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Multi-level Implementation of International Law: The Role of Vertical Epistemic Communities

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Abstract

Subnational entities in federal states typically retain a degree of sovereignty and enjoy leeway in implementation, raising questions such as whether—and how—international law is actually implemented at the subnational level. This article sheds light on these questions, using two contrasted case studies in Switzerland: The Istanbul Convention on domestic violence and the European Union (EU) Directive 2016/680 on data protection. Based on a document analysis of the law-making process and 44 semi-structured interviews with national and subnational political actors, we observe how international obligations are legally implemented, that is, transposed into legislation at the subnational level. Our results show that: (1) Subnational civil servants play a decisive role, while members of parliament are marginal. (2) Civil servants may constitute Vertical Epistemic Communities (VECs), which are able to "technicize" the issue to ensure swift implementation through administrative venues. (3) VECs are particularly influential as they use intercantonal conferences as institutional platforms to shape implementation processes. Otherwise, implementation becomes politicized, and its success strongly depends on subnational politics.

Résumé

Les entités infranationales des États fédéraux conservent généralement un certain degré de souveraineté et jouissent d'une marge de manœuvre dans la mise en œuvre, ce qui soulève des questions, telles que si - et comment - le droit international est réellement mis en œuvre au niveau infranational. Cet article apporte un éclairage

sur ces questions, en s'appuyant sur deux études de cas contrastées en Suisse: La Convention d'Istanbul sur la violence domestique et la Directive 2016/680 de l'Union européenne (UE) sur la protection des données. Sur la base d'une analyse documentaire des processus législatifs et de 44 entretiens semi-structurés avec des acteurs politiques nationaux et infranationaux, nous observons comment les obligations internationales sont légalement mises en œuvre, c'est-à-dire transposées dans la législation au niveau infranational. Nos résultats montrent que: (1) Les fonctionnaires infranationaux jouent un rôle décisif, tandis que les membres des parlements sont marginaux. (2) Les fonctionnaires peuvent constituer des *Vertical Epistemic Communities (VECs)*, capables de « techniciser » une thématique afin d'assurer une mise en œuvre rapide par le biais des instances administratives. (3) Les *VECs* sont particulièrement influentes car elles utilisent les conférences intercantonales comme plateformes institutionnelles pour orienter les processus de mise en œuvre. Dans le cas contraire, la mise en œuvre devient politisée et son succès dépend fortement de facteurs politiques infranationaux.

Zusammenfassung

Subnationale Einheiten in föderalen Staaten behalten in der Regel ein gewisses Mass an Souveränität und verfügen über einen mehr oder weniger grossen Umsetzungsspielraum, was z.B. die Frage aufwirft, ob bzw. wie internationales Recht auf subnationaler Ebene tatsächlich umgesetzt wird. Dieser Artikel beleuchtet diese Fragen anhand von zwei kontrastierenden Fallstudien in der Schweiz: Die Istanbul-Konvention gegen häuslicher Gewalt und die Richtlinie 2016/680 der Europäischen Union (EU) zum Datenschutz. Auf der Grundlage einer Dokumentenanalyse der Gesetzgebungsprozesse und 44 halbstrukturierten Interviews mit nationalen und subnationalen politischen Akteuren beobachten wir, wie internationale Verpflichtungen rechtlich umgesetzt werden, d.h. wie sie auf subnationaler Ebene in Gesetze «übersetzt» werden. Unsere Ergebnisse zeigen folgendes: (1) Subnationale Beamte spielen eine entscheidende Rolle, Parlamentarier hingegen eine marginale Rolle bei der Umsetzung. (2) Beamte können *Vertical Epistemic Communities (VECs)* bilden, die in der Lage sind, ein Thema zu «technisieren», um eine rasche Umsetzung durch Verwaltungseinrichtungen zu gewährleisten. (3) VECs sind besonders einflussreich, da sie interkantonale Konferenzen als institutionelle Plattformen nutzen, um Umsetzungsprozesse zu gestalten. In anderen Fällen wird die Umsetzung politisiert, und der Erfolg des

Umsetzungsprozesses hängt stark von der subnationalen Politik ab.

Riassunto

Le entità subnazionali negli stati federali mantengono tipicamente una certa sovranità e godono di un margine di manovra nell'implementazione. Questa situazione conduce a chiedersi se - e come - il diritto internazionale sia effettivamente attuato a livello subnazionale. Il nostro articolo fa luce su questi interrogativi, utilizzando due casi di studio contrastanti in Svizzera: La Convenzione di Istanbul sulla violenza domestica e la Direttiva dell'Unione Europea (UE) 2016/680 sulla protezione dei dati. Sulla base di un'analisi documentale del processo legislativo e di 44 interviste semi-strutturate con attori politici nazionali e subnazionali, osserviamo come gli obblighi internazionali vengono implementati legalmente, ossia recepiti nella legislazione a livello subnazionale. I risultati mostrano che: (1) I funzionari pubblici subnazionali svolgono un ruolo decisivo, mentre i parlamentari sono marginali. (2) I funzionari pubblici possono costituire *Vertical Epistemic Communities (VECs)*, che sono in grado di "tecnicizzare" la questione per garantire una rapida attuazione attraverso le vie amministrative. (3) Le VEC sono particolarmente influenti perché utilizzano le conferenze intercantonali come piattaforme istituzionali per dare forma ai processi di attuazione. Altrimenti, l'implementazione diventa politicizzata e il suo successo dipende fortemente dalla politica subnazionale.

KEYWORDS

Federalism, Implementation, Intercantonal Conferences, International Law, Switzerland, Vertical Epistemic Communities

INTRODUCTION

During recent decades, there has been significant research on the national implementation of international law. However, the implementation of international law in federal states – especially at the subnational level – is under-explored. Subnational entities enjoy a degree of sovereignty, raising questions about whether and how international law is effectively implemented at the subnational level. Existing research has focused on the role of subnational entities in ensuring compliance with international treaties (Ku et al., 2019; Risse et al., 2013; Wyttenbach, 2017) or on the diversity of domestic responses to European policies (Dörrenbächer, 2017; Thomann & Sager, 2017; Thomann & Zhelyazkova, 2017). Nevertheless, it lacks a micro-level perspective on how implementation is carried out by actors such as civil servants, experts, and members of parliaments in a multilevel setting, especially at the level of subnational units, although it would be crucial to grasp the dynamics at work (Paasch & Stecker, 2021). Against this background, this article has three main objectives. First, it aims to systematically examine the respective role of civil servants, experts, and members of parliaments in the subnational implementation of international norms, with the expectation that the former will be particularly central. In that regard, the literature on the implementation of international norms has indeed

established that "it is likely to be civil servants working within bureaucracies—or in some cases seconded or contracted external "experts"—who take on the role of developing and implementing policy" (Betts & Orchard, 2014, p. 17). Second, in the case of Switzerland, it has been demonstrated that the implementation of international conventions has been discussed at intercantonal conferences, working as coordination mechanisms where members of federal and cantonal governments meet to discuss common interests (Niederhauser, 2021). Therefore, this article also aims to shed light on the role of intercantonal conferences with respect to international law, contributing to the literature on these conferences as governance devices (Behnke & Mueller, 2017; Schnabel & Mueller, 2017). Third, vertical epistemic communities (VECs) could play a decisive role in the implementation of policies at the subnational level, as they may "take particular advantage of multilevel systems, such as federalist states, which offer various entry points" (Mavrot & Sager, 2018, p. 12). This article contributes to the literature on epistemic communities by demonstrating how and under what conditions VECs uphold the successful implementation of international norms at the subnational level.

