7 Potentials of "e"-solutions and Open Government in cross-border cooperation

7.1 "E"-Solutions as a new stimulus for cross-border administrative relations?

"E"-solutions can play an important role in the context of European Administrative Integration. The EU has set up since the 1990s a strategy of strengthening the European integration via a stimulation of e-government solutions. This approach, however, is ultimately mainly relevant for the transnational interaction between private actors and/or for their relation to the respective national administrations. This is the case for instance in the area of non- harmonized products where the principle of mutual recognition is strengthened by an active information policy initiated by the EC and implemented via national contact points[399]; or the implications of the so-called Bolkestein directive where unified contact points have been installed, also with the aim to improve an "e"-based information exchange all over Europe[400] but also for the administrations themselves, thus supporting the emergence of an EAS via the promotion of EU-wide "e" solutions in very different policy-areas such as police and justice, the external border-protection (FRONTEX), the information exchange in the maritime sector (CISE), public procurement (new directive of 2014 on e-procurement) and/or the management of financial promotion programmes in the context of the new cohesion policy etc.

While there is a general trend to go for e-solutions, the level of its application in the transnational cross-border context is still rather low. This chapter assesses the reason for this by assessing to what extent the specifics of cross-border governance could be a reason for this. On this basis a model for the application of transnational "e"-solutions is developed based on the combination of a typology of typical missions and the elements of the core-process of cross-border cooperation itself. Finally I try to draw a conclusion with respect of the future transnational dimension of the EAS.

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399 Beck 2015a
400 European Commission [Ed.], Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries, Final report, presented by MKW Wirtschaftsforschung GmbH, Munich/Empirica Kft., Sopron, Brussels, EC 2009

Following the general definitions and concepts of "regional governance"[401], as shown in chapter 2 cross-border governance is characterised by a number of quite distinct patterns[402]. The challenge of practical cross-border cooperation is to develop a holistic approach of cross-border governance, which is much more complex and difficult to achieve compared to the case of governance approaches taking place within the territorial context of a single jurisdiction. It is exactly here where a reflection on the potentialities of new e-solutions can lead to interesting new approaches. Two different conceptual dimensions have to be distinguished in this respect: e-government and e-governance.

According to an early definition, e-government consists of "the execution of business processes related to public government with the help of information and communication technologies via electronic media"[403]. This definition covers both the local, regional and state-level, includes executive, legislative and judicial processes and focuses on a "new accessibility" of persons, processes and data objects, allowing for new cross-border administrative actions. The expected new modes of interaction are no longer determined by the classical restrictions of public action such as time, space, organisation or paper. With regards to the scope of application of such a new "virtual government", a differentiation between information, communication and transaction as relevant to the levels of a new quality of interaction between public actors and their target groups is suggested, leading to a large number of new "e"-supported activities: e-information, e-communication, e-forms, e-commerce, e-service, e-workflows, e-democracy, e-benefit[404].

In such an instrumental perception, e-government is seen as the central component and paradigm of public sector reform, increasing its effectiveness, efficiency and quality, strengthening its competitiveness and enhancing its modernisation – a perception that is rooted in the New Public Management movement of the 1990ies[405]. A more prospective European view of e-government, however, stresses – on the grounds of new trends such as social and economic transitions, technological advances in the miniaturization and portability of ICT's or the need to strengthen the involvement and participation of citizens and target groups in the policy-making pro-

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401 Fürst 2011
402 Beck/Pradier 2011
403 Reinermann/ von Lucke 2000: 1
404 Reinermann/von Lucke 2000: 3
405 Beck / Larat 2011

172

cess – the need to define e-government in a broader sense as a tool and enabler for better government in order to achieve and provide greater public value[406]. New elements such as more accountability, transparency and openness, greater participation and more accessibility[407] are now also part of the more recent European discourses on e-governance[408]. In an early model, Finger/Pécoud[409] have developed an e-governance approach which integrates three policy-levels (global, national, local), three types of actors (private, public government, third sector) three different policy functions (policy-making, regulation, service-delivery) and three different degrees of the use of NICTs (information, interaction and transaction). E-governance is then defined as the combination of all four aspects in a dynamic perspective, allowing for three new conceptualisations: e-governance as customer satisfaction, as processes and interactions and as tools for a new democratic government[410].

Within the additional context of the web 2.0 and in the perspective of a "social computing" prospective elements such as users empowerment in content creation, optimization of peer support and service delivery, social and organisational innovation, improvement of internal work processes and products and services, new knowledge and tools for learning, optimization of healthcare management and socio-economic inclusion, gathering of collective knowledge to enhance political participation and mass-collaboration or even a better informed and evidence-based policy decision making are expected at a conceptual level: "Social Computing affects several aspects of public governance, influencing both citizen-government relations and back office public administration activities. Social Computing is also leading to new forms of participation, which could enhance social awareness and the involvement of users. In brief, Social Computing is transforming relationships and ways of working within and between public sector organisations, opening the way to innovative service delivery and regulatory and policy-making mechanisms"[411]. In addition, a better and more effective integration of ICT into governance processes (Gov. 2.0) could improve the quality of policy making, increase the speed

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406 Centeno/van Bavel/Burgelman 2005
407 Marche/McNiven 2003
408 see for instance Cordela 2013
409 Finger/Pécoud 2003
410 Finger/Pécoud 2003: 8–10
411 EC-JRC, The Impact of Social Computing on the EU Information Society and Economy, [Institute for Prospective Technological Studies] EUR 24063EN, SevilleEC/JRC 2009: 121

of policy formulation, enhance evidence-based policy making, reinforce long-term policy planning beyond the 'short-termism' and immediate benefits and 'quick-wins'[412].

It is evident, that from a conceptual point of view "e"-solutions can contribute significantly to the improvement of cross-border cooperation and its governance. Consequently, the Digital Agenda for Europe[413] referred to elements such as the development and provision of cross-border public services online, the implementation of seamless eProcurement services, mutual recognition of e-Identification and e-Authentication or the full interoperability of eGovernment services in a transnational dimension. Overcoming organisational, technical and semantic barriers could indeed be one of the central innovations for making cross-border cooperation work more smoothly.

Looking at the reality, however, the cross-border situation looks less fortunate in many European regions. Different to the European perspective, where the supply-side index of eGovernment services availability online stands at 70 % on average, and the average usage is at least around 30 % of the adult population, the estimation for the case of *transnational e-services* would come to a much lower score – both at the level of availability and demand. Although the Commission initiated from 2006 with the CIP mechanism[414] a series of pilot cross-border applications (like for instance E-CODEX[415], with the aim to increase interoperability between legal authorities, ePSOS[416] and e-HEALTH with the aim to improve cross-border interoperability between e-medical services and systems, PEPPOL[417] with the aim to achieve seamless cross-border e-procurement at community-level, SPOCS[418] with the aim to further develop the functionality if the single contact points, or STORK[419], which aims at establishing a European e-ID interoperability platform, allowing citizens to establish new e-relations across borders) the cross-border dimension today represents rather first steps in multilateral cooperation between Member States to build digital

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412 Misuraca 2013
413 COM(2010)245 – 19.05.2010
414 Competitiveness and Innovation Framework Programme, Decision 1639/2006/EC
415 https://www.e-codex.eu/home.html (30.03.2022)
416 https://healthcare-in-europe.com/en/news/epsos.html (30.03.2022)
417 https://www.peppol.eu/ (30.03.2022)
418 https://joinup.ec.europa.eu/collection/simple-procedures-online-cross-border-services-spocs (30.03.2022)
419 https://data.europa.eu/doi/10.2826/480977; European Commission 2020

174

Europe then a coherent policy approach. Especially from the point of cross-border territories "e"-solutions are not yet tools that are used in a significant way[420].

Beyond the organisational, legal, technical and semantic barriers already identified[421] much more challenging reasons have to be added: On the one hand, both the developers, providers and target groups of e-government solutions here are coming from different domestic backgrounds and solutions developed in the context of Member State A are often not necessarily compatible with the expectations of target groups coming from Member State B: even if the offer may be provided in the language of the neighbouring state[422] the administrative structure and specifics are still strongly determined by the domestic rules and administrative cultures. Paperless and borderless interaction is mostly not possible on a cross-border perspective because many services (like for instance in the social and/or health area or with the registration of a car in the case of a cross-border move) still require either a personal appearance of the target groups and/or the filling of classical administrative forms designed for domestic target groups. A cross-border case, from the point of view of the domestic administration, still constitutes the exception rather than the rule and the incentive for local and regional politicians to include it -beyond the rather symbolic gesture of "we have not forgotten our neighbour, and this is why our homepage has also a section in his language" – as a specific pattern in a new administrative "e" solution is rather low.

Secondly, the magnitude of the overall cross-border phenomenon is still rather low. In most policy-area the cross-border activities of the target groups are clearly below 5 %: The overall number of cross-border commuters in Europe, for instance, is only around 1,000,000 (which represents only 0.004 % of the economically active population in Europe) and even in cross-border-regions with a relatively high number of cross-border commuters this share is not higher than 5 %[423] – with some exceptions, however, like Luxembourg and Geneva, which are attracting an extremely

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420 See for instance the conclusions on this issue in the EU eGovernment Report 2014 on: https://ec.europa.eu/digital-agenda/en/news/eu-egovernment-report-2014-shows-usability-online-public-services-improving-not-fast

421 European Commission 2013

422 The design of bi- or multiligual e-government-forms, however, is still rather the exception than the rule when it comes to national or even local public services, and often more difficult to realize than a classical paper version.

423 The 90,000 cross-border commuters in the Upper-Rhine region, for instance, are representing 3 % of the active population of the entire cross-border territory.

175

high level of commuters from the neighbouring state. The same rather low level can be identified in areas such as education, training and research, economic production and innovation, tourism, consumer behaviour – the cross-border case here, too, is still rather the exception than the rule.

