

From ‘de jure’ to ‘de facto’ decentralised public policies: The multi-level governance approach

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Abstract

This contribution recalls the existing interdependencies across levels of government and elaborates on the multi-level governance gaps framework to identify coordination and capacity reinforcement tools to improve public policy outcomes in decentralised contexts. It details how the Organisation for Economic Co-operation and Development has adopted this approach. This paper then focuses on one of the tools used by countries and regions – *Contracts*. Contracts across levels of government, though not exempt of drawbacks, can favour information-sharing and mutual understanding as to how to address common policy priorities, while reducing the transaction costs of policy implementation; and generate trust between public actors for their future endeavours. The last section underlines some more general observations and questions like the use of multi-level governance approach to preserve the ‘biodiversity’ of regions. The note concludes with the need to re-insert relationships with people and not only among public authorities in a ‘new generation’ multi-level governance framework.

Keywords

contracts across levels of government, coordination, decentralised public policies, incentives, multi-level governance, OECD, regional development

Introduction

The environment in which governments operate today is very uncertain due to megatrends such as climate change, digitalisation and demographic change (as well as urbanisation, ageing and migration).¹ In addition, growing mistrust towards institutions related to the uncertain environment and the perception of increasing inequalities among people and among

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places, contribute to fragmenting society while challenging the key role of public actors on social cohesion. ‘Geography of discontent’² and ‘places that don’t matter’ (Rodríguez-Pose, 2017) are recurrent expressions used to characterise these complex situations.

In this context of radical change, there is no ‘one-fits-all’ or optimal type of solution to improve the efficiency and effectiveness of public intervention. There is no single omniscient agent, who can offer solutions to all problems. National and supra-national governments are no exception to this rule. The challenges call for innovative responses based not only on individual experience but also on others’ knowledge. Agents can build them through a variety of interacting strategies (networking, imitation, mutualisation, etc.) and select solutions rather based on experimentation, than by confronting realities to normative rules.³

The intuition behind this new allocation of roles and mutual institutional dependence already appeared in the work of Gary Marks and Liesbet Hooghe, on multi-level governance (MLG) in the 1990s (Jeffery and Peterson, 2019) on the impact of European integration. They initiated a broad research programme characterising the evolution of democratic systems in the world.

This MLG research programme is specific in different ways. First, it is open to interdisciplinary approaches, starting from political science and extending to other strands of social science, including law and economics. This openness is key to understanding its paradigmatic nature. The programme is also characterised by its dual ambition: to concretely understand and address public challenges and to contribute to research on institutions theory. The evolution in time and in the scope of MLG is thus best described as a to-and-fro between theory and practice. This also explains why both academia and public organisations have adopted MLG in the 2000s (e.g. European Union, Committee of the Regions, Organisation for Economic Co-operation and Development (OECD), etc.).

Admitting the complexity of institutional systems and the importance of implementation for well-functioning public policies in decentralised contexts – rather than seeking to develop universal and normative responses – is now evident. It was not so widely accepted before the crisis that led to the questioning of mainstream approaches and opened international institutions to alternative ways of thinking.⁴ Despite its modest and descriptive methodology, the MLG approach revealed its analytical impact with time, allowing to develop extensive analytical and diagnosis tools, relevant to many public policy issues.

This contribution presents an example of the influence, uses and expansion of the MLG research programme. It argues that MLG is inevitably needed and presents the characteristics of MLG gaps. Delving into MLG ‘in practice’, this paper then presents the way the OECD, through its Regional Development Policy Committee, has adopted this approach. It then argues that ‘contracts across levels of government’ are a powerful tool to address MLG gaps. It concludes by examining future challenges to MLG. Indeed, this approach has raised high expectations that it has to live up to. This *rançon de la gloire*⁵ underlines how MLG is expected to play a key role to reconcile fragmented pieces of our societies and help restore coherent contributions to common goods at various geographic scales.

MLG is inevitably needed to address coordination gaps

The first job of Government is not to administer transactions, but to solve the problems that people care about. These do not follow the administrative breakdown of public departments and agencies, and thus there is a risk of ‘gaps’ in policy-making. Closing these gaps is complex: horizontal and vertical policy processes are necessary to manage complexity. In particular, how can governments both tailor public policies to specific contexts, avoiding a ‘one fits

Table 1. Multi-level governance gaps.