To evaluate these, we observe the subnational implementation of international law in two contrasted case studies in Switzerland: the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence and the European Union (EU) Directive 2016/680 on data protection (in accordance with the Schengen Association Agreement, SAA). The Swiss case is particularly interesting, as it represents an instance of high decentralization, where cantons dispose of strong authority and autonomy and are entrusted with broad implementation competencies (Lehmbruch, 2019). Therefore, Switzerland offers an ideal setting for observing the role of subnational actors in the implementation of international law. Moreover, the cantonal level provides us analytical leverage because cantons significantly vary in their size and population as well as in the capacities of their governments, parliaments and administrations (Battaglini & Giraud, 2003). For instance, the Canton of Zurich, "has almost twice as many administrative employees today than the smallest canton (the Canton of Appenzell Inner-Rhodes) counts residents" (Vatter, 2018, p. 245). This research design aims at allowing us to identify the regularities that hold notwithstanding these differences and the specific role of contextual factors.

In the next section, we discuss the literature on the implementation of international law and derive three expectations. The following section outlines the selected case studies, data, and methods. The final section presents the empirical analysis of the two implementation processes, highlighting the role played by civil servants, members of parliaments, experts in intercantonal conferences, as well as the contribution of VECs, and the variations in implementation due to differences in cantonal political contexts.

THEORETICAL FRAMEWORK

Subnational Implementation of International Law

While there is plenty of literature on the domestic implementation of international law (Betts & Orchard, 2014; Cole, 2015; Raustiala & Slaughter, 2002; Thomann & Sager, 2017), limited attention has been given to the subnational level (Ku et al., 2019; Risse et al., 2013; Wyttenbach, 2017). This constitutes a serious gap, especially for research on federal states, where subnational entities are often expected to legislate to implement international law treaties and comply with their obligations (Schmid, 2019). This process deserves special attention, as it can be seen as an essential manifestation of complex multi-level dynamics, whereby norms established at the international level should be implemented at the subnational level. In such cases, subnational entities are particularly remote from the original rule-makers, which could create additional challenges for implementation and compliance (Maggetti, 2021). In this section,

we discuss both political science literature on EU law and legal scholarship on international human rights law, then we distill our expectations on the role of domestic actors in the subnational implementation of international law.

Legislative and Practical Implementation of International Law

By drawing from political science literature on the implementation of EU law, we define implementation as "the process of putting international commitments into practice: the passage of legislation, creation of institutions (both domestic and international) and enforcement of rules" (Raustiala & Slaughter, 2002, p. 539). In this article, we explore a specific part of the process called legislative implementation. We argue that it has been largely overlooked by the literature so far. *Legislative implementation* leads to *legislative compliance* (the substantive legal conformity of national (and subnational) rules with international rules), while *practical implementation* leads to *practical compliance* (the extent to which national (and subnational) institutions effectively apply and enforce international rules). We observe that most political science scholarship on implementation focuses explicitly on practical implementation, primarily through the lens of the extensive literature on street-level implementation. One notable exception is the work of Paasch & Stecker (2021), who analyze the transposition of 850 EU directives in Germany (we note that they use *implementation* and *transposition* interchangeably, whereas, in our opinion, distinguishing the two would improve conceptual clarity). They find that involving subnational authorities substantially delays transposition and call for further research on individual implementation, notably on the variance in transposition across subnational units.

Mastenbroek is the author of another piece of research on transposition, who analyzes the role of national legislative drafters. The core task of these individuals is to provide legal input in drafting bills and legislation. Here we follow her approach, which "[i]nstead of tracing compliance with EU rules from the top–down, […] analyzes the attitudes and behavior of civil servants involved in EU compliance in a bottom–up manner" (Mastenbroek, 2017, p. 1292). While Mastenbroek only observes the role of legislative drafters (and their managers), these are usually not the only civil servants involved in the legislative implementation process, and perhaps not even the most crucial. We wish to push this approach further, to dig deeper into the process of legislative implementation and observe the role of the other actors involved. As highlighted by Betts and Orchard (2014), "it is likely to be civil servants working within bureaucracies—or in some cases seconded or contracted external "experts"—who take on the role of developing and implementing policy" (p. 17). For instance, in Swiss cantons, the drafting of bills is often executed jointly by specialized bureaucrats who work in substantive policy divisions with members of parliament.

Expectations

As we aim to observe the role of subnational actors in legislative implementation processes, we notably draw from the literature on the role of parliaments, starting with subnational legislatures. Although some lament the lack of research on subnational parliaments (Auel, 2021; Downs, 2014, p. 616), a few recent studies shed some light on their role in the ratification and implementation of international instruments. Theodoro Luciano and Junqueira (2022) observe subnational parliaments' engagement with the EU-Mercosur trade negotiations, but they focus on parliaments' reactions and mobilizations related to this trade deal ratification and their research does not cover any kind of implementation. There is also a growing literature

addressing the role that subnational parliaments could or should play in EU affairs, but it largely looks at the future, and reaches mixed conclusions (Abels & Eppler, 2016).

Therefore, we mostly rely on the general literature on parliaments to move forward. Debates about parliaments' declining power have been going on for decades. In 1979, Richardson and Jordan already talked about "post-parliamentary democracy". Benz and Papadopoulos (2006) state that "the initiative and control functions of parliaments are expected to be weak, with parliaments instead being confined to the role of ratifying bodies" (p. 3). Concerning subnational parliaments, "[m]uch of the literature documents apparent trends toward executive dominance mirroring those evident in some national parliamentary contexts, a reality increasingly depicted as evidence of a kind of democratic deficit" (Downs, 2014).

In Switzerland, the weakening of the national parliament has often been linked to the growth and professionalization of the federal administration related to the complexification of political problems (Di Capua et al., 2022; Sciarini & Fischer, 2019, p. 55). The federal administration is constituted of thousands of experts on specific topics. Therefore, it has an informational advantage over the parliament. Consequently, the administration plays an increasingly important political role (Varone, 2014, p. 337), despite the slow professionalization of the parliament that started in the 1990s (Pilotti, 2017). Furthermore, it is generally argued that "internationalization increases the role of governments vis-à-vis other domestic actors (i.e., parliament and interest groups) who do not have similar strategic resources" (Papadopoulos, 2008, p. 260). In the same vein, internationalization reinforces the administration. As Sciarini (2015) argues, "in Europeanized processes […] bureaucratic policy-making is likely to take the lead" (p. 26). Indeed, governments and administrations control the agenda at the domestic level and negotiations at the international level, providing them with an informational advantage. Thus, they tend to have more power in strongly internationalized sectors. At the subnational level, the actors involved are remote from the international level. Moreover, members of cantonal parliaments (MCPs) are weakly professionalized. In most cantons, they spend less than 20% of a full time job on their parliamentary occupation (Eberli et al., 2019). For this reason, we expect members of cantonal administrations to play an even more significant role than at the federal level:

> *Expectation 1: Civil servants have considerably more influence than members of cantonal parliament in the legislative implementation of international law at the subnational level.*

In addition to civil servants and members of parliament, it has also been demonstrated that experts play a role in international law implementation (Betts & Orchard, 2014, p. 14). However, the roles of civil servants and (non-state) experts in implementing international law have been understudied so far. This gap in the literature is probably caused by the fact that this requires "micro-level process tracing" (Betts & Orchard, 2014, p. 26) and money and time-consuming methods, such as direct observation and interviewing.