A third reason could be, that, due to the overall lack of cross-border dynamics, also the shaping of cross-border procedures and institutions themselves, are at a transnational territorial level not developed strongly. Actually there are only very few direct interactions between neighbouring administrations that go beyond a symbolic way of mutual *attention* and when it comes to the interaction of administrative services Europe is still far away from the application, for instance, of the principle of mutual recognition -although this could lead to a very promising innovation of cross-border cooperation as a transnational dimension of the European Administrative Space[424].

Finally the specific challenges and patterns of cross-border-cooperation and its governance as described above, may also be considered as deter-mining factors for the low degree of "e"-application in the transnational territorial context so far. Especially the fact, that cross-border cooperation de facto is rather a strong inter-personal rather than inter-institutional policy-field resulting from the strong inter-cultural and inter-systemic dif-ferences, must be mentioned in this context. One might therefore come to the conclusion that from a conceptual perspective, it is more or less a question of belief whether or not CBC-e-solutions should be developed. In order to advance, however, it is promising to look much deeper into the specific functioning of cross-border cooperation itself, analysing in which areas of application and/or functional dimensions e-solutions could create an additional value in the future.

7.2 Improving cross-border cooperation via e-solutions – potentialities of application

The basis for the following prospective reflection is a combination of two dimensions which are relevant for the practical functioning of CBC: the classification of typical missions on the one hand and the elements/steps of the typical core-process of CBC on the other hand. On this basis I will as-sess in which functional areas challenges can be identified under the Status Quo of CBC and what kind of actor-relations are each time characteristic

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424 Beck 2015

176

for it. This will then be the basis for a critical reflection on the application of the toolbox of ICT's instruments and the prospective interpretation of the dimensions of e-government and/ or e-governance. The reflection is based on the horizontal analysis of different contributions from the research cycle on cross-border cooperation, already cited above[425], the results of an international conference[426], a report of the Council of Europe, prepared by the author[427] and the conclusions on two conferences with practitioners on cross-border cooperation with German participation[428].

Regarding the subject area of cross-border cooperation, the following five ideal-types of activities can be distinguished:

A. <u>Simplifying horizontal mobility</u>: It is amazing to see that the level of transnational mobility of individuals in Europe still is clearly below 2 % but that a large part of this phenomenon is actually taking place within the European border regions[429]. Assuming that both citizens and economic actors in border-regions would like to perceive and use the cross-border territory in the same way as they can do on the domestic ground of a member state – e.g. choose their place of work, residence, investment, childcare, medical treatment and practice their consumer behaviour independently from national borders – the public services responsible for these issues on both sides of the borders are intending to provide for a coherent administrative framing of this horizontal mobility of persons, services and goods in the cross-border perspective and handling individual cases of cross-border mobility. The main actors here are (the deconcentrated) services of state administrations.

B. <u>Management of projects:</u> A second and empirically ever more important field of cross-border activity are joint projects with partners coming from either side of the border. Mostly [but not only!] funded by the various INTERREG-programmes, set up for the three stands of the territorial development objective, the transnational development and management of projects can be seen as a significant constitutive element of cross-border cooperation, covering a wide range of thematic areas and including actors

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425 Wassenberg 2010; Beck/Wassenberg 2011a, 2011b, 2013,2014; Wassenberg/Beck 2011
426 Pires 2012
427 Congress of Local and Regional Authorities [2013]: Prospects for effective transfrontier co-operation in Europe [Rapporteur: Breda PECAN], CG/GOV[24]6, Strasbourg, 21 May 2013
428 BMI / Euro Institute 2014
429 European Commission 2009

coming from different levels of both the public, the private and the third sector.

C. <u>Management of bodies and programmes</u>: A third field of activities is the case of the management of joint cross-border programmes and bodies. Here the target groups are mostly local and regional authorities as the "official representatives" of the participating Member States who want to improve cross-border cooperation via approaches of integrated and joint decision-making and/or institution building on the one hand and the joint management of co-financed programmes such as INTERREG on the other. These approaches are per se representing a joint political will and thus can be perceived as symbols of mutual trust: by creating a joint organisational undertaking with a commonly managed budget and personnel that works exclusively for the jointly defined transnational tasks the partners want to actively overcome a standalone approach and develop joint functional provisions. In the case where these bodies are even equipped with a proper legal form the case of mutual recognition from a formal point of view is implemented: both the national and European as well as the public or private legal forms that can be applied for such bodies finally depend on the choice of one national jurisdiction, usually determined by the spatial seat of the body in one of the two neighbouring states. By joining such a cross-border body with a legal status, all participating parties are mutually recognising the law and the jurisdiction of the country of domicile (usually this is even explicitly mentioned in the legal conventions).

D. <u>Stimulating the development of cross-border shared services:</u> A fourth field of activity is the relatively new area of cross-border shared services. In the past, cross-border cooperation was mainly concentrated either on a single-project approach (INTERREG has promoted this approach significantly in the past and will certainly continue to do so in the future) or on a cross-border body/programme-approach, allowing for the coordination of partners with regards to overall development objectives of a territorial unit. Compared to this, the approach of cross-border shared-services focuses on the optimisation of both the quality and the delivery of services based on an integrated cooperative approach across national borders. Mostly classical "non-sovereign" local service categories like water and electricity supply, waste disposal, social and health services, maintenance of public buildings or green spaces, transportation, internal administrative services such as salary statements, accountancy of IT-management or even public procurement are to be reorganized between neighbouring local communities with the objective to develop new economies of scale and/or to maintain services, which under a single organizational approach, would

178

no longer be affordable (e.g. in rural and/or peripheral regions suffering from demographic change).

E. Stimulating territorial development – Optimizing thematic cooperation between sectorial administrations: The focus of this fifth area of activity lies in the challenge that the integrated development of a cross-border territory (360°perspective) covers a large number of different policy fields which require a coordinative approach of sectorial administrative actors. The structural preconditions for such an approach, however, are again not very favourable because in most cases thematic administrative law – which is finally the basis for sectorial action – is either fully characterised by national standards, or by a situation where Member State A may meet EU standards and Member State B or C may even go beyond this, like it is with the case of air-pollution protection, renewable energy-regimes, financing of transportation infrastructure, environmental protection, spatial planning, science and research promotion, education and training etc. As it is the case for horizontal mobility (case A.) in these areas mostly (deconcentrated) state administration is competent, often however, on a multi-level basis with a rather complex mix of public, private, national, regional and local actors to be involved too.

With regards to the second dimension, the very content of cross-border cooperation can be ideally represented in the form of a core-process which covers the following six generalized progressive steps: Encounter/Meeting, Information, Coordination, Stragey/Panning, Decision-Making, Implementation (see above chapter three). These six steps represent an ideal-type for the evolution of a tangible cross-border-cooperation approach, which is empirically validated by both the study of the historical evolution of CBC in an entire territory[430] and cases of individual/sectorial/project-based cooperation experiences, where often the lack of the realization of steps 1 – 3 leads to a failure of steps 4 – 6 (for instance in the case of the development of an externally funded project-proposal which is actually lacking the relevant basic -functions of a sustainable cooperation-approach).

The following table presents an assessment of the combination of these two dimensions presented above and identifies at the same time the respective relation of actors, which may be relevant for the reflection on a possible future contribution of "e"-solutions:

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430   see for ex. Wassenberg 2007

Figure 17: Framework of the application of e-solutions within cross-border coop-eration
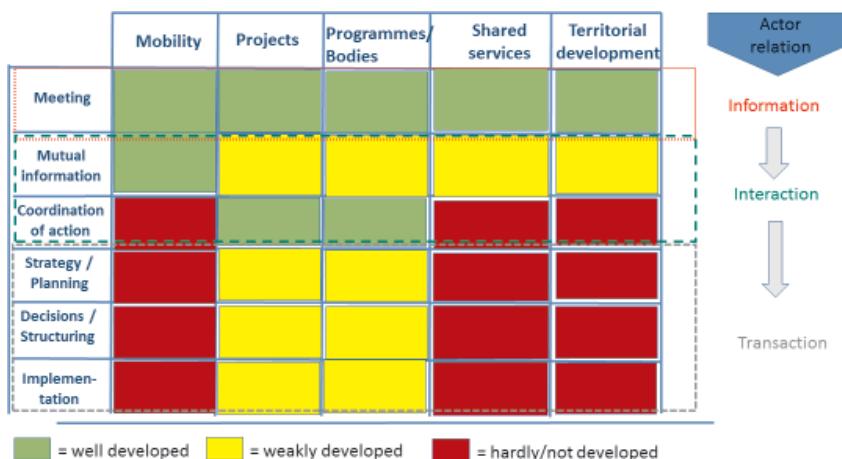
With regards to the question of how well the different CBC activities are fulfilled, we can see that in three areas (mobility, shared services and territorial development) the cooperation is still very much limited to the functional levels of meeting and mutual information. Only the activities of project-management and also the management of programmes and bodies have for the moment developed all six functions, however still with a rather weak shaping of the "higher" levels of strategy, decision-making and joint implementation. In the perspective of the functions themselves, the interpretation of the table allows to conclude that especially the last three levels of CBC-functions seem to be very challenging in the sense that the systemic, cultural and interest-related preconditions of CBC governance are very complex[431].