Gap	Description	Actions needed
Information gap	Asymmetries of information (quantity, quality, type) between levels of government (intentional or not)	Incentives to reveal and share information
Capacity gap	Insufficient scientific, technical, infrastructure capacity of subnational actors, in particular to design appropriate strategies	Instruments to build local and regional capacities
Funding gap	Unstable or insufficient revenues undermining effective implementation of responsibilities at the subnational level	Shared financing mechanisms
Policy gap	Silo approaches of sectoral ministries and agencies	Mechanisms to create multidimensional/holistic approaches at the subnational level, and to exercise political leadership
Administrative gap	Mismatch between functional areas and administrative boundaries	Arrangements and institutions to act at the appropriate level
Objective gap	Actors at different levels have different and often contrasting objectives that impede co-operation	Incentives to align objectives
Accountability gap	Difficulty to ensure the transparency of practices across constituencies	Institutional quality measurement; instruments to strengthen integrity at central and local levels; instruments to enhance citizens' involvement

Source: Adapted from Charbit (2011) and Charbit and Romano (2017).

all' approach, while maintaining some degree of coherence among the diversity of subnational strategies? In the absence of an optimal model, how can countries identify and assess MLG challenges in order to improve the effectiveness of public policies in decentralised contexts?

In order to answer these questions, the first task is to identify who is in charge of what, in terms of design, regulation, budget and implementation of the policy that government wishes to improve. This 'institutional mapping' matters: it may uncover overlaps between actors' functions or excessive dependence of some actors on others' decisions. Overlapping per se is not a concern if co-ordination among stakeholders in the delivery of public policies is effective. If not, various co-ordination 'gaps' can explain some failure in efficiently managing public policies. Sometimes the emergence of new issues (environmental concerns, demographic evolutions, etc.) may not even be the cause of this overlap, but rather, on the contrary, generate the opposite, that is, a 'vacuum', due to the absence of clear definition of competences. It is therefore crucial to be able to address the issues of overlap and 'vacuums' and to ensure the smooth coordination among stakeholders.

An *MLG tool* is used as a common reference to assess coordination and capacity challenges across levels of government and to formulate actions needed to address those (Table 1). This framework has been extensively used and permanently adjusted and adapted to a variety of policy fields and country reviews.

MLG in practice and the Regional Development Policy Committee of the OECD

Since its birth 20 years ago, and under the influence of its first Chair, Fabrizio Barca, the OECD Regional Development Policy Committee (RDPC, initially Territorial Development Policy Committee) has paid great attention not only to the substance of regional development policies, but also to *how* these are implemented in decentralised contexts. The Committee argued that paternalistic views on subnational governments (SNGs) based on subsidies, was largely insufficient and that it was essential to encourage the exploitation of endogenous assets through investment policies. It was then able to convince broader policy-making community that ‘going green’; ‘going productive’ or ‘going inclusive’ all required to ‘go local’. In other words, it suggested that stronger synergies between policies were needed in order to meet the needs of individuals and businesses ‘at the relevant geographical scale’ (beyond administrative boundaries). Implementing these recommendations led to observations that, instead of a strict allocation of distinct responsibilities, public management domains such as finances, human resources, regulation, e-government reflected mutual dependency across levels of government (Charbit and Michalun, 2009).

Today MLG is a major pillar of the RDPC’s activities, not just to improve regional development policies but also to improve the outcomes of various policies which involve SNGs. The way that this Committee’s work has influenced the broader OECD policy agenda was underlined in March 2019, during its Ministerial meeting in Athens, through four main pervasive ‘MLG-type’ messages (see Box 1):

Box 1. Key messages to the OECD from its Regional Development Policy Committee (RDPC).

- There is no ‘average’ region: above all, governments must go beyond national averages to identify issues and define policy priorities;
- Implementation is half the battle. The RDPC anticipated the evolution of the OECD from a ‘think tank’ to a ‘do-tank’. The diversity of countries (and Ministries) represented in the RDPC and its Working Parties on Urban Policy, Rural Policy and Territorial Indicators (Regional Development, Infrastructure, Economy, Interior, Administrative reform, Urban, Agriculture, etc.) have focused on coordinated and action-oriented implementation;
- Broadening and deepening SNGs engagement. The RDPC has worked towards this objective through the creation: of ad-hoc thematic communities of practice (e.g. on water governance, port cities, rural regions for renewable energy, green cities, indigenous communities, mining communities, circular cities and regions, local implementation of Sustainable Development Goals (SDGs)); of more permanent platforms for dialogue across and within levels of government (Roundtable of Mayors and Ministers, Champion Mayors for Inclusive Growth, Territorial Dialogues); or through multi-sector stakeholder engagement (Water Governance Initiative);
- Regions are early warning actors. The RDPC enriched OECD debates by providing a variety of local realities from which to draw on and with which to experiment. From the challenges of rising inequalities and the slowdown in productivity growth, to the imperative to address climate change and environmental degradation, the RDPC raised the awareness on global issues before these became mainstream after the crisis.