To address the role of civil servants and experts, we also draw from the literature on epistemic communities, which are "network[s] of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas, 1992, p. 3). Epistemic communities "are channels through which new ideas circulate from societies to governments as well as from country to country" (Haas, 1992, p. 27). However, under specific circumstances, they may also act as channels to implement policies. We build our argument on Mavrot and Sager's (2018) concept of vertical epistemic community (VEC), which in their case study includes national and subnational civil servants who "take particular advantage of multilevel systems, such as federalist states, which offer various entry points" (p. 12).

Mavrot and Sager (2018) observe secondary harmonization, which occurs when the central state depends on political units to implement federal policies, and "political units adopt similar solutions for policy problems without being coerced to do so" (p. 2). Although there is no international instrument in their work, we argue that a secondary harmonization is a form of implementation close to our legislative implementation concept. Accordingly, "a strong vertical epistemic community could be a decisive factor in the secondary harmonization in a federalist system" (Mavrot & Sager, 2018, p. 12). They show that in the case of the Swiss smoking prevention policy, the epistemic community shifted the decision-making process to the administrative spheres, thus technicizing it, and bypassing the political arena. However, the conditions that make a VEC "strong" are not explicit. Moreover, they call for further studies on the VEC concept, notably "in other sectors within multilevel settings, be it in a national or an international context" (Mavrot & Sager, 2018, p. 13). This article argues that VECs may be important in implementing international law. Therefore:

> *Expectation 2: VECs may facilitate the implementation of international law by bypassing the political spheres and shifting the decision-making process to the administrative spheres.*

Finally, besides actors and networks, implementation should also depend on the institutional setting. Previous research on federal systems has demonstrated that the implementation of international conventions was discussed in intercantonal conferences (Niederhauser, 2021). Intercantonal conferences are coordination mechanisms where members of federal and cantonal governments meet to discuss issues of common interest. The Conference of cantonal governments (CdC), the most important of these conferences, was set up in 1993 "to ensure that the cantonal interests are considered in the Europeanization process" (Vatter, 2018, p. 75). Then, there are 12 conferences of ministers, such as the Conference of Cantonal Ministers for Justice and Police and the Conference of Cantonal Ministers of Social Affairs. Finally, there are intercantonal conferences of experts, which gather specialized civil servants from the cantonal administrations. In the literature on federalism, intercantonal conferences are seen as devices that strengthen the power of cantons vis-à-vis the federal level (Füglister & Wasserfallen, 2014; Vatter, 2018). They were created as bottom-up mechanisms while engaging in horizontal policy coordination (Schnabel & Mueller, 2017). Scholars have called for more studies on intercantonal conferences, notably on directly and indirectly Europeanized domains (Schnabel & Mueller, 2017, p. 564). According to Vatter (2018), "there is not much research available on such a technocratic conference of experts since they are mostly convened ad hoc on a case-by-case basis out of specific demand" (p. 81). However, we observe that many conferences of experts are now permanent. In each of our two case studies, a specific conference is involved: the Swiss Conference against Domestic Violence (CSVD) and the Conference of Data Protection Commissioners (PRIVATIM), respectively.

We should emphasize that these conferences are often constituted of civil servants, who hold expertise in a particular area. In our study, we assume that both civil servants and (non-state) experts play a role in implementing international norms. Concerning epistemic communities, Haas argues that they are distinct from a simple bureaucratic group since they promote broader policy enterprises than the traditional administrative mission. "Bureaucratic bodies operate largely to preserve their missions and budgets, whereas epistemic communities apply their causal knowledge to a policy enterprise subject to their normative objectives. Consequently, although members of epistemic communities may use the bureaucratic leverage they are able to acquire through obtaining key personnel slots within bureaucracies, their behavior is different from that of the individuals typically analyzed in terms of their bureaucratic constraints" (Haas, 1992, p. 19). Against this background, we expect the following:

Expectation 3: Intercantonal conferences of experts may serve as horizontal coordination devices providing a venue for influence for VECs in the legislative implementation of international law.

To sum up, we expect to observe civil servants, holding a particular expertise in the area and organized through vertical epistemic communities, to exert a prominent role in the legislative implementation of international law, sustained by their participation through intercantonal conferences.

DATA, METHODS, AND CASE SELECTION

Data and Methods

We combine two qualitative datasets to explore our expectations empirically. First, we collected official documentary sources at the federal and cantonal levels to retrace the ratification process of the instruments and follow-up work on implementation. We relied on the federal government's dispatches accompanying federal bills, governmental reports, and official administrative documentation related to the instruments and their implementation at the federal and cantonal levels in order to accomplish this. We also collected documentation at the cantonal level, consisting of official and legislative documents, as well as parliamentary interventions, responses of the cantonal government, and parliamentary debates in the cantons. Second, to understand how relevant political and bureaucratic actors play a role in the legislative implementation of these instruments, we conducted 44 semi-structured interviews with members of cantonal parliaments (MCPs), cantonal officials, one member of a cantonal government, members of the federal administration and members of civil society organizations. The interviews lasted, on average, around 1 hour and 30 minutes, were conducted in French and German, and were designed to delve into actors' understanding and interpretation of international law implementation processes at the subnational level. The authors translated all excerpts contained in this article.

We analyzed this data using thematic content analysis and interpretative policy analysis. We notably draw on Yanow (2015), who conceptualizes implementation as experienced and observed, and as a political, administrative process at the hands of street-level civil servants. The civil servants we observe can be considered as mid-level bureaucrats because they do not directly interact with clients, but similarly to street-level bureaucrats, they have a meaningful margin of discretion in implementation (Hupe, 2019). The first step was the identification of themes and patterns across the documents and the interviews with the software MAXQDA. Then, we reconstructed and retraced the political and bureaucratic legislative implementation processes through what could be characterized as "micro-level process tracing" (Betts & Orchard, 2014, p. 26). Finally, we examined our interviewees' contextual features and characteristics that may be associated with specific uses of the instruments.

Case Selection

To answer our research questions, we selected two case studies, each being an international law obligation that should (in principle) be legislatively implemented at the subnational level in Switzerland. We decided to select our cases following the "diverse case" method, which involves selecting cases that encompass a range of variations (Seawright & Gerring, 2008, p. 301) taking into account "the diversity" of international norms (Gerring, 2018, p. 58). Thus, we selected one from the EU and one from a human rights treaty.

