



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Department of Economic Affairs FDEA
State Secretariat for Economic Affairs SECO
WTO Division

Implementation of the GPA in Switzerland : meeting the challenge of securing effective involvement by sub-central government units

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State Secretariat for Economic Affairs (SECO)

House of Parliament, East Wing, 3003 Bern

GPA-Symposium : Developmental and trade significance, changing context and future prospects

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OVERVIEW

- 1. Significance of procurement markets in Switzerland**
- 2. International law governing procurement in Switzerland**
- 3. Implementation at federal and subterritorial levels**
- 4. Legal aspects of the implementation at subterritorial level**
- 5. Institutional aspects of the implementation at subterritorial level**
- 6. Conclusions**



POINT 1 : SIGNIFICANCE OF PROCUREMENT MARKETS

Government procurement represents in **Switzerland**

36 billions of Swiss francs = 25 % of government expenses
undertaken by the respective levels of State as follows :

- **Confederation: 19 %,**
- **Cantons: 38 %,**
- **Municipalities: 43 %.**

 **POINT 2 : INTERNATIONAL LAW GOVERNING
PROCUREMENT IN SWITZERLAND**

WTO/GPA

(41)

EU (27), USA,
Canada,
Japan, Korea,
Hong Kong,
Singapur, Aruba,
Israel, Island,
Norway,
Liechtenstein,
Chinese Taipei,
Switzerland

EU
(27)

FTA-EFTA

(21)

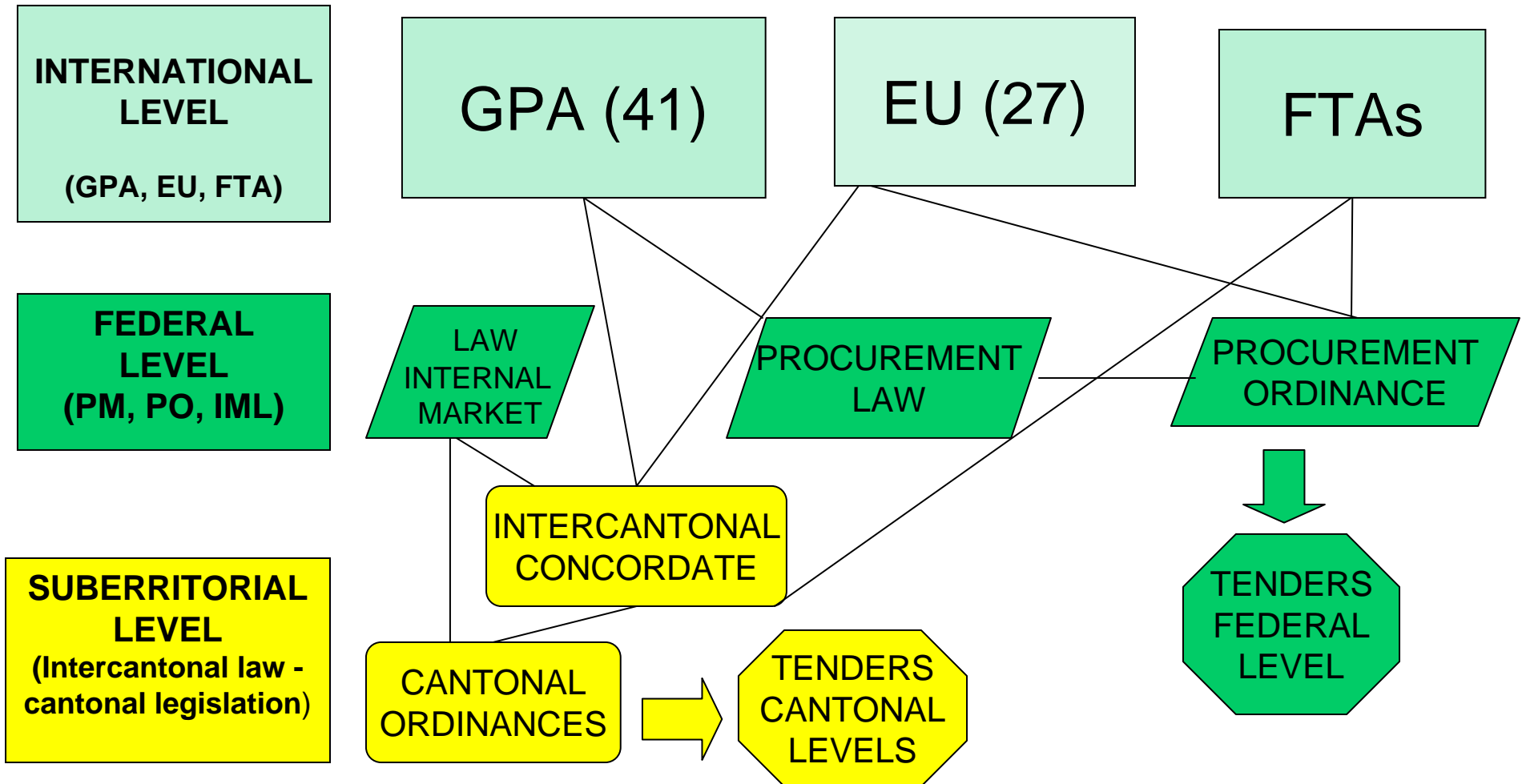
Chile, Mexiko
Korea, Canada, Singapur,
Israel, Macedonia, Croatia,
Turkey, Tunesia,
Palestinian Authority,
SACU, Marokko, Jordan,
Lebanon, Egypt, GCC,
Colombia, Serbia, Albania