Source: Regional Development Policy Committee meeting at the Ministerial Level, Athens, 2019 March 19, <https://www.oecd.org/regional/ministerial/documents/>
 OECD: Organisation for Economic Co-opp://dx.doi.org/10.1787/region-data-eration and Development.

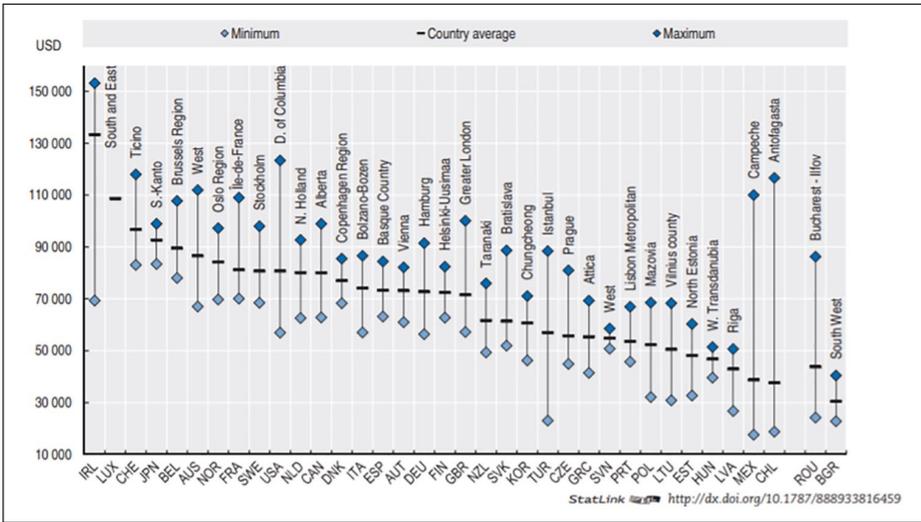


Figure 1. Labour productivity in 2016, TL2 regions. Source: OECD (2018), OECD Regional Statistics (database); <http://dx.doi.org/10.1787/region-data-en>. TL2 refers to Territorial Level 2. The 389 OECD large (TL2) regions represent the first administrative tier of SNG, for example, the Ontario Province in Canada. There are 2251 small (TL3) regions contained in TL2 ones. This classification is consistent with the Eurostat NUTS 2013 classification for European countries.

These messages draw from the diversity of local and regional circumstances, which feature in the OECD Regional Database, Regional Wellbeing Database and the Metropolitan Areas Database.⁶ The *Working Party on Territorial Indicators* also contributed to delineate comparable functional urban areas, providing knowledge on the territorial realities beyond administrative boundaries. The *OECD Network on Financial Relations Across Levels of Government*⁷ and more recently, the *World Observatory of Subnational Government Finance and Investment*,⁸ complemented this comparative regional data with more institutional comparative information on subnational finances and responsibilities. This work features in recent publications which discuss the assignment of responsibilities and how to improve the working of decentralisation. In recent years, the OECD has focused extensively on some current dynamics driving MLG, in particular the trend towards differentiated subnational governance, and has argued that the way MLG systems are designed has an impact on policy outcomes, hence the imperative to strengthen MLG systems (Allain-Dupré, 2018; Allain-Dupré, 2020; OECD, 2019a).

Because of territorial differences, there is a need for a ‘place-based’ approach. Given that SNGs share responsibilities with higher levels of government to some degree, such place-based policies have to involve them. With time, however, these regional disparities tend to stabilise at the macro-level, though large differences across countries remain (see, for instance, Figure 1 on the differences in regional labour productivity in OECD countries).

