programs, and the cantons in turn wanted to regain their autonomy and participation in the decision-making process. This system created an interpenetration of the three institutional levels underlined by a tangle of responsibilities, a challenge for which federalism was not prepared (Dafflon, 2004). The NFA reform began in 1991, with the initial analyses on the effectiveness of fiscal equalization and division of competences within a federal state prepared by the Swiss Finance Administration (Wettstein, 2002).

In summary, the reasons that led to the reform were as various as they were numerous (Jacot-Descombes, 2013):

- The increase of public tasks (between 1940 and 1970),
- The increase of the citizens' exigencies in the quality of the public service,
- The multiplication of powers ceded by the cantons to the Confederation (centralization process),
- The financial and administrative pressures imposed on the cantons by the Confederation,
- The loss of autonomy and decision-making competences of the cantons,
- The "Crisis of implementation" and the tangle of responsibilities,

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4 Federal Council. 1981. Popular turnout on the financial Regime. Bern. 709-710

5 Federal Council. 1980. Saving program. Bern

- The disintegration of the principles of federalism (transparency, subsidiarity, and fiscal equivalence).

The aim of the reform is to create a spirit of partnership through a vertical collaboration in which strategic management is the charge of the Confederation, and operational responsibility is assigned to the cantons. These CPs are legally based on art. 46 al. 2 of the Constitution of 1999: "*The Confederation and the cantons may agree that the cantons perform the implementation of federal law; to this end, they set up programs financially supported by the Confederation*". According to article 23 of LSu, the subsidies provided by the CPs are not measured by the progress of the work (input), but are based on results (output) (Wettstein, 2001). This procedure, regarded as a new form of organization, signifies a radical change from both an administrative and a conceptual point of view. It reinforces the multilevel government structure. Time alone will tell whether this way of meeting the challenges of multilevel governance (Benz, 2004) will prove to be successful (Ladner, 2010).

Currently, the second period of the CPs (2012-2015) is approaching its end, and it is appropriate to assess the effectiveness of the reform to date. This involves taking into account the meetings with cantonal authorities and the various evaluation reports from the Federal Finance Administration (March 2014), the Audit Office (May 2014), and the Foundation for Confederation Collaboration (June 2014). Although it would be premature to make definitive conclusions, it may be useful to study the advances made in disentangling responsibilities and tasks, and decreasing the expenses of the cantons.

### **3. The Conceptual Framework and Overview of the Literature**

The political elites believed that the allocation of tasks was the solution to change significantly the relationship between the Confederation and the cantons. Drawing on the federal reports and the literature, it is apparent that many principles of the New Public Management (NPM) have had a strong influence on this Swiss reform by providing its ultimate direction and shaping its values. Braun exemplifies this influence in showing that the "framework program", written and published by the Conference of Cantonal Finance Ministers (*Konferenz der Finanzdirektoren*; CFM) in 1991, was replete with NPM thinking: clear objectives, purposeful steering, and transparency of procedure. According to Braun, it even became impossible to reform the organization of the state without legitimizing it by a reference to the notion of efficiency or use of basic ideas from NPM philosophy. The conceptual background is thus centered on the NPM principles.

The establishment of the theoretical framework based its roots on the work of Christophe Hood in 1991. He drew attention to the origin of the NPM design, which is a marriage of two different ideologies. On one hand, one movement was the "new institutional economics" that was built on the post-World War II era: the development of Public choice theory, transactions costs theory, and Principal-agent theory. The new institutional economics movement abetted the creation of a set of administrative reform

doctrines built on ideas of competition, user choice, and incentive structures such as contracts and transparency. On the other hand, the second partner of this marriage was the business-type “Managerialism” phenomenon that results in successive waves of reform based on the ideas of professional management expertise with better performance and higher outputs (Pollitt, 1990 and Rhodes, 1997). The resulting three theories help to frame the main problems addressed in this article. To bring a new approach to the reform assessment, multi-level governance is also considered. In order to assess the CPs, the yardsticks of the NFA principles are applied. These are assumed to be the same as the NPM principles, which are considered as comparative references. New institutional economics and multi-level governance theories are defined in order to construct a set of assumptions and identify several important questions.

In the 1980s, NPM reform introduced methods and management tools directly from private and multinational companies (Pollitt & Bouckaert, 2004). The objectives were greater efficiency, productivity and quality of services, better use of public resources, and a reduction of hierarchy (Giauque & Emery, 2008). In Switzerland, the NPM has been a source of inspiration and had great influence in the 1990s (Emery, 2000). Reforms of public administration have focused mainly on increasing organizational efficiency and reducing costs. Accordingly, the Confederation has tried to transfer the NPM principles to vertical collaboration, whereas they were initially implemented in horizontal cooperation (among regions, cantons, or private and public players).

The Swiss government had precisely the ambition to create a partnership to promote a cooperation based on non-hierarchical relationships, in order to give a strategic role to the Confederation and operational responsibility to the cantons. This would provide more accountability and flexibility to the cantons, improve the performance of the public management, and strengthen exchanges between the federal and cantonal levels through a long negotiation process. The use of global budgets originating from the Confederation and distributed to the cantons would allow them to have operational freedom to fulfill the tasks agreed upon. Beyond these principles, the NPM also promoted the use of public contracts in public administration (Athias, 2013).

In this way, a more determined, professional, open and flexible public administration becomes a real machine, delivering more transparent policy and empowering managers to provide service delivery. Delivery contracts, agency contracts, convention objectives, and contracts of public markets all belong to “internal contracting”, such as the CPs (Chevallier, 2008); also known as “performance contracting”, as opposed to “external contracting”, according to Greve (2005). A first assumption can be formulated by considering the CPs as respectful of these principles. It raises some fundamental questions, such as whether the vertical cooperation is truly non-hierarchical, and whether the CPs really assign a strategic role to the Confederation and an operational role to the cantons that is reinforced by better communication?



Contracting for public services is thus an integral part of the NPM movement that influenced public sector reform in most OECD countries (Greve, 2005 and Hood 1991). One of the chief aims of contracting is to influence performance and achieve a better output. In fact, results-based management is still being seriously discussed at all levels of the political sector (Power, 2000). Proponents of NPM attribute a high priority to measuring outputs and outcomes, and aim to base their new policies and management activities on these data. This is ideally meant to make policy implementation more efficient (cost-effective action, measured by the costs/benefits report) and effective (achievement of the objectives) (Von Thiel, 2002). For this reason, performance has to be seen as the key feature of the NPM, as well as the main goal of the 2004 Swiss reform. The article 43 al. 5 of the 1999 Constitution stipulates by insinuation that the CPs have to be adequately *rational*. In accordance to the rational choice theory, the choices of an agent are aimed at optimizing profitability and productivity, which are directly related to performance (Scott, 2000). A second assumption can be expressed here by determining whether the CPs are performing well in the implementation of public policies.

According to the specialist Simon Domberger (1998), the benefits of contracting are specialization, market discipline, flexibility, and cost savings. These positive effects of public contracts are also emphasized by the **Public choice theory**. In accordance with this theory, policy makers may tend to pursue political rather than economic objectives, which can undermine the effectiveness of the service (Buchanan and Tollison, 1984). Governments and administrations often have incentives (election, income, power) that drive them to produce inefficient outcomes (Rawls, 1971). On one hand, the contract specifies the objectives and development of public service and can avoid such excesses. On the other hand, it is necessary to fully specify means and costs of public services in order to maintain a good quality of service.

The problem can be more deeply explained by using the terminology of the **Principal-agent theory, or agency dilemma**. One set of arguments finds its roots in the work of Waterman and Meier (1998), and is based on the development of political relations between a principal (Confederation) and an agent (cantons). Both are usually assumed to be motivated by self-interest. But the problem is that self-interest often makes the agent reluctant to share the information with the principal (Bergen *and al.* 1992). Thus the principal works under the conditions of incomplete information; the agent has information that the principal would like to obtain. Whenever an individual (the principal) trusts another person (the agent) to perform a service on his behalf and cannot fully observe the agent's actions, a principal-agent problem arises. The problem is a moral hazard and involves adverse selection, also called "hidden action" and "hidden information" (Greve, 2005). To encourage an agent (cantons) to act in the interest of the principal (the state), a compensation system, based on a model contract, is needed (Jensen *and al.*, 1976). Therefore, Confederations make a contract with the cantons "which perfectly controls the agent" (Laffont and Martimot, 2001).