BILATERAL

FHA/EPA Switzerland-Japan



POINT 2 : INTERNATIONAL LAW GOVERNING PROCUREMENT IN SWITZERLAND



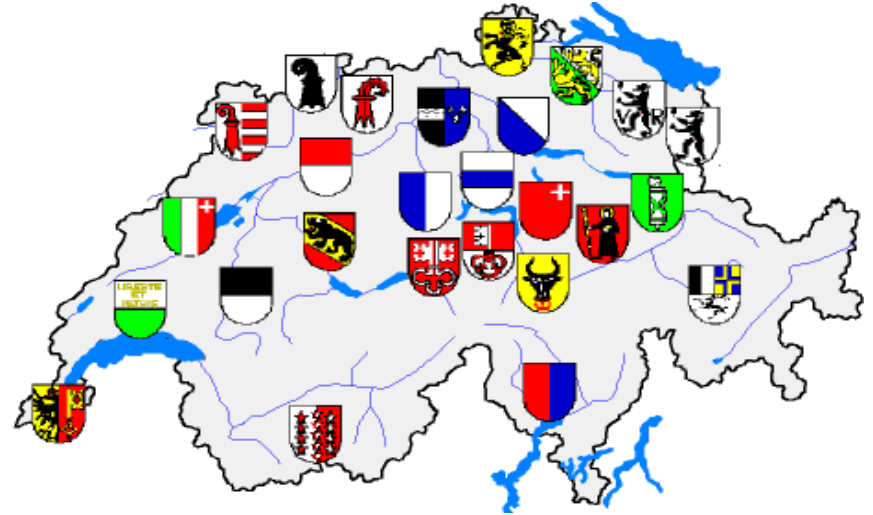


POINT 2 : INTERNATIONAL LAW GOVERNING PROCUREMENT IN SWITZERLAND : HISTORICAL EXTENSION OF MARKET ACCESS

	GATT 1979 Tokyo Round	WTO 1994 Uruguay Round	CH-EU 1999 Bilateral I	WTO 2009 REVISION GPA Revised offer CH
A 1	FEDERAL	FEDERAL		Functional Definition +supreme courts +ex- tension/dynamisation
A 2		CANTONS	Districts Municipalities	Extension/dynami- sation (transport, tele- com, energy, water)
A 3		UTILITIES	Railways Energy (total) Telecom Privat entities acting with special rights	Functional Defi- nition + clear con- ditions for eligibility
A 4		SERVICES		
A 5		CS	(water, electricity, local transports, ports, airports)	Extension scope list of Services



POINT 3 : Implementation of international law at federal and subterritorial levels : Three levels of government



- Federal government
- 26 cantons
- 3000 municipalities





POINT 4 : Legal aspects of the implementation at subterritorial level : The Intercantonal Agreement

The 26 Swiss cantons operate since November 25, 1994 under the **Intercantonal Agreement on government procurement**, revised on March 15, 2001 and its Executive Directives . All cantons have joined the revised Agreement also named “concordate”.

The objective of the concordate - defined in its Article 1 – is to implement the commitments under international treaties (GPA, bilateral and FTA) at subterritorial levels (cantons, municipalities, utilities, etc.).