In addition to regional development policy, the MLG approach connected the OECD’s regional work to broader OECD horizontal projects, clarifying ‘who does what’ in institutional mappings and embodying the subnational dimension and the need to coordinate public action across levels of government. From there originate several work streams, not

least thanks to the mobilisation of stakeholders across different ‘communities of practice and networks’, such as: *Public investment and Recommendation of the OECD Council on Effective Public Investment across Levels of Government* (OECD, 2014) which is the first instrument of the OECD to uphold the key role of SNGs, *Water Governance and the OECD Principles on Water Governance*, and *Migrant integration and the OECD checklist for public action for migrant integration at the local* (Charbit and Piccinni, 2020; OECD, 2018b). Other work streams like climate change and small- and mid-size enterprises (SMEs) are currently emerging, in particular under the umbrella project to territorialise sustainable development goals (SDGs).⁹

Contracts across levels of government as a tool to address MLG gaps¹⁰

Definition and contractual logics

National constitutions (and regulations) are ‘Master Contracts’ between citizens and their governments as well as among levels of government. They define what are decentralised competences, however, in an incomplete way. Indeed, this incomplete contract requires *tools* (e.g. other contracts) to address interdependency among (legally) independent/autonomous actors at different levels of government, to implement decentralised public policies. Various tools of the kind are in place in OECD countries. For example, the *Council of Australian Governments* (COAG) gathers representatives of subnational entities and their ministerial counterparts. In Canada, *Regional Development Agencies* (RDAs) act as intermediaries between the federal government and the SNGs. The European Union (EU), like many other international organisations and national governments, uses *conditionalities* tying the disbursement of funds to the implementation of certain policies at the lower level. In the Netherlands, a *Special Commission* for the Delta co-ordinates public and private actors’ involvement in the future of particular regions on the topic of water management.

We focus here on *contracts* because they can respond to the seven gaps identified above, by involving a variety of incentives (conditions, funding, performance, reputation of contractual parties, etc.) and by adapting to various socio-economic geographies. Contracts respond to different objectives related to country experience with decentralisation (its ‘maturity’) and are extensively used by OECD countries (federal as well as unitary governments) for regional development, including for urban and rural areas; as well as to address specific regional policy fields.

Contracts across levels of government can be broadly defined as any arrangement that reorganises the rights and duties of governments, other than by way of the Constitution. They define the mutual obligations of parties, which have to agree on: (1) authority (the assignment of decision rights), (2) respective duties (contributions of the parties), and (3) enforcement mechanisms (to make commitments credible). Contracts can complement both formal and informal arrangements. While some countries may not explicitly refer to certain arrangements as contracts, these should be considered as such if they fulfil the basic characteristics described above.

There are two main logics of contracting across levels of government: *transactional* and *relational*. In transactional contracts, the respective duties of both parties can be stated in advance, and are thus complete because the different parameters can be quantified and measured. In contrast, parties to a relational contract mutually commit to

co-operate in the future and design a governance mechanism for that purpose. In this case, contracting means implementing bilateral negotiation mechanisms and guaranteeing that co-operation will be preserved in the long-term. Because of the complexity and the impossibility to establish certain conditions upfront, relational contracts are less complete. Typically, contracts aimed at dealing with regional development policies tend to be relational. However, there are often contracts comprising both transactional and relational elements, especially in the case of infrastructure projects.

Contracts fulfil different objectives: *Empowerment contracts* can help subnational authorities, during the early stages of decentralisation, to develop new capacities and gain greater autonomy in dealing with regional development policies. These are often used to implement decentralisation reform (e.g. first *Contrats de Plan* in France, current contracts in Morocco to support the implementation of the *Régionalisation avancée*, etc.). *Delegation contracts* are used when central governments delegate the implementation of specific tasks to SNGs. Delegation is based on the assumption that acting at the local level is more cost-effective (e.g. the *Devolution Deals* in the United Kingdom). With *policy-sharing contracts*, central governments and SNGs co-operate in order to fulfil certain competences on a 'peer' basis. If both levels have competences and capacity, their complementary action might lead to better outcomes. Policy-sharing contracts may also be tools for collective learning, when central governments and SNGs seek to innovate in particular areas, building new capacities and new approaches to policy making. In the Netherlands, the *Climate Adaptation City Deal* was signed in 2016 between the Ministry of Infrastructure and the Environment, three regional water authorities, five cities¹¹ and seven other partners (research centres and companies), to create a learning environment for climate adaptation at the urban level for the next 4 years.¹²