Another relevant variable is the norm's salience. Generally, we expect political spheres to engage more with salient norms (Theodoro Luciano & Junqueira, 2022), while administrations might engage more with less salient norms. For the same reason, we expect administrations to engage more with technical norms, while political spheres might engage less with those. Consequently, we selected two norms with different degrees of salience and of various technical complexity. Furthermore, international norms have different economic consequences for cantons. While implementing certain norms might involve high financial costs, others might financially benefit cantons. We also identified this variable in our case study selection to take it into account. Considering these criteria, we selected two international instruments which recently entered into force in Switzerland. This enabled us to observe the implementation process from close range. As interviews are one of our two data sources, this temporal proximity also ensures that memories of the process are still vivid for our interviewees. The two selected international instruments are the EU Directive 2016/680 on data protection[1] and the Istanbul Convention on domestic violence.[2] The following subsections present these instruments and explain why they must be implemented in Switzerland.

The EU Directive 2016/680 on Data Protection

Since the adoption of the Schengen Association Agreement (SAA),[3] the Swiss authorities must implement all the Schengen acquis, including data protection. Directive 2016/680 is a development of the Schengen acquis. This Directive complements the better-known European General Data Protection Regulation (GDPR), which does not regulate data processing in the context of criminal prosecution and police and judicial cooperation. The GDPR was not considered a development of the Schengen acquis and was therefore not notified to Switzerland. Moreover, the GDPR would only have to be implemented at the federal level, which is why we focus here on Directive 2016/680.

Directive 2016/680 must be implemented in the domestic legal orders of the Member States. Switzerland formally had two years to implement it, until 1 August 2018. At the federal level, it was implemented by the Federal Act on the Protection of Personal Data in the context of the application of the Schengen acquis in the criminal field. The cantons must also adapt their legislation on data processing by cantonal authorities to this new directive (Kaempfer, 2023).

The Istanbul Convention on Domestic Violence

The Istanbul Convention on domestic violence entered into force for Switzerland on 1 April 2018. It takes a global approach to combat violence against women and domestic violence, which means relevant policies should include different actors and agencies that take several measures to provide a holistic response to violence against women. According to Article 10, member states shall "designate or establish one or more official bodies responsible for the coordination, implementation, monitoring and evaluation of policies and measures."

[1]Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data (Directive 2016/680).

[2]The Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

[3]Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, 26 October 2004 (RS 0.362.31).

Switzerland decided to designate only one official body: the Domestic Violence Domain of the Federal Office for Gender Equality (BFEG).[4] The convention also establishes an international group of experts on action against violence against women and domestic violence (the "GREVIO"), which is charged with monitoring the implementation of the Convention by state parties (article 66). Every state party must periodically submit a report on the implementation of the Istanbul Convention to the GREVIO, which serves as a basis for the GREVIO to evaluate the situation and make recommendations.

The convention's implementation is a transversal task involving various policy fields, actors, and institutions, as well as the federal and cantonal levels. While some obligations relate to the federal level, others are directly within the competencies of the cantons, several of which explicitly require legislative measures, such as the obligation to take legislative measures or other measures to ensure the establishment of adequate shelters for victims of domestic violence (Article 23 of the Convention) and for support for victims of sexual violence (Article 25). Several reports point to a lack of capacities regarding shelters in Switzerland. In the process leading up to the ratification of the convention, the Federal Office of Justice stated that "globally, swiss law fulfils the requirements of the convention", but acknowledges that "a few points must be clarified with regards to cantonal competencies […] notably on the question of whether there exist enough shelter possibilities for victims".[5] Therefore, we argue that a need for legislative implementation at the cantonal level exists.

Selection of Cantons

The study of subnational implementation also enables us to account for different institutional and political contexts in the subnational units, which will be useful for our empirical investigation. An in-depth analysis for all the Swiss cantons being unfeasible, we selected a sample containing four cantons that can be considered representative of the existing diversity, notably in terms of size, language, degree of urbanization, and parliament's resource capacity, professionalization, and political position. The objective is to explore the impact of these variations on the observed implementation processes by teasing out the emerging regularities that hold notwithstanding these differences and the specific role of contextual factors (Plümper et al., 2019).

To do so, we identified Geneva as a "most likely case" in legislative implementation: a large and urban canton with a resourceful and strongly professionalized parliament,[6] relationships with international organizations, and quite strong left parties in parliament and government, which tend to be more favorable to international law (Miaz et al., 2023). By contrast, Schwyz is our "least likely case" because it is a small German-speaking rural canton with very weak left parties in parliament and government. We added two intermediary cases, Neuchâtel (a small French-speaking canton with a weakly professionalized parliament and strong left parties in parliament and government) and Zürich (a large German-speaking canton with a strongly professionalized parliament and moderately to quite strong left parties in parliament and government). Table 1 below presents these four cantons and their characteristics.

[4]Federal Council. Message concernant l'approbation de la convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique [Message concerning the approval of the Council of Europe Convention on preventing and combating violence against women and domestic violence], 2 December 2016, https://www.fedlex.admin.ch/eli/fga/2017/76/fr.

[5]Federal Office of Justice. Projet mis en consultation: Convention du Conseil de l'Europe du 11 mai 2011 sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique [Draft for Consultation: Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence], 2015, p. 2 Translated from French.

[6]This is relative as cantonal parliaments are non-professional. Members of the Geneva parliament spend around 40% of a full-time job for politics, the highest in Switzerland. The Swiss average is around 20%. In the canton of Schwyz, it is around 10% (Bundi et al., 2017).

TABLE 1 Characteristics of selected cantons.

Cantons	Languages	Population (2021)	Legislature under study	Strength of the left in Government[a]	Strength of the left in Parliament[b]
Genève	French	483 503	2018–2023	Quite strong	Quite strong
Neuchâtel	French	173 333	2017–2021	Strong	Quite strong
Schwyz	German	161 353	2020–2024	Null	Very weak
Zurich	German	1 537 408	2019–2023	Quite strong	Moderate

[a]Percentage of members from left parties: <18 Very weak, 19–28 Weak, 29–38 Moderate, 39–48 Quite strong, >49 Strong.
[b]Ibid.

EMPIRICAL FINDINGS

We will present how the two selected international instruments have been implemented in the four cantons.

Data Protection

Organization of the Implementation

In 2006, when all the Schengen acquis had to be implemented into Swiss domestic law following the SAA, the Conference of Cantonal Governments (CdC) created a Schengen/Dublin Policy Monitoring Group, which had a working group on data protection. When Directive 2016/680 was notified to Switzerland on 1 August 2016, Switzerland had two years to implement the Directive until 1 August 2018. The working group members on data protection rapidly realized that the average Swiss canton did not have sufficient knowledge and resources to grasp the meaning of these EU provisions on data protection and their implications.[7] Therefore, to facilitate implementation in the cantons, the CdC mandated a specialist to draw up a practical guide on data protection to ensure the cantons' adoption of the necessary provisions.[8] This specialist is a professor of information and data protection law at the University of Basel and the data protection commissioner of the canton of Basel-Stadt. In this capacity, he was frequently in contact with the working group on data protection. The process also received strong support from the police authorities, who were interested in receiving information from the Schengen Information System and wanted to ensure Switzerland would remain part of the Schengen agreement.[9] Hence, the specialist drafted a guide to breaking down the minimum standards of the acquis on data protection into individual elements that could be implemented. Around the same time, the modernization of the Council of Europe Convention 108 was implemented on data protection. Therefore, the guide was designed to ensure that both instruments were respected. The result consists of a 27-page table, which gives the cantons for every subtopic of Directive 2016/680 and Convention 108 a legal basis and commentary explaining the legislative objectives that must be met by the cantons and providing possible solutions to realize them. The CdC sent the guide to the governments of all cantons on 3 February 2017 along with an

[7]Interview 19. Data Protection Officer of the canton of Basel-Stadt and titular Professor of Information and Data Protection Law at the University of Basel, January 2021.
[8]A similar guide was already drafted in 2006, when all the Schengen acquis had to be implemented into Swiss domestic law. See Kaempfer (2021).
[9]Interview 19 (cf. footnote 9).

accompanying letter addressed to "the political and technical interlocutors of the cantons responsible for the implementation of Schengen/Dublin." The guide[10] and the letter[11] can be found on the website of the data protection commissioner of the Canton of Basel-Stadt.