The realization of this objective leads to provisional conclusions as follows :

- The cantons comply with the commitments of the international treaties
- They use a parallel implementation to the federal level (law/ordinance)
- The international treaties fully apply at federal and subterritorial levels



POINT 4 : Legal aspects of the implementation at subterritorial level : Legal outcomes of the Concordate

The subterritorial legislation on government procurement generates the following outcomes at the levels of cantons and municipalities :

- a) transparency of the tendering procedure and awarding of contracts;
- b) strengthening of competition between tenderers ;
- c) Access to the markets to foreign bidders on a reciprocal basis;
- d) equal treatment between tenderers as requested by the GPA;
- e) Implementation of internationally agreed mandatory thresholds
- f) rational use of public funds through competition;
- g) respect of the provisions referring to workers' safety and working conditions for procurement in Switzerland ;
- h) wide access of tender notices through paper and electronic means;
- i) efficient remedy system at cantonal levels.



POINT 4 : Legal aspects of the implementation at subterritorial level : Differences between cantonal and federal levels

Differences between cantonal and the federal levels include :

- the cantons do not foresee the option to negotiate during a tender process ;
- The cantons cover all services and are therefore an appropriate model for GPA-members to address the issue of market access based on reciprocity.

Differences cleared between the cantonal and federal levels include :

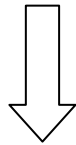
- Challenge procedures adapted at federal level (2007)



POINT 4 : Legal aspects of the implementation at subterritorial level : Challenge procedures (subterritorial / federal)

**Procuring entity from Swiss
Confederation**

Publication on [https:// www.simap.ch](https://www.simap.ch)



**Federal administrative Court
(Bundesverwaltungsgericht)**

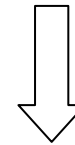
- Value of market > International thresholds and
- Question of substantial importance



Federal Court (Bundesgericht)

**Procuring entity from a canton or
municipality**

Publication on <https://www.simap.ch>



Cantonal
authorities

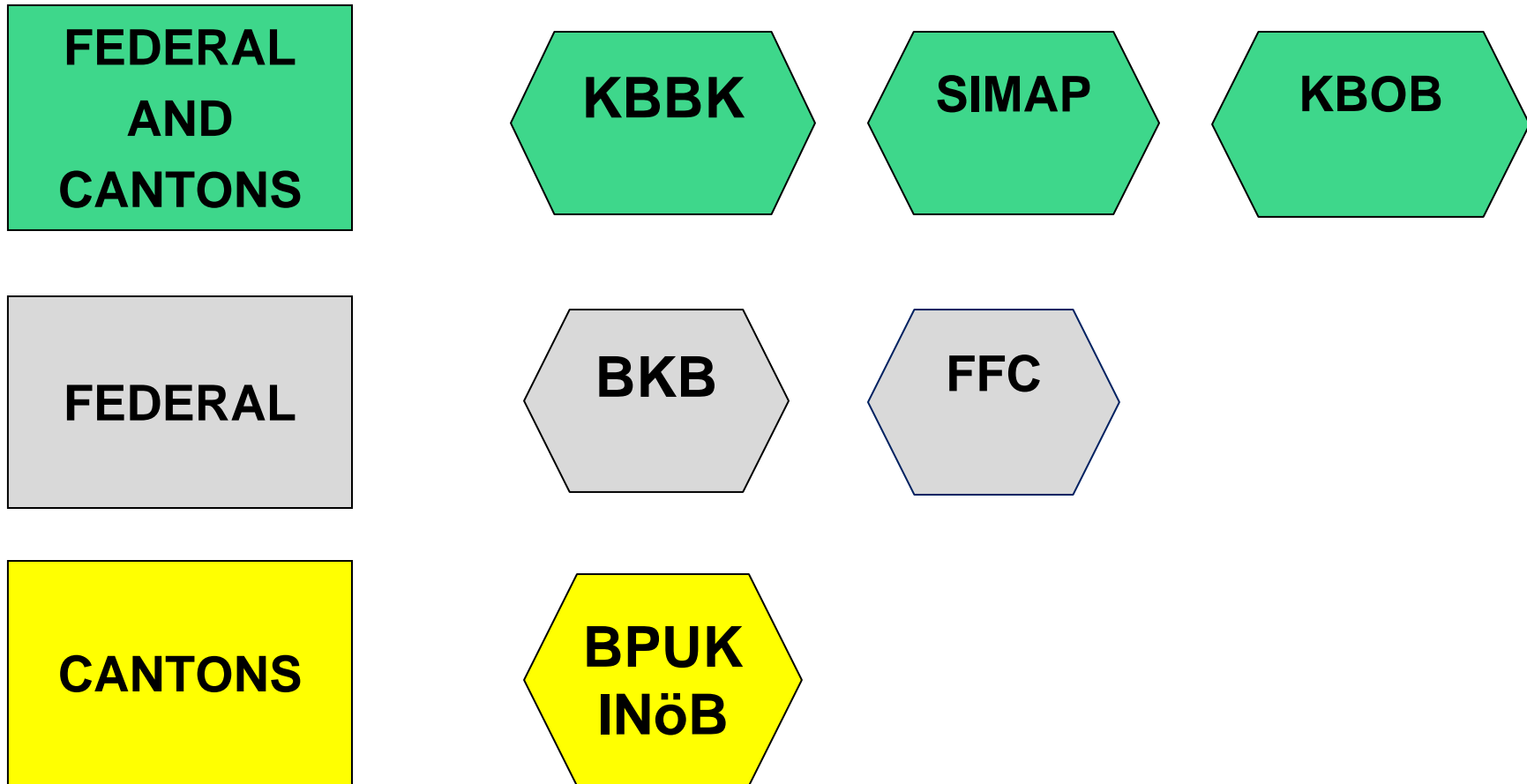
**Cantonal administrative Courts
(Kantonale Verwaltungsgerichte)**

