Joachim Beck

Horizontal Integration

An Administrative Science Perspective on
Cross-Border Cooperation in Europe

Nomos

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For Gabrielle, Constantin and Jonathan

Foreword

The present publication has a longer prehistory, which ultimately began when I found my professional start at the German University of Administrative Sciences in Speyer after completing my studies in administrative sciences at the University of Konstanz in 1991. Due to my private residence in Strasbourg, I travelled weekly between the two cities – and was suddenly a European cross-border communter whose everyday life was confronted with two political-administrative systems and two very different cultures.

From this personal experience grew an interest that not only led to the topic of my PhD thesis, published in 1997, but also had a decisive influence on my further professional and academic career: Cross-border cooperation in Europe. Over the years, this topic has led to many cooperations with institutional and academic partners and resulted in numerous publications. I have also been able to contribute to the development of this policy field in cooperation with the Council of Europe, as an expert advisor at the European Commission's Directorate General for Regional Policy, in various research and consultancy projects funded by public institutions and, ultimately, through my active participation in the cross-border cooperation within the Upper Rhine metropolitan region as Director of the Euro-Institut. Above all, these diverse experiences have enabled a practice-based analytical approach in the form of „participating observation", which formed the basis for more fundamental scientific reflections on the subject area of cross-border cooperation in Europe.

Looking back on more than 25 years of dealing with the topic of cross-border cooperation, the idea arose to thematically bundle publications of conceptual relevance that have been published in various journals or scattered as book contributions, and to develop them further in a separate book publication under an overarching question. Although this idea had already been working in me for several years, two recent historical events gave me the concrete reason to finally start writing the manuscript. On the one hand, the temporary closure of internal and external borders in the context of the Covid19 pandemic in spring 2020 made it clear, that achievements of the European integration process that were thought to be secure, such as open borders in Europe, can evaporate from one day to the next. On the other hand, the invasion of Ukraine by the Russian army in violation of international law dramatically showed that borders

still have an important constitutive significance, but that even in the 21st century they can be violated in the heart of Europe by acts of war with fatal consequences. The resulting realisation, that European integration needs to be noticeably deepened, raises not least the question, of what roles European border regions can play in Europe in the future.

The title of this publication was deliberately chosen against this background. For some time now, I have been arguing that a horizontal European integration dimension is taking shape in European border regions, which has not yet been sufficiently analysed and conceptualised in the academic literature. Moreover, for me as an administrative scientist, the subject area of cross-border administrative relations forms the core of my research interest. And it is precisely these cross-border administrative relations that in practice play a major role in determining whether and, if so, how border regions can develop their European integration potential at all. From this point of view, too, European border regions have so far only been analysed in a rudimentary way. In this respect, this publication attempts to close a twofold research gap and at the same time to substantiate related perspectives of a transdisciplinary research approach in administrative science.

Numerous people have accompanied me on my exploration of cross-border cooperation in Europe so far, and I am deeply grateful to them. A selection must always remain unsatisfactory, nevertheless I would like to mention a few people in particular in this context. First of all, I'd like to thank Birte Wassenberg and Anne Thevenet for their loyal connectivity, academic curiosity and professional support, which are an important source of my work. In addition, I would like to thank Fabrice Larat not only for his true humanity and friendship, but also for his constant scientific and intellectual inspiration and encouragement. I thank Jürgen Oser for his enthusiastic pragmatism, which has sustained me for many years in cross-border cooperation on the Upper Rhine, even in difficult phases. Klaus König, Michel Casteigts, Franz Thedieck, Gernod Joerger, and Karlheinz Lambertz were/are constant role models and supporters. Eddie Pradier, Sebastian Rihm, Alix Weigel, Tobias Heyduk and Philipp Bauer were/are not only close collaborators to whom I owe many suggestions – they have themselves became committed practitioners or young academics - in the field of cross-border cooperation and beyond.

I would like to thank the Consortium of Baden-Württemberg Libraries for selecting and supporting this publication to appear in open access format. Beate Bernstein and Eva Lang from NOMOS Verlag provided

me with excellent advice and professional support in completing the manuscript.

Ultimately, my special thanks go to Olaf Handloegten for his loyal and inspiring friendship since the Constance times (even over times of big geographical distance) – and to my wife Gabrielle and my sons Constantin and Jonathan, who have always actively supported and sustained me over the years in the various professional and academic functions – enduring the spatial, intellectual and cultural border-crossings that have been associated with them. It is their understanding and openness that made the time available for these texts to be written.

Strasbourg, June 2022   *Joachim Beck*

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1. Cross-border cooperation as a horizontal integration perspective – an introduction

Cross-border cooperation in Europe is constantly gaining in importance. At the latest with the realisation of the European Single Market, i.e. the official abolition of internal borders in Europe, it became obvious that European border regions play a very specific and central role in the European integration process[1]. This was again reinforced by the eastward enlargement, which expanded the spectrum of what we can define as cross-border territories in Europe quantitatively, but above all qualitatively[2] .The importance of cross-border territories can be illustrated by a few figures: Approximately 40 % of the EU area can be classified as a cross-border area at NUTS 2 level. An estimated 30 % of the EU population lives in border areas. Of the 362 regions registered with the Council of Europe, more than 140 are border regions[3]. Although only about 7 million nationals of EU countries (=3.3 % of the European labour force) are mobile within the EU in the sense that they live or work in a country other than their country of origin in the course of their lives, about 1.2 million work as posted workers in another EU country and 1.1 million commute daily as cross-border commuters from their country of residence to a neighbouring country for work[4] – a high proportion of this overall very relative mobility phenomenon nevertheless takes place in the border regions of the European Union.

This specific type of territory, which has so far played a rather minor role in the official documents and in the technical and spatial development strategies of the European Commission[5], performs specific functions for the realisation of the European integration process. Especially in connection with the redesign of the European Cohesion Policy (2014–2020) and the realisation of the Treaty objective of territorial cohesion[6], it became

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1 Wassenberg/Beck 2011
2 Foucher 2007
3 Ricq 2006
4 Eurostat 2014
5 See for example Sixth progress report on economic and social cohesion. COM(2009) 295 final; Beck 2011
6 Ahner/Fuechtner 2010

15

clear, that the border regions in Europe should experience a political and functional upgrading in the future.[7] This can also be illustrated by the fact that the effects of the progress of European integration can be studied here with particular clarity: horizontal mobility of goods, capital, services and people are very obvious in border regions, but also the remaining obstacles to this horizontal mobility. This is why the border regions have often been described as laboratories of European integration[8] and why cross-border cooperation as such can be interpreted as a specific horizontal dimension of European integration[9].

The following diagram, created by the Association of European Border Regions (ABER) illustrates the density of cross-border cooperation links that have developed in Europe since the Second World War. In an international comparative perspective, this represents an important unique selling point of the European continent and illustrates the functional potential that can result from such a horizontal European integration perspective:

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7 Beck 2012
8 Lambertz 2010
9 Wassenberg 2008; Beck/Thevenet/Wetzel 2009; Beck 2018

Figure 1: Cross-border territories in Europe

(source: https://www.aebr.eu/)

Looking at the historical development of cross-border cooperation in Europe, however, it can be stated that for a long time, Europe was dominated by confrontation rather than cooperation, in which nation states as central actors sometimes aggressively redefined or changed territorial and state borders in the form of armed conflicts. Ultimately, it was only after the Second World War that one could speak of cross-border cooperation in the

true sense of the word – the recognition and thus stabilisation of borders through international and intergovernmental treaties formed the basis[10].

