

## **Forum of Federations**

**Federalizing process in Italy – A comparative perspective**

Rome, February 18-19, 2010

---

***How does Switzerland  
live with decentralized  
competencies ?***

# ***How does Switzerland live with decentralized competencies ?***

---

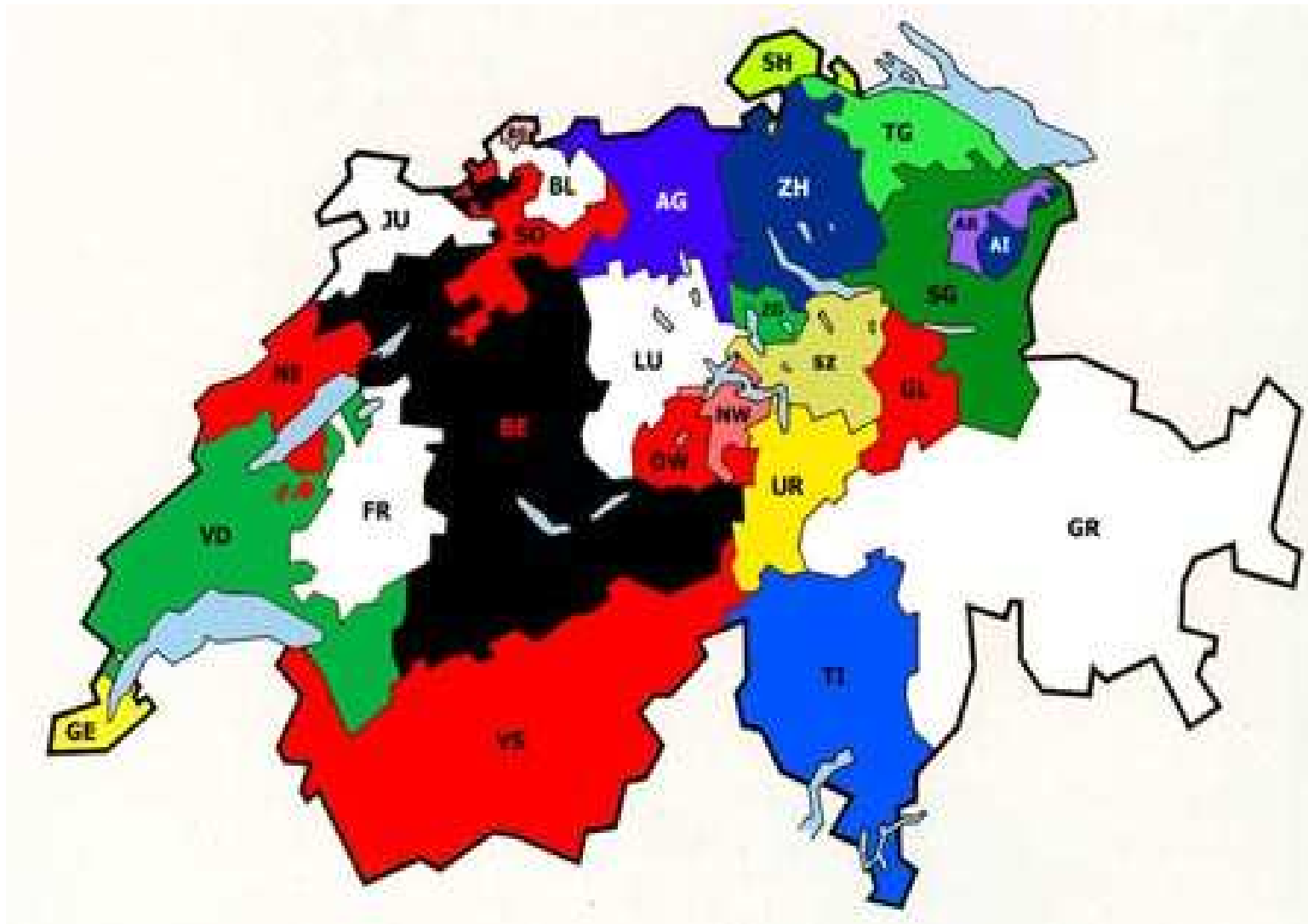
- Switzerland as a federal state:
  - Main features
  - Division of powers and its evolution
- Swiss federalism in practice
  - Principles
  - A few examples
- Assessment
- Final word: Swiss federalism tomorrow

# Switzerland as a federal state

---

## □ Main features:

- Two political levels : Confederation and cantons (also: municipalities)
- 26 cantons
- A federation from the bottom up



February 18, 2010

Anne Benoit, Dr. iur., LL.M.