File a complaint to...

File a complaint to...



POINT (5): Institutional aspects of the implementation at subterritorial level : OVERVIEW





POINT 5 : INSTITUTIONAL FRAMEWORK

Cantonal level

The **Swiss Conference of the cantonal directors for public works, land management and environmental protection (BPUK)** is the inter-cantonal authority in charge of government procurement. This Authority has the competence to modify the Inter-cantonal Agreement, edict rules on tender procedures, modify thresholds below the internationally agreed thresholds, check the implementation of the inter-cantonal Agreement and adopt rules of procedures and organisation.

The BPUK has elaborated executive directives and recommendations. The BPUK is also an information and advice organ to the cantons. In each canton, the department or the unit in charge of government procurement is in charge to follow and to coordinate the implementation of the legislation.

For detailed information, see: <http://www.bpuk.ch>



POINT 5 : INSTITUTIONAL FRAMEWORK

Government procurement Commission: Federal State-Cantons (KBBK)

The KBBK was established with the entry into force of the GPA. **The KBBK aims at a faithful implementation by Switzerland of its international obligations in the area of government procurement.** Its membership is equally shared by **representatives of the cantons and representatives of the Federal government in charge of government procurement.** Its major tasks refer to :

- a)the **elaboration of the Swiss position in international fora;**
- b)the **promotion of exchanges of views between the Federal government and the cantons;**
- c)the **elaboration of recommendations on the transposition of international obligations;**
- d)the **conclusion of agreements with foreign surveillance entities;**
- e)the **granting of advice and acting as mediator in dispute cases;**
- f)the **filing of complaints** for violation of international obligations to the federal or cantonal competent authorities under specific circumstances.



POINT 5: INSTITUTIONAL FRAMEWORK : Coordination Group for Construction and Property Services (KBOB)

The KBOB has, in the area of **construction**, the same competences as the BKB. These bodies have been kept **separate** because they deal with **significantly different fields**. Membership in the KBOB is made of the units of the **Federal government** (FOCL, armasuisse, ETH-Council, FORC, FOT), **the cantons** (BPUK) **and the municipalities** (Swiss associations of towns and of municipalities) dealing with construction projects. Its tasks refer to **facilitate the work of its Members** with the aim of **improved quality and saved resources**. The KBOB contributes mainly to:

- a) **define** the purchasing policy at the **Federal** government, **cantons** and **cities** level;
- b) **coordinate and exchange experiences between its Members**;
- c) **represent** its Members' interest when dealing with the construction industry;
- d) **publish** contracts as models, recommendations, tariffs, general conditions; and,
- e) **work** in various areas such as the elaboration of a concept for permanent training, security, inclusion of inflation in constructions' pricing, prevention of corruption and integrity clauses.