Cross-border relations were initially established in post-war Europe in the form of town twinnings. In 1958, the first institutionalisation took place with the founding of the EUREGIO Gronau in the German-Dutch border region, which was followed in the 1960s by many analogous local initiatives in Western European border regions, which finally led to the founding of the Association of European Border Regions (AEBR) at the end of the 1960s[11]. In this respect, it can be said that cross-border cooperation in post-war Europe developed from the bottom up. It was not until the 1970s that cross-border cooperation was recognised and ultimately codified at the level of the participating states, in the form of specific intergovernmental agreements in which the fields of activity and the actors involved in cross-border cooperation were defined and joint cross-border government commissions were set up to implement them. This state practice was raised to a broader European level in the 1980s. Worth mentioning here is the so-called Madrid Framework Convention on Cross-Border Cooperation of the Council of Europe, in which standards and foundations for cross-border cooperation were laid for all 46 member states of this international organisation[12].

The 1990s marked an important turning point. On the one hand, in the wake of the fall of the Iron Curtain, the European Commission actively took up the issue of cross-border cooperation and installed INTERREG, a central funding mechanism in financial and conceptual terms. On the other hand, numerous new border regions were formed in Eastern and South-Eastern Europe, which defined themselves programmatically as "Euroregions" right from the very beginning. On the other hand, the realisation of the single European market from 1993 onwards and the associated implementation of the so-called four fundamental freedoms (freedom to provide services, freedom of capital movement, freedom of movement of persons, freedom of movement of goods) brought about a considerable dynamisation of horizontal socio-economic interdependencies, from which the European internal borders in particular profited to a considerable extent.

Not least because of the practical challenges arising from this, a dynamisation of cross-border cooperation in Europe can be observed from

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10 Wassenberg 2007; Lambertz 2010
11 AGEG 2008
12 Ricq 2006

the year 2000 onwards[13]. Thus, numerous border regions located on Europe's western borders have questioned their established structural and functional patterns of cooperation and tried out new forms of cross-border governance. The border regions that emerged partly ad hoc on Europe's eastern borders from the 1990s onwards caught up with functional and organisational structuring, partly in a very innovative way from the outset. The European Commission also supported this dynamisation, on the one hand by successively increasing the funding available for the INTERREG programme, and on the other hand by providing specific cooperation instruments such as the legal institute of the EGTC (European Grouping of Territorial Cooperation)[14]. At the same time, some border regions repositioned themselves as so-called Euro-Districts, with the explicit aim of strengthening the experimental laboratory function at the decentralised level in a cross-border perspective[15].

Complementarily, the European Commission also promoted the emergence of so-called transnational macro-regions and made its cohesion policy much more impact-oriented[16]. Finally, with the initiative to create a cross-border mechanism at the European level and the adoption of the Franco-German Treaty of Aachen in 2019, more recent initiatives have been taken at both the European and intergovernmental levels to make the legal and administrative framework for cross-border cooperation more flexible[17].

When this book reflects on cross-border cooperation in Europe, it does so with the intention of placing the horizontal dimension of the European integration process symbolised by cross-border cooperation more firmly in the focus of academic and practical debate and, at the same time, to explore ways in which territorial as well as socio-economic development potentials in Europe can be better realised by improving cross-border cooperation.

Cross-border territories have enormous territorial development potential. The practical realisation of the four European fundamental freedoms is particularly concretised in this type of territory, which can be under-

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13 MOT 2007
14 Beck 2017b
15 Frey 2005
16 https://ec.europa.eu/regional_policy/fr/policy/cooperation/macro-regional-strateg
    ies/
17 Beck 2021

stood as a proximity-level of European integration[18]. At the same time, border regions illustrate the practical obstacles that still exist with regard to the realisation of the European fundamental freedoms. At the level of individual citizens, but above all at the level of businesses and civil society, approaches to cross-border action are still hindered by a multitude of obstacles in real-world practice. According to a survey carried out by the European Commission in preparation of the socalled "b-solutions"-Initiative[19], legal and administrative factors are the greatest obstacles to cross-border mobility in Europe (53 %), in addition to linguistic and informational obstacles. These obstacles not only have a subjective de-motivating effect on individual actors who wish to orient their everyday actions towards cross-border mobility, they also lead to considerable economic welfare losses in Europe. A study, commissioned by the EU Commission in 2017, proved that legal and administrative obstacles lead to a loss of 3 % of European GDP. However, the specific welfare losses within the socio-economic proximity-level within European border regions are likely to be many times higher. If all negative legal and administrative border effects in Europe were eliminated, this would lead to a growth boost of 485 billion euros and the creation of over 8 million jobs in European border regions[20].

If one mentally removes the national border and looks at a cross-border territory from a 360° perspective, functional and institutional scales may well emerge that lead to comparability with national standards. For example, the cross-border cooperation area of the Trinational Metropolitan Region Upper Rhine (TMO) on the German-French-Swiss border covers an area of 21,000 km², where more than 6 million people live in a polycentric settlement structure, where more than 200,000 companies of partly global importance exist, where more than 170 science and research locations exist and where important regional, national, European and international institutions are located[21]. In addition, as part of the European Commission's reorientation of cohesion policy, cooperation patterns have emerged in many border regions that follow the logic of multi-level governance and tend to realize territorial development goals through the interaction of

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18 Reitel/Wassenberg 2015; Blatter 2004; Böhm/Drapela 2017; Klatt/wassenberg 2020; Beck/Thevenet/Wetzel 2009/AGEG 2008
19 https://ec.europa.eu/regional_policy/en/newsroom/news/2021/02/02-09-2021-b-sol utions-to-cross-border-obstacles-a-complementary-cooperation-tool
20 European Commission 2017a
21 https://www.rmtmo.eu/fr/home.html

different sectors (politics, administration, business, science, civil society). Initial experience with such approaches, however, shows that even in these new governance patterns, a dominance of public actors can ultimately be observed[22]. Obviously, there is also a particularly pronounced institutional (national) path dependency in cross-border affairs, which tends to hinder the development of existing potentials.

Border regions and the cooperation processes taking place within them can be defined today as a separate transnational policy field, whose constitutive characteristics and functionalities in addition to its property as a sub-system of national and regional governance are more and more also determined by the European level[23]. From the point of European integration and the related multi-level perspective it can be observed how cross-border governance has – over time – become an increasingly significant object of European policy[24]. It is obvious that the cross-border areas of Europe have strongly benefited from the advances of the European integration process. Major European projects such as the Schengen Agreement, the Single European Act (SEA), the Maastricht Treaty or the introduction of the euro in the framework of the Monetary Union implemented important integration steps which have influenced the life of the population in the border regions significantly in a positive way. However, within these main European projects, border regions ultimately have not been explicitly defined as object areas, but still must rather be regarded as symbolic fields of application or rather 'background slides' of respective high-level European policy strategies. What has impacted, however, and strongly influenced both the emergence and the practical functioning of cross-border cooperation during the last 25 years, is the action-model of European cohesion policy[25]

Within the European cohesion policy, only relatively low funding for the promotion of cross-border cooperation was made available until the late 1980s. Yet, the introduction of the Community initiative INTERREG resulted in a veritable thrust. 100 cross-border programme regions have been formed since then and until 2020 29.5 billion€ in EU funds, as well as a nearly great amount of national and regional co-financing will have been invested in border regions. In addition – and alone for the period 2014–2020 – an additional 876 million euros have been invested within

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22 Beck 2013
23 Wassenberg/Beck 2011; Lambertz 2010
24 Beck 2011
25 Beck 2011

the framework of the cross-border component of the neighbourhood policy (IPA-CBC and ENPI-CBC). In these territorial fields of cooperation not only a variety of specific development projects are conceived and implemented jointly between partners coming from different territorial jurisdictions. The general governance model of European regional policy – beyond the narrower project reference – often also leads to optimised structuring of the overall organisation of cross-border cooperation itself[26].