This letter states the objectives of the guide, which are to encourage cantons to review their legislation according to the Schengen acquis on data protection. The letter also highlights the importance of data protection for the EU and for cross-border police cooperation, and the Schengen evaluation that will take place in 2018:

> "The guide is intended to help the cantons to review their data protection legislation and to assess where they need to intervene.
>
> Please forward the guide to the competent authorities in your canton so that they can assess the changes to be made and take the necessary legislative and/or organizational steps.
>
> We would be grateful if you would pay the necessary attention to data protection, as data protection and its enforcement are becoming increasingly important in the eyes of the EU, in return for the intensification of cross-border police cooperation in recent years and the increased exchange of information. In 2018, Switzerland will carry out a new Schengen evaluation which will also include data protection."[12]

The letter also reminds the cantons that they have two years to implement the Directive as of its notification.

Against this background, we can conclude that federal and cantonal data protection commissioners, along with the working group on data protection and the mentioned specialist, form a VEC, a vertical "network of professionals with recognized expertise and competence in a particular domain [data protection law] and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas, 1992, p. 3). This VEC organized the implementation of the EU Directive by sending detailed instructions to "the political and technical interlocutors of the cantons." Moreover, they use the intercantonal conference of data protection commissioners (PRIVATIM) to oversee implementation: cantonal progress is tracked on PRIVATIM's website.[13] The following subsection shows how the implementation was conducted at the cantonal level.

Implementation at the Cantonal Level

Following this letter, we observed legislative processes initiated in the four studied cantons. The initiation of the process followed a similar pattern in most cantons. Following the reception of the letter, a working group was created, which always gathered the cantonal data

[10]CdC. Guide pratique, Adaptation des lois cantonales sur (l'information et) la protection des données [Practical guide, Adaptation of cantonal laws on (information and) data protection], 2017, available at: https://www.dsb.bs.ch/dam/jcr:0172d1bc-88ff-4dde-8fb4-b1b25535f43c/CdC%20Guide%20pratique%20LPD%20Cantons.pdf.

[11]CdC. Lettre du 3 février 2017 aux interlocuteurs politiques et techniques des cantons, en charge de la mise en oeuvre de Schengen/Dublin [Letter dated 3 February 2017 to the political and technical interlocutors in the cantons responsible for implementing Schengen/Dublin], available at: https://www.dsb.bs.ch/dam/jcr:890f7461-ddcc-4728-a15a-304f338cbc89/Begleitschreiben%20Guide%20patique%20F.pdf.

[12]Ibid.

[13]Privatim. État des révisions de la loi sur la protection des données dans les cantons [Status of data protection law revisions in the cantons], 27 June 2023, available at: https://www.privatim.ch/fr/etat-des-revisions-de-la-loi-sur-la-protection-des-donnees-dans-les-cantons-27-juin-2023/.

protection commissioner and member(s) of the cantonal legal service. In some cantons, members of the police were also involved (Neuchâtel), and in others, it was constituted as an interdepartmental group with all departments involved (Geneva). This working group prepared an amended version of the cantonal law on data protection, taking into account the guide.[14] The working group's work appears to be very similar in all cantons. An extract of the interview here illustrates it:

> "the work is mainly done by the [legal service], and we examined, compared the different texts, identified the obligations that seemed new to us, we then made proposals to the working group to adapt our law when we thought it was necessary, and then [the working group] met many times […] to discuss each legal provision as proposed, to see if we would keep it, modify it, if we amend it… and then, in the end, we came up with a proposal, which modifies the law, which we will soon submit to the government."[15]

This interviewee also stated they have to determine whether or not there is room for maneuver in this process: "that's one of the main difficulties: to determine how much discretion we have [in implementing the new right or obligation] and whether several options are available."[16]

The amended version must then be validated by the cantonal government, which sends it to the cantonal parliament for adoption. In Schwyz, Zurich, and Neuchâtel, the cantonal parliaments have adopted the new law. In Geneva, the working group will submit the law to the parliament in 2023.

One striking feature is that the parliamentary stage seems to have been noticeably short in all three cantons. In Schwyz and Zurich, the revision project went through the normal parliamentary process, that is, first to a parliamentary committee and then to the plenary. In Neuchâtel, the government managed to bypass the normal parliamentary process.

In Schwyz, the law project did go through a committee that made a minor amendment asking particularly sensitive personal data to be exhaustive and not exemplary in the law. The government then supported this minor amendment and included it in the law. Besides this, the discussion at the parliament remained short. Only one far-right Swiss People's Party member made explicit that his party was not enthusiastic about Switzerland having to follow supranational legal developments. He stated that the legal revision "is more a marriage of convenience. The bride is not very beautiful, but she is intelligent."[17]

In Zurich, the government opposed any attempt to change the proposed law. The left-wing Social Democratic Party of Switzerland (SP) tried to use the opportunity of legal revision to make changes in the law on data protection. The present government member advised against it, stating that "the timing [was] short due to the European regulation,"[18] and was supported by most other parties.

In Neuchâtel, the government and its civil servants bypassed the normal parliamentary process, so the revision project was not debated in a committee. It went directly to the plenary, where members of the cantonal parliament (MCPs) spent less than 12 minutes discussing the project. Only one parliamentarian, who spoke for the SP, regretted how the process was conducted. He explained to us in an interview that as a lawyer with some knowledge of data

[14]This is confirmed by interviews for the cantons of Geneva, Neuchâtel and Schwyz. For Zurich, it features in the proposal to amend the Zurich Data Protection Act drawn up by the government of the Canton of Zurich on 4 July 2018, 9.

[15]Interview 27. Member of one Office of Legal Affairs, Geneva, Zoom, February 2022.

[16]Ibid.

[17]Cantonal Parliament Schwyz. Ausserordentliche Sitzung, Summarisches Protokoll [Extraordinary meeting, summary minutes], 22 May 2019.

[18]Cantonal Parliament Zurich. Protokoll [Minutes], 9 September 2019.

protection, he believes some modifications could have been made to this law and regretted that the parliament did not get a chance to address this issue adequately:

> "[…] perhaps there would have been another weighing of interests that could have been done differently, and we could have been inspired a little more notably by European law for certain things related to the protection of citizens' data vis-à-vis the State, well there you have it, we can imagine that a certain number of things could have been discussed when they were not."[19]

Apart from him, we observe that most MCPs did not take ownership of these legal processes. Interestingly, most interviewees stated this was a "technical" topic that did not require the parliament's attention.