This finding can be explained by the analysis of the underlying relation between the participating actors. While the first function can be easily fulfilled with an actor-relation based on neutral (and thus politically in-nocuous) information, the second and third functions already require a real interaction between both individual and corporate actors coming from different jurisdictional settings. The three last functions, on the other hand, require – with increasing intensity – a real transaction in the sense that both content and strategy positions have to be negotiated in a non-hi-

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431   For a more detailed explanation of these findings see Beck 2015 and Beck 2014

erarchic way. This is particularly the case in the field of territorial development, where in addition the actor-constellations are cross-sectorial by nature, often leading to highly dynamic but asymmetrically network-constellations[432]. At the same time, this underlines the complex preconditions for making a vertically and horizontally integrated governance work in the context of CBC (see chap. 2 and 3 of this paper). Interestingly, however, this seems to be less problematic in activity-areas that are characterised by a certain degree and/or form of institutionalisation, as it is the case with the activities of project-management or the management of joint programmes and bodies[433].

Three conclusions can be drawn from this analysis with regards to the question of a future role of e"-solutions in the cross-border context. Considering the absence of any significant transnational e-government approach designed to serve the specific needs and purposes of cross-border policy making and taking into account the results of the analysis presented above, the first, slightly paradoxical, conclusion is that the design and added value of "e"-solutions in the cross-border context could rather be expected from approaches following the logics of e-governance than an e-government.

Secondly, within such e-governance solutions a specific focus should be set on ICT's allowing for a
– better informed joint decision making between actors (tools generating integrated prospective geographical information about the inter-sectorial potentialities of the cross-border territory under a 360° perspective; simulation-programmes in order to anticipate impacts of decisions and non-decisions such as tools to support forecasting, systems analysis, agent-based modelling, simulation and visualization but also very simple tools supporting a cross-border agenda-planning)
– better informed and structured work-processes (tools to allow for the development of real cross-border workflows at a multi-level basis, but also simple platforms and shared work-spaces where the work on joint projects, studies, proposals, meeting-documents etc. can be better coordinated on a synchronous basis).

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432 Beck 1997
433 I am referring here to the evidence of most cross-border territories in Europe, which have no competent common inter-institutional CBC frame for the management of mobility and territorial development and where also the potentials of cross-border shared-services are still not developed properly

- better interaction between public, private and societal actors with regards to both the identification/design of new policy-options and the development of newly identified potentialities (for instance transnational e-citizens forums and/or consultations of future cross-border work-programmes and initiatives, systemic target-group-oriented "e"-need assessment)
- better monitoring and impact assessment of the implementation of both projects, programmes and decisions (for instance indicator-based transnational statistical tools, structured e-reporting at the level of projects and programmes).

Finally, the "e"-solutions must be well reflected and – if possible – jointly developed by all partners, in order to realize tangible approaches that really meet the needs and expectations of all actors involved. Here the interesting question is, to what extend comparable ICT tools available on either side of the border are also compatible from the inter-cultural point of view. In addition, the practical understanding of cross-border cooperation as a specific field of "small foreign policy"[434] may lead to natural limits in the use of the transparency-potentialities of ICT's – a pattern that can be studied already with the implementation of "classical" e-government approaches within the domestic context of the Member States in Europe. Cross-border e-governance hence will certainly require a much higher ex ante investment in terms of preparatory studies, pilot-implementations and training than similar solutions, designed and implemented within a domestic context – but the potentials may certainly justify it.

Most classical definitions of e-government are focusing on the improvement of the interaction between local/state government and its target groups and/or the cooperation between administrative units coming from different organisational contexts and backgrounds. Process reengineering, more target orientation and a simplification of administrative barriers with regards to an increase of quality in service delivery based on the use of integrated technical tools and systems (one stop agencies) can be seen at the core centre of the concept[435].

Recent literature on modern forms of public policy-making, however, has introduced the notion of governance[436], referring to a non-hierarchical and integrated process of joint policy-development and implementation, realized through the cooperative interaction between actors coming from

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434 Lambertz 2010
435 Reinermann/von Lucke 2000
436 Benz et al 2007; Grande 2000

different sectors (public, private, societal). A specific form of this governance is regional governance[437], mostly applied in the context of territorial development, where the potentialities and resources of different territorial actors are interrelated and shared in order to develop new synergetic regional potentials – unused by classical sectorial or government-centred approaches so far.

Taking cross-border-cooperation, which can be understood as a specific form of European territorial governance[438] as an example, the article has assessed, to what extent new "e-based" forms of territorial governance could stimulate cross-border policy making. Drawing on empirical evidence about the central challenges and shortcomings and based on a classification of typical forms and functions of cross-border cooperation in Europe, new approaches of "e-solutions" have been identified as a promising way to improve cross-border governance. In a prospective view, however, is was in a slightly paradoxical way, suggested to develop cross-border e-governance first and not to start with a classical e-government approach, in order to develop the sector, increase cross-border exchange and dynamics between actors and thus lay the grounds for a more effective cross-border cooperation. This suggestion follows the notion of "Governance without Government"[439] which is well established both in science and in administrative reality[440]. Referring to a well-known basic principle in organisational theory, the hypothesis can be developed that in transnational relations "*e-government follows e-governance*" and that such an e-governance approach could, indeed, provide cross-border territories in Europe with a very useful new dynamic.

In addition, the application of e-governance in the territorial context of cross-border-cooperation is very promising in terms of feasibility: Mutual exchange and learning is easier possible in the context of direct transnational working-relations and the notion of trust and proximity – both preconditions for building the necessary social capital – is usually better given within a cross-border rather than within a more global European inter-state context. It is not an anonymous administration here, but the administration of the "next door neighbour", which actors can easily learn to know better[441], where exchanges of both practices and personnel can

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437 Fürst 2011
438 Beck 2013
439 Rosenau/Czempiel 1992
440 Beck/Larat 2015
441 Beck 2008b

take place at a formal and informal basis[442], and where the necessary administrative capacity for joint "e"-solutions can be built up and trained in order to effectively handle cross-border policy-problems in a professional and flexible way. On the other hand it is evident, that administrative law is still strongly linked with the classical concept of territoriality. It might, therefore, even be questioned if Member States are at all willing to overcome this principle and enter into an open reflection in order to use the potentialities of "e"-solutions which I have tried to sketch above.

In light of the seven challenges of cross-border policy-making presented in chapter 5, however, and which can be explained by the absence of a tangible transnational "hardware" (which would indeed be an effective cross-border *government*), e-governance-solutions could play the role of a transnational "software" – both stimulating, structuring and optimizing the interaction of collective and individual actors, themselves often still deeply rooted within their national domestic context. With regards to the concept of the European Administrative Space and certainly in terms of a more pragmatic understanding of its real-world connotation, the development and promotion of such e-governance-solutions could give a new and innovative role to cross-border territories, allowing for a substantive understanding of the laboratory role they can play for the future of both the EAS and European integration.

7.3 Open Government as future-oriented reform approach in cross-border cooperation?

Open Government (OG) has experienced a boom as a reform concept in recent years, due in particular to the term in office of U.S. President Barack Obama. On February 24, 2009, the "President's Memorandum on Transparency and Open Government – Interagency Cooperation" launched OG in the USA as a central initiative of the Obama Administration. Here, in an integrative concept, the three key terms "transparency," "participation" and "cooperation" were formulated as normative core messages for modern democracies, with which to respond to the loss of popularity and trust among citizens[443].

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442 Larat 2015: 171
443 Lathrop/Laurel 2010; Wirtz/Birkmeyer 2015; Wewer 2013

Unlike e-government, which in its practical implementation still focuses mainly on the electronic processing of public services[444], this approach, which has since been taken up in Europe as well[445] and has even led to the global movement of an OGP (Open Government Partnership with 79 member countries around the globe; see: *https://www.opengovpartnership.org/*), is based on the assumption that the provision of state and municipal services can be improved if the needs and potential of users are actively included in both the design and implementation of public action. By making consistent and systematic use of the possibilities offered by modern information technology for this purpose, relevant stakeholders, citizens and other target groups can be better informed about political decisions and involved in the decision-making, implementation and evaluation of government measures[446]. Improving effectiveness, efficiency and legitimacy can thus be seen as the basic intention of the concept. In this sense, various reform ideas are bundled under the OG concept today. Based on attempts to integrate information and communication technologies and with a focus on substantial changes in the political-administrative culture[447], the following three central aspects are repeatedly discussed in the literature:

– the aspects of transparency and accountability, including freedom of information and open data (government and administration should be transparent)
– the aspects of participation in the sense of open innovation processes and the inclusion of external knowledge (government and administration should be participatory)
– the aspects of cooperation within the administration and with civil society (government and administration should overcome silo thinking and cooperate – across all administrative and sectoral levels).

Beyond the three core messages, however, there is still hardly a tangible and concrete definition of open government to be found in science and practice. One reason for this may be that the term was used by the Obama administration for measures in so many different policy areas that the systematic implementation of the Obama memorandum was almost

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444 See the still convincing conceptual framing of Reinermann/von Lucke 2000: 1; cf. also the conclusions on this issue in the EU eGovernment Benchmark 2019: https://ec.europa.eu/digital-single-market/en/news/egovernment-benchmark-2019-trust-government-increasingly-important-people
445 Hilgers/Thom 2012
446 Striker/Ritz 2014
447 von Lucke 2017

completely lost. Whether it was economic development, deregulation or improving the quality of life in general, the Obama administration lumped everything together under the term "open government. Also, the often-repeated "triple definition" of open government as transparency, participation, and collaboration cannot ultimately be seen as a coherent model in itself, but rather represents a series of keywords, each of which must then be further differentiated. Following *Pasutti,* Open Government can be[448] summarized as an approach that opens up the actions of government and administration to the population and the business community. In doing so, the entire public sector, i.e., politics, government, administration and the judiciary, is to become more open, transparent, participatory and cooperative. Open government thus encompasses both government attitudes and legal, financial, communication measures and approaches that proactively provide transparency to citizens and other audiences about their government's activities (information), support opportunities for citizens and stakeholders from other sectors to actively participate in government decisions (participation), and promote mechanisms for creating innovative governance solutions (collaboration). Open government can thus be understood as a holistic approach that combines different concepts of a political and administrative innovation, and the whole open government approach is ultimately based on the idea of strengthening the government's problem-solving capacity in times of an increasingly complex world by involving citizens and target groups. On the larger scale of the societal macro-level, Open Government is often even seen as an approach to improving democracy through the use of new digital and procedural tools and methods such as Open Data, e-voting or optimised approaches to e-government[449].

