


INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**Part II IGR IN PRACTICE**

9 PUBLIC SECURITY (CRIME & TERRORISM)

**10 PROTECTION OF THE ENVIRONMENT (GREEN FEDERALISM)**

11 SERVICES: PUBLIC HEALTH & PUBLIC EDUCATION

Thomas Pfisterer, Januar 2016

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**„Green Federalism“- Environment: SWISS CONTRIBUTION**

1 THE QUESTIONS OF THE ORGANIZERS – EXPERIENCES OF OTHER COUNTRIES

2 **COMPLEX SWISS DISTRIBUTION** OF POWERS & REGULATION – CONSTITUTION & LAWS – especially IMPLEMENTATION

3 “ENVIRONMENT” - **PART OF THE RECENT REFORMS** OF FEDERALISM

4 **COOPERATION** BETWEEN THE FEDERATION & THE CANTONS

5 **PARTICIPATION** IN GENERAL

6 CANTONS: **FEDERAL PARTICIPATION**

7 PEOPLE & CANTONS: **DEMOCRATIC PARTICIPATION**

8 **INDIVIDUAL**: RIGHTS & POLITICAL PARTICIPATION

9 **ASSESSMENT**

10 SWISS OFFICE FOR ENVIRONMENTAL PROTECTION **INTERNET**

11 **Three Questions** of the Practice in IGR

Thomas Pfisterer, Januar 2016

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**1 THE QUESTIONS OF THE ORGANIZERS – EXPERIENCES OF OTHER COUNTRIES**

1.1 Contention of the Distribution of Powers (Forest & Water of the Rivers)?

1.2 Redistribution through Cooperation between National, State & Local Layers?

1.3 Supplement by Participation of all relevant Stakeholders?

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**2. COMPLEX SWISS DISTRIBUTION OF POWERS & REGULATION – CONSTITUTION & LAWS – especially IMPLEMENTATION**

2.1 Complex Distribution of Powers - by History & Matters

2.2 The overarching Principle of Sustainability

2.3 Specific Protection of the Environment – Federal Framework & Cantonal **Autonomy & Implementation**

2.4 Problems of Environmental Policy

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**Environmental Legislation**

Legislation with the goal of maintaining and improving the environment and the natural foundations of life

- Environmental Protection Act
- Waters Protection Act Hydraulic Engineering Act
- Forest Act
- Act on the Protection of Nature and Cultural Heritage
- CO2 Act
- Gene Technology Act
- Fisheries Act
- Act on Hunting and the Protection of Wild Mammals and Birds

- Swiss environmental legislation is not codified
- The EPA is the basic legislative enactment of environmental law

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---








---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**Individual Areas of Environmental Protection Legislation**

	Protection against <b>catastrophies</b> /major accidents (OMA)		Handling of <b>organisms</b> (RO, ContainO)
	<b>Environmental impact assessment</b> (EIA)		<b>Waste</b> and contamination (TOW, OMW, CSO)
	Pollution control (OAPC, NAO, NIRO)		<b>Soil pollution</b> control (SoilPO)
	Environmentally <b>hazardous substances</b> (ORRChem)		<b>Environmental incentive taxes</b> (OVOC)

Thomas Pfisterer, Januar 2016

---

---

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**3. "ENVIRONMENT" – PART OF THE RECENT REFORMS OF FEDERALISM**

**3.1 Not only Reallocation of Powers – to live with Complexity & unavoidable Overlapping**

**3.2 Reorganization – IGR: general Principles – Cooperation & Participation**

**3.3 The never ending Call for Reforms**

Thomas Pfisterer, Januar 2016

---

---

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**4. COOPERATION BETWEEN THE FEDERATION & THE CANTONS**

**4.1 Bottom up Development: Autonomy & Cooperation**

**4.2 Partnership of the Federation and the Cantons**

**4.3 Key for Cantonal Implementation: bundling Federal & Cantonal Interests**

**4.4 Agreements to shape & to implement environmental Goals**

**4.5 Implementation in Cooperation with Private Partners**

Thomas Pfisterer, Januar 2016

---

---

---

---

---


---

---

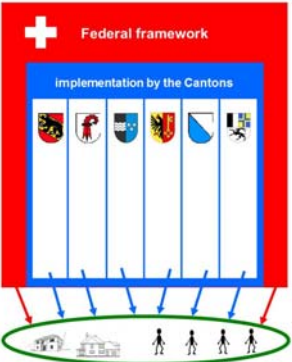
---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**Environmental Protection (specific power / Art. 74 FC)**