Between 2000 and 2006 alone, INTERREG III contributed to the creation or maintenance of 115 200 jobs, the establishing of almost 5800 new companies and the program also supported another 3900 already existing companies. More than 544 000 people participated in events, dealing with issues of territorial cooperation. In addition, cooperation within the framework of almost 12 000 networks was promoted, which resulted in the creation of nearly 63 000 cooperation agreements. More than 18 000 km of roads and railways in border areas have been built or repaired, investments in telecommunications and environmental improvements were forced and more than 25 000 specific local and regional initiatives have been promoted. With the 4th programming period (2007–2013), INTERREG became a so-called "mainstream programme" of European structural policy, by which cross-border cooperation in addition to the interregional and transnational cooperation has been upgraded as part of the new objective 3 "European territorial cooperation". Cross-border cooperation processes are thus considered explicit fields of experimentation for European territorial governance and are given an immediate cohesion-related action, which was further strengthened in connection with the objective of territorial cohesion, newly introduced in the Lisbon Treaty. The programme period 2014–2020 was characterised by a stronger thematic focus in programming as well as a more intensive impact-orientation when choosing and implementing new cross-border projects[27]. The indicators in the following table not only illustrate the quantitative significance of the overall impacts achieved, they also show that the programme has already achieved significantly more objectives than planned at an early stage:

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26 Desousa 2012;
27 Beck 2011; Ahner/Füchtner 2010

Figure 2: Interreg indicators: 2023 targets and achievements up to end-2019

Target value (number)	Implemented values (number)	Implemented relative to target (%)
Firms engaged in R&D cross-border co-opera-tion	10 319	24 879	241
Research institutes in-volved in cross-border cooperation	2 265	11 206	495
Participants in cross-border labour mobility measures	194 080	132 629	68
Participants in cross-border labour and training programmes	65 740	108 282	165
Participants in cross-border inclusion mea-sures	31 900	15 771	49
Participants in cross-border youth schemes	62 761	147 535	235

Source: European Commission, Directorate-General for Regional and Urban Poli-cy, Eighth report on economic, social and territorial cohesion, 2021, p. 292

The following chapter two examines the connection between European integration and the genesis of cross-border cooperation in Europe on the basis of established discourses on integration theory.

Beyond this EU-wide dimension, border regions are characterised by a very specific structural situation: natural and/or socio-economic phenome-na such as transport, labour market, service-delivery, individual consump-tion, migration, criminality, pollution, commuters, leisure-time behaviour etc. typically have a border-crossing dimension, directly both affecting and linking two or more neighbouring states in a given trans-border territory. These negative or positive spill-over effects of either structural or everyday policy problems require a close cross-border co-operation between those actors, which are competent and responsible for problem solution within the institutional context of the respective neighbouring state[28]. The wide range of possible inter-institutional and problem-specific constellations in Europe`s border regions, however, does not allow a uniform classifica-tion of what the characteristics of this type of regions look like: not all border-regions, for instance, are isolated rural territories facing important

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28 Drewello/Scholl 2015

structural problems which are ignored by the respective national government. During the last years many border regions have become rather important junctions of the socio-economic exchanges between the neighbouring states and their historical role as "crossing points" has even been positively reinforced[29].

One common element of cross-border regions in Europe, however, can be seen in the fact that cross-border co-operation has a long tradition in the old member states of Europe, and that it was gaining fast significance for the new border regions in Eastern Europe. This history, constant changing institutional challenges and the specific preconditions have in each case lead to the development of specific solutions of the respective cross-border governance[30]. In contrast to the national context, where regional co-operation is taking place within a uniform legal, institutional and financial context, cross-border governance is characterized by the challenge to manage working together politico-administrative systems which have a distinctive legal basis and share a different degree of vertical differentiation both in terms of structure, resources equipment and autonomy of action[31]. The specific patterns of cross-border governance that can be observed in Europe are examined in more detail in chapter three of this book.

Borders[32] are a complex multidimensional phenomenon in Europe today. If one looks at the realities of the living and working environments as well as the leisure time of border residents[33], the horizontal interconnections of business and research[34], the cooperation between politics and administrations,[35], it can be seen that the border phenomenon and thus also the object of cross-border cooperation can no longer be reduced to a simple spatial separation function[36]. Cross-border territories and the cooperation that takes place in them are subsystems,[37] which in turn are constituted by the horizontal networking (and selective integration) of functional subsystems of the respective national reference systems involved. In addition to the spatial, the border thus also encompasses political, economic,

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29 MOT 2007
30 Benz 1999; Benz/Lütz/Schimank /Simonis 2007
31 Eisenberg 2007
32 Speer 2010; Blatter 2000; Rausch 1999; Beck 1997
33 Wille 2012; Beck/Thevenet/Wetzel 2009
34 Jakob/Friesecke/Beck/Bonnafous 2011
35 Beck 1997; Wassenberg 2007; Kohlisch 2008;; Federal Ministry of Transport, Building and Urban Affairs 2011; Frey 2005
36 Casteigts 2010
37 Frey 2003

legal, administrative, linguistic and cultural dimensions, which broaden the analytical focus of the initial conditions, structuring, procedural patterns and material solution contributions of the „subsystem of cross-border cooperation"[38]. In this context, an important role for the practical functioning of this subsystem is played by the administrative-cultural factor[39]. In general, administrative cultures can be understood as the respective structural and functional specifications of the legal and administrative systems of different countries. As a rule, administrative cultural patterns are related back to superordinate country-specific cultural patterns. They manifest themselves at a macro-level, on the one hand, in the respective specific, culture-bound structure of an administrative system and, on the other hand, both through functional characteristics of administrative organisations that appear as institutional actors in cross-border cooperation. On the other hand, at a micro-level, administrative culture maifests itself through behavioural patterns of individual actors (=the agents), which in turn are shaped by the given administrative cultures – as they still represent national domestic institutions (=the principals), for example in cross-border working meetings. The following diagram schematically depicts the basic administrative cultural constellation of cross-border cooperation. The question of how problems or development potentials that are considered common can be dealt with in the form of cross-border cooperation within an inter-institutional transnational subsystem, is very much shaped by the respective institutional and individual administrative cultures of the countries involved. Chapter four of this book takes up the resulting analytical questions, namely firstly, to what extent different administrative cultural imprints shape the results of cross-border cooperation processes (in the sense of an independent variable), and secondly, to what extent specific administrative cultural patterns have emerged within a cross-border cooperation area over longer periods of time from the cross-border interaction between actors, coming from different administrative cultural backgrounds (in the sense of a dependent variable), and to what extent these can be interpreted as success factors of an effective cross-border cooperation related to the respective common need for action.

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38 Beck 2010
39 Beck 2008a; Beck 2008b

Figure 3: The intercultural challenge of cross-border copperation
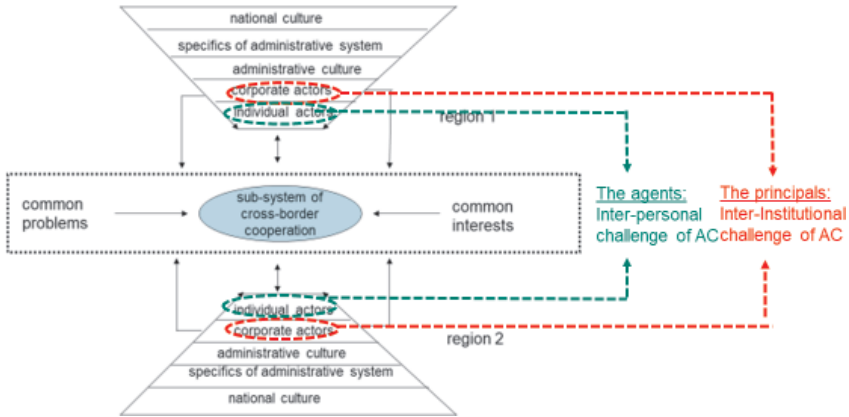
Beyond its current achievements, cross-border co-operation is still confronted and finds itself sometimes even in conflict with the principle of territorial sovereignty of the respective European states involved[40]. Even legal instruments aiming at a better structuring of the cross-border co-operation by creating co-operation groupings with a proper legal personality[41], like for instance the newly created European Grouping of Territorial Co-operation (EGTC)[42], do not allow for an independent trans-national scope of action: regarding budgetary rules, social law, taxation, legal supervision etc. as the details of the practical functioning of an EGTC depend entirely on the domestic law of the state, in which the transnational grouping has finally chosen to take its legal seat.