Open government (OG) as a concept for modernising the public sector is compatible with established discourses on reform in administrative science at various levels. It refers to a model of government and administrative action that shapes the development and implementation of public policy in close interaction with actors from civil society, business and academia under the three premises of transparency, participation and collaboration. Thus, from an administrative science perspective, OG is not necessarily something completely new, but rather stands in the tradition of various administrative science reform discourses: On the one hand, it shows references to concepts of state theory that postulate a development

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448 Pasutti 2012
449 von Lucke 2017

from the democratic state of the 1950s, the active state of the 1960s, the lean state of the 1970s and 1980s, the activating state of the 1990s to the digital state of the 2000s. In terms of fundamental normative models of public administration[450], on the other hand, it can be located as a further development of the idea of cooperative and responsive administration, in contrast to autonomous and hierarchical administration[451]. At the municipal level, in turn, the approach can be linked to concepts that see an evolutionary development from the regulatory municipality of the 1950s and 1960s, the welfare municipality with a focus on social security of the 1970s, the service municipality of the 1990s to the networked citizens' municipality of the 2000s[452]. Finally, it is also necessary to establish conceptual references to the more recent debates on the topos of regional governance[453].

The policy field of cross-border cooperation in Europe[454] has not yet been the subject of considerations on open government. This is not surprising, as the role and function of cross-border cooperation in the context of European integration has only become a focus of practical discourse and academic attention since the 1990s. This is in contrast to the actual development of this relatively new policy field and its factual importance for the territorial development of Europe. An estimated 30 % of the European territory can be located as a border region at the level of a NUTS II classification. About 30 % of the European population also lives in these border regions. After the Second World War, intensive domestic and foreign policy approaches to cross-border cooperation have emerged in all border regions. These have led to an institutionalization of cooperation as well as to a multitude of projects. After the fall of the Iron Curtain, the European Commission actively supported these cooperation approaches financially through the specific INTERREG funding programme. Institution building was also actively promoted by providing the relevant legal instruments (EGCT: European Grouping of Territorial Cooperation). A recent study[455] concludes that cross-border cooperation in Europe today has a permanent staff capacity of more than 21,000 full-time equivalents in the institutions created specifically for this purpose as well as at the level of the partner

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450 Bogumil/Jann 2020: pp 253
451 Bauer/Beck/Hedyduk 2021
452 Kegelmann 2019
453 Fürst 2011
454 Harguindéguy/Sànchez-Sánchez 2017; Beck 2019.
455 Beck 2018a

administrations involved – which corresponds to about half of the staff strength of the institutions of the European Union.

Evaluation studies show that cross-border cooperation in Europe is very much driven by public actors not only in its genesis but also and especially in its present form[456]. This specific pattern can be interpreted by different explanatory approaches. Border regions symbolize interfaces between different political-administrative systems, between different cultures and – on closer examination – also between socio-economic realities, which in the overall picture are still characterised by a relatively low horizontal interaction dynamic. Recent studies by the European Commission as well as Euro-Barometer surveys show that these borders still constitute effective barriers in the everyday lives of European citizens and are perceived as such. It is obvious that the identification not only of citizens, but also of socio-economic and other actors is still very much related to the respective national context. Accordingly, cross-border policy approaches, even if they refer to the narrower territorial perimeter of a cross-border area, manifest themselves in the context of the inter-institutional and inter-cultural logic of different national, regional or local political-administrative systems and are thus, from a scientific point of view, located in the field of micro-diplomacy or intergovernmentalism[457].

Against this background, it seems promising to use the premises and approaches of Open Government outlined above as a starting point for a reflection on possible innovation potentials in cross-border cooperation. To what extent can patterns already be identified in the practice of cross-border cooperation that are captured by the three dimensions of Open Government (information, participation, cooperation)? Conversely, what suggestions can arise from an in-depth examination of these dimensions for the further development of existing cross-border cooperation? And finally, to what extent can conclusions be drawn from the concept of OG that can be used to answer the more fundamental question of the impact levels of territorial innovation in a cross-border context?

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456 Harguindéguy/Sànchez-Sánchez 2017; Wassenberg/Reitel 2015
457 Beck 2018b

7.4 OG potentials in cross-border cooperation – Three case studies from the trinational Upper Rhine region

If one tries to answer the question to what extent principles of open government and administrative action in the sense defined above have already been realised in the field of cross-border cooperation or, conversely, which potentials these principles might contain for a conceptual further development, it makes sense to first recall some basic functional principles of cross-border cooperation in Europe. Cross-border cooperation has established itself in Europe after the Second World War in different phases of development as a policy field of its own, not least also of European politics. Immediately after the war, the focus was on questions of reconciliation between former war opponents, but in the 1960s and 1970s the need for a formal institutionalization was recognized. At the beginning of the 1990s, the policy field was realized in the form of concrete projects, which were conceptually and financially supported by the later European funding instrument INTERREG. Since then, project orientation can be regarded as one of the essential features of cross-border cooperation, even if (or perhaps precisely because), since the 2000s, questions of institutionalization and, in the context of the Aachen Treaty, especially of legal and administrative flexibilization have increasingly been on the agenda.

If one looks at these development phases of cross-border cooperation[458], one constant can be observed, which still represents an essential basic prerequisite or limitation of this policy field today: Cross-border cooperation operates at the interface between historically evolved political-administrative systems. Even in those policy fields where communitarization has taken place within the framework of European integration, the implementation of European policies is still dependent on the functioning of national policies and administrative systems. Similar to federal states, which do not have a continuous vertical administrative function from the central to the local level, the European Union is also structured from the bottom up in administrative terms. As a result, both the genesis and the functionality of cross-border cooperation depend on reliable contributions to action from the respective political and administrative contexts of the participating member states.

From the perspective of open government and administrative action, the first observation that can be made is that cross-border cooperation is per se a symbol of such openness. If the political-administrative systems

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458 Reitel/Wassenberg 2015

189

at their external borders or at the interfaces to their neighbouring systems were completely closed, no cross-border cooperation could emerge. From systems theory[459] we know about the duality of systems. On the one hand, a system presupposes the existence of a boundary to its environment, since without such a boundary a system would not exist precisely in constitutional terms. At the same time, although systems are characterized by self-referentiality, they ultimately presuppose, in order to avoid functional sclerosis, interaction with their environment at the same time. The environment of a political-administrative system in a border region has two reference levels: on the one hand, the political-administrative system of the neighbouring state itself, and on the other hand, the cross-border socio-economic dynamics (mobility of labour, capital, services, etc., but also positive or negative spill-over effects) which provide the occasion for entering into cross-border cooperative relationships with institutional or personnel actors from the neighbouring state. Cross-border cooperation is thus related to all three of the openness dimensions described above. This openness manifests itself in the effort to overcome the functional closedness of national political-administrative systems in order to solve cross-border problems. Thus, cross-border cooperation can be interpreted as a functional equivalence of the horizontal dimension of European integration[460]. In the following, the three openness dimensions of OG in cross-border cooperation will be examined in more detail on the basis of three action approaches from the tri-national region of the Upper Rhine (border triangle of Germany, France and Switzerland).

7.4.1 OG dimension transparency: Infobest as a one-stop agency in the cross-border mobility area

According to a 2019 publication by Eurostat, there are 2 million cross-border workers in Europe, i.e. people who live in one Member State but work in another. This corresponds to about 1 % of the European labour force[461]. Even if these figures – like the entire extent of personal occupational mobility in Europe – may seem rather insignificant from a global perspective, they play a very important local and regional role in the border regions. On the one hand, the share of the labour force there is higher (44 %

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459 Willke 2014
460 Beck 2013
461 Eurostat 2019

190

of all French cross-border commuters live in the Grand Est region; the roughly 90,000 cross-border commuters in the Upper Rhine region still correspond to 3 % of the cross-border labour force), and on the other hand, cross-border mobility is considerably concentrated in some border communities, where it can easily exceed 50 % of the local labour force. Moreover, cross-border mobility is not limited to the aspect of occupation. The freedoms of the internal market have meant that consumer behaviour in particular, and increasingly also settlement behaviour, no longer stops at borders. Thus, the French customer share in the retail trade of the small border town of Kehl is 80 %. 10 % of the inhabitants of Kehl have French citizenship and have chosen to live on the German side of the Rhine due to the comparatively lower real estate prices. Of the total of around 484 504 immigrants to the Grand Est region in 2015, 43 006 came from Germany – making it the fourth largest group after the Maghreb, Turkey and Italy[462].

In particular, cross-border professional mobility, but also a simple change of residence, can pose a variety of administrative challenges for those concerned. Cross-border mobility still often contrasts with the historically evolved legal and administrative structures of the individual member states. Although there are indeed legal areas that have in the meantime been uniformly regulated by the European legislator, in fact most legal areas and thus the corresponding administrations with which a cross-border actor has to deal are still strongly shaped by the national state: both social and tax law, regulatory law, residents' registration law, labour law and business law are not harmonised at the European level, but are at best coordinated by corresponding directives, the implementation of which is reserved for the member states according to their own structures and standards.