In conclusion, legislative implementations took place in every canton, led by the cantonal data protection commissioners and civil servants from the cantonal legal services. We also observe that these civil servants, who form a VEC, are seen as having expertise in the matter and, thus, authority. It seems that the "technical" aspect of data protection law, combined with a particular authority held by these civil servants, enabled the depoliticization of the issue and bypassing of the parliaments. It echoes Mavrot and Sager's (2018) case, wherein reforms were "proposed by the governments as technical revisions requested by professionals, thus limiting the risk of political appropriation." In all cantonal processes, the role of MCPs was minimal; they arguably only acted as "ratifying bodies" (Benz & Papadopoulos, 2006).

Istanbul Convention

Organization of the Implementation

Intercantonal conferences also organize the cantonal implementation of the Istanbul Convention: the Conference of the Cantonal Ministers for Justice and Police and the Conference of Cantonal Ministers of Social Affairs mandated the Swiss Conference against Domestic Violence (CSVD) to facilitate implementation (Niederhauser, 2021). The CSVD regroups cantonal officials in charge of domestic violence issues (hereafter "DV delegates").

Upon receiving the mandate to facilitate the implementation of the Istanbul Convention at the cantonal level, the Committee of the CSVD decided to do a stock-taking exercise to identify the current needs for cantonal implementation. On this basis, in September 2018 it published a report on the implementation of the Istanbul Convention at the cantonal level.[20] One co-president of the CSVD explained that this was done by translating and adapting the Istanbul Convention into priority fields of action through a back-and-forth process between the needs identified in the field and the convention's content.[21] The report identifies seven priority fields for the first phase of the implementation. For instance, they "recommends that a survey of the shelter situation be carried out as a matter of urgency."[22] Therefore, the CSVD guides cantonal actors toward the most urgent actions. This report is, however, much less precise than the data protection guidelines in our other case study.

[19]Interview 40. SP Member of the Neuchâtel Cantonal Parliament, Neuchâtel, May 2022.
[20]CSVD. Mise en œuvre de la Convention d'Istanbul au niveau des cantons, état des lieux et mesures à entreprendre [Implementation of the Istanbul Convention at cantonal level, current situation and measures to be taken], September 2018, https://ch-sodk.s3.amazonaws.com/media/files/181025_Bestandsaufnahme_Istanbul_f_def.pdf.
[21]Interview 13. Head of the Office for the Promotion of Gender Equality and the Prevention of Violence, Geneva, July 2020.
[22]CSVD. (cf. footnote 9). p. 24.

There are no legislative objectives that must be met by the cantons nor possible solutions to achieve them.

In contrast to data protection commissioners, DV delegates are not independent experts because they are civil servants from the cantonal administrations and report to a cantonal government member, i.e. a cantonal Minister, who is an elected politician. Nevertheless, we will argue that DV delegates were exempt from their administrative mission when they participated in the CSVD and that they constitute a VEC, with the CSVD acting as a venue for this VEC.

First, it is interesting to note that DV delegates created the CSVD during a constitutive assembly in 2013. During this assembly, there was a discussion on whether members of the CSVD should be officially designated by their canton. In certain cantons, this would have forced members to ask for voting instructions from their governments before CSVD meetings. It was decided that members would not have to be officially designated by their cantons to avoid this. This allows DV delegates to support positions that differ from their governments within the CSVD. Furthermore, the CSVD was constituted under an association under Swiss private law. The literature acknowledges that intercantonal conferences do not have constitutional bases (Vatter, 2018) and are "located outside the formal framework of Swiss federalism" (Schnabel & Mueller, 2017, p. 552). Nevertheless, it remains somewhat surprising for a state-like entity to be constituted as an association under private law. This demonstrates that the CSVD wishes to remain independent from political decisions.

Second, despite being civil servants, DV delegates' work is political and profoundly shaped by their normative beliefs. Several DV delegates come from politics and associations. One DV delegate we interviewed had a political career and was involved in women's movements before becoming the head of the Office for Gender Equality. While in office, she was accused of being too political, but in the interview, she stated, "I am political, I accept that, but this job is political, whether you want it or not."[23] Another DV delegate had worked for more than 20 years in an association supporting victims of violence. She compared the two positions, saying that being a public service with the backing of an international Convention gives more authority than being a feminist association. She said that they are more listened to as a public service, but their discourse must be "legally sound, factual, argumentative."[24] Indeed, most DV delegates possess what Kardam and Acuner refer to as "dual identity" (Kardam & Acuner, 2018, p. 107): they are both civil servants and normatively close to women's movements.[25]

For these reasons, we argue that the DV delegates, together with the BFEG, constitute a VEC even though they only consist of civil servants (Haas, 1992, p. 19) and that the CSVD serves as a venue for this VEC. Indeed, it is clear that DV delegates have normative objectives that go further than traditional administrative activities, as demonstrated by the fact that they wish to exempt themselves from their administrative mission in their activities in the CSVD. Their background, political role, and "dual identity" are additional evidence. Of course, epistemic communities are not strictly defined groups, and it is hard to define who is in and out. DV delegates have contacts with members of the civil society, which could arguably participate in the epistemic community. However, based on our data, we argue that DV delegates fulfill the definition of a VEC by themselves, blurring the boundaries between experts and civil servants.

[23]Interview 4. Head of the Office for Family Policy and Gender Equality, Neuchâtel, March 2020.

[24]Interview 13. Head of the Office for the Promotion of Gender Equality and the Prevention of Violence, Geneva, July 2020.

[25]On the relationships between DV delegates and women's movements in Switzerland, see Delage et al. (2020).

Implementation at the Cantonal Level

At the cantonal level, we observed different processes taking place in the cantons. We identified a legislative implementation in only one canton (Neuchâtel), while in others, there have been some parliamentary interventions but no legislative reform nor new law.

In Neuchâtel, the head of the Office for Family Policy and Gender Equality had planned a new cantonal report on domestic violence for 2018 because the last one dated back to 2008. As the Istanbul Convention entered into force in Switzerland around the same time (1 April 2018), she considered it an opportunity to reform the existing cantonal law on domestic violence – *Loi sur la lutte contre la violence dans les relations de couples (LVCouple)* (Act on the fight against violence in couple relationships) – which dated back to 2004, so as "to adapt it to the Istanbul Convention."[26] In this process, she told us, the role of the BFEG and the CSVD was mainly informative, "the cantons are still sovereign to apply [the Istanbul Convention] due to federalism."[27] In other words, they have a certain room for maneuvering to implement or not the convention in one way or another. Therefore, she used the convention's ratification to support her draft legislation. The report presenting the new legislation to the cantonal parliament mentioned that the canton "will be able to honor its obligations coming from the signature of the Istanbul Convention."[28] The new legislation first had to be supported by the minister in charge, then by the whole cantonal government, and finally adopted by the cantonal parliament in November 2019. The project received wide support during the process, notably because the topic is widely supported along the political spectrum, and the cantonal parliament successfully adopted it with only minor changes. However, this is also because the head of Office had drafted softened and sometimes limited propositions to ensure that a majority of the cantonal parliament would support the legislative project.[29]

In the other cantons, the administration has not yet initiated legislative processes. However, we observed that in all four cantons (including Neuchâtel), MCPs used parliamentary interventions (motions, postulates, interpellations, or questions) either to ask the government what the canton was doing to implement the Istanbul Convention[30] or to use the convention as a political argument to ask what the canton does to prevent and fight domestic violence.[31]

Most of these interventions come from women MCPs from the SP, sometimes in collaboration with women from the Green Party, and more rarely with women from other political parties. In several cases, these parliamentary interventions relayed in their canton an intervention template that the "Socialist women", a group within the SP, drafted together with the NGO Brava and the Istanbul Convention Network (a coalition of NGOs created to observe the implementation of the convention). The intervention template was designed for MCPs and contained questions for the cantonal government on implementing the Istanbul Convention. It was then sent out to all the SP cantonal sections, with a suggestion to submit it to their respective governments.[32]

[26]Interview 4. Head of the Office for Family Policy and Gender Equality, Neuchâtel, March 2020.