Even in those regions where the degree of co-operation is well developed, cross-border co-operation is also still a transnational politico-administrative subsystem, created by and composed of the respective "domestic" national partners involved. Both, institutions, procedures, programmes and projects of cross-border co-operation depend – in practice – on decisions, which are still often taken outside the closer context of direct bi- or multilateral horizontal co-operation. In most transnational constellations – also where federalist states are participating – cross-border policy-making cannot be based on a transparent delegation of proper com-

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40 Beck 1999
41 Janssen 2007
42 Regulation (EC) No1082/2006 on a European Grouping of Territorial Cooperation

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petences from the domestic partners towards the transnational actors, but the domestic partners must still rather recruit, persuade and justify their actions and their legal and financial support for each and every individual case. The "external" influence on such a sub-system of co-operation has, thus, to be considered as being relatively important. Cross-border co-operation can therefore be interpreted as a *principal-agent constellation*[43] : with the principals being the national institutional partners of this co-operation (regions, state organisations, local authorities etc.), representing the legal, administrative, financial and decisional competences and interests of their partial region, and the agents being the actors (cross-border project partners, members of transnational bodies or specific institutions, programme officers and co-ordination officers etc.) responsible for the preparation, the design and the implementation of the integrated cross-border policy[44]. Different to classical principal-agent assumptions, however, the principals are playing a much more important role, clearly defining the scope and limits of action for the agents within a transnational context of such a "secondary-diplomacy"[45]. Cross-border co-operation thus has always both an inter-institutional and an inter-personal dimension, requiring the co-operation of both, corporate and individual actors with their specific functional logic, motivated by special interests in each case[46].

The reference level of this sub-system is founded through a perception of cross-border regions as being "functional and contractual spaces capable of responding to shared problems in similar and converging ways, so they are not political regions in the strict sense of the term"[47]. On the other hand, the fact that cross-border co-operation is not replacing, but depending on the competence and the role of the respective national partners[48] does not automatically mean that this co-operation is a priori less effective than regional co-operations taking place within the domestic context. Research on multi-level policy-making in Europe has shown that a productive entwinement and networking of different actors coming from distinct administrative levels and backgrounds can be as effective as classical institutionalised problem-solving[49]. Yet, the institutional and functional preconditions of cross-border co-operations are far more complex and exposed to various

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43 see Czada1994; Chrisholm 1989; Jansen/Schubert 1995; Marin/Mayntz 1990
44 Beck 1997
45 Klatt / Wassenberg 2020
46 Coleman 1973; Elster 1985; Marin 1990
47 Ricq 2006, p. 45
48 Blatter 2000; Rausch 1999
49 Benz 1998; Benz/Scharpf /Zintl 1992; Grande 2000

conditions. The central criterion for the evaluation of a successful cross-border governance, however, is, nevertheless, both the degree of mobilisation and participation (structure and quality) of the relevant institutional and functional actors and the effectiveness of the problem-related output which this subsystem of co-operation is producing[50]. Chapter five takes this question as a starting point to discuss the possibilities and limits of better *capacity development* in a cross-border context. Following the line of argumentation of this book, the structural question of how cross-border territories can be functionally upgraded, is addressed in addition to the field of education and training. In this regard, two conceptual approaches are presented and made usable for the cross-border context: On the one hand, the extent to which cross-border development and action needs can be better realised within the framework of *horizontal subsidiarity* , by which the participating states increasingly transferring competences and scope for action to cross-border territories and the institutions developed there, so that these are put in a position to first develop relevant approaches to solutions themselves. On the other hand, the functional idea of *mutual recognition* established in the context of European law is transferred to the context of cross-border cooperation. The concept of mutual recognition can be seen as an alternative to legal institutional integration at the European level. For a cross-border cooperation context, a variety of innovations can result from this approach.

In its various functional and spatial manifestations, cross-border cooperation since the Second World War has also led to a remarkable growth of transnational institution-building. The sixth chapter of this book analyses the cross-border institutional profile that can be observed in Europe in this regard. Particularly from the perspective of horizontal integration, as this book is based on, the question of whether horizontal patterns of interaction between institutional and individual actors have in the meantime reached a degree of intensity that can be regarded as a form of transnational institution-building in its own right, appears significant. Starting from basic considerations on the genesis and perspectives of the European administrative space, the chapter examines the specific quantitative and qualitative imprints of such cross-border territorial institutionalism. It is argued that cross-border cooperation today constitutes an independent horizontal dimension of the European administrative space, both qualitatively and quantitatively. At the same time, a model is developed that makes it possible to make this territorial institutionalism usable for further

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50 Casteigts/Drewello/Eisenberg 1999

neoinstitutional research approaches. On this basis, the research perspectives for a better understanding of the respective institutional functional logics are outlined.

In the 21st century, societies as well as the economy and administrations in Europe are increasingly confronted with the phenomenon of digitalisation. The seventh chapter of this book examines the extent, to which perspectives for the qualitative development of cross-border cooperation can arise from this approach. Here, the focus is placed on two specific manifestations of digitalisation. On the one hand, it examines the extent to which approaches of *administrative "e-solutions",* as they are currently being implemented in many European member states for the modernisation of public service processes, can provide new impulses for cross-border cooperation. Based on a critical analysis of the status quo, which is still characterised by analogue cross-border cooperation in many cases, a step-by-step model of cross-border governance will be used to analyse for which cooperation levels and practical approaches e-solutions could bring concrete added value. Since digitalisation can fundamentally open up new possibilities for interaction and forms of interaction between public administrations and their target groups, the discussion on digitalisation in recent years has also promoted a conceptual approach that fundamentally raises the question of an increased opening of political administrative systems. The seventh chapter therefore takes up the question of the extent to which approaches to such *open government* in the area of cross-border cooperation are either already being practised or can promote new impulses. On the basis of the three classic fields of open government, it is shown how transparency, participation and collaboration can be realised in a cross-border administrative context of action and what perspectives can result from this for future cross-border cooperation.