In light of the conventions-programs, cantons are involved in the negotiations, and often know more than the Confederation about a particular public policy, which allows them to ask for more flexibility and freedom of action in its implementation. To maintain "control" and prevent cantons from acting for their own benefit, the Confederation must impose clear objectives in the contracts (Miller, 2005). "Everything is a matter of incentive: incentive to work hard, incentive to produce good quality products (...); how to design institutions in order to provide incentives for good economic agents is a central issue of economics today" (Williamson, 1975). In addition, the federal government should introduce a monitoring system and a benefit contract, as well as appropriate incentives, such as bonuses or penalties to reduce the risks; even if it creates "transaction costs" (Williamson, 1975).

In summary, agency theory uses the metaphor of a contract to describe relationships in which one party delegates to another (Jensen *and al.*, 1976). The focus of the theory is on determining the most efficient contract, given the environmental uncertainty and the costs of obtaining information for the principal to monitor the agent completely. Surprisingly, most agency models define efficiency from the principal's point of view, where the principal is not always the dominant party in the relationship (Bacharach and Lawler, 1981). Indeed, Greve assumes that contracting represents a break with the hierarchical mode of governance. In the context of CPs, an efficient contract is not the one that brings about the best possible outcome for the principal given the constraints imposed; but rather that which maximizes the joint utility of both principal and agent. A third assumption can be articulated by considering the CPs as an instrument creating an equal negotiation between the Confederation and the cantons.

The **Multi-level governance theory** also is also relevant to this study. With the recent increase of cooperation and participation in politics or public administration, the multi-level governance theory has gained importance (Bach and Flinder, 2004). It quickly became a catchall concept that indicated phenomena taking place on three different analytical levels, as stated by Piattoni in 2010: political mobilization (politics), policy-making arrangements (policy), and state structures (polity). It also evokes the idea of increasingly complex arrangements and network structures for arriving at authoritative decisions (Piattoni, 2010). At its center, the theory prefers negotiation and cooperation instead of coercion, command, and control (Kersbergen and Waarden, 2004).

Former experiences have shown that development of political programs and their implementation are no longer in the hands of the sovereign state alone. Although CPs are designed to handle common tasks between the Confederation and the cantons, their negotiation involves other players. In practice, cantons need to consult both public and private parties before and during the negotiation process. This broad consultation brings a new perspective to the vertical cooperation. According to Peters and Jon (1998) and Hooghe and Marks (2001), multi-level governance adds new elements to traditional state functions, such as civil society, multilevel politics, network systems, and

bargaining. It begins when the relationship is not hierarchical, and when it involves the three main institutional levels: "negotiated, non-hierarchical exchanges between institutions at the transnational, national, regional and local levels" (Peters and Jon, 1998). This theory thus invites normative reflection on the conditions under which binding decisions gain widespread acceptance and bestow legitimacy. Hoogh and Marks (2001) argue that public management is more effective if it is carried out by multilevel relationships, which could limit federal centralization and reinforces the role of each player. In accordance with the works of Benz (2010), a last hypothesis can be framed by assuming that this multi-level governance in the CPs' structures allows for more effective and legitimate policy-making.

#### 4. The CPs as New Public Instruments

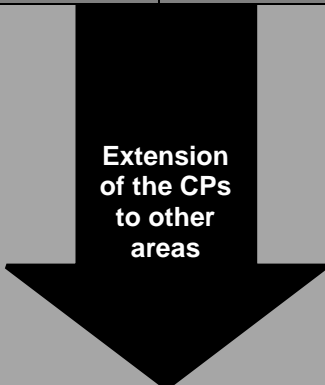
The CPs are valid for three periods of four years (2008-11, 2012-15 and 2016-19, respectively), and the model is the same for each canton. These CPs are allocated between the Confederation and the cantons, which negotiate the federal contributions and the package of coordinated and consistent measures for a period of four years. As mentioned earlier, grants are theoretically no longer based on individual projects, but on a general budget based on objectives and indicators.

At the beginning of the reform, only 15 main common tasks were covered by CPs, all gathered in nine different categories of public policies. As time passed, other public areas have been added through successive changes of laws and ordinances, and are now treated by CPs. These public programs are additional tasks, which have been fulfilled jointly by the Confederation and the cantons. These new public areas are:

- the New Regional Policy (2008-2015),
- the renovation of the buildings program (2010-2020) introduced by the Act on CO<sub>2</sub>,
- the introduction of cadastre restricting public right to land (2012-2015),
- the specific encouragement of cantonal integration of foreigners (2014-2017).

They are not all based on a four year period. For instance, the first one is planned for a six year period, whereas the renovation of buildings program is calculated on a ten year period. However, these programs are sometimes broader and may include other territorial units, such as regions or districts (e.g., the New Regional Policy). To conclude, nineteen CPs are in progress in 2015. An overall picture of the CPs in existence and their associated tasks is presented in Figure 1, below. The tasks in bold face are areas covered by the CPs. As of 2015, twenty-two common tasks, nineteen CPs and four public areas are applied by CPs (in grey).

**Figure 1: Division of tasks between institutional levels.**

Year	7 Federal tasks	10 Cantonal tasks	26 Common tasks
2008	<ol style="list-style-type: none"> <li>1. Pensions</li> <li>2. Invalidity insurance</li> <li>3. Support for country-wide activities of organisations for the disabled</li> <li>4. Highways</li> <li>5. Defense</li> <li>6. Agricultural consultancy agencies</li> <li>7. Animal breeding</li> </ol>	<ol style="list-style-type: none"> <li>1. Support for housing</li> <li>2. Working and day-care facilities for invalids</li> <li>3. Special schools</li> <li>4. Support for regional and local activities of organisations for the disabled</li> <li>5. Educational grants up to secondary school</li> <li>6. Traffic control outside agglomerations</li> <li>7. Support for educational facilities for social workers</li> <li>8. Recreation and sport</li> <li>9. Airfields</li> <li>10. Improvement of housing conditions in mountain areas</li> </ol>	<ol style="list-style-type: none"> <li>1. Medicare (individual subsidies for health care insurance)</li> <li>2. Additional social benefits</li> <li>3. Higher education grants</li> <li>4. Traffic within agglomerations</li> <li>5. Regional traffic</li> <li>6. Main roads</li> <li>7. <b>Noise protection along local and cantonal roads</b></li> <li>8. Execution of criminal penalties and measures</li> <li>9. <b>Official measurements</b></li> <li>10. <b>Protection of cultural heritage and conservation of historic monuments</b></li> <li>11. <b>Nature and wildlife protection</b></li> <li>12. <b>Flood protection</b></li> <li>13. <b>Water protection</b></li> <li>14. Improvement of agricultural structures</li> <li>15. <b>Forest maintenance (protection, management, and biodiversity)</b></li> <li>16. <b>Hunting oversight</b></li> <li>17. <b>Fishing oversight</b></li> <li>18. <b>National parks</b></li> <li>19. <b>Defensive works and basic data on dangers</b></li> <li>20. <b>Protection of natural habitats of waterfowl and wildlife</b></li> <li>21. <b>Protection of natural heritage of UNESCO</b></li> <li>22. <b>Development program for mountain region</b></li> </ol>
2008	 <p><b>Extension of the CPs to other areas</b></p>		23. <b>Encouragement of the development of regional policy</b> - economic development (New Regional Policy (NPR))
2010			24. <b>Remediation Program for buildings</b> - partial revision of the CO2 Act (2010-2020)
2012			25. <b>Introducing a cadastral real estate register to restrict public right to land</b> (2012-2015)
2014			26. <b>Specific encouragement of the integration of foreigners</b> - (Revision of the cantonal integration programs (PIC))

As the idea behind the creation of the CPs was to use them as a blueprint for other tasks, they can easily be applied to other common tasks. The eight common tasks that are not covered by the CPs are those whose principal responsibility resides clearly with the cantons. In these cases, the initiative for the realisation of cantonal benefits belongs to private owners, or to those involved in the purely financial provision of services, as opposed to institutions or individuals (whose contributions are considered non-negotiable because they have already been settled through federal law; Federal Finance Administration, 2014). Each CP is written in sixteen points<sup>6</sup>. Despite the Confederation's willingness to standardize these contracts, norms vary according to the complexity or the particularity of the public domain. These public contract models are given by the Confederation to the cantons as an annual report that comprises the following:

The **preamble** sets out the framework of the CP. It presents all the **objectives**, which have to be achieved at the end of the four year period. The objectives are specified in detail with different **indicators**. Depending on their complexity, they can be included in the appendices of the CP. These indicators are the criteria for the final control by the Confederation, which verifies that the objectives have been fulfilled. "In all cases, indicators should be defined as much as possible to not be influenced by unpredictable factors such as natural events, especially the weather."