From the perspective of an actor who is mobile across borders, this very quickly results in very high transaction costs, which tend to make it unattractive to take advantage of the opportunities offered by, for example, a cross-border labour and consumer market. It is not only the fact of dealing with a different administration that can be problematic – it is much more difficult that the administrative structures of the neighbouring state usually exhibit major structural and functional differences from the respective home context. In addition, it is not uncommon for cross-border jurisdictional problems to arise between the administrations involved. Also, and especially in terms of language, citizens very quickly

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462 Insee, RP2015 exploitation principale, géographie au 01/01/2017

encounter hurdles when they are confronted with neighbouring administrations. Administrative forms, as well as digital solutions developed as part of national e-government approaches, are generally not multilingual. In addition, there are differences in administrative cultures, which point to fundamental differences that still exist, for example, with regard to the position of a citizen in communicative dealings with an administration. Since there is no uniform administrative procedure law in Europe, very many cross-border administrative processes are not defined as business processes. Differences in responsibility between state administration and local authority administration on the one hand, and different criteria and standards on the other, contribute to the difficulty of cross-border mobility. In addition, cooperation between competent specialised administrations in the cross-border perspective is often still based on voluntariness as well as on patterns of informal administrative action. Individual employees may well have occasional contacts with their counterparts in neighbouring countries, but as a rule this does not lead to the development of reliable administrative relationships, since even informal administrative action can rarely overcome the great diversity of national administrative systems in Europe.

In view of the great importance of cross-border mobility on the one hand and its practical administrative challenges on the other, an approach to a solution was developed in the cross-border region on the Upper Rhine at the beginning of the 1990s that is strongly oriented to the idea of the One-Stop Agency. Just as it is common today in many administrations with public traffic to set up service areas where administrative customers can deal with their concerns centrally in one place without having to switch between many different administrative offices (principle of the citizens' office), 4 cross-border information and advice centres (Infobest) were[463] set up along the border in the Upper Rhine. Three of these Infobest offices were symbolically housed in former customs buildings. As contact points for everyone, these facilities represent focal points in the cross-border area where citizens or other actors with a cross-border orientation can obtain both initial advice and an explanation of cross-border procedures and responsibilities. Each Infobest has fully bilingual staff recruited from the respective partner countries (Germany, France, Switzerland) and thus able to explain their own political-administrative context to a client from a neighbouring country, as well as to establish the necessary initial institutional contacts. The free advisory services of the

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463   https://www.infobest.eu/de (30.03.2022)

192

Infobest offices relate to general information on the neighbouring countries and, among other topics, in particular to the areas of social security, employment, taxes, moving to a neighbouring country, education, vehicle purchase or transfer, and traffic. Over the years, bilingual fact sheets have also been developed for central topics; the corresponding national administrative forms are also available on site so that they can also be explained using the example of a specific individual case.

In contrast to what is usual in a classic citizen service office, administrative processes cannot be accepted in the Infobest offices for binding processing or forwarded to the respective responsible administrative offices. The structure therefore does not have a link between a generalist front office and specialised processing in the back office. Rather, Infobest is a general information and consulting office supported by the local authorities, which does not replace the respective competencies and distribution of responsibilities of the involved specialised administrations. Its range of services is limited to problem analysis, presentation of responsibilities, and referral to the administrative offices responsible in the respective national context.

Through its intensive involvement in cross-border issues and the informal communication relationships built up over the years, Infobest also performs a networking function between the administrations of the three neighbouring countries on the Upper Rhine. In addition, the Infobest offices regularly hold cross-border consultation days on their premises, bringing together representatives of the respective specialised administrations (for example, pension insurance or financial administrations) from the partner countries, thus creating a virtual cross-border administration: Citizens can switch between administrative systems by meeting contact persons from the respective national specialised administrations in neighbouring offices. Individual case-related problems can be analysed cooperatively in this way and, in most cases, also successfully solved between the respective experts on site.

The Infobest offices make a considerable contribution to the transparency of cross-border administrative matters through the information and advice they offer and, in particular, through their bilingual and intercultural mediation function. National specialised administrations, where an individual case from a neighbouring country with its specific competence requirements can very easily get lost (most administrations arrange their individual cases according to the initial letters of the respective surnames of their customers, but not according to the required cross-border or international competences of the respective case handlers) are relieved by the

fact that corresponding customers are informed and advised in advance and corresponding administrative forms are thus filled out correctly and corresponding documents are submitted completely.

However, the digitization of public administration poses a major challenge for this well-established solution approach. More and more administrations are handling their service functions exclusively digitally as part of e-government. Public areas are being scaled back or completely replaced in terms of quantity (organisation of opening hours) and/or quality (qualification of staff at the counter) as part of the current modernisation approaches. The fact that cross-border administrative relationships are generally not defined on the basis of transparent business processes that are coordinated between all the specialised administrations involved in a cross-border situation makes cross-border processing structurally more difficult. Although citizens can find digital service offerings in the respective specialised administrations that allow them to process administrative processes flexibly in terms of time and space within the respective national framework, the corresponding interfaces and/or access to the administrations responsible in the neighbouring country and/or digital service offerings and/or administrative forms do not exist in most cases. This leads to new problem situations not anticipated by the respective digital solutions and thus to the de facto blocking of service processes.

In the context of digitization, Infobest offices will have to develop a new, even more important service function in a cross-border context: in the future, the initial consultation will no longer be able to refer only to the factual level, but will also have to include corresponding digital interface functions. As part of a pilot project funded by the German Federal Ministry of the Interior (Regional Open Government Lab), Kehl University of Applied Sciences, together with Infobest Kehl/Strasbourg and the corresponding specialised administrations in France and Germany, is currently developing a concept for turning Infobests, which have so far functioned predominantly in analogue form, into digital one-stop agencies. In doing so, the existing digitalisation approaches on the European level (for example, the establishment of DSI – Digital Service Structures as so-called Building Blocks within the framework of the CEF program of the EU Commission, or the implementation as ISA – Interoperability solution for public administrations[464]) as well as on the national level (for example, universal process OZG of the state of Baden-Württemberg and *www.service-bw.de* or the French approaches to the creation of citizen-oriented decen-

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464 European Commission 2017

194

tralized "Maison de Service au publique"[465]) will be functionally linked with each other via business processes oriented to the cross-border life situation concept. The Infobest offices are to be assigned a future-oriented interface function, which in particular also includes an important social and intercultural mediation function and thus continues to contribute, but at a new level, to the transparency of cross-border administrative relations, even in the age of administrative digitalization.

7.4.2 OG dimension participation: Cross-border citizen participation in the Upper Rhine region

The topic of participation in cross-border cooperation has[466] gained special political significance in the Upper Rhine region since the founding of the trinational metropolitan region Upper Rhine (TMO) in the mid-2000s. The starting point was the consideration, analogous to the metropolitan and regional governance processes developing in many member states[467], to overcome the functional logic of cross-border cooperation, which until then had been predominantly focused on political-administrative rationality, through an intersectoral networking process. Governance in the Upper Rhine today consists of four pillars: The political pillar with the official cross-border institutions on the regional and intergovernmental level, the Eurodistricts on the inter-municipal level as well as the Upper Rhine city network; the scientific pillar, in which 170 institutions from science and research are networked cross-border across university types; the economic pillar, in which the Chambers of Industry and Commerce as well as the Chambers of Crafts have come together cooperatively; and finally the civil society pillar, within which a networking of social actors of the three countries is promoted. Within the individual pillars, strategic guidelines were developed in a participatory manner, which were networked in 2010 to form a TMO 2020 strategy for the entire region. In 2018/2019, the TMO Strategy 2030 was updated in a collaborative process between all relevant stakeholders and adopted by the representatives of the 4 pillars on November 2019.

From the outset, the topic of citizen participation was strategically significant, but very challenging in concrete implementation. This was partly

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465 www.maisondeserviceaupublic.fr (30.03.2022)
466 www.rmtmo.eu (30.03.2022)
467 Fürst 2011

due to the fact that the relevant terminology and concepts are culturally very different in the three countries and are also put into practice in very different ways. The role that civil society plays or should play in public and political processes is also strongly influenced by the different political cultures of the three neighbouring countries[468]. Nevertheless, it was initially possible to organize three cross-border citizens' forums in Strasbourg, Karlsruhe and Basel in 2010 and 2011, in which more than 500 representatives of civil society took part. The main topics discussed there were better networking of citizens through the elimination of language barriers, more comprehensive information through the media and improved cross-border public transport connections. Expectations were also formulated for politicians to intensify citizen participation in the future and to improve cooperation between administrations. In the context of a so-called three-country congress, which was dedicated to the topic of civil society in the Upper Rhine on June 27, 2012, corresponding objectives for the civil society pillar were formulated.

In the years that followed, however, it became apparent that the rather top-down organised participation process ultimately yielded few concrete results. On the one hand, it was found that institutional representatives of civil society tended to participate in the citizens' forums. Secondly, the topics discussed were often far too broad and comprehensive to actually be within the competence of local and regional politicians to act and solve problems. The topic of citizen participation was therefore increasingly shifted to the level of the inter-municipal Euro-districts, as it was possible to develop greater proximity to citizens from there. At the level of the TMO, the topic was again taken up and focused in the Strategy 2030. The goal of the TMO in the future is to promote cross-border voluntary work outside and in associations as well as meetings and events by and for the next generation in the Upper Rhine with offers that are as low-threshold as possible. In addition, interdisciplinary projects are to be developed and implemented in dialogue between science, politics and citizens (reallabs).

Despite these efforts, many observers assume that the identification of the citizens with the cross-border living space is, as in other border regions of Europe, also comparatively low in the Upper Rhine[469][470]. Even though cross-border consumer and leisure behaviour has intensified in the last 30 years, the vast majority of the Upper Rhine population still identifies with

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468 Beck 2014
469 Cf. already Beck/Wassenberg 2013
470 Decoville/Durand 2018

the respective sub-regional centre of life in Germany, France or Switzerland.