As already explained in more detail above, legal and administrative differences between the Member States constitute a considerable obstacles to the development of cross-border cooperation approaches and, more broadly, mobility in Europe. From the perspective of border regions, this reveals a paradox of European integration: the more the European legislator relies on implementation-friendly Directives at the instrumental level, the more the empirically verifiable differences in legal implementation in the national context tend to stabilise rather than level out structural differences beyond national borders in Europe. Moreover, numerous areas of law relevant to European mobility are not subject to European standardisation at all – they can be interpreted as an expression of the member states' desire not to communitise these areas of law. For example, tax law,

general and special administrative law, labour law, social security law or vocational training law, to name just a few areas of law, are primarily characterised by national legislation. There are, of course, some European Directives that at least coordinate the social law provisions of the member states, for example, or intergovernmental solutions such as double taxation agreements. From the perspective of cross-border cooperation, however, law in areas relevant to mobility usually represents a veritable obstacle, as actors crossing borders are confronted with different legal systems. Against this background, chapter eight of this book analyses the question of the possibilities and limits of legal flexibility, which is decisive for the practical organisation of cross-border cooperation. The provisions included in Chapter 4 under the heading "Regional and Cross-Border Cooperation" in the Treaty between the Federal Republic of Germany and the French Republic on Franco-German Cooperation and Integration of January 2019 (the socalled Aachen Treaty) appear to be particularly groundbreaking in this regard: Article 13 para. 1 not only acknowledges the role of decentralised cross-border cooperation between Germany and France, but also postulates the objective of "...facilitating the removal of obstacles in border regions in order to implement cross-border projects and to facilitate the daily lives of people living in border regions". Article 13(2) puts this in concrete terms by stating that cross-border bodies should in future be equipped with appropriate competences, targeted resources and accelerated procedures for this purpose. At the same time – and this can be seen as a particularly innovative moment – the treaty opens up the option of adapting existing legal and administrative regulations to meet needs and to issue exemptions for border regions. The fact that the first phase of the Corona pandemic led to border closures, which in fact also led to a standstill in cross-border cooperation between local and regional actors in the Franco-German border area on the ground, highlighted the need for further reflection on the future of cross-border cooperation, particularly in the context of the Treaty of Aachen, in order to better consider the three levels of European integration, Franco-German cooperation and the decentralised territorial development of border areas in an integrative post-pandemic perspective, with a special focus on the question of the possibilities and limits of legal-administrative flexibilisation. Based on an analysis of two concrete cross-border cooperation projects, the chapter attempts to develop pragmatic approaches to solutions in this regard.

Finally, from the perspective of administrative science, broader research perspectives are outlined in the last chapter of this book. Research in administrative science is not only interdisciplinary in the sense that the

subject area of public administration requires an integrative consideration of different scientific disciplines (law, social sciences, economics); it is also transdisciplinary in the sense that the reason for research in administrative science – also and especially in a historical perspective – does not usually find its justification in epistemological considerations of the scientific disciplines involved, but starts from practical problems of the object of investigation itself. Such a transdisciplinary understanding of science also appears to be particularly suitable for opening up the subject area of cross-border cooperation in Europe in a more integrative way. The concluding chapter attempts to illustrate this by using the example of some basic approaches in administrative science and, on this basis, proposes elements for a future transdisciplinary research programme in administrative science.

2. Cross-border cooperation within the process of European integration

Europe without borders is the core and finality of the European integration process: central milestones of European integration such as the creation of a single internal market, the monetary union, the various rounds of enlargement, as well as the Lisbon and "Europe 2020" strategies aim at this. The focus of this European integration process – also in its academic analysis – is usually in the vertical perspective: the realisation of integration through supranationality in the form of a transfer (or preservation) of nation-state tasks to the European level in order to be able to better solve common problems and to ensure the *level-playing field* necessary for many economic and political actors.

Practitioners and also the European institutions themselves are of course very aware that despite the postulate of a Europe without borders, in fact many borders still do exist. On the one hand, because only partial areas of the spectrum of public tasks have so far been "zoned up" to the supranational level, on the other hand, because not all member states participate in some European tasks and areas of competence (key words: monetary union and Schengen) and because the historically grown political-administrative and economic systems of the member states want to secure their specific national policy approaches in a number of public task areas. For this reason, "subsidiarity-friendly" directives have long dominated over "integration-friendly" regulations at the level of the European legislator, and the Commission of the European Union (EU) is constantly striving for better or more intelligent legislation[51].

Moreover, the phenomenology of the border itself has a multidimensionality that is particularly relevant for cross-border cooperation as part of the European integration process. In addition to the political-administrative dimension, this also includes the legal, economic, cultural and linguistic dimensions[52]. The respective degrees of European integration can also and especially be determined by the relevance of these dimensions in the

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51 See for example " Smart Regulation in the European Union ", Commission communication – COM (2010)543 (8.10.2010).
52 Beck 2010

everyday practice of cross-border exchanges and relations within Europe[53]. In this respect, cross-border territories represent a specific subject for the analysis of the European integration process. They have specific functions that can be understood as horizontal contributions to integration and are referred to in the literature as "European laboratories" or "Europe in miniature". Thereby, in the practice of cross-border cooperation, the European overlaps with very specific territorial, transnational and substantive functional levels[54].

This chapterwill attempt to examine more closely the specific connections and mutual influences between European integration on the one hand and cross-border cooperation on the other, and to outline some action-oriented perspectives for the further development of this policy field.

2.1 Cross-border cooperation from the perspective of European integration theories

It seems to be in need of explanation and at first also paradoxical to want to apply European integration theories to the subject area of cross-border cooperation – because no specific integration in the European sense takes place in the border regions: It is not about the transfer of competences to higher levels, the absorption of individual elements in the interest of a better and greater whole, the transfer of at least partial sovereignty to a higher level or the creation of an institutional framework comparable to that of the European system of government. Rather, cross-border cooperation is transnational or subnational cooperation within a European framework designed externally by the member states. The objective of most cross-border cooperation approaches is to increase the cohesion of the respective cross-border area. With the concept of cohesion, a conceptual bridge can be built to the "neighbouring" concept of integration, especially as this is increasingly used in the current European integration debate: In any case, a direct reference to the current European integration debate is quite possible via the concept of cohesion. Integration and thus also European contributions to integration in and through cross-border regions take place on many levels. In order to be able to grasp, correctly classify and assess these in perspective, the premises and theorems of the different European integration theories open up interesting insights.

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53 Beck/Thevenet/Wetzel 2009
54 Beck/Pradier 2011; Lambertz 2010; AGEG 2008

Four basic academic currents have accompanied the European integration process and have decisively shaped the related schools of thought and academic lines of discourse: structuralist explanatory approaches (federalism and neo-institutionalism), functionalist approaches (functionalism and neo-functionalism), nation-state-centred approaches (realism and intergovernmentalism) and interaction-problem-solving-oriented approaches (transactionalism, multi-level politics). In the following, the essential premises of the respective schools of thought are recapitulated in a nutshell[55].

2.1.1 Structuralist approaches

Structuralist approaches see the necessity of advancing the process of European integration primarily through the establishment of performance-based institutions at the supranational level. Without a real transfer of competences and institutional decision-making powers to the supranational level, symbolising a new form of cooperation beyond a confederation of states, no real integration can ultimately take place. This position was primarily advocated immediately after the end of the Second World War by the school of thought of the federalists, who – following the example of the USA – proclaimed the creation of the United States of Europe as a new federal state. The normative concept of federalism is based on the assumption that all other forms of integration (such as the international legal form of cooperation in intergovernmental organisations) are less effective in terms of securing lasting peace. All real integration steps and measures of the European unification process are evaluated exclusively from the perspective of their suitability for realising the goal of a European federal state.

Classical federalism can thus be interpreted as an early form of European contructivism, according to which the direction of development of European integration is not given *per* se, but must be constructed on the basis of social interactions, i.e. through conscious, goal-oriented setting within the framework of complex processes. Interestingly, this line of thought received renewed attention in the 1990s in connection with (neo-)institutionalist approaches, which emphasised the importance of the existing (and to be developed!) institutional framework for the procedures and content of European policy development and thus the material progress of

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55 The following is based on Beck 2011a; Eppler/Scheller 2913; Schwok 2005

integration. Institutions, according to the premises, are not only results of historical developments that lead a life of their own over time and thus construct social realities: They are themselves created on the basis of more or less rational decisions in anticipation of specific functions (e.g. reduction of transaction costs for the member states) for the further integration process.