The **legal bases** establish the identity of the institutional players, as well as the scope and duration of the convention. The canton must achieve the objectives "at the lowest cost, within the time limits and goals, and organize themselves adequately". The amounts paid by the federal government may be divided among the different objectives of the program. These amounts are paid each year in June or July, according to the Convention-program schedule. **Payments** are made independently of the achievement of objectives, unless significant problems arise, in which case benefits may be reduced or suspended.

If one or more objectives are not fulfilled before the end of the period, the canton can ask for a **delay** of an additional year to achieve them. For that extra time, the Confederation does not make any additional contribution. However, "the obligation to achieve the objectives within an additional period does not apply if the canton can prove that the agreed service cannot be provided due to external circumstances beyond its control". If after additional time the canton is unable to meet the goals, the federal government may ask for a payback of federal contributions. It is also possible for the

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<sup>6</sup> 1. Preamble 2. Legal bases 3. Contracting parties 4. Contractual territory 5. Validity 6. Objects of the contracts 7. Bases for financing 8. Method of payment of the fixed contribution 9. Administration 10. Obligations of the parties 11. Framework conditions and terms of adaptation 12. Performance of the contract 13. Procedure in case of differences of opinion 14. Miscellaneous 15. Entry into effect of the contract 16. Appendix

cantons to **change goals** during the contract time, if conditions change and excessively complicate the execution of the CP. In this case, if a service cannot be provided, alternatives can be found.

The responsible cantonal service is authorized to use the federal contribution to provide for another objective of the program. To have an effective and optimal CP, this **adaptation** mechanism must be accompanied by an escape clause: if a provision of the agreement loses part or all of its effectiveness due to changes in the general conditions, this does not affect the legal effectiveness of the entire CP. "As a private contract law, the intent of the provision in question must be reached as fully as possible."

In case of **differences of opinion**, a special procedure can be applied to settle conflicts, even during the CP period. Finally, the State Councillor of the canton and the head of the federal department usually **sign** the contracts.

The negotiation process includes the following steps:

- The Confederation sends a letter to the cantons to initiate negotiations on CPs. The cantons must specify the general lines on the content and financial matters in a contract draft.
- After a general review of cantonal requests by the federal board, the negotiation may start. During the negotiation process, each party provides interdisciplinary coordination between specialized federal and cantonal divisions.
- Adjustments should then be made on the positions of each player, before the formal notification of the agreement to the appropriate federal agency.
- The Confederation and the canton finalize the agreement, and when everything is accepted, the newsletter is officially published and the cantons transmit the CPs to municipalities for consultation.

The municipalities cannot participate in the negotiations, as these may only occur between the Confederation and the cantons. Third parties merely have the right of final consultation; or, exceptionally, to be consulted by the main institutional player during negotiations on projects involving towns and municipalities (particularly in the field of environment).

Conversely, a contact with individual municipalities is recommended when a CP refers to a single exceptional object on the territory of the municipality in question. In practice, it is very rare that municipalities wish to consult the CP. Nevertheless, it should be noted that the CPs involve more strategic objectives, and therefore it is a relatively rare occurrence that common interests are particularly affected.

After notification or publication, the cantons, municipalities, or third parties have thirty days to appeal if they wish to make adjustments to the CP content. If an appeal is accepted, the Confederation must contact the cantons for a second proposal - if necessary, following further negotiations.

Finally, after an appeal procedure, the authorized agents – those responsible for the federal office and the cantonal State Councillor - sign the agreement. The CP then becomes a contract under public law.

## 5. Research questions, hypotheses and methodology

The purpose of this paper is to determine whether the CPs meet the objectives of the reform, and to assess the allocation of tasks and their impact on the vertical cooperation. This requires answers to the following research questions:

- Is the vertical cooperation non-hierarchical?
- Does it give the CPs a strategic role in the Confederation and an operational role in the cantons?
- Should the vertical cooperation be reinforced by improved communication?
- Are the CPs performing as dictated by the Constitution?
- Is there a multi-level governance situation in the application of conventions-programs? And if so, to what extent does it allow a better implementation of tasks?

In addition four hypotheses were tested:

- H1: The CPs respect and apply the NPM principles.
- H2: The CPs are performing in the implementation of public policies.
- H3: The CPs create an equal negotiation between the Confederation and the cantons.
- H4: These multi-level governance structures allow for more effective and legitimate application of the CPs.

The qualitative study was based on twenty-five cases studies. Five different CPs were selected for analysis (protection of cultural heritage and conservation of historic monuments; encouragement of the integration of foreigners; economic development; protection against noise; and protection of the nature and landscape), as were five cantons (Vaud, VD; Valais, VS; Geneva, GE; Zurich, ZH; Uri, UR). Each CP was carefully chosen based on the fact that each has different characteristics, such as financial deficits, institutional communication weaknesses, or delay issues. The diversity of the sample allows for a complete picture of the CPs' applications. Likewise, the cantons were chosen according to their economic, cultural, size and demographic

density differences (chosen in accordance with the data provided by the Swiss office of statistics (*Bundesamt für Statistik*, BFS).

First, a questionnaire of twenty-seven opened or closed questions in French or German was submitted to the cantonal representatives in charge of the selected CPs. This questionnaire was based on the principles of the NPM. These NPM principles are the following: Vertical partnership, Non-hierarchical collaboration, Attribution of strategic/operational roles, Global grants, and Performance.

It is very difficult to define the performance, as it is not possible to impose objective indicators about what constitutes “good performance.” Consequently, the outcome was defined as the “perception of the performance” that can be measured by two variables: the efficacy and the efficiency.

The analysis was based on variables directly interpreted from the NPM principles previously listed. The variables that were used for the research include:

- the intensity of the communication between the institutional levels before and during the negotiation process,
- the type of role given to each player,
- the degree of coordination with other players (multi-level governance),
- cantonal satisfaction,
- the type of federal grants agreed upon (based on inputs or outputs),
- the profiles of the cantons (economic weight, demographic density, and geographic size of the cantons to distinguish whether they have any influence on the contractual agreements).

The questionnaire answers were coded from one (positive) to five (negative or “I don’t know”), and transcribed into the IBM SPSS Statistics 22.0 software to analyse which questions were relevant for the research, relying on frequency tables and initial observations.

This paper develops only the three first steps. It presents intermediate results from twelve interviews given in cantonal offices from June 2014 to March 2015. Every public domain and every canton selected were included in this first sample. The questionnaire seems to be both relevant and precise. Only two questions were slightly modified following remarks of two cantonal authorities.

The future steps will be the completion of all these interviews, and addition of data from the national level provided by interviews with federal authorities. This will allow analysis from both sides of the negotiation: the Confederation and the cantons. Then, the results will be analysed on the fs/QCA software to find which conditions are necessary or sufficient to have performing CPs. This Qualitative Comparative Analysis Method (QCA) is commonly used to generalize results in a macro perspective by making a comparison



with a few qualitative cases. It integrates key strengths of both qualitative (case-oriented) and quantitative (variable-oriented) approaches that will bring a strong *plus-value* to this research.

## 6. Findings

### Interview Results

Twelve interviews have already been conducted with cantonal authorities. Some CPs seem to be more effective than others. One main observation can be made: if the public task is originally well-defined and can easily be divided into clear objectives, then it is easier to set indicators. However, this seems to be an ideal situation, because the main problem remains: the definition of indicators and the respect of the objectives agreed upon at the beginning of the negotiation. The CPs need time in order to be well-accomplished.

For instance, the CP for **the official measurements** was the first one to be launched in 2008. At the beginning it even was a *pilot-project*. After a few adjustments, it is now perfectly applied. On the contrary, the CP for the **protection of Cultural Heritage and Historic Preservation** was applied later; at the beginning, the subsidies system was still based on specific costs (input) instead of general grants (output). It is believed by Mr. Benoît Coppey, Deputy of Heritage in the monuments and archaeology service of Valais, that this CP should remain as it is. The reason is that in contrast to the other public domains, four year planning is impossible. His service operates on the requests of punctual intervention from municipalities, private parties, or churches. As a consequence, he cannot know what annual financial amount is required for any given year. The Federal Culture Office (*Bundesamt für Kultur*; BAK) already expects his service to determine the budget for the 2016-2019 period in April 2015, but it is not possible to project how many projects will be undertaken. Moreover, the passage from one CP to another is poorly organized because the grants completely stop during the transition; as written by Mr. Coppey in the annual report, “the latest execution for the 2012-2015 period must be made by April 2015. This will result in a period of uncertainty until the approval of the following convention-program (first half of 2016), during which it will be impossible to confirm federal funding for projects submitted during this period.” Another problem raised is the inadequate budget provision. A 2014 federal report announced that the total amount needed to perform all the tasks should be in excess of 100 million francs. Today, the amount reaches only 34 million. Valais requested 3.9 million, but according to Mr. Coppey, it will receive only 2.8 million. In summary, such evidence confirms that the CP for the protection of Cultural Heritage and Historic Preservation has encountered major temporal and financial problems.