[27]Ibid.

[28]Cantonal Government Neuchâtel. Rapport du Conseil d'État au Grand Conseil à l'appui d'un projet de loi sur la lutte contre la violence domestique [Report from the Cantonal Government to the Cantonal Parliament in support of a bill to combat domestic violence], 2019, p. 24.

[29]Ibid.

[30]For example, in the canton of Neuchâtel, the Interpellation 18.216 "Convention d'Istanbul: qu'en est-il de sa mise en oeuvre?" [Istanbul Convention: what about its implementation?], issued by Martine Docourt (SP).

[31]For example, in the canton of Schwyz: Interpellation I 34/18: "Gewalt gegen Frauen – was macht der Kanton Schwyz" [Violence against women – what does the canton Schwyz], issued by Carmen Muffler and Jonathan Prelicz (Socialist Party, SP) on December 5, 2018; or in the canton of Zurich: Question: "Gewalt gegen Frauen" [Violence against women], issued by Michèle Dünki, Pia Ackermann and Rafael Steiner (SP) on September 3, 2018.

[32]Interview 8. SP Member of the Neuchâtel Cantonal Parliament, Neuchâtel, June 2020.

In the canton of Zurich, a group of SP MCPs submitted a series of interventions related to the Istanbul Convention, one of them based on the intervention template.[33] One of the MCPs who submitted these interventions explained their objective was "to put the topic on the political agenda, to bring it to the public."[34] At the same time, she identifies the administration as a more operational actor. These interventions reached their goal of receiving media coverage. The specialized bureaucrats from the Zurich Intervention Centre against Domestic Violence perceived the interventions positively, as they helped legitimize and support their actions and put pressure on the government to take measures.[35] Indeed, shortly after these interventions, the cantonal government decided to include violence against women in its law enforcement strategy for 2019–2022 and announced an additional requirement of 1.5 million Swiss francs per year for the victim counseling centers would be included in the budget for 2020 and subsequent years.[36] In 2021, the government adopted an action plan containing 16 measures, all referring to specific articles of the Istanbul Convention.[37] This example shows that MCPs use the Istanbul Convention as an agenda-setting tool. MCPs submitted similar interventions in the cantons of Schwyz and Geneva.

In Schwyz, a member of the Social Affairs Department represents the canton at the CSVD. She wishes the Istanbul Convention was considered more seriously but stated: "I can't do anything, I'm too far down the hierarchy. I can point it out to my superiors, but the political will is not there." She added, "When I talk about the Istanbul Convention […] at the domestic violence roundtable, they look at me like I'm from Mars, no one has ever heard of that." She explained that larger cantons are expected to have working groups related to the Istanbul Convention, but Schwyz has a very small administration. They cannot carry out any additional tasks. Moreover, the federal administration cannot force the canton to act. Only if federal laws required it would the canton act. Similarly, some requirements, such as a 24-hour helpline phone for victims, cannot be realistically implemented in a small canton like Schwyz. Overall, all interviews we conducted in Schwyz pointed out that the canton has too few staff and too little money, and the government does not want to spend any money on this anyway.

We should add that the multiplication of actors and documentation involved in the implementation strategy probably hinders effective implementation by civil servants at the cantonal level. This issue was highlighted by a member of the cantonal legal service, who explained that it was unclear what legal changes they had to make:

> "The problem is that for a long time, we did not understand what we actually had to implement because the responsibilities were not entirely clear at the federal level: the BFEG, crime prevention services, the CSVD… And it was not clear who has the lead […]. We have received a lot of papers so far, but we don't know exactly what we have to implement."[38]

In conclusion, this case study confirmed that MCPs play a minor role in the legislative implementation of international law. In only one canton was the convention legislatively implemented (Neuchâtel), and it followed a civil servant's impulsion. Parliamentarians submitted multiple interventions in other cantons, but this has not led to legislative implementation. Interestingly, no MCPs said they considered it their job to implement these obligations.

[33]Interview 22. Two SP Members of the Zurich Cantonal parliament, Zurich, January 2021.
[34]Ibid.
[35]Interview 26. Two Members of the Zurich Intervention Centre against Domestic Violence, Zurich, April 2021.
[36]Cantonal Government Zürich. Auszug aus dem Protokoll [Extract from the minutes], 27 February 2019, https://www.zh.ch/bin/zhweb/publish/regierungsratsbeschluss-unterlagen./2019/184/RRB-2019-0184.pdf, p. 18.
[37]Cantonal Government Zürich. Auszug aus dem Protokoll [Extract from the minutes], 31 March 2021, https://www.zh.ch/de/politik-staat/gesetze-beschluesse/beschluesse-des-regierungsrates/rrb/regierungsratsbeschluss-338-2021.html.
[38]Interview 44. Head of the Schwyz Legal Office, Zoom, August 2022.

They all stated this was the government's and the administration's task. Based on this case study, we also argue that civil servants formed a VEC, using the CSVD as a venue for influence. We want to nuance Mavrot and Sager's (2018) claim that a strong VEC is "a decisive factor in the secondary harmonization in a federalist system," as we argue that this is not an explicit criterion. Rather than using "a strong VEC" as the independent variable, we argue that a VEC must be able to technicize the issue to ensure a swift implementation through the administrative spheres. If it cannot, its success will depend on the subnational political contexts, especially the political majority in the subnational institutions, which the Swiss context shows can be highly different from one canton to another.