Lessons and suggestions to implement contractual arrangements in practice

While extensively used, contracts could benefit from more emphasis on their enforcement and organisational features. *Enforcement* is a key aspect of a contract's effectiveness. Enforcement should ensure that each party fulfils the mutual commitments, as well as resolve conflicts. Without an enforcement mechanism, parties' commitment to the contract is not credible. Enforcement may be internal (performed by the parties) or external, based either on stakeholders engagement (e.g. citizens, businesses, universities, non-governmental organisations (NGOs), etc.) or on third parties (e.g. a judge, a group of peers, international agencies, media, independent agency). It is also key to *Limiting conflicts of interest* and warrant that the evaluator (s) of parties' commitment is/are neutral. One way to avoid the risk of opportunistic behaviour and build on general interest instead of electoral strategies can be to *Adopting contracts that exceed different electoral mandates*. Sharing information among peers can also create more effective contracts through '*Benchlearning*'. Usually, new contractual phases between higher and lower level of government are negotiated from scratch, without reference to experiences and results. '*Repetition*' in contractual agreements should be encouraged to take into account pitfalls and backlogs in public action. *Using rewards and not just sanctions* would also be a strong incentive to performant contracts. Finally, *involving different stakeholders beyond central and subnational governments* in project selection, design and implementation could help achieve better outcomes.

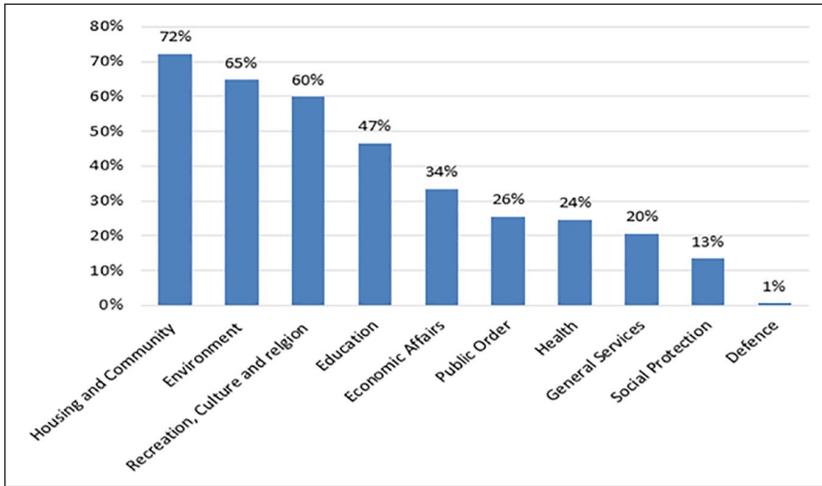


Figure 2. Share of sub-national government expenditure in general government expenditure (COFOG nomenclature).

Source: OECD (2018c) Subnational governments in OECD Countries: Key data.

Recent applications of contract theory¹³ to contracts across levels of government suggest novel insights which still deserve to be experimented (Brousseau, 2017: Lessons from this work seem to suggest that short-term commitments, although renewable, are preferred to long term contracts to limit renegotiations. They also underline that building trust must remain the dominant objective of contractual relationships.

Concluding remarks

To manage MLG is necessary: When competences overlap . . . as well as when they are allocated in a clear-cut way¹⁴

As shown in Figure 2, a clear-cut separation of responsibilities is rare, and most competences fall under various levels of government. Most policy areas involve more than one party, and some more than others – housing, environment, culture, education or economic affairs. For example, across OECD countries, ‘regional development’ is always a shared responsibility across levels of government, even in federal countries (with the exception of Belgium).

However, MLG ‘gaps’ do not emerge simply because of possible redundancies or the unclear allocation of roles, but simply because the expertise and responsibilities of levels of government are *mutually dependent*. Were responsibilities perfectly separated, central and subnational governments would still need to co-operate. Implementing the Constitution (the ‘master’ contract) requires a number of mechanisms to co-ordinate legally independent and autonomous actors that nonetheless depend on one another to achieve policy goals. Such interdependencies across levels of government may take several forms, including financial arrangements. While regions within countries are increasingly gaining more autonomy and decision-making power (Hooghe and Marks, 2016), those interdependencies are not disappearing.

The need to preserve the ‘biodiversity’ of regions: Convergence or co-existence?