To give another example, the CP for the **protection of Nature and Landscape** was applied in 2008 with unclear objectives which were too broad, such as for “natural environment” or “species,” according to Mr. Bertrand Von Arx, Director of biodiversity in Geneva. Moreover, there is a lack of communication between some cantons and the Confederation: as stated by Mr. Von Arx, the Federal Office for the Environment (*Bundesamt für Umwelt*; BAFU) should include the cantons earlier in the decision-making process. For example, the Confederation has made an important working document about federal priorities in the environment. Mr. Von Arx deplores the fact that the content was decided only by the federal experts, when in fact, it is required that the cantons participate. In addition, the Handbook of the BAFU (2014) drew attention to the diversification and the heterogeneity of the protection measures, the landscape development in the environmental arena, and the impossibility of comparing the two. In making decisions alone, the Confederation could lack some important cantonal information, resulting in negative interactions with the cantons. Another problem raised by the canton is the measure of the indicators or objectives. Indeed, in the environmental area, the results of an action cannot be collected after four years; rather, a much longer period is required (Federal Audit Service, 2013). In those circumstances, the annual evaluation made by the Confederation is useless. Finally, Mr. Von Arx maintains that the Confederation should give more flexibility to the cantons; for instance, allowing them to work together on larger cantonal projects.

Likewise, Mrs. Véronique Martrou, Economist at the Department of Economic Development and Trade of Vaud and in charge of the convention-program for the **Encouragement of the development of regional policy**, argues that the Secretariat for Economic Affairs of the Confederation (*Staatssekretariat für Wirtschaft*; SECO) should participate more in the discussion before the negotiation process. As stated by Mrs. Martrou, the strategic orientation that should normally be given by the Confederation is not clear enough. In that regard, she regrets not having formal sessions with the Confederation to share more; she truly considers that it is a matter of coordination.

Another problematic situation concerns **the convention-program for the issues of Noise and Sound Insulation**. The two cantonal representatives in charge of this public task agree that the role of the Confederation is not strategic enough and sometimes can be incompetent, e.g. with regard to the Federal Roads Office (*Bundesamt für Strassen*; ASTRA). According to the representatives, ASTRA is not as innovative as it should be. Mr. Cyril Durussel, Engineer at the Directorate General for Mobility and roads in Vaud, says that ASTRA is still studying solutions that have existed for the past twenty years. The Noise Protection ordinance was written in 1987 and revised in 2004. It set an end to the federal subsidies in 2015 for highways and railways, and in 2018 for other roads, such as cantonal and municipal roads. Political players already know that many of the objectives will be reached. As a result, many compensation claims from individuals will be formulated because of noise from heavy transport. According to the Federal Office of

the Environment, victims will demand 19 billion Swiss francs as compensation. Obviously, such a prospect seriously concerns federal officials. The Federal office of the Environment would like to abolish the current system and base the standard noise compensation on more predictable annual amounts, which could avoid disbursement of the large and variable amounts determined by the courts (the so-called law project "LAN"). But according to Mr. Lucien Pignat, Engineer at the Department of Transportation, Equipment and Environment of Valais, the cantons already oppose this scenario, fearing high costs. According to Mr. Christian Gorce, Director of the Department of the Environment, Transports and Agriculture of Geneva, another issue is that the negotiation is not as equal as desired; rather, it is very hierarchical. More than imposing the contract on the cantons, the Confederation has the final word on the subsidies distributed to the cantons. Thus, the bargaining process is far from equal, which illustrates the largest contradiction with the NPM principles. In the questionnaire responses, Mr. Gorce and Mr. Pignat expressed their dissatisfaction with the weak federal subsidies received and the impossibility to request an increase. They question whether the CPs are truly innovative, or whether they already revealed their limitations.

### Questionnaire Results

Interviews of respondents revealed many interesting points. The answers to the questionnaires were entered into the IBM software, from which measurements were made and calculations were performed upon the data.

The first observation made is on the contacts that cantons have, both before and during the negotiation process of the CPs (Figure 2). By counting the number of positive answers of the questionnaires, it was possible to create bar plots. Each percentage was calculated as follows: total of number of "very strong" + total of number of "strong" / total of answers (12) x 100.

Before the negotiation, the cantons apparently don't have any contact with the media (0%) and very few with private companies (12%). Sometimes they consult the municipalities (28%), as some of them could have special requests or interests. For instance, the protection against noise often involves the municipalities. The canton of Vaud consulted almost 160 municipalities before the negotiation, in order to estimate the needs and expectations of these participative municipalities. Regarding the most frequent contacts, these concern the Confederation and the other cantons. The only CP that involved the associations before the negotiation is one concerning the protection of the Nature and Landscape. For instance, expertise from "Pro Natura,"<sup>7</sup> or the Swiss

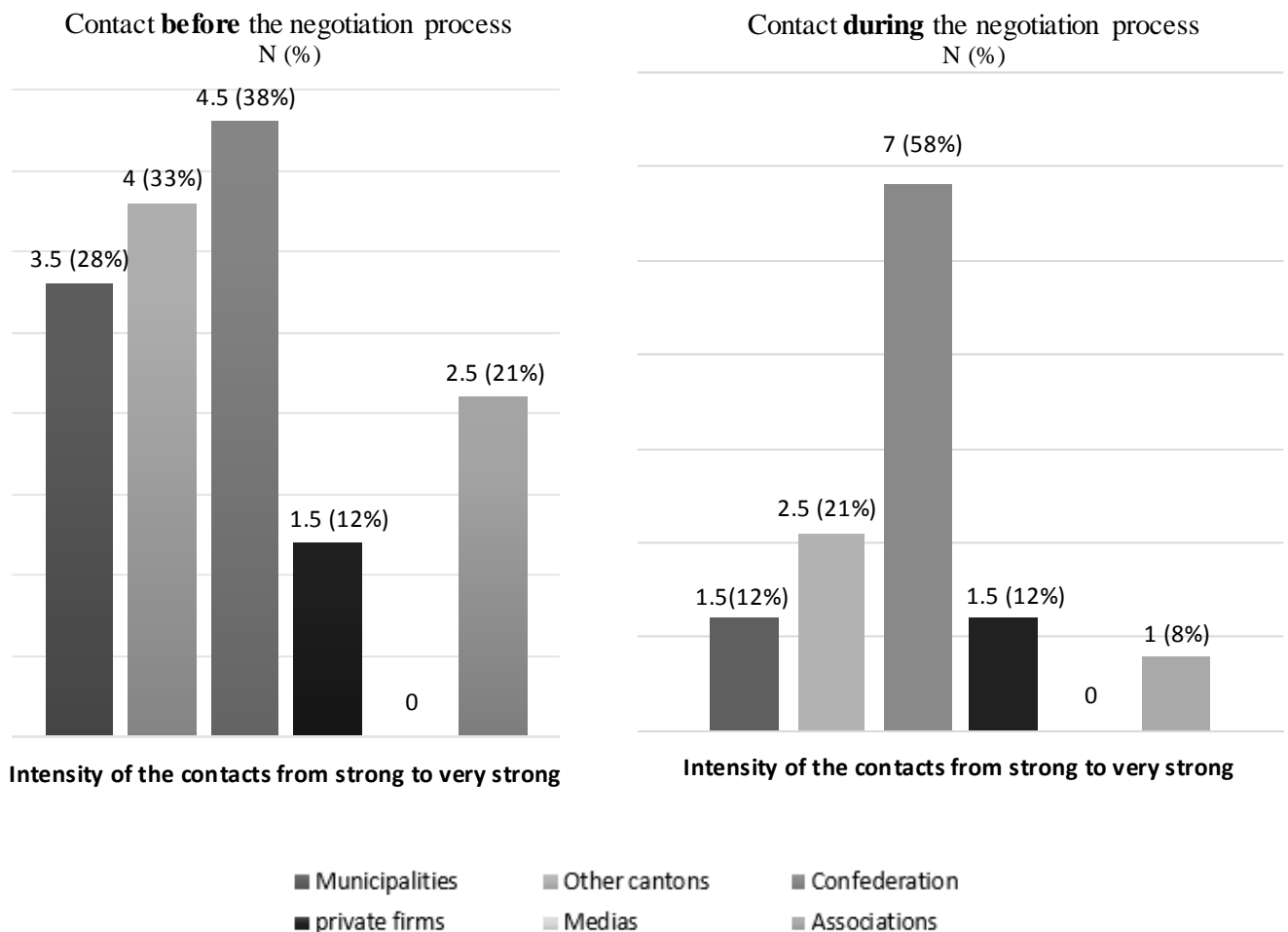
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<sup>7</sup> Pro Natura is a private non-profit organization founded in 1909; it is the largest organization for nature conservation in Switzerland.

association for the protection against birds (“BirdLife”), were requested by the Nature and Landscape Office in Geneva. The same is also true among the Universities, especially the Graduate School of Landscape, Engineering and Architecture of Geneva (HEPIA). Indeed, expertise from environmental associations or universities are often sought by some of the cantons for the preparation of the CP.