In this context, however, the Corvid19 pandemic can also be seen as a serious turning point in the Upper Rhine region. Due to the abrupt and, above all, uncoordinated border closures between the national governments of Germany, France and Switzerland as of March 17, 2020, cross-border cooperation was abruptly put into a state of closure and "non-cooperation". This traumatic experience for many border actors and border residents of the sudden reappearance of a closed border, permeable only to a few people, combined with sometimes very different, but in any case uncoordinated, measures of shutting down public life, dramatically illustrated what achievements had ultimately been achieved through consistent cross-border cooperation in the past. The fact that cross-border affairs as well as a cross-border way of life are ultimately not a normality but the results of long-term cooperation processes was acknowledged on the individual as well as on the institutional and, above all, on the media level.

Against this background, the state government of Baden-Württemberg organized a digital citizens' dialogue in the trinational Eurodistrict Basel on October 12, 2020, dedicated to the topic of "Corona and living together in the trinational border region of Basel"[471]. The methodology of this citizens' dialogue was fundamentally different from previous approaches. On the one hand, the topic was specifically targeted at an area where citizens could actually be expected to be affected accordingly. Secondly, 60 randomly selected citizens from the three countries were integrated into the citizens' dialogue via digital formats – this ensured that the interests of civil society functionaries could not be addressed, but rather the actual lifeworld views of the inhabitants of the border region. Thirdly, the process of the Citizens' Dialogue was initially geared to collecting a survey of the participants' mood and their initial participation. The participants were specifically asked whether and how they personally felt about the closing of the border and public life. As many as 40 % of the participants stated that the considerable restriction of the possibilities to cross the border had been experienced as very drastic. Through this and in the further discussions and work in small groups, an awareness of the importance of openness in the cross-border living space was created to a special degree. Fourth, the citizens' dialogue was characterized by working in small groups specifically on the question of what expectations would

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471 Ministry of State 2020

be placed on politics in the event of a second lock-down. The following diagram provides an overview of the core results of these demands. The fact that, not least as a result of this citizens' dialogue, the regional players in a joint regional interest group and, in particular, the Baden-Württemberg state government campaigned for at least the state borders to remain open during the second lock-down can be seen as a real success of this format of digital citizen participation.

Figure 18 Results of the group work of the citizens' dialogue at Eurodistrict Basle
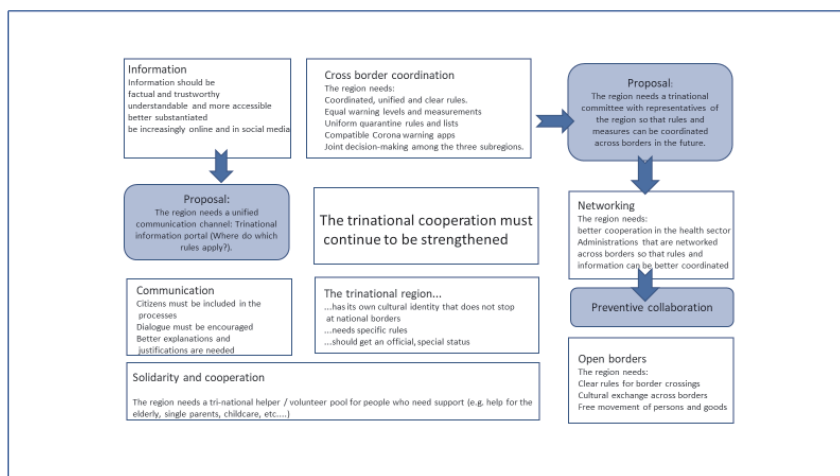
Source: Ministry of State 2020: 7 – translation by the author.

7.4.3 OG dimension collaboration: The INTERREG Programme

If, as a third example, we look at the central funding instrument INTER-REG and ask about the potentials and limits of its contribution to the realisation of the principles of open governance, it seems useful to distinguish between two levels: on the one hand, the program level as such, and on the other hand, the level of the projects concretely supported by this funding program. On both levels, in turn, the dimensions of structure and functionality appear to be of interest in this context. These level-specific dimensions will be examined in more detail in the following using the example of the INTERREG programme Upper Rhine.

   The INTERREG program Upper Rhine already existed in the form of the then autonomous experimental program area Pamina as one of the

first Europe-wide 14 pilot projects and can thus be considered representative for the genesis and development of the INTERREG approach as a whole since 1989[472]. From a structural point of view, the INTERREG program is characterized by the fact that the systemic openness described above is concretized in the fact that various program partners of the participating member states jointly support and also co-finance the program. The example of the Upper Rhine shows here a cross-level institutional cross-border partnership of the spatially responsible administrative bodies: on the French side, the Région Grand Est, the Départements Bas-Rhin and Haut-Rhin as well as the French State are involved; on the German side, the Federal Ministry for Economic Affairs and Energy, the State of Baden-Württemberg (Ministry of State as well as the two regional councils) and the regional associations Hochrhein-Bodensee, Mittlerer- and Südlicher Oberrhein as well as the State of Rhineland-Palatinate (State Chancellery, Ministry of Economics, Transport, Agriculture and Viniculture, Struktur und Genehmigungsdirektion Süd) and the Rhine-Neckar Association; on the Swiss side, the Regio Brasiliensis as coordinating body, as well as the cantons of Basel-Stadt, Basel-Land, Aargau, Solothurn and Jura. This programme-related partner mix, however, only represents the cross-sector collaboration idea intended in the sense of Open Government in a rudimentary way. This is only found at the level of the so-called monitoring committee, in which other institutional actors from the programme area are also represented – albeit exclusively in an advisory capacity. On this level, there is a representative of the European Commission as well as other state institutions relevant for spatial development (Commissariat général à l'égalité des territoires (CGET) on the French side and the State Secretariat for Economic Affairs SECO on the Swiss side), the economic and social committee of the Grand Est region (CESER – Conseil Economique, Social et Environnemental Régional Grand Est), as well as the central cross-border institutions German-French-Swiss Upper Rhine Conference (representatives of the state administrations on the Upper Rhine), Upper Rhine Council (Trinational Parliamentary Assembly), Trinational Metropolitan Region Upper Rhine (representatives of the pillars politics, economy, science and civil society), the four inter-communal Eurodistricts (Pamina, Strasbourg/Ortenau, Freiburg(Centre et Sud Alsace as well as the Trinational Eurodistrict Basel) and the citizens' advice network Infobest.

Looking at this spectrum of actors, one can definitely say that the governance structure of the INTERREG Upper Rhine Program not only

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472   Beck 1997; Reitel/Wassenberg 2015

includes a systemic openness but also a structural, cross-level openness in the sense of regional governance. However, from the perspective of open government in an intersectoral collaborative assessment, the absence of direct representatives of chambers of industry and commerce, chambers of crafts, trade unions as well as representatives of civil society organisations or the network of cities is striking. On the one hand, this may be due to the basic approach of representativeness (representation via the TMO or CESER); on the other hand, it may ultimately also be explained by the simple question of the manageability of a committee size.

Moreover, collaborative openness is especially designed on the functional level of the programme. Thus, the action model of INTERREG in the border regions of Europe has led to a very specific design of both programme development and implementation. In addition to the partnership principle, the principle of planning/multi-annuality should be mentioned in particular. This has led to the establishment of differentiated programme planning procedures in many border regions. In particular, a broad stakeholder consultation has been developed in the Upper Rhine region for several programme periods. The planning bases in other border regions, which are partly still exclusively based on SWOT analyses and which are mostly prepared by external consultants, are increasingly complemented by professional participative elements in the Upper Rhine. This can be outlined by the example of the currently ongoing consultation on the INTERREG VI programme: an ad hoc group2020+ had initially identified with the managing authority the thematic funding areas that tend to be the most important and prepared the corresponding specifications of the European Commission for thematic concentration. More than 900 stakeholders from different levels and sectors were contacted on this basis and asked to complete a specially developed online questionnaire. The 149 contributions received with concrete evaluations and suggestions on the individual topics could be assigned to 95 different institutions: Authorities and local authorities (38), associations and federations (22), colleges, universities and public research institutions (18), other public institutions (8), private companies (5), foundations (3) and chambers (1). In addition, there were contributions from 11 cross-border institutions and one private individual. From a conceptual point of view, the contributions received were evaluated by the INTERREG working group on the basis of two central criteria: 1. number of comments received for the individual specific objectives (quantitative prioritization) and 2. significance of the expert comments for the strategic evaluation of the relevance of the specific objectives (qualitative prioritization). In a second consultation phase,

the so-called intervention logic (connection between strategic objectives, specific objectives and concrete fields of action, from which externally developed projects can then be funded) is now being elaborated on this basis, also collaboratively.

On the other hand, evaluations of various INTERREG programs, including those in the Upper Rhine region, also show that there are limits to collaborative openness in the subsequent implementation. For many years, the INTERREG programs of the past were characterized by a strong bottom-up principle, but the selectivity on the basis of transparent criteria was not always given both in the generation of projects and in the selection of projects by the working group and the monitoring committee. The complexity of the partner structure on the one hand and the great challenge of horizontal synchronisation, not least of different administrative cultures and system logics, lead in practice to the fact that the formal decision-making processes are characterised by a considerable informality in the sense of making informal preliminary decisions (so-called non-decision-making)[473]. What on the one hand is the prerequisite of good cross-border cooperation, namely that trusting informal network structures between institutional and personnel actors prepare formal decisions of cross-border bodies in an informed manner, is repeatedly criticised by external applicants with regard to the practice of the INTERREG programme. This criticism is increasingly met, not least also in the Upper Rhine region, by the fact that project development should no longer be exclusively bottom-up but increasingly also top-down in hybrid form, i.e. in the form of project calls with transparent objectives and selection criteria. One example in this context is the so-called Science Offensive, which between 2007 and 2020 stimulated research, innovation and technology transfer by establishing new cross-border partnerships between science and research institutions in 3 strategic development fields in the spatial vicinity of the tri-national Upper Rhine, using 11 million euros of funding.