DISCUSSION AND CONCLUSION

Civil Servants and Parliamentarians in the Legislative Implementation of International Law at the Subnational Level

We first observe that civil servants played a major role in all the cases of legislative implementation of treaties that create obligations for the subnational level, such as cantons in Switzerland. For the implementation of Directive 2016/680, much of the work was done in working groups gathering members of the legal offices and data commissioner of the cantons. In these processes, the role of members of cantonal parliaments (MCPs) was limited. We may argue that their role was limited to "ratifying bodies," sometimes referred to in the literature (Benz & Papadopoulos, 2006). Interestingly, no MCPs said they considered it their job to implement these instruments. They all stated that this was the government's and the administration's task. Those who submitted interventions related to the Istanbul Convention were not trying to implement the Convention nor directly asking for legal amendments but were more generally calling for actions from the cantonal governments. As expected, the salience of the issue of domestic violence triggered more engagement by MCPs. One common feature we observed across case studies is that international obligations are considered truly distant by MCPs. A member of the cantonal administration also highlighted this:

> "When [politicians from the cantonal and local levels] meet, [they] don't talk about international law, more about very concrete problems … but there are no big words like the Istanbul Convention […] but [the cantons] talk about international law, I mean 'where do we put this house to accommodate women victims of violence?' that's the problem: where, when, how many, etc. So, it is the implementation of the Istanbul Convention, but it's not… the approach is not the same, it's just the vocabulary that is different, but the concerns are the same […] the difference is often just a question of narrative. And then we go down to the level of the municipalities […] with people who [act as politicians] once a month in the evening between 6 and 7 pm, and who might be farmers on top of that, so you cannot expect… [end of reply]."[39]

This extract highlights one challenge of international law implementation at the subnational level, where political actors are weakly professionalized and particularly remote from the original rule-makers (Maggetti, 2021). Overall, this confirms our first expectation that civil servants play a much greater role than MCPs. Indeed, there is a greater difference in the level of expertise between cantonal civil servants and parliamentarians at the

[39]Interview 36. Two Members of the Office for Exterior Affairs, Neuchâtel, April 2022.

cantonal level than at the federal one. Moreover, while cantonal administrations might not control negotiations at the international level, as opposed to federal administrations (Papadopoulos, 2008; Sciarini, 2015), they are active at different levels, and their contacts at the federal level contribute to their informational advantage.

Intercantonal Conferences and Epistemic Communities

Turning to the role of civil servants and experts in implementing international instruments, we showed that the boundary is often blurred between experts and civil servants. This is especially true in Switzerland, where the experts in charge of implementation are often civil servants, but they may be formally independent from elected politicians, as the data protection commissioners, or they may exempt themselves from their administrative mission, as the CSVD members. Moreover, we have demonstrated that "expert civil servants" may form VECs, which, in line with our third expectation, use intercantonal conferences as institutional platforms to facilitate international law implementation. Our research also sheds some light on intercantonal conferences of experts, which play a growing role in international law implementation and in policy making more generally, although they are quite informal mechanisms (Vatter, 2018). Interestingly, while intercantonal conferences play a role in both case studies, one case ends with very homogenous implementation (or even harmonization), while the other not. We discuss this difference in the next two subsections. Another contribution of this article is to show that an epistemic community can be composed exclusively of civil servants, which act as policy experts therein. This claim is based on the case of the CSVD, wherein we highlighted two factors: first, CSVD members are civil servants who work in a very political position and have normative objectives that go further than traditional administrative activities (Haas, 1992, p. 19). Secondly, civil servants exempt themselves from their administrative mission when they rejoin the CSVD, somehow losing part of their official capacity. This goes against Haas' claims that "Bureaucratic bodies operate largely to preserve their missions and budgets, whereas epistemic communities apply their causal knowledge to a policy enterprise subject to their normative objectives" (Haas, 1992, p. 19). Although this finding is admittedly based on intercantonal conferences in Switzerland, which is a specific case, we believe that the evolution of states' structures since Haas makes it likely that this could happen in different settings. We believe this is an important conceptual contribution to the literature on VECs.

Under what Conditions Can a Vertical Epistemic Community Ensure Implementation?

In the case of data protection, the fact that the reforms were almost entirely decided in the administrative spheres enabled their swift adoption in all cantons. In that regard, this case is similar to the one examined by Mavrot and Sager (2018), where the epistemic community shifted the decision-making process to the administrative spheres, thus technicizing it and bypassing the political arena. This also supports our second expectation that VECs may facilitate implementation by bypassing the political spheres and shifting the decision-making process to the administrative sphere. The fact that data protection is widely regarded as a technical topic certainly helped, as confirmed by our interviews with parliamentarians who adopted the reforms. Furthermore, what is notable in this case study is that even though the implementation required legal amendments and thus the involvement of cantonal parliaments, civil servants managed to keep the whole process in the administrative sphere. In this sense, the VEC is even more influential than in Mavrot and Sager's case, wherein the VEC used policy programs to avoid political spheres.

We also want to engage with the argument that "a strong vertical epistemic community could be a decisive factor in the secondary harmonization in a federalist system" (Mavrot & Sager, 2018, p. 12). Our case studies shed some light on a "strong" VEC. Indeed, civil servants in charge of implementing EU law on data protection are lawyers (from legal offices and data protection commissioners). It seems that the "technical" aspect of data protection law, combined with a particular form of knowledge-based legal authority held by these civil servants, enabled the depoliticization of the issue and bypassing the parliament. In the case of the Istanbul Convention, civil servants in charge of domestic violence are experienced professionals specialized in domestic violence. However, they are not lawyers or human rights specialists. Moreover, we have seen that many of them come from the political scene and civil society associations and occupy a peripheral position in the administration. Therefore, the processes they lead are more likely to be seen as political and do not carry the same authority as the legal offices. This confirms Betts and Orchard's (2014) claim that implementation depends on "which epistemic communities are designated as having authority over implementation" (p. 14).

To sum up, we want to highlight the two factors that we believe played a role: the issue's perceived technicality and the knowledge-based authority of the VEC. A VEC perceived as having more knowledge-based authority is more likely to be able to technicize the issue, thus ensuring a swift implementation through the administrative spheres rather than the political ones.

Political Contexts of Subnational Units

In conclusion, it is important to note that the legislative implementation of Directive 2016/680 on data protection is very homogeneous. There were very few variations between cantons in how the process was conducted. By contrast, the implementation of the Istanbul Convention enables us to discuss the question of the political contexts of subnational units. The canton that implemented the Istanbul Convention the most swiftly and diligently is Neuchâtel. This was not our "most likely case" (it was Geneva). However, it is the canton with the most left-wing political institutions. By contrast, the canton of Schwyz, which we identified as our "least likely case," is where the Istanbul Convention was the least implemented. This is related to the political majorities within the canton's institutions, as highlighted by our interviews. Thus, a political majority favorable to international law may be necessary for legislative implementation if the VEC does not manage to keep the implementation process in the administrative sphere.[40] In sum, it appears from our study that a VEC manages to implement an international instrument either (1) if they can technicize the issue to ensure a swift implementation through the administrative spheres rather than the political ones or (2) if the subnational political context is favorable.

It would be interesting to investigate whether these findings hold in similar federal contexts, such as in Germany and in the U.S., under specific scope conditions, namely a large leeway granted to subnational units and the presence of intergovernmental councils structuring relations among civil servants in charge. More empirical research is needed in that regard.

Overall, this article brings a long overdue micro-level analysis of international law implementation in – and across – subnational units (Paasch & Stecker, 2021). The prominent role of civil servants and experts in legislative implementation raises the recurring question of democratic legitimacy highlighted by the literature on subnational parliaments (Abels &

[40]For a discussion on political majority and political will in this context, see Miaz et al. (2023).

Eppler, 2016). Equally important is our claim that epistemic communities can be composed exclusively of civil servants operating as policy experts. This contribution to the literature on epistemic communities would be interesting to confirm in different settings, especially as this blurring of the boundaries between experts and civil servants also raises questions on the nature of the state and its legitimacy.

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DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request. The data are not publicly available due to privacy or ethical restrictions.

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