In contrast, during the negotiation, municipalities are consulted less (12%), which is also true for the other cantons (21%). After the “multilevel groundwork” is achieved, the cantons then have to debate with the Confederation alone. Indeed, the graph shows that the main contact that cantons have is with the Confederation (58%). This step only concerns both of the contractors. It moves towards an atmosphere of competitive behaviors between each canton. “Who is receiving more from the Confederation, and why?” are recurrent preoccupations among the cantons. Despite of the fact that the CPs are free access – although not necessarily published online – they were not easy to obtain, nor was it simple to ask the cantonal authorities for the financial amounts they received from the Confederation.

**Figure 2: Contacts before and during the negotiation process. Percentages of positive answers.**



The second observation was made pertaining to the degree of satisfaction that the cantonal representatives have with the CPs (Figure 3). The question was “What is your degree of satisfaction with the following aspects of the CPs?” The question contained the following elements:

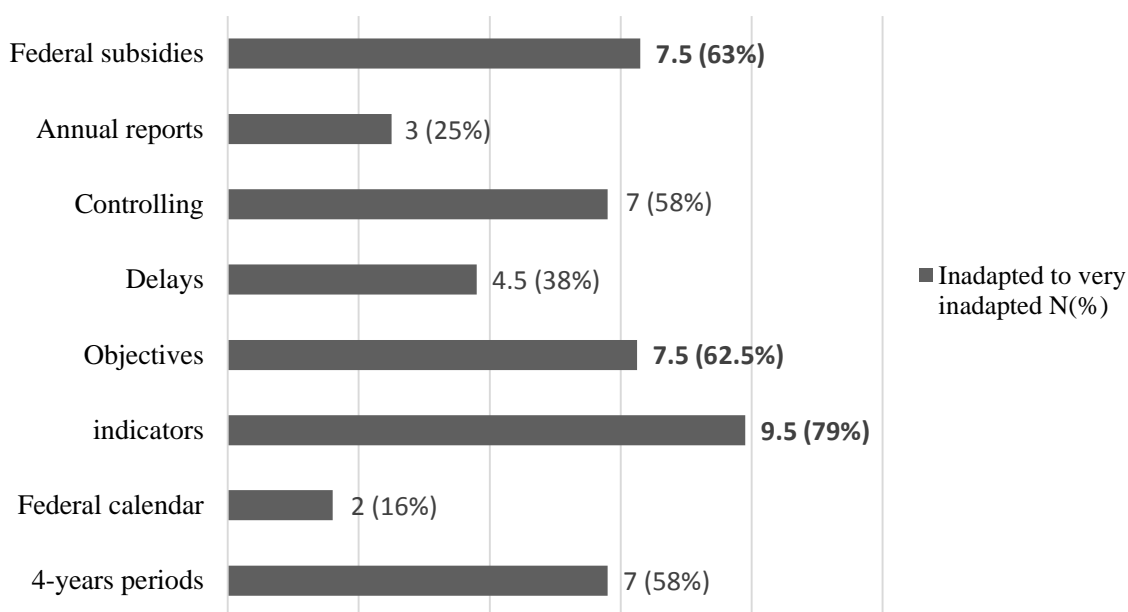
- duration of the contract,
- structure (in sixteen dispositions),
- frequency of the federal meetings,
- indicators,
- objectives,
- delays,
- federal control,
- surveys,
- annual reports,
- type of federal finance,
- federal finance subsidies and financial planning,
- facility of the procedure.

The possible answers ranged from “very inadapted” to “very adapted” and “I don’t know”. To determine which elements of the CPs still need to be improved, the negative answers were counted from “very inadapted” to “inadapted”. Among the sixteen items, only seven were relevant. At first glance, the fixation of indicators and objectives causes important problems for the majority of the cantonal authorities interviewed. The four year period is also problematic. For five cantonal services of twelve, four years is insufficient time to accomplish all the objectives initially agreed upon. This is especially the case for the protection of Cultural Heritage and Historic Preservation convention. Likewise, five cantonal players think that the federal control is not well-adapted. They are missing financial and personnel resources, which leads them to neglect their own areas of responsibility. Indeed, Mr. Von Arx from Geneva drew attention to the report of the 2013 Federal Finance Control, which emphasizes the uselessness of these controls. The reason is that the results sometimes cannot be measured at the end of the period, such as the environmental tasks. For instance, “if the authorities decide to plant a tree, the result will not be evident in 4 years. It will take time for this tree to grow,” comments Mr. Von Arx.

Figure 3 also shows that the federal subsidies are not adapted for many cantons. The interviews indicated that this was the most problematic element of the CPs, as the canton cannot decide the amount received. It depends heavily on the other cantons, and

often inadequate funds are granted. The problem is significant in the Cultural Heritage and Historic Preservation convention domain (Figures 4 and 5). However, the frequency of the meetings organized by the Confederation does not seem to be problematic, nor do the annual reports. Even if the cantonal agents in the Noise protection domain disagree, the system of calculation imposed by the Confederation is “a big and complex Excel graph to complete with irrelevant statistics”.

**Figure 3: Degree of satisfaction of the cantonal authorities interviewed. Percentages of negative answers**

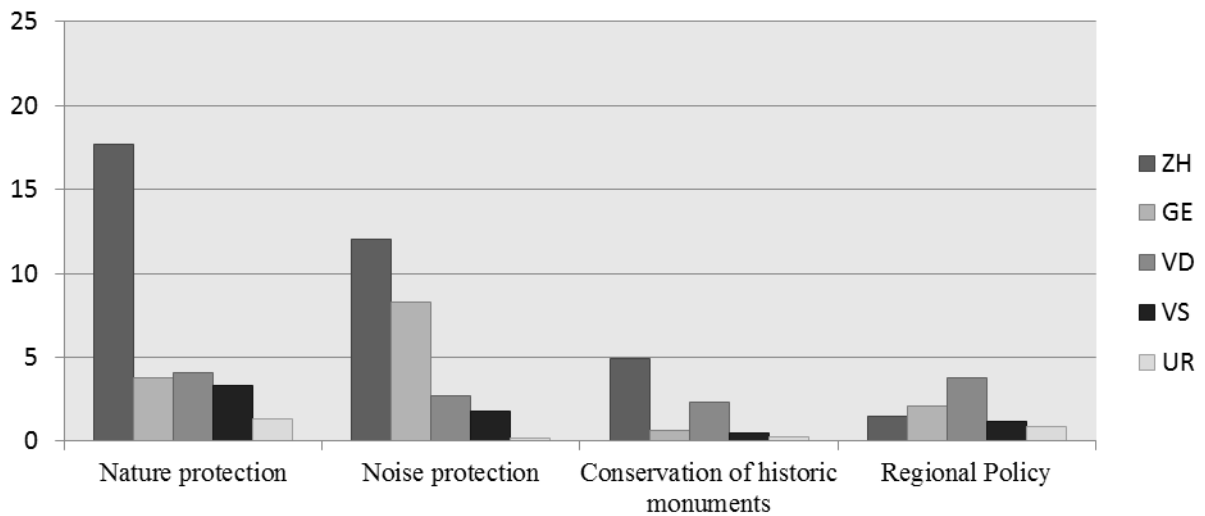


Figures 4 and 5 show strong disparities between cantons and public areas. A first reflection can be made on the general increase of the federal subsidies from the first to the second period. The cantons realized from experience exactly how much they need and where best to concentrate their expenses. As a result, they could re-direct their demands and priorities. However, there are some exceptions; such as the Noise protection CP, whose period spans from 2008 to 2018. Instead of changing the CP, the cantons modified the conditions and objectives, in addition to the financial amounts agreed upon in the first place. Differences of federal subsidies are quite relevant for the Noise protection CP, and to lesser extent, the Conservation of historic monuments, even if they remain low.