Thomas Pfisterer, Januar 2016

---

---

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**5. PARTICIPATION IN GENERAL**

5.1 „Everybody should participate to preserve his Environment“

5.2 Content of Participation

5.3 Optimal Participation – Competence, Efficiency & Consent

Thomas Pfisterer, Januar 2016

---

---

---

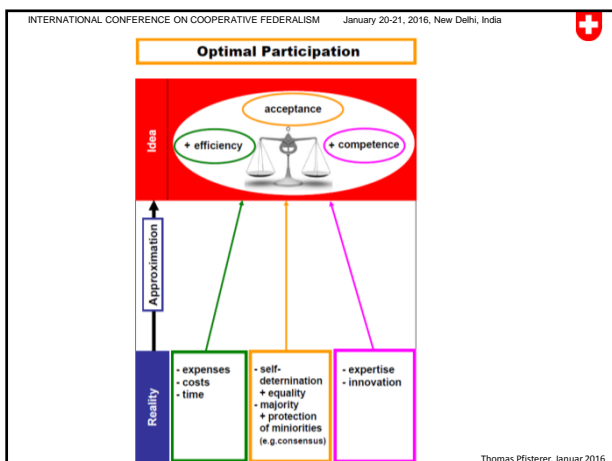
---

---

---

---

---



---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**6. CANTONS: FEDERAL PARTICIPATION**

6.1 The Participation at the Preparation of the Content of Decisions

6.2 Cantonal Participation in Changes of Constitution & Laws

6.3 The cantons influence their Autonomy & Implementation

6.4 Content: Balancing of interests in mutual respect

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**7. PEOPLE & CANTONS: DEMOCRATIC PARTICIPATION**

7.1 Participation of the People at **federal** level

7.2 Participation of the People at **cantonal** level

Thomas Pfisterer, Januar 2016

---

---

---

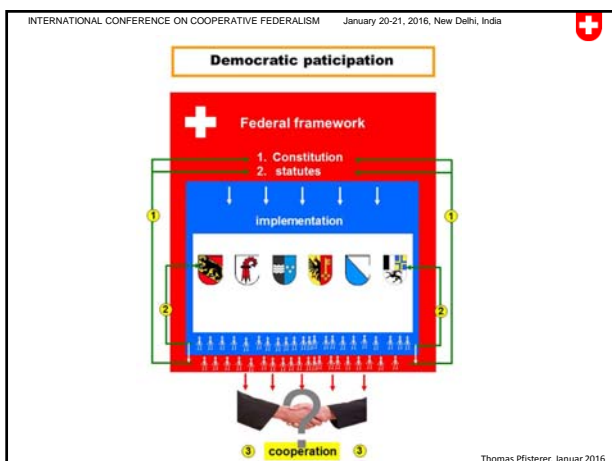
---

---

---

---

---



---

---

---

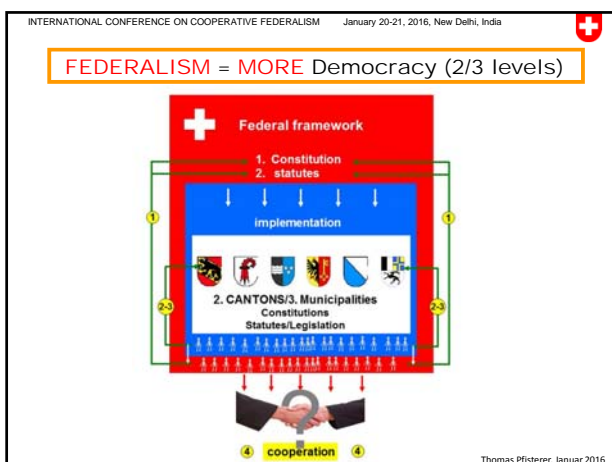
---

---

---

---

---



---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**8. INDIVIDUAL: RIGHTS & POLITICAL PARTICIPATION**

- 8.1 Participation of **Private Persons & Organisations**
- 8.2 Participation in the **Preparation** of constitutional & legislative Amenments/Changes
- 8.3 **Court action**

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**9. ASSESSMENT**

- 9.1 Assessment of **Federal Participation: +/-**
- 9.2 Assessment of **Democratic Participation: +/-**

Thomas Pfisterer, Januar 2016

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**10. SWISS OFFICE FOR ENVIRONMENTAL PROTECTION**

10.1 <http://www.bafu.admin.ch/index.html?lang=en> (English)

10.2 News & Publications - Newsletter, RSS feed and social media of the FOEN

Thomas Pfisterer, Januar 2016

---

---

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**11. Three Questions of the Practice in IGR**