On the level of projects funded by the INTERREG programme, the structural level shows a very high thematic openness. Since the INTERREG program was established, 835 projects have been funded in the Upper Rhine, covering a total of twelve thematic fields: from research, science and technology transfer, to economic development, education/training and bilingualism, employment and the labour market, nature conservation, biodiversity and environmental protection, mobility and transport, public services and cooperation between administrations, cooperation

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473 Beck 2018a

between citizens, health, tourism, cultural heritage and sports, risk prevention and risk management. Thus, hardly any area of public tasks is ultimately not backed by a specific INTERREG project, which suggests that the programme has had a considerable broad impact, which in turn suggests a great openness in cooperation. Within these 835 projects, 322 small projects have been realized, which aim at bringing citizens and associations into a cross-border cooperation context in a low-threshold way. Individual projects have also led to considerable intersectoral networking in the respective policy fields covered, such as the tri-national project TRISAN[474], which has brought all relevant health actors in the Upper Rhine into a collaborative working context, or the tri-national project ATMO-Vision[475], which has networked 20 actors from different sectors and levels in the field of preventive air pollution control.

The collaborative orientation on the structural level (topics and actors) is opposed by limitations on the functional level. For example, the INTER-REG programme's approval criteria, which are very restrictive compared to national programmes, preclude the direct participation of private sector actors as project sponsors. Actors from the social sector, on the other hand, see themselves hindered in the development of cross-border projects by the so-called reimbursement principle, since a project promoter must be able to pre-finance a project largely from its own funds in case of doubt – which meets with considerable obstacles, especially among actors from civil society. From a functional point of view, these criteria imply a privileging of public actors or – in the case of the business community – of institutional representatives. In the practical handling of INTERREG projects, a significantly increased reporting effort compared to national funding programmes is criticised. Not only the proof-of-use procedure but especially the documents to be submitted in the context of project approval represent a demotivating hurdle that should not be underestimated in its complexity. In addition, project sponsors bear a considerable risk due to the reimbursement principle: if, for example, the originally planned thematic or structural approach changes during project implementation, if individual project partners leave the working context, or if new challenges arise in implementation that were not known at the time of application, this leads to a change in the budget. Expenditures that have already been made in advance, for example as personnel or ongoing rental costs (so-called overhead costs), can thus very quickly remain with

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474 www.trisan.org (30.03.2022)
475 http://www.atmo-grandest.eu (30.03.2022)

202

the project executing agency without retroactive subsidization by the programme. The functional conception of an INTERREG project is based on the assumption that the project, as it was applied for, will be implemented 1:1. Especially in an intercultural and intersystemic context, this approach ignores insights that can be read in any manual on classical project management: It is the exception rather than the rule that a project is realised as planned precisely because of its secondary organisational character and, as a rule, precisely because of its innovative collaborative context. Learning loops, which are naturally anchored as innovation dimensions in good project management, can thus only be realised to a very limited extent. In combination with the documentation obligation, which many project participants perceive as bureaucracy, there is a danger that the central funding instrument for cross-border cooperation will lose its attractiveness in the future and that collaboration in the sense of open government and administrative action will decrease due to the extraordinarily high administrative transaction costs.

As the analysis presented makes clear, INTERREG has both potentials and obstacles with regard to the realisation of the Open Government principle of collaboration on the programme as well as on the project level. Three levels of innovation can be derived in this context:

One approach developed in many discussion contexts for the realization of open government is the provision of open data. In the cross-border context, this could promote the existing approaches of consultation and participation in the sense that it enables stronger evidence-based programme development. The alignment of programme objectives with actual cross-border added values as well as their measurability can be seen as important foundations for the further development of transparency, participation and collaboration, especially in the cross-border context. Open data can also promote openness in the debates and programmatic definitions and thus contribute to transparency both in the cross-border potential analysis and in the subsequent project selection.

A second approach from the general Open Government debate can lead to the recommendation of a perspective overcoming of the so far rather restrictive design and handling of funding criteria in the INTERREG programme. The rather small-scale, input-oriented programme and project management should lead in favour of a more flexible, result-oriented handling of funding criteria in the cross-border context. Many national funding programs work, for example, with the instrument of simplified proof of use or with de minimis rules. Trust and transparency can be the basis for expanding the spectrum of eligible actor constellations in order to

promote even more cross-sector collaboration in the sense of open regional governance. One of the basic ideas of open government refers precisely to the special innovation that can arise from a non-hierarchical collaboration of the administration with actors from other functional systems. However, this presupposes that even in a funding programme for cross-border cooperation, target groups are treated appreciatively as potential-oriented partners and not as simple applicants.

A third approach, which is primarily effective at the project level, could be to take the findings of modern project management more into account at the level of INTERREG. Many approaches of Open Government implement agile methods of public management. This means taking into account the fact that projects usually deal with innovative and complex issues, which are characterised by a high degree of momentum, and whose quality gain often consists precisely in adapting not only the content but also the structure and roles of the project participants flexibly and as needed during the course of the project[476] : Exclusively linear, "mechanistic" project planning, as it is currently demanded especially with regard to the preparation of a binding financing and realisation plan when applying for an INTERREG project, ultimately does not do justice to the complexity of cross-border projects at the interface of intersystemic and intercultural challenges. In contrast, agile methods[477] should not only allow learning and innovation loops, but should also be actively demanded as a target criterion already at the application stage. The attractiveness of INTERREG projects can be increased, for example, through flat-rate funding. In this way, a contribution to the dynamization of cross-border cooperation can be made.

7.5 Conceptual perspectives of Open Government in cross-border cooperation

As the three case studies show, system boundaries become particularly visible in cross-border cooperation. Such system boundaries are also generally relevant when reflecting on the state and perspectives of OG. Even if theories of a medium scope are sought in administrative sciences today in a pragmatic understanding, it can be useful in this respect – in view of the very fundamental perspectives of change that are intended by OG – to make sure of some fundamental basic assumptions of administrative

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476 Preußig 2015
477 Hofert/Thonet 2019

science. On the basis of the exemplary analysis of cross-border cooperation, four conceptual perspectives for the further discussion of (municipal) open government in Germany will therefore be outlined below.

System-theoretical premises

A central characteristic of public administration can be seen in its function as an institutional capacity for the fulfilment of public tasks. Whenever a public administration is to be established or changed, this is not an end in itself, but should be directed towards the finality of optimising the production and provision of public goods. Public administrations are structural/institutional capacities designed according to the public function assigned to them. In this respect, the institutional configuration of a public administrative unit cannot be separated from the functional needs and structural requirements of the associated task performance.

A second more fundamental design principle of public administration is its character as a social functional system. Accordingly, in public administration, as in any organisation, both membership, competence, task orientation, formal and informal structure, etc., are defined by institutional systemic boundaries that can be understood as constituting criteria. Social systems are also characterised by specific codes that govern the communication and connections between their members and that simultaneously distinguish a system from its environment[478]. Accordingly, the differentiation of various functional systems can be understood as a characteristic feature of states and societies of modernity[479]. A social system, on the other hand, does of course not stand isolated from its environment; indeed, it depends for its own survival on external interaction and cooperation with other functional systems. Interdependence and open communication with a system's environment are therefore indispensable – especially for public administration, which draws both resources and legitimacy from its political-social environment and whose addressees are located in other functional systems (society, economy, science, etc.). Beyond the classical approaches of systems theory, newer concepts of administrative science therefore underline the increasing blurring of systemic boundaries and argue from unilateral public governance towards more complex inter-systemic / hybrid patterns of cross-sectoral network governance ("New Public

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478 Willke 2014
479 König 2008

Governance") of the future[480]. Change and changeability of a system in relation to its increasingly complex environment thus becomes the central evaluation standard of an innovative public administration. Such an inter-systemic view of the networking of collective actors from different sectors then increases the permeability of system boundaries – but it does not dissolve them and, above all, the existence of differentiated functional systems, but actually presupposes them. In this respect, realistic approaches to open government should argue for openness but not for the *systemic* de-differentiation of public administration in relation to other social functional systems. Especially with regard to the successful further development and acceptance of cross-border cooperation, this appears to be a central prerequisite.

Neo-Institutionalism: overcoming path dependencies

Meanwhile, Open Government explicitly and implicitly aims at institutional change in government and administration. Institutions can be understood as stable, permanent bodies for regulating, producing or carrying out certain collective purposes. In this context, they can refer to social behaviours or norms as well as to concrete-material as well as abstract-immaterial purpose-oriented institutions. In a basic political/administrative science understanding, institutions represent a corridor of action that acts as a "structural suggestion" with regard to the task-related structuring of interactions between different actors. The question of the creation and changeability of institutions, or in a broader conceptual understanding, the possibilities and limits of shaping institutional arrangements in the sense of "institutional change," is the subject of various scholarly theoretical approaches that have recently sought to integrate various monodisciplinary premises via the concept of neo-institutionalism. Following *Kuhlmann/Wollmann*[481], three lines of argumentation/theoretical models can be distinguished:

Historical neo-institutionalism assumes that institutions, as historically evolved artifacts, can usually only be changed to a very limited extent and, if so, only in the context of major historical-political ruptures or shaping lines. In this sense, institutional factors tend to have a restrictive effect on actors who intend changes and innovations in given institutional arrange-

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480 Kegelmann 2019
481 Kuhlmann/Wollmann 2014

206

ments (so-called path dependence). In contrast, *rational choice or actor-centred neo-institutionalism* emphasises the general, interest-driven ability of acting actors to shape institutions, although their choices are in turn channeled or even limited by existing institutional conditions. Approaches of *sociological neo-institutionalism* also acknowledge the fundamental (interest-driven) design of institutional arrangements by acting actors, but in this context, in contrast to theories of institutional economics and its model of thinking (*homo oeconomicus*), which is oriented towards individual utility maximisation, they emphasise the culture-bound nature and the group membership of actors (*homo sociologicus*) as explanatory variables.