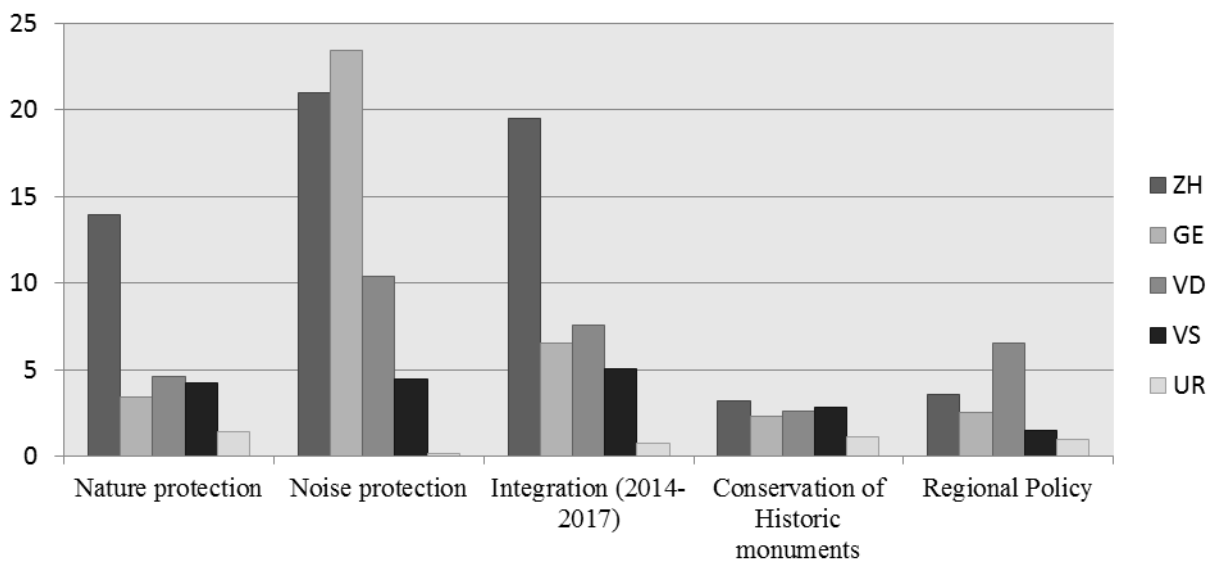
Initially, the economic weight of the canton seems to depend upon the financial amounts received by the Confederation. For instance, there is a trend for Zurich and Geneva, the richest cantons of the sample (see the cantons profile in Annex 1): they are receiving more than the other cantons. This is especially evident in regard to Zurich. On the

contrary, the subsidies received by the canton of Valais are low, and are even lower for the canton of Uri, which is considered as the weakest canton in terms of economic weight. When it comes to the analysis of public areas, the subsidies given for the Conservation of historic monuments are very low. The subsidies for the protection of the Nature and Landscapes do not vary appreciably, in contrast to those in the Regional Policy domain.

**Figure 4: Federal subsidies for the 2008-11 period (Million).**



**Figure 5: Federal subsidies for the 2012-15 period (Million).**



Source: federal subsidies agreed upon and listed in the CPs collected from March 2014 to March 2015.

Two variables used in the questionnaire allowed the CPs' degree of performance to be assessed, i.e., efficiency and the efficacy (Figure 6). The first question related to the measure of efficiency was "How do you rate the costs/benefits of the conventions-programs?" Possible answers ranged from "Very low", "Acceptable" to "Very high". Most major cantonal representatives chose "Low to very low" (53%) or "Acceptable" (45%), while only a small minority (2%) chose "high to very high". For more than half the respondents interviewed, there are no changes compared to the situation before the introduction of the CPs. The second question was "Does the convention-program allow to save on implementation, administrative, expertise and evaluation costs?" (Figure 7). The question related to efficacy was the following: "Did you reach the 2008-11 objectives?" Most of the cantonal representatives answered "No" (65%); the remainder answered "Yes" (25%) or "I don't know" (10%).

**Figure 6: Measure of Efficiency and Efficacy of the conventions-programs**

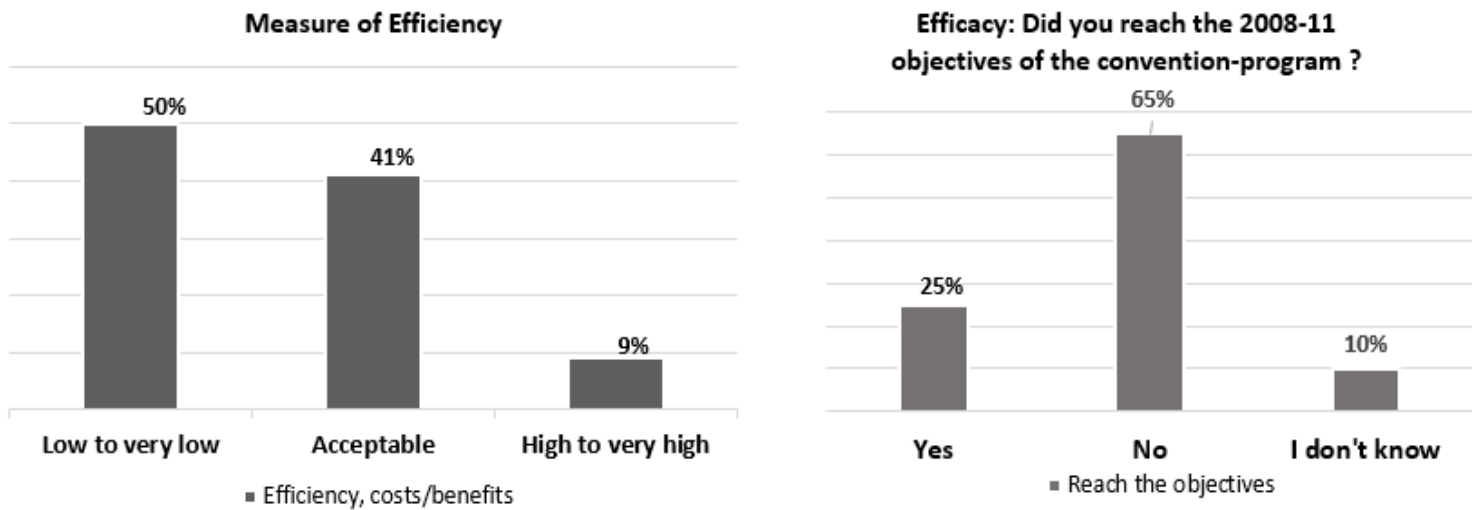


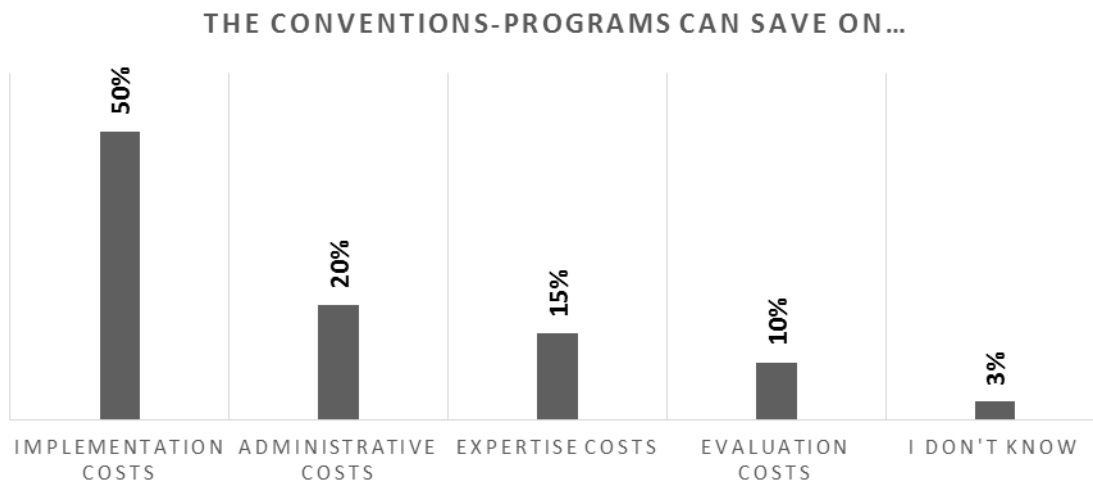
Figure 7 illustrates that the CPs can only save on implementation costs. When it comes to administrative, expertise and evaluation costs, there are no differences than before the application of the CPs. Over half of the cantonal authorities interviewed think that CPs allow a better financial and political organization, even if the costs remain high for some charges. They are convinced that these contracts introduced clearer regulations and facilitated the implementation of public policies by giving more time and powers to the cantons.