11.1 How to strengthen environmental impact procedure (EIP)?

11.1.1 Legal Basis for the environmental impact process/ assessment (EIP) – federal requirement of an EIP

11.1.2 Door-opener for private Organisations' Appeal

11.1.3 What are the main functions of the EIP?

a) putting the prevention into concrete terms

b) legality of a project (no higher standards required)

c) totality: all facts and norms

11.1.3 Who assesses the impact? – the «normal» authority

11.1.4 What kind of installations/work? – list, threshold

11.1.5 What are the steps of the procedure? – early begin!

Thomas Pfisterer, Januar 2016

---

---

---

---

---


---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India 

**Legal Basis for the Environmental Impact Procedure/Assessment (EIP)**

[Chapter 3: Environmental Impact Assessment](#)

**Art. 10a Environmental impact assessment**

<sup>1</sup> Before taking any decision on the planning, construction or modification of installations, an authority must assess their impact on the environment at the earliest possible stage.

<sup>2</sup> The requirement of an environmental impact assessment applies to installations that could cause substantial pollution to environmental areas to the extent that it is probable that compliance with regulations on environmental protection can only be ensured through measures specific to the project or site.

<sup>3</sup> The Federal Council designates the types of installation that are subject to an environmental impact assessment; it may stipulate threshold values above which the assessment must be carried out. It reviews the types of installation and threshold values periodically and adjusts these if required.

**Art. 10b Environmental impact report**

<sup>1</sup> Any person who wishes to plan, construct or modify an installation that is subject to an environmental impact assessment must submit an environmental impact report to the competent authority. This forms the basis for the environmental impact assessment.

<sup>2</sup> The report contains all the information required to assess the project in accordance with the environmental protection regulations. It is drawn up in accordance with the guidelines issued by the environmental protection agencies and includes the following:

a. the existing condition;

b. the project, including proposed measures for the protection of the environment and in the event of disaster, and an outline of the main alternatives, if need be studied by the applicant;

c. the foreseeable residual environmental impact.

<sup>3</sup> In order to prepare for the report, a preliminary investigation is carried out. If the preliminary investigation conclusively ascertains the effects on the environment and the environmental protection measures required, the results of the preliminary investigation are deemed to be the report.

<sup>4</sup> The competent authority may request information or further clarification. It may call for expert reports; before doing so, the authority must allow interested parties the opportunity to state their opinions.

**Art. 10c Assessment of the report**

<sup>1</sup> The environmental protection agencies assess the preliminary investigation and the report and proposes the measures required to the competent decision-making authority. The Federal Council issues regulations on the time limits for the assessment.

<sup>2</sup> The competent authority must also consult the Federal Office for the Environment (the Federal Office) when the assessment concerns refineries, aluminium smelters, thermal power stations, or large cooling towers. The Federal Council may extend the duty to consult to cover other installations.

**Art. 10d Public access to the report**

<sup>1</sup> Any person may inspect the report and the results of the environmental impact assessment unless overriding public or private interests require secrecy.

<sup>2</sup> Trade and business secrecy must be preserved in all cases.

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**PROCEDURE FOR AN ENVIRONMENTAL IMPACT ASSESSMENT**

It is a **part of the ordinary procedure** for land planning, for a permit and so on.

Ordinary procedure for one level: **main steps**

- 1 preliminary Exploration /administrative guideline**
- 2 Report on the Impacts**
- 3 Evaluation** by Federal/ cantonal special Service & **proposition** to the "normal" authority
- 4 public Consultation 30 days**

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**Private Organisations' Right of Appeal against Rulings on Installations in the EIP**

**1. 55 Organisations with the right to appeal**

<sup>1</sup> Environmental protection organisations have the right of appeal against rulings of the cantonal or federal authorities on the planning, construction or modification of installations for which an environmental impact assessment in terms of Article 10a is required, subject to the following requirements:

- a. the organisation is active in Switzerland on a national basis.
- b. it pursues non-profit making objects; any commercial activities must serve to achieve the non-profit making objects.

<sup>2</sup> The right of appeal is available to organisations only for complaints in legal fields that have formed their objects in terms of their articles for a minimum of ten years.

<sup>3</sup> The Federal Council designates the organisations that have the right to appeal.

<sup>4</sup> The supreme executive body of the organisation is responsible for filing the appeal.

<sup>5</sup> The organisations may authorise their legally independent cantonal and supra-cantonal subsidiary organisations to file objections and on a case-by-case basis to file appeals that relate to their local field of activity.