Territorial indicators underline the diversity of regional characteristics. Globalisation seems to favour metropolitan ‘winner-takes-all’ champions, which concentrate talent, investors, knowledge, innovation, cultural amenities and access to public services. However, it is crucial to preserve regional ‘biodiversity’ – that is the variety of development options based on local assets, to be able to respond to future challenges and today unknown evaluation criteria.

This injunction seems to contradict the traditional main objective of regional policy like the EU one for instance, which targets ‘convergence’ of standard indicators (such as gross domestic product (GDP) per capita).

Should different development paths have to converge (towards a ‘dominant model’) or is it possible for different local approaches to co-exist? This is an important question in the context of (1) limited positive externalities of the leading people/firms/places to the others, and symmetrically and (2) ‘saturation’ of some localised development models (such as the ones related to ‘over-tourism’ situations). Indicators of regional performance should definitely go beyond GDP and consider other wellbeing drivers of local attractiveness.

Again, the MLG lenses may offer some answers. Metropolises are ‘giants with feet of clay’: affordability for middle- and low-income households, inequalities, congestion and pollution all challenge the sustainability of their growth model. On the other hand, there are strong differences among rural places depending on the proximity to urban centres: the closer they are, the better their socio-economic situation (OECD, 2016). There is growing awareness of the interdependence between large urban areas and rural areas and of the need to use MLG instruments, of Type II instead of strict Type I, to engage in urban–rural partnerships (as illustrated by the circular economy of neighbouring places¹⁵).

MLG as a counterweight to centrifugal forces: Involving non-state actors

This note sheds light on the way in which the OECD adopted the MLG approach, mainly by taking stock of interactions among public authorities. This focus seems now outdated. Indeed, as was documented in related OECD work, involving inhabitants, NGOs and businesses is crucial, whether in the areas of public investment, water or the integration of migrants, or of urban or rural development, or even when producing and using indicators. In short, we need to ‘re-visit’ the MLG gaps framework to include this effective dialogue between public and other stakeholders and propose more Type II solution-driven, involving stakeholders of various nature. This issue is relevant at different scales, be at the very local level or on a global scale. Current centrifugal forces are questioning multilateralism at the global level and of the EU as a common future for Europeans. Conversely, the MLG school of thought emerged to show that supranational and subnational (in particular regional authorities) governments were imposing themselves as major decision-makers while central authorities were losing influence. However, we are today witnessing the awakening of ‘nation-states’, often to the detriment of much-needed multilateral co-operation in the face of mega-trends.

More programmatically, the fragmentation of relations today raises the question of the modalities needed to rebuild the adhesion to collective goals. How to address the contradiction between the vital need to respond to common issues (such as climate change) and

the apparent political withdrawal that characterises our societies (as shown by attitudes towards migrants)? Informing and involving people is thus a key issue for the ‘new generation’ of MLG to reflect local circumstances and address local challenges, together with the aim to provide connecting tools, as well as to build common decision-making processes at the global scale.

Author's note

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Notes

1. <https://www.oecd.org/regional/ministerial/documents/>
2. At the EU level: https://ec.europa.eu/regional_policy/en/information/publications/working-papers/2018/the-geography-of-eu-discontent; more generally: OECD (2019b).
3. See, for example, Collier (2018).
4. See the initiative on New Approaches of Economic Challenges of the OECD <https://www.oecd.org/naec>
5. In French, the price to pay for success.
6. <http://www.oecd.org/cfe/regional-policy/regionalstatisticsandindicators.htm>
7. <http://www.oecd.org/tax/federalism/>
8. <http://www.oecd.org/cfe/regional-policy/Observatory-on-Subnational-Government-Finance-and-Investment.htm>
9. <https://www.oecd.org/cfe/territorial-approach-sdgs.htm>
10. This section is based on various publications, in particular: OECD (2007), Charbit and Romano (2017), OECD (2018a) and Charbit and Romano (2019).
11. The Hague, Dordrecht, Gouda, Rotterdam and Zwolle.
12. Various examples of these different contracts can be found in references including the implementation of the contractual approach in specific countries like for the ‘Canadian Metagovernance’ - Bradford (2017).
13. Initiated with a 2008 paper by Hart and Moore (2008) and subsequently the subject of the 2016 Nobel Prize in economics (Oliver Hart and Bengt Holmström), to develop the Contract as Reference Points Theory (CRPT).
14. See Charbit and Romano (2019).
15. <http://www.oecd.org/cfe/regionaldevelopment/circular-economy-cities.htm>

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