Before the negotiation, the cantons have enough time to plan a better implementation action by contacting other players, including other cantons and to a lesser extent, associations and private players. Subsequently, they can be fully ready to bargain with the Confederation. However, the majority of the people interviewed think that they are not able to save costs on administrative tasks, expertise and evaluations. On the contrary, the introduction of CPs creates more administrative tasks by requiring preparation of the annual reports, gathering of the results, generation of subsequent reports, coordination of meetings between other cantons, and punctual compliance with federal controls.

Likewise, the evaluation costs increased because the cantons must present outcomes, effects and consequences in a timely manner. The assumption is that this is a direct result of the growing importance of performance assessment in the public sector.

**Figure 7: overview on the conventions-programs' costs savings.**



*Actual and future challenges*

Experience and practice have indicated that the use of CPs involves a learning process, a “step by step” procedure<sup>8</sup>. So far, the administrative units that have regularly and gradually implemented such contracts seem more successful than the offices that wish to impose them quickly, as demonstrated by the success of official public measurements<sup>9</sup>. The introduction of the CPs involves a strong organization for each step of the process. Results-based management demands a new cultural vision and unprecedented types of relationships between the players involved. Although the first period (2008-11) has shown fruitful changes, improvements are still needed. The BAFU has presented a first assessment of the CPs in environmental domains during the first period (2008-11). The results of the questionnaire generally confirm what the Confederation has assessed for this first period. However, the results raise new issues, such as the cantonal perception of the federal controls, the federal subsidies, the costs savings, or the degree of contact (or communication) before and during the negotiations.

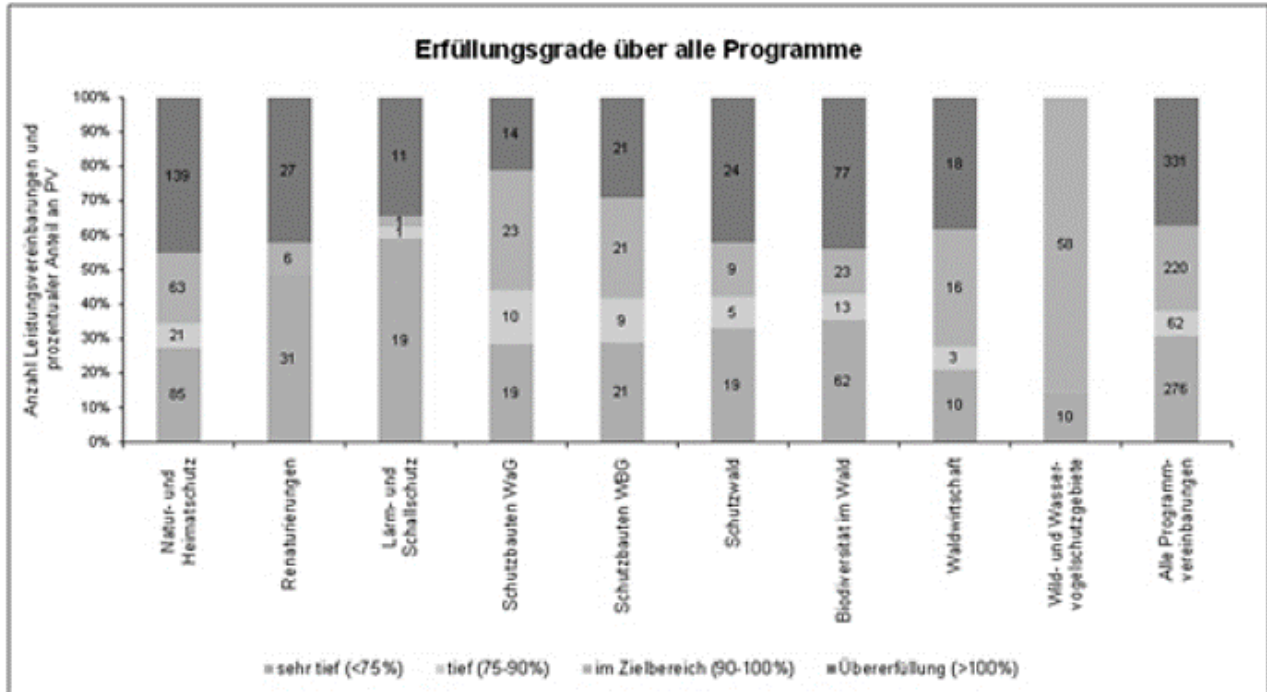
Using the results announced by the cantons, the BAFU made a comparison of each program and each performance indicator, with the targets set in the conventions. The results were derived from its annual control (“controlling”). The assessment indicators were the “realization rate,” from “very low” to “very high” (Figure 8). The first column represents the CP on the Nature and Landscape protection, and the third column illustrates the CP on Noise protection. The first column shows that eighty-five of the indicators reached 28% of the objectives, while the third column indicates that nineteen indicators reached 55% of the objectives. The last column combines all the CPs in the environmental area. Five hundred and fifty-eight of the indicators didn’t reach 60% of the objectives initially agreed upon. This evaluation has found some evidence to support the idea that the CPs need strong improvements to the indicators. According to Daniel Lehman, in charge of annual controlling, this problem arises from the complexity of the procedures and the impermissibility of the natural processes. The control’s forms were modified and simplified in 2013<sup>10</sup>.

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8 Federal Finance Administration (March 2014), the Audit Office (May 2014), and the Foundation for Confederation Collaboration (June 2014).

9 Federal Financial Control. 2014. Programm Vereinbarungen-Risiken und Herausforderungen Synthese Bericht; Bern.

10 See the Newsletter of the Federal Office for the Environment, January 2013.

**Figure 8: Evaluation of all the CPs in the environmental areas.**

Source: Newsletter of the Federal Office for the Environment (October 2012).

In addition to the federal evaluation on the environmental area, some other general problems were observed during the first period and half of the second period. These were summarized by the cantons in 2014<sup>11</sup>, and also identified in this study.

Of special interest is the excessive influence of the Confederation in the definition of contract objectives, which reduces the flexibility of cantons. Challenges also arise in respect to the unconditional transfers defined by the CPs. According to the inputs (specific costs or *inputs*), too many contributions are still paid by the Confederation, which was also the procedure in the old system. During the first period, the BAK gave financial contributions to the cantons based on the degree of implementation progress, which was also the procedure before the reform. This issue can be seen in the CP for the protection of Cultural Heritage and Conservation of Historic monuments.

Another difficulty that emerges is the fixation of precise indicators of reference, which makes the controlling process more complex. This problem has also been previously identified within the questionnaires. "Sometimes results of a project are achieved at the end of the period", which explains the absence of reliable and measurable indicators. As

<sup>11</sup> CdC. 2014. Monitoring on Federalism.

a consequence, federal control becomes complicated and periodic achievements cannot be calculated. However, this allows the cantons operational flexibility, which corresponds to the main objective of the reform. According to several federal agencies, the margin of independent cantonal operation is measured in connection with the definition of contractual objectives<sup>12</sup>.

The lack of communication between the Confederation and the cantons is another issue to be addressed. Apparently, the Confederation cannot follow every cantonal project, which prevents it from having a strong strategic structure. For instance, according to Mrs. Martrou (in charge of the New Regional Policy in Vaud), because the Confederation doesn't participate in the former discussions about the program, there is a lack of communication, as well as a lack of coordination.