The premises of the structuralist approach can be simplified to the formula "*function follows structure*", based on a well-known guiding principle of management theory: Progress in European integration depends to a large extent on how efficiently and ultimately autonomously European institutions are equipped in relation to the member states.

2.1.2 Functionalist and neo-functionalist approaches

Functionalist and neo-functionalist approaches, on the other hand, see the real motor for the European integration process not primarily in the European institutions themselves, but in the realisation of functional-sectoral integration processes. Based on the so-called "Monnet method", the assumption is made that political integration can be achieved primarily through the greatest possible economic integration within the framework of a common market. This principle was codified at the European level in the Treaty of Rome in 1957.

The basic assumption of the (neo-) functionalist school of thought is based on the thesis that the discrepancy between the socio-economic problem space (i.e. social and economic disparities between the member states) and the political action space (national competences) almost automatically results in a necessity to improve the ability to control at the supranational level. The stronger the functional cross-border interdependencies, especially between economic actors in Europe, the more willing the member states will be to jointly regulate technical, i.e. regulatory competences that are remote from sovereignty, at the European level. This area of "*low politics*" would then automatically lead to the necessity of gradually harmonising more and more policy areas at the European level (so-called *spill-over effect*). From this point of view, it is easy to explain, for example, the so-called "internal market method" or the approach to the creation of monetary union. According to this theory, European integration is "...ultimately the result of the activities of those actors who are particularly active in the search for new structures of cooperation, quasi an *avant-garde of* integration. According to the neo-functionalist view, the competences of the

organs of the European Community (EC)/EU increase quasi-automatically because in all member states the policy areas are so closely intertwined that the integration of one policy area at the supranational level has a pull effect on other functionally closely related policy areas"[56].

Mirroring structuralism, the premises of (neo-) functionalist theories can be simplified to the formula "*structure follows function*": The intensity and structure of European integration are determined by the functionality of the underlying socio-economic interdependencies and not vice versa.

2.1.3 Nation-state-centred approaches

Unlike the structuralist and functional integration theories, whose levels of finality both refer to the expansion of the supranational level, the nation-state-centred approaches emphasise the role of the member states in the European integration process. Their most extreme manifestation is the so-called realist school, which was very much influenced by the early premises of the international relations schools of thought. After the end of the Second World War, the "realists" – in diametrical contrast to the federalists – sought closer cooperation between the states of Europe according to the classical principle of intergovernmental cooperation: The aim was to create a confederation of states without transferring sovereign rights to a supranational level, as this would never be possible from a realist point of view.

In the tradition of this school of thought, intergovernmentalism established itself from the 1970s onwards, which decisively shaped the academic debate until the 1980s and can be interpreted as an anticipation of or reflex to the so-called Eurosclerosis. The starting point of this theory is the thesis of sovereign nation states as the only actors actually shaping policy at the European level. These tend to resist the transfer of policy-making competences to supranational institutions. If they are prepared to do so, this is primarily motivated by the fact that this benefits their own nation-state interests or that they can enforce them better in this way. Intergovernmentalism sees the nation state as a single actor. Economic, political or financial power is recognised as the primary means of asserting interests in the European system. Core areas of national sovereignty such as defence, foreign policy, internal security, taxation, labour market and social policy etc. or – in the case of the German Länder – cultural and educational

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56 Lang 2011: 73

policy are systematically withdrawn from the European integration process by the member states.

According to the premises of intergovernmentalism, the progress of the European integration process is determined solely by the sovereign decisions of the governments of the member states; progress in integration is thus the result of negotiations between autonomous states, with their economic and geostrategic interests dominating the European idea in practice. Competence is only transferred if there are concrete benefits for the member state context. The postulate "*I want my money back*" attributed to the then British head of government Margret Thatcher can be considered characteristic of this. Neo-intergovernmental approaches also follow this view of the primacy of the nation state, but differentiate the explanation of its motives for action with regard to the need for greater consideration of organised interests within the respective member state.

2.1.4 Interaction: problem-solving approaches

One school of thought that is important for the conception and interpretation of the European integration process, albeit one that has received little attention for a long time, is transactionism. This theory, which is strongly influenced by sociology (Karl Deutsch), assumes that the integration progress is influenced by the intensity and structure of the communication and interaction relationships between political/institutional, economic, social and individual actors. Mutual learning and cooperation relationships result from consolidated communication and interaction relationships, which not only reduce transaction costs, but also promote common action orientations that ultimately contribute to integration. Many practical approaches to promoting intercultural communication, European encounters (such as EU programmes like *Leonardo*, *Tempus*, voluntary services, town twinning, etc.) or the transfer of good practices (*Interact*, *Interreg* IV C) follow these theoretical premises.

Interest-led interaction and communication in the form of negotiation systems also form the theoretical basis of the theory of European multi-level politics and its conceptual formulation as *multi-level governance*[57]. This school of thought, developed strongly from political science network and *policy research*[58], views European integration as the result of a highly net-

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57 Scharpf 1994; Jachtenfuchs/Kohler-Koch 1996; Grande 2000
58 Windhoff-Héritier 1990, 1993; Jann 2009

worked process of interaction and cooperation in which actors from different vertical (local, regional, national, supranational) and horizontal (state, economy, society, science, etc.) levels of action are functionally linked with each other in order to define collective problems and solve the resulting need for action based on a division of labour. The actions of the actors are determined on the one hand by the institutional context within which they (can) act within their own framework of action, and on the other hand by the reconciliation of individual interests and variable modes of decision-making. There is no hierarchical subordination structure between the levels; decision-making competences are ultimately determined by situational-strategic rather than *per se* structurally defined actor qualities. The functional logic, degree and finality of European integration are thus differentiated and ultimately seen as variable – which in turn leads to normative questions regarding the legitimacy and acceptance of such a highly complex European negotiation system.

2.2 Which interlinkeges between EU-integration and cross-border cooperation?

Just as the European integration process itself can be interpreted historically and conceptually by alternative schools of thought, different patterns of interpretation or levels of evaluation are also possible for the analysis of cross-border cooperation as part of this overarching integration process. The difficulty, however, lies in the fact that cross-border cooperation has never been treated as a separate subject area in the relevant academic theories, which means that the necessary conceptual bridging must be done interpretatively and on the basis of cross-border practice itself. On the other hand, cross-border cooperation has a primarily horizontal dimension, which is why the vertical view (supranationality), that predominates in most integration theories, can only be indirectly transferred to the cross-border context.

A first level of reference to the European integration theories and the historically variable meanings of their respective schools of thought can be established by analysing the genesis of cross-border cooperation[59]. Interesting parallels emerge here, although they are offset in time. Whereas the Treaty of Rome relatively quickly and permanently established functionalist views at the European level, the early days of cross-border cooperation in Europe were characterised by transactionist and then structuralist

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59 Wassenberg 2007

attitudes on the part of the actors involved. In the first decade of coopera-
tion, the moment of mutual encounter between former wartime enemies,
the establishment of direct, decentralised communication and interaction
relationships across national borders, and the identification of common
issues and problems through mutual information about each other's policy
concerns were of central importance. This first phase then led directly at
the beginning of the 1960s and until the end of the 1970s to an intensive
phase of cross-border institution building: first at the inter-communal level
in the form of *Euregios*, then at the inter-state level through the creation of
mixed government commissions with mostly decentralised/deconcentrated
working structures.

   At the end of the 1980s/beginning of the 1990s, on the other hand,
when nation-state-centred approaches gained in importance at the Euro-
pean level, a paradigmatic shift towards a more functionalist self-under-
standing can be observed at the level of cross-border cooperation with
the implementation of the first *Interreg programmes:* Territorial cohesion
of cross-border areas, according to the premises, can be better realised
through concrete projects in whose development, financing and imple-
mentation partners on both sides of the border actively cooperate, rather
than within the framework of institutionalised bodies. This paradigm shift
was in turn superimposed and strengthened by one of the largest func-
tionalist projects of European integration: the realisation of the internal
market. At the end of the last century, a certain convergence between the
European and cross-border levels can be observed, in which approaches of
multi-level governance are favoured at both levels.