# Switzerland as a federal state:

---

- Allocation of powers
  - Art. 42 Constitution: *“The Confederation shall fulfil the duties that are assigned to it by Federal Constitution”*
  - Art. 3: *“The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They shall exercise all rights that are not vested in the Confederation”.*
- Confederation: enumerated powers
- Cantons: all the rest
- New competence for the Confederation = constitutional amendment

# Switzerland as a federal state:

---

## □ Evolution

↳ Substantial growth of federal powers through constitutional amendments

- 1848: 1<sup>st</sup> Constitution; minimal federal competencies
- 1874: 2<sup>nd</sup> Constitution; more federal competencies
- 1874-1999: partial revisions => significant growth of central competencies
- 1999: 3<sup>d</sup> Constitution => no substantive changes in the allocation of powers

# Recent development: 2004-2008

---

- Reform of financial equalization and task allocation (RET / NFA): A project of renovation for Swiss federalism
  - Constitutional amendments + new laws + changes in the financial flows
  - Financial equalization
  - Disentanglement of tasks and financial flows
    - Principles of subsidiarity and of fiscal equivalence
  - New forms of cooperation between Confederation and cantons
  - Strengthening the inter-cantonal cooperation

# Swiss federalism in practice:

## **Main powers of the cantons**

---

- Education
- Public security (police)
- Health
- Taxes (in particular direct taxes)
- Culture
- Infrastructure (roads, water, construction, planning)
- Assistance to needy persons
- Courts

# Swiss federalism in practice:

## **Working principles**

---

- ❑ Executive federalism => Implementation of federal law by the cantons
- ❑ Principle of subsidiarity (art. 5a, 42, 43a Cst.)
- ❑ Principle of fiscal equivalence (art. 43a Cst.) => ensures that those who decide have to bear the financial consequences of their decisions

# A few examples

---

- Dangerous dogs
  - Confederation is competent for the protection of animals, not for protection of humans against animals
  - First: Cantonal legislative action
  - Then: Constitutional amendment to create a new federal competence
  - 5 years



# A few examples

---

## □ Hooliganism

- Federal competence doubtful
- Temporary federal provisions
- 2 options for a harmonized solution
  - new constitutional provision
  - **inter-cantonal agreement**



# A few examples

---

- Smoking ban
  - Confederation has a competence
  - First: Cantonal regulations
  - Then: Adoption of a federal law: minimal solution + authorizes stricter cantonal regulations



# A few examples

---

- AMBER alert
  - No federal competence  
=> Confederation refuses to act
  - Cantonal level slow
  - Political pressure
  - Solution: agreement between cantons and Confederation



# A few examples

---

- Cooperation in the field of higher education
  - Complex mechanism of inter-cantonal coordination and federal intervention
  - Co-existence of 3 instruments:
    - Federal law
    - Inter-cantonal agreement
    - Agreement between cantons and Confederation



# Assessment: how does Switzerland live with decentralized competencies ?

---

## □ Negative points:

- Slow & inflexible
- Complex
- Inefficient
- Inequalities
- Cantonal selfishness and competition
- Too much federal intervention

## □ Positive points:

- Slow
- Creative
- Cantons = laboratories
- Cantonal competition
- Proximity to the citizens

---

## □ Recent tendencies

- Return some powers to the cantons
- More inter-cantonal cooperation and coordination
- More cooperation between cantons and Confederation
- Mostly through informal instruments

# ***Final word: Swiss federalism tomorrow ?***

---

- No abolition of federalism
- Shift in power in favour of the Confederation will continue
- More cooperation
- 10 cantons instead of 26 ?

---

***Thank you for your attention !***