Although it is premature to draw sweeping general conclusions, considering all the evidence, it is clear that the CPs still need to be improved. These divergences ultimately make the system of allocation of tasks more complex and confused, which affects the principle of the CPs. Despite these negative arguments, the system is generally positive concerning the disentanglement of tasks, transparency, and efficiency<sup>13</sup>; it is well accepted by the cantons and the municipalities. Improvements can first be made in limiting the influence of the Confederation in the definition of objectives, in addition to reducing the normative density and the guidelines. More importantly, in accordance to the Swiss Control Finance office, it is essential that "the instrument of CPs is not a panacea to be applied under all circumstances."<sup>14</sup>

## 7. Conclusion and Perspective

The new system of the allocation of tasks requires a profound organizational change in philosophy and practice. The competence distribution is now designed along the lines of New Public management and Principal-agent theory (Braun, 2009). This model has been extended to the reform of the allocation of tasks to reinforce collaboration between the Confederation and the cantons. Based on the introduction of public law contracts, the players' reform was aimed at establishing a partnership, without any form of hierarchy, through which both the Confederation and the cantons could participate in the decision-making process. This attempt was risky because the principles of the NPM called for horizontal cooperation, and not vertical. Because the new procedure involves other players, the multilevel government dimension has gained importance. The CPs are

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12 Federal Council. 2014. Report on the assessment of efficacy of the reform between the Confederation and the cantons; Bern.

13 Report on the evaluation of the financial equalization between the Confederation and the cantons, 2012-2015, from the Federal Finance Administration (FFA)

14 "Programm Vereinbarungen-Risiken und Herausforderungen Synthese Bericht", 2 April 2014, CFF

supposed to allow for a better understanding and public management between the Confederation and the cantons.

This study has performed a general analysis on the impact of the CPs on vertical collaboration, focusing on the application of the NPM principles to assess the new system introduced by the reform. Despite the lack of empirical research, there is an astonishingly high number of reports among cantonal and federal offices about the application of CPs. The analysis focused on those reports and brought new empirical examples. Four assumptions, or hypotheses, were initially formulated to guide the analysis toward reaching appropriate conclusions. These hypotheses are identified in Section 5 above in *Research Questions, Hypothesis and Methodology*.

This investigation has found some evidence to support the idea that the CPs are improving vertical cooperation. However, while the CPs introduced a cooperative federalism and are gaining quality over time, improvements are required because the NPM principles are not all strictly applied or respected, and many problems remain to be solved.

The first general observation that has been made from the literature and the interviews is that vertical cooperation is not as equal and non-hierarchical as desired. Decisions come first from the Confederation, the party providing the funds, which corresponds to the principle of "the one who pays is the one who takes control". "The Confederation is still heading the financial and legislative controls" (Federal Financial Administration, 2014). The distribution of federal subsidies to all cantons is made according to a limited budget. Consequently, the Confederation makes the final decision and ignores the concept of a negotiation.

The second observation is that the assignment of decision-making and operational roles seems unrealistic. In light of the reform, where there are concurrent responsibilities, strategy is meant to be determined on the higher level, whereas operational freedom should be granted on the lower levels. This principle is not respected. Logically, the cantons cannot have an independent operational role when the Confederation is dictating the strategic decisions. As a result, whatever praise may be extolled in favor of vertical cooperation, there always has been, and still is, a hierarchical relationship.

The third observation is that the CPs are not performing as expected. When it came to the question of the impact of CPs on the costs/benefits balance, the results showed pessimistic views, with 50% negative answers. The costs are still too high for the general expenses of the cantons. For the question related to efficacy, 65% of the cantonal representatives interviewed didn't reach the 2008-11 objectives fixed into their CP. This could be a result of adjournments in the implementation, lack of financial amount, or insufficient time. Consequently, these public contracts are not performing yet.

Another observation comes from the strong cooperation and participation of other players before or during the negotiation of the CPs. The preparation of the CPs is not in

the hands of the cantons and the Confederation only; it also involves associations, municipalities, and universities. According to the cantonal representatives interviewed, this broad participation could lend a strong legitimacy to the CPs. To this end, one can assume that the process responds to the multi-level governance theory and brings a new perspective to vertical cooperation. However, others could not recognize this multi-level approach because they did not involve municipalities and outside experts.

In addition to the short-term problems identified, more systemic problems have to be considered. For instance, there are still enormous differences between partners in terms of economic influence, which gives more influence to one partner in the decision-making process. The cantons including prosperous metropolitan areas with cities like Zurich or Geneva are much more economically powerful than those in the mountainous areas of the Alps, such as Valais. The major cantons and bigger cities have the ability to pay more (>50%) than the Confederation, which increases their political weight at the expense of other, weaker cantons. The condition is that each canton pays a contribution, which corresponds to at least the minimum of the amount provided by the Confederation. It is interesting to argue that sanctions should be limited as a consequence of unacceptable behavior. So far, there are no procedures for sanctioning the cantons if they do not respect the conditions of the contract. Taking into account cases of obstruction and outright refusal to conform from players such as the cantons, to follow their own logic, this could be an obstacle for the CPs. Currently, conflicts are solved by political means.

Despite of the fact that CPs produce a new form of organization in the implementation of public policies, they could add to entanglement of tasks. Instead of disentangling responsibilities and tasks, it seems that this use encourages ever more common implementations, such as:

- the New Regional Policy,
- the renovation building program,
- the introduction of cadaster restricting public right to land,
- the encouragement of cantonal integration.

By extending their utilization and further implication of the institutional responsibilities, the Confederation takes the risk of complicating the system, ultimately leading to the same problems encountered before the reform.

Although the CPs still have systemic dysfunctions, the search for new energy and successful solutions is encouraging a mutual understanding. There has been a profound change in public management, which has narrowed the analysis of the Swiss federal system. The reform represents a “leap forward”: even if the requirements of an equal partnership between the different levels of government are not fully met, the reform is a logical attempt at change.

Following the various analyses - primarily from this study, but also from different federal offices - the following improvements are recommended for the next four year contract period:

- strict implementation of the principles of the reform (payments based on output),
- awareness of the financial and material disparities between cantons,
- inclusion of more cantons in the initial decisions to avoid centralization pressure,
- reduction of federal influence in setting goals,
- reduction of guidelines and standards ,
- re-definition of the strategic role of the Confederation to include the participation of the cantons,
- strengthening of vertical communication,
- alignment of the federal and cantonal calendars.

In summary, the reform of the allocation of tasks between the Confederation and the cantons has not only helped to establish a new balance of power, but has also redefined the federal system. Vertical cooperation now corresponds better to a cooperative federalism. In practice, the extension of the use of CPs to other public programs shows that it provides a good “blueprint” or “implementation model”, even if it is not adapted to all common tasks. This demonstrates the importance of this new instrument in vertical cooperation and the implementation of public policies.

Despite all these positive effects, various failures have been found:

- conflict between the strategic and the operational roles of the Confederation and the cantons,
- disparate management of tasks,
- large differences of economic influence among cantons,
- indicators and objectives,
- lack of financial subsidies,
- lack of communication and coordination,
- high administrative and evaluation costs,
- inadequate federal controls
- lack of limited sanctions for unacceptable behaviour.

The most important solutions to the above problems would be:

- reduction of the Confederation's influence on objectives,
- reduction of normative density,
- strengthening of communication,
- better contract indicators that allow more effective federal control

Further research is doubtlessly required to determine the real influence of the CPs on vertical cooperation. Nevertheless, this study makes it clear that over time, CPs are earning more acceptance and are increasing in quality. The shift from a system of subsidies (input) to one of specific assignments (output), which are based on differentiated objectives and calculated with performance indicators, is gradually being adopted in the public sector. The results seem positive, but more refined explanations must be determined in a subsequent study, based on an analysis conducted with an expanded set of interviews.



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## Annexes

### 1. The profile of the cantons: from the richest to the poorest

2004-2014 data, BFS	ZH	GE	VD	VS	UR
<b>Economic weight (GDP per inhabitants in Swiss francs )</b>	<b>92 553</b>	<b>104 914</b>	67 159	53 867	48 733
<b>Geographic size (km<sup>2</sup>)</b>	1 782.9	282.4	<b>3 212.1</b>	<b>5 224.4</b>	1 076.4
<b>Habitat and infrastructure surface %</b>	<b>21.9</b>	<b>33.3</b>	9.3	3.5	1.9
<b>Agricultural area in %</b>	<b>41.7</b>	<b>39.5</b>	<b>42.4</b>	19	24.2
<b>Forest area in %</b>	<b>30.4</b>	12.4	<b>32.1</b>	24	20.1
<b>Number of municipalities</b>	<b>171</b>	45	<b>318</b>	135	20
<b>Demographic density (km<sup>2</sup>)</b>	<b>848</b>	<b>1 884</b>	260.2	61.7	33.8
<b>Number of inhabitants</b>	<b>1 408 575</b>	463 101	734 356	321 732	35 693