   However, a clear difference can be identified with regard to an interpre-
tation of the intergovernmental view. While at the European level, despite
the assumptions of the realist and then nation-state-centred schools of
thought, an ever greater transfer of tasks and competences to the suprana-
tional level can in fact be observed over time, at the level of cross-border
cooperation a proportionally ever greater increase in the importance of
the participating states can be assumed over the same period. It is true
that in the cross-border context, due to the high territorial cross-sectional
character, more and more thematic fields of action have been developed,
and decentralised actors have been activated and motivated on a broader
level to participate concretely in projects and measures of cross-border co-
operation. So far, however, this has in fact taken place within a constantly
narrow corridor of national sovereignty. Today, it can by no means be
said that border regions are in a position to compensate for the lack of in-
tegration at the supranational level with their own cooperation approach-

es in relevant policy fields. As far as the development of approaches of "horizontal subsidiarity"[60] is concerned, the nation-states have so far been rather reserved and have generally rejected the corresponding requests of the border regions for a material transfer of competences with the – quite understandable! – argument, that any cross-border exception (e.g. in tax law, labour law, social law, administrative law, etc.) is not compatible with the principle of equal treatment within the state. So far, there are hardly any genuine cross-border experimental clauses at the level of specialised laws or the corresponding administrative regulations.

From the European integration theories outlined above, some interesting conclusions can also be drawn that concern the interpretation of the basic philosophy of cross-border cooperation and its specific *governance*[61]. These relate first to the question of which functional logic cross-border cooperation primarily follows or should follow. In the field of tension between the functionalist premise of "*structure follows function*" and the structuralist view of a "*function follows structure*", the former seems to dominate in cross-border cooperation. Unlike the European reality, which manifests itself through actual functional interconnections and as a veritable core project on the international/global agenda, a broader cross-border reality (beyond selective phenomena such as cross-border commuters) is not given *per se*, but must be constructed. Institution building, beyond the respective purpose-related justification in the cross-border context, always also entails a superordinate symbolisation related to tasks and political fields[62]. It is not without reason that the sustainable cross-border structure building is one of the most important goals of the *Interreg programmes*, because with each permanent project a new cross-border reality is established, which did not exist before in this form. In this way, cross-border functions and functionalities are always established through the structures. Against this background, the fact that many border regions today complain about the great diversity of and sometimes confusion between these structures must give cause for concern.

Furthermore, cross-border cooperation differs from European integration in its much stronger transnational character, which contributes to a specific, more intergovernmental functionality. The transnational dimension of cross-border *governance* as a negotiation system[63] is a specific

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60 Beck et al 2010
61 Beck/Pradier 2011.
62 Cf. Edelman 1990
63 Benz/Scharpf/Zintl 1992

characteristic that contributes quite significantly to explaining the specific functions and functionalities of this cooperation approach. Unlike "classic" regional or European governance, cross-border governance is characterised by the fact that decision-making arenas of a few, but directly neighbouring and usually very different political-administrative systems are directly linked to each other. The resulting cross-border negotiation systems are characterised by a – in comparison to national, regional and European *governance* – significantly stronger *principal-agent* problem. Here, it is not only a matter of the clash or functional coordination of different system characteristics, but also of the specific challenge of back-mediation and thus of the possibilities and limits of the functional "*embeddedness*" *of* a cross-border territorial sub-system in its respective constitutive national political-administrative systems[64].

In addition, there is the intercultural mediation and communication function[65], which is also closely linked to the transnational dimension of cross-border *governance* and which, due to its bi- or tripolarity, is significantly more complex than that of the European level – especially since this is increasingly overlaid in institutional practice by its own European administrative culture[66]. This refers not only to the interpersonal but also to the inter-institutional components of the cross-border negotiation system and explicitly includes the question of the compatibility of divergent European administrative cultures, which is open in principle[67].

Furthermore, features such as the consensus principle, the delegation principle, the non-availability of hierarchical conflict resolution options, the rotation principle in the committee chair, the tendency to postpone decisions or the structural implementation problem can also be explained by this transnational dimension. Cross-border *governance* thus obviously shares to a large extent those general features that have been elaborated in international regime research with regard to the functionality of transnational negotiation systems[68].

Finally, European integration theories can also be made useful for the cross-border context in the form of questions about the field of tension between persons (pioneers) and institutions, about the connection between functional interdependencies made possible by the European level (espe-

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64 Frey, R. 2003
65 Beck 2008a
66 Georgakakis 2008
67 Thedieck 2007
68 Hasenclever et al 1997; Müller 1993; Kohler-Koch 1989; Epfinger et al 1990

cially the internal market effect and the monetary union) and the concrete results of cross-border cooperation processes or the practical shaping of the role of cross-border actors[69] are addressed in connection with European *multi-level governance*[70]. It is not the place here to conduct an in-depth interpretation of cross-border cooperation from the perspective of European integration theories. But already these very general points of view have made it clear that from the point of view of integration-related theorising, Europe's cross-border territories can represent a promising subject of scientific analysis. In particular, the combination of structuralist and transactional theory approaches, as developed in political science in the form of so-called actor-centred institutionalism, appears to hold special potential[71].

2.3 Cross-border territories: Objects or subjects of European policy?

In addition to the interpretation from the perspective of European integration theories, the European function of cross-border territories can also be developed from their policy field-specific perspective. Border regions and the cooperation processes that take place in them can be defined as a policy field of their own, whose constitutive characteristics and functionalities are co-determined by the European level in addition to their characteristic as a sub-system of national and regional *governance.* From the perspective of European integration and the multi-level perspective associated with it, the question arises as to whether cross-border *governance* in this context is more of an object (= scope of application) or also already a subject (corporate actor) of European policy.

It is obvious that cross-border territories have benefited more than perhaps any other type of region from the progress of the European integration process[72]. Through the major European projects such as the Schengen Agreement, the Single European Act (SEA), the Maastricht Treaty or the introduction of the euro within the framework of monetary union, important integration steps have been realised that have had a significant and lasting positive influence on the lives of the population in border regions. However, the border regions within these projects do not represent a real

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69 Long 2010
70 Benz 2009
71 Scharpf 2006
72 Beck/Thevenet/Wetzel 2010

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object area, but must rather be regarded as symbolic fields of application or "background foils" of higher-level European policy strategies.

As an object area of European policy in the proper sense, however, cross-border cooperation at the European level is defined on the one hand as a specific dimension of cohesion policy and on the other hand as a general type of area within the framework of European spatial development policy.

Within the European Cohesion Policy, only relatively small amounts of EU funds were available for the promotion of cross-border cooperation until the end of the 1980s. However, the introduction of the Community Initiative *INTERREG* as its own funding framework led to a real boost. 75 cross-border programme regions have been formed, and a European funding volume of almost 8 billion euros was made available for cooperation at European borders between 2007 and 2013 alone, and another 9.4 billion under the cross-border component of the Neighbourhood Policy (*IPA-CBC* and *ENPI-CBC*)[73]. In these territorial cooperation fields, not only were a large number of concrete development projects conceived and implemented in partnership, but the general action model of European regional policy also led – beyond the narrower project reference – in many cases to optimised structuring in the functional and procedural organisation of the cross-border territories themselves.