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

**11.2 How to strengthen forest diversion & compensatory afforestation process?**

**11.2.1 Legal basis**

**11.2.2 Compensatory afforestation**

**11.2.3 Measures against Expansion of forest – demarcation**  
by spatial planning – within & against the zoning for settlement

**11.2.4 Procedure – spatial planning & particular permits**

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---



INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

### LEGAL BASIS FOR DEFORESTATION

**Art. 3 Forest Compensation**  
Forest area should not be reduced.  
**Chapter 2: Protection of the Forest against Intervention**

**Section 1: Deforestation and Declaration as Forest**  
**Art. 4 Definition of deforestation**  
Deforestation is the permanent or temporary change of use of forest land.

**Art. 5 Prohibition on deforestation and derogations**  
<sup>1</sup> Deforestation is prohibited.  
<sup>2</sup> In exceptional cases a deforestation permit may be granted if the applicant proves that there are important reasons for the deforestation that outweigh the interest of forest conservation and, furthermore, the following conditions are fulfilled:  
a) the proposed site must be essential to the works, for which the deforestation is to be carried out;  
b) the works must essentially fulfill the spatial planning requirements;  
c) the deforestation does not cause any serious threat to the environment.  
<sup>3</sup> Important reasons do not include financial interests, such as the potentially profitable use of the land or the low-cost acquisition of land for non-forestry purposes.  
<sup>4</sup> The protection of nature and cultural heritage must be taken into account.  
<sup>5</sup> A time limit shall be set for deforestation permits.

**Art. 6 Responsibility**  
<sup>1</sup> Exceptional permits are granted by:  
a) the federal authorities, if they are competent to decide on the construction or alteration of works, for which deforestation is to be carried out;  
b) the cantonal authorities, if they decide on the construction or alteration of works, for which deforestation is to be carried out.  
<sup>2</sup> Before the cantonal authority decides on a derogation, it shall hear the Federal Office for the Environment (Federal Office).  
<sup>3</sup> The area to be deforested exceeds 5000 m<sup>2</sup>: if several deforestation applications are made for one and the same project, the total area is decisive;  
b) the forest to be deforested is located in several cantons.

**Art. 7 Compensation for deforestation**  
<sup>1</sup> For all deforestation, compensation in kind must be provided in the same region and with species that are predominantly suited to the location.  
<sup>2</sup> Measures may be implemented for the benefit of nature and landscape conservation instead of compensation in kind.  
a) in areas with increasing forest area;  
b) in other areas by way of exception in order to conserve arable land and areas of ecological or landscape value.  
<sup>3</sup> Compensation for deforestation may be dispensed with in the case of deforestation:  
a) of areas that have grown in the last 30 years in order to reclaim arable land;  
b) to guarantee flood protection and to rehabilitate waters;  
c) for the preservation and improvement of biotopes in accordance with Articles 18a and 18b paragraph 1 of the Federal Act of 1 July 1966<sup>1</sup> on the Protection of Nature and Cultural Heritage.  
<sup>4</sup> If arable land that has been reclaimed in accordance with paragraph 3 letter b is given a different use within 30 years, the compensation for deforestation must be provided retrospectively.

**Art. 8 Compensation**  
The cantons shall ensure that considerable benefits arising from deforestation permits that are not covered by Article 5 of the Federal Act on Spatial Planning of 22 June 1979<sup>2</sup> are adequately compensated for.

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

### 11.3 How to ensure effective monitoring of the award of tribunals to ensure their compliance?

#### 11.3.1 Court System

Appellate Authorities

```
graph BT
  A[Authorisation/ decision of a cantonal authority] --> B[Cantonal Administrative Court]
  C[Authorisation/ decision of a federal authority] --> D[Federal Administrative Court]
  B --> E[Federal Supreme Court]
  D --> E
```

#### 11.3.2 Execution of court decisions & monitoring

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM January 20-21, 2016, New Delhi, India

### SWISS Legal Basis FEDERAL Environmental Law

RS 814.01  
Federal Act on the Protection of the Environment  
(Environmental Protection Act, EPA)  
of 7 October 1983 (Status as of 1 April 2015)  
<https://www.admin.ch/opc/en/classified-compilation/19830267/index.html>

RS 814.011  
Ordonnance relative à l'étude de l'impact sur l'environnement (OEIE)  
du 19 octobre 1988 (Etat le 1<sup>er</sup> janvier 2016)  
<https://www.admin.ch/opc/fr/classified-compilation/19880226/index.html>

Thomas Pfisterer, Januar 2016

---

---

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---