The realisation of open government approaches ultimately also takes place in the context of these three theoretical explanations. On the one hand, it presupposes an understanding of the basic configuration of public administration, which is historically (and functionally!) based on reliability and stability, and thus the need for longer-term perspectives of change. At the municipal level, this is symbolized, among other things, in the phenomenon of so-called *executive leadership*, *which* has been empirically documented by municipal science since the 1970s (Bogumil 2002). On the other hand, it requires the identification of a clear benefit precisely also for central actors at the level of politics and administration, since otherwise they will show little willingness for institutional change. At the municipal level, this manifests itself, among other things, in the challenge of also being able to involve the elected representatives of the institutions as well as the top administrative officials as actors. Finally, a further challenge can be seen in the fact that OG approaches run the latent risk of being limited in a municipal system of action to only a few members of a change group of "conviction agents" who are overlaid by the "digitization community" that currently dominates the majority, with the result that the instrumental frame of reference of the latter group dominates the normative frame of reference of the former.

The extent to which municipal open government can actually succeed in overcoming the assumed systemic "path dependency of closedness" appears to be quite open in view of the results of a recent survey in Germany[482]. The relevance of an evolved continental European legalistic administrative culture[483] may well point here to systemic limits to both what is feasible and what is desirable. Ultimately, the example of cross-border cooperation also underscores the importance of historically grown

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482 Beck/Stember 2019
483 König 2008

administrative path dependencies in the horizontal dimension of transnational intergovernmentalism[484] and suggests that attention be paid to their temporal dimension of change.

Participation and collaboration: considering lessons learned from the past

The above-mentioned challenge, based on the model of sociological neo-institutionalism (culture-bound and group affiliation), may in turn be due to the fact that the approaches to participation and collaboration proposed in recent times by models of open government are by no means new in a historical perspective. As early as the 1960s/1970s, there were intensive efforts to make public administration more citizen-friendly and open[485]. Many of these approaches were conceived in the context of a democratization and modernization that had yet to catch up at the administrative level after World War II[486]. Even more recently, a whole series of contributions on the subject of citizen participation by local government scholars have analyzed both the feasibility and the limits of opening up local government in particular to the social sphere[487].

One of the central findings, for example, is that approaches to citizen participation should be viewed in a differentiated manner, and that different levels of intensity should be reflected in each case in relation to the project[488]. The following diagram[489] shows such a level model of citizen participation and illustrates that many of the approaches to action intended by open government for the structural and functional opening of local government ultimately aim at the upper right level, i.e., actually at the delegation of competence to act:

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484   Beck 2014
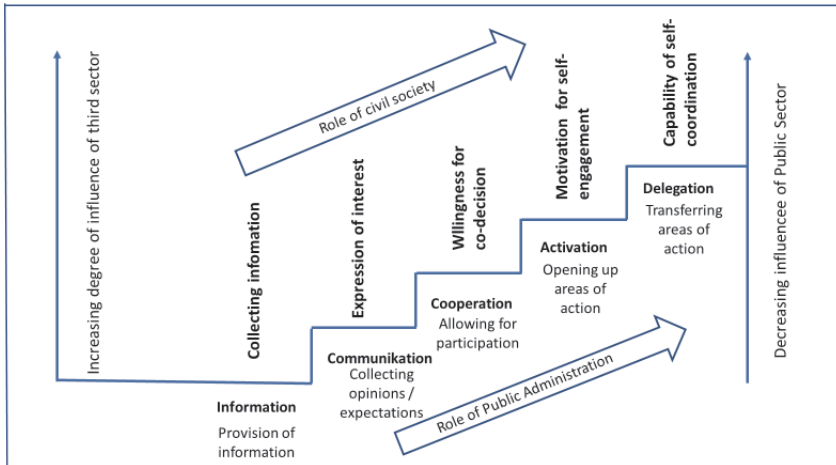485   for example Hoffmann-Riehm 1979
486   König 2020: pp. 110
487   for example Mauch 2014
488   Coleman 2015
489   Own illustration based on Kegelmann 2015: 378

Figure 19: Model of Participation

Source: own illustration following Kegelmann 2015: 378

The fact that this "royal class" of citizen participation is particularly pre-suppositional may be one reason why open government approaches are initially confronted with scepticism, especially in those municipalities that already have comparatively broad experience with citizen participation. They are aware of the need to plan such approaches very carefully ex ante and of the limited ability to manage the complexity of the interde-pendence of goals, content, actors, processes and resources. If, on the other hand, open government approaches argue with the necessity of an openness of the path itself or even a utopian finality[490], experienced admin-istrative practitioners will initially tend to avoid using the potentials of OG[491]. The example of cross-border cooperation presented above has also made clear how preconditional participation processes ultimately are, and how important it is that there be both a real sense of involvement and that real implementation-related perspectives for action on the part of citizens be opened up[492].

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490 Cf. Holzner 2019
491 Wewer 2020
492 Cf. Ulrich 2021

Differentiation of tasks in implementation instead of normative holism

If Open Government is also to be understood as a method for meeting the requirements of and approaches to implementing agile administration[493], then it would also seem to make sense to reflect at least on municipal Open Government more strongly from a task-related perspective. From the perspective of administrative science, there are two possible ways of differentiating between the two. On the one hand, it is useful to recall the established differentiation of tasks according to function in administrative science[494] : *regulatory administration* primarily serves to enforce and control normative requirements; administrative action here is typically subject to a high degree of conditional programming, which suggests a rather low degree of required agility. Accordingly, the potential for open government methods must appear comparatively low here. By contrast, the situation is quite different in *service administration*: Technical, personnel or financial services are closely related to the changing needs of target groups; they indicate a high degree of required agility and thus also great potential for open government approaches and methods. In contrast, *organisational administration* (internal services and support services) is of medium relevance to agility, while at the municipal level *political administration* (decision preparation and steering support) has a medium need for agility, but also a very high potential for open government, since it is ultimately a matter of overcoming the still widespread and empirically proven self-image of "executive leadership" at the municipal level in[495] favour of new dimensions of openness.

On the other hand, a recourse to established concepts of policy analysis can also[496] provide interesting impulses for the further conceptual design of municipal open government. In municipal practice, it is becoming increasingly apparent that previously separately conceived/codified and thus, in administrative practice, also organisationally isolated subject areas and policy areas are increasingly characterised by the challenge of integrative task performance. With its distinction between interdependent material, procedural and institutional policy dimensions on the one hand and policy typologies with different functional logics on the other, the policy-analytical view of open government can promote more integrative thinking.

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493 Bartonitz/Lévesque 2018; Hill 2018a, 2018b.
494 Bogumil/Jann 2009: 89
495 Bogumil 2002
496 Schubert 2012

210

In particular, thinking more strongly in terms of policy networks[497] could help to conceptualise the functional overcoming of system boundaries inherent in open government not only in normative terms, but also in terms of concrete material policy fields and issues. The fact that different policy fields require different control logics, actor constellations and institutional arrangements could provide exciting conceptual and benefit-related impulses for the implementation of open government, especially at the municipal level. In terms of internal organisation, this could ultimately also contribute to overcoming the classic self-image of so-called event-driven process chains taking place within ad hoc defined responsibilities (i.e., thinking from the inside out) in favour of agile criteria based on the real requirements of increasingly integrative policy fields and variable actor constellations – i.e., promoting systemic thinking from the outside in. For the above-mentioned examples from the field of cross-border cooperation, the greatest potential for innovation is likely to be tapped here.

In summary, especially against the background of the examples from the field of cross-border cooperation, it is suggested that Open Government should not be seen as a normative model for the creation of a participatory administration, but rather as a method with which the greatest possible transnational openness can be developed within given nation-state structures and procedures, especially at the level of cross-border cooperation.

Accordingly, the expected impact should also be viewed in a differentiated manner[498] – in contrast to what is sometimes controversially discussed in some academic or interest-based publications. From a practical application point of view, open government is concretised in the context of cross-border cooperation on three levels. First of all, it can help to promote material innovations at the *micro level*, i.e. in the area of tasks and policy fields, projects, employees, target groups and instruments, to increase acceptance and legitimacy, to strengthen motivation and commitment, but also to increase commitment and identification with the goals and tasks of cross-border cooperation. Effectiveness and efficiency gains can be expected as further impact contributions at this level.

At a second level of aggregation, the organisational *meso level*, open government can contribute to an optimisation of cross-border procedures, structures, decisions and internal and external interactions. Processes of strategy formation, but also of transnational further development of given administrative cultures, holistic approaches to organisational development,

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497 See already Marin/Mayntz 1990
498 Wewer 2013; Wewer/Wewer 2019

and systemic innovations, for example in the area of the development of new forms of work or personnel development oriented towards transnational and intercultural openness, can lead here to new and innovative patterns of action for cross-border cooperation under the auspices of open government.

Finally, on a third level of aggregation, the *macro level,* open government can contribute to orienting a border region as a whole on the basis of principles of openness. Here, positive impact expectations can be achieved with regard to an improvement of the input – output legitimation of cross-border policy approaches as well as the normative justification of the transnational public space and of public action in a cross-border perspective[499].

The three levels of impact are vertically interconnected. The self-image of open government certainly encompasses all three levels and, especially in the cross-border context, it is by no means to be limited exclusively to the macro level. Many innovation potentials for cross-border practice can also be seen at the micro and meso levels. In this respect, the implementation of open government in cross-border cooperation in its rather pragmatic understanding is likely to differ centrally from normative approaches, as they are postulated in particular in the international and national debate.

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499 Boedeltje/Cornips 2004; Beck 2019

212