For further detailed information : www.kbob.ch



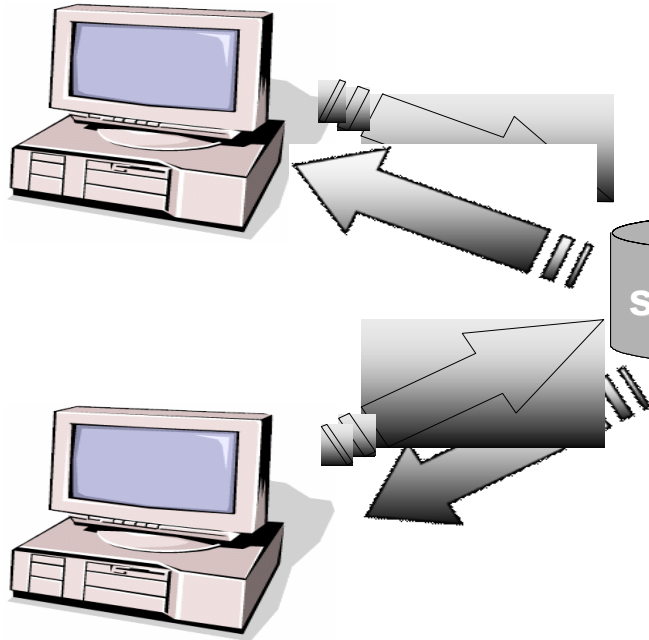
POINT (5): INSTITUTIONAL FRAMEWORK : SIMAP = simap.ch

- Simap is an Association between the Confederation and the Cantons.
- Objective : To run and further develop a common and centralized electronic gate for information covering government procurement in Switzerland, in order to assure :
 - integrated transparency for all tenders in Switzerland;
 - harmonization of the purchase processes in Switzerland;
 - a common approach for the direct collection of statistics.
- Funding : The development of the application has been financed by the Confederation (State Secretariat of Economic Affairs) and by the association simap.ch. The future running of the system will be covered by the association simap.ch.
- The use by tenderers and entities will be free of charge.



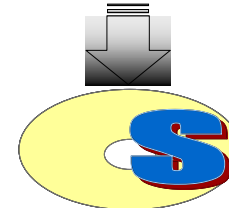
POINT 5 : INSTITUTIONAL FRAMEWORK : Parties involved in simpa.ch

Procuring entites
Cantons and Confederation



Official publication media

Supplier





POINT 5 : INSTITUTIONAL FRAMEWORK : simap.ch : KEY FUNCTIONS

- Access to the integral tender documentation available interactively
- Continued electronic process between the publication of the tender and the award
- Easy handling of the linguistic diversity of the publications (4)
- Selective downloading / research functions for publications
- Online abonnements for tenderer
- Up- and downloading of the tender documentation
- Interactive questioning / Electronic Forum for replies
- Automatic electronic gates to the cantonal administrative publications, the SHAB and TED



POINT 5 : INSTITUTIONAL FRAMEWORK : Purchasing Commission of the Federal government (BKB)

The purchasing Commission is a **policy and coordination body** of the **Federal government** in the areas of **goods and services**. Membership is made of the largest purchasing entities of the Federal government and specialised units from various Federal departments. Its tasks refer mainly to the :

- a) **elaboration** of the purchasing policy of the Federal government with in particular recommendations on the evolution of government procurement and tendering systems as well as the preparation of legislative projects in the field of government procurement;
- b) **coordination** between purchasing entities;
- c) **elaboration** of general conditions, standard contracts and tariff scales for services.

The purchasing Commission has developed an interactive support tool on internet www.gimap.ch.



POINT 5 : INSTITUTIONAL FRAMEWORK

Federal Finance Control

The **Federal Finance Control** is an institution acting as **external audit at the federal level**. It aims at **verifying a correct implementation of the legislation**. It proceeds through special, non-systematic **examinations**. These examinations cover detailed analyses of specific tenders as well as horizontal aspects of several tenders. It also checks prices for large tenders - awarded without competition (limited tendering).



POINT 6 : CONCLUSIONS

The interaction of appropriate legal instruments and strong institutional frameworks are the essential keys to implement the commitments of the GPA at the federal and subterritorial levels with outcomes as follows :

- Provisions at national level in line with the GPA
- Provisions that secure, increase and facilitate market access opportunities and sustainable growth
- and reduce risks of disputes and panels
- in order to promote the efficient use of public funds by generating competition among suppliers worldwide



POINT 6 : Conclusions : Questions for the discussion

- How do you evaluate the contribution of the GPA and/or the revised GPA for the achievement of the objectives of your internal legislation ?
- How do you appreciate the way Switzerland has accomplished the implementation of the GPA at subterritorial level ?