Between 2000 and 2006, the *INTERREG* III programme also contributed to the creation or maintenance of 115 200 jobs and the creation of almost 5800 new businesses, and supported a further 3900 businesses. More than 544 000 people participated in events dealing with cooperation issues. It also supported cooperation through almost 12 000 networks, which led to the development of some 1285 sections on cross-border or transnational issues and the conclusion of almost 63 000 agreements. More than 18 000 km of roads, railways and paths in border areas were built or repaired, along with investments in telecommunications and environmental improvements, and more than 25 000 specific local and regional initiatives were supported[74]. With the fourth funding period since 2007, *INTERREG* became a so-called "*mainstream programme*" of European structural policy by generally upgrading cross-border cooperation in the new Objective

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73 Instrument of Pre-Accession (IPA) or European Policy Neighbourhood Instrument (ENPI)

74 Cf. the detailed results of the ex-post evaluation of Interreg III at http://ec .europa.eu/regional_policy/sources/docgener/evaluati¬on/expost2006/inter- reg_en.htm(2.1.2011).

3 "European Territorial Cooperation" alongside interregional and transnational cooperation. Cross-border cooperation processes are thus seen as explicit experimental fields for European territorial *governance* and are given a direct cohesion-related mandate for action, which was further strengthened in connection with the new objective of territorial cohesion introduced in the Lisbon Treaty.

The European Spatial Development Perspective (ESDP) also focuses on the importance of cross-border cooperation as part of an integrated spatial development policy that seeks to overcome national borders and administrative barriers. Together with the Territorial Agenda of the EU (TAEU) and the Green Paper on Territorial Cohesion, it forms the foundation for a future territorial orientation of Community policies.

However, this is by no means a self-fulfilling process. Cross-border cooperation as an object area of European cohesion and spatial planning policy has suffered greatly in the past from the fact that the classical European sectoral policies have so far often been conceived and implemented in isolation from the objectives of social and economic (and now territorial) cohesion. It is true that according to the Union Treaty, the design and implementation of all EU policies should take into account their impact on economic, social and territorial cohesion. Moreover, as for instance the 5th Cohesion Report pointed out, some policies – for example transport, environment, fisheries – currently have a relatively clear territorial dimension. Other policies – for example, research, information society, employment, education, agriculture, climate change policies – tend to have only a partial territorial dimension[75]. "Still other policies – for example, internal market and trade policies – do not or cannot make a distinction between different parts of the EU in their implementation"[76]. Common to all EU sectoral policies is the relatively low level of horizontal coordination and harmonisation between the individual Directorates General and their sectoral interventions at the territorial level in Europe.

This general finding concerning cohesion policy as a whole is even more relevant for cross-border cooperation: Here, it is not only the classic questions of coordination and demarcation between *INTERREG* funding on the one hand and other Structural Fund interventions (*ERDF*, *ESF*, *EAFRD*) in the national sub-areas of the cross-border territories that pose a challenge. From the perspective of cross-border territorial cohesion, far more problematic are the regularly differing implementations of EU law

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75 European Commission, Directorate General Regional Policy 2010.
76 Ibidem, p.XIX.

by neighbouring states, which lead to asymmetries in sectoral policy and thus often increaserather than level out structural, sectoral policy or procedural differences. It must appear more than alarming that the extensive annual work output of the European Commission (on average several hundred proposals for directives, directives, regulations, decisions, communications and reports, green papers, infringement proceedings per year)[77] refers at best in a very indirect form to the cross-border territories, both on the target and on the object level, but directly affects them in its implementation! Within such a national and European sectoral policy framework, which is still largely "externally" defined and thus independent of the cross-border territorial development needs and objectives, *INTERREG programmes* and cross-border spatial planning approaches can ultimately only develop a structurally reduced effectiveness.

Four developments, however, illustrate that in recent times the European level has increasingly taken up the field of cross-border cooperation and begun to develop it as a strategic object area beyond the classic "*INTERREG world*".

On the one hand, with the European Grouping of Territorial Cooperation (EGTC)[78], the European legislator has created a European legal instrument which, from the EU's point of view, was primarily intended to ensure integrated cross-border programme management, but which in fact was quickly developing into a strong symbol for strengthening integration within cross-border territories as a whole. On the other hand, new explicit cross-border policy dimensions in territorial cohesion at the European level can be identified in the framework of the European Neighbourhood Policy (especially the *IPA programme*) as well as in the EU strategies for the promotion of so-called macro-regions. Furthermore, the strategy documents "Europe 2020, the flagship initiative for the creation of an "Innovation Union"[79] or the flagship initiative "Resource-efficient Europe" also contain explicit references to cross-border territorial cooperation, e.g. by calling for reducing the bureaucratic burdens of cross-border activities

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77 See, for example, the European Commission's 2022 work programme "Making Europe Stronger" (COM(2021) 645 final) with its numerous strategic and sectoral initiatives. In addition, there are the so-called catalogue projects of the individual directorates-general as well as a multitude of rather technical decisions of the almost 400 administrative committees (so-called comitology).

78 Regulation (EC) No1082/2006 on a *European Grouping of Territorial Cooperation.*

79 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: *Europe 2020 Strategy Flagship Initiative, Innovation Union* SEC(2010) 1161, 6.10.2010.

within markets that are still highly fragmented by 26 different legal systems, promoting cross-border cooperation in those cross-border areas that can create innovative EU added value and reducing bottlenecks in cross-border sections and intermodal hubs. Finally, the 5th Cohesion Report itself already confirmed the explicit anchoring of cross-border cooperation as part of the third cohesion objective, and saw this as an important future field of action of a more territorially oriented European cohesion policy from 2013.

A different picture emerges with regard to the question of the extent to which cross-border territories are also subjects of European policy, i.e. actors who proactively or at least reactively influence the emergence and shaping of European policy. In the absence of empirical studies on this topic, some experience-based aspects will be addressed in the following.

First of all, it is interesting to note that the European border regions have had a common interest platform, the Association of European Border Regions (AEBR), with its headquarters in Gronau, North Rhine-Westphalia, since the early 1970s[80]. Over the years, this institution has carried out very targeted lobbying not only at the level of the participating member states, but also directly at the level of the European institutions, and has been pushing this forward especially in recent times through a variety of activities. In addition to AEBR, the Committee of the Regions (CoR) as well as the Representations of the Regions in Brussels have established themselves as further players in recent years, while at the level of the European Parliament there are hardly any *intergroups* or specific committees or they are still in the process of being established – primarily promoted by reflections on the design of macro-regional EU strategies.

The central challenge of a European representation of interests and thus the foundation of a subject function capable of action and articulation for European politics is the difficulty of defining cross-border territories as a single actor. The wide range of cross-border territories in Europe[81] (old and new border areas, areas with urban cores and rural areas, border areas with strong and weak geographical/natural borders, border regions on the internal and external borders of the community, border regions with high and low conflict intensity, border regions that lie outside the EU, etc.)[82] makes it difficult to identify common interests and thus to articulate European interests.

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80 See for a detailed presentation of this topic Guillermo-Ramirez 2010
81 Ricq 2006
82 Lambertz 2010

In addition, in European multi-level *governance* it is primarily the member states and then their sub-state units (countries, regions) themselves that represent the interests of the border regions. Joint initiatives by the border regions themselves have only taken place in recent times. From the perspective of the cross-border regions, this shows the problem of vertical and horizontal subsidiarity of a European representation of interests: The professional communication relations in Europe (Council of Ministers, Conferences of Ministers, etc.) are still being constituted by the Member States and then their sub-state units (Länder, regions, etc.). Cross-border coordination with regard to the conception and implementation of European policy approaches related to cross-border territories hardly takes place at the level of the member states and the EU (at least beyond the negotiations on securing the continuation of *INTERREG* or the further development of European spatial planning policy).

This explains why the representation of interests to date – and thus indirectly also the European subject function in question – of the cross-border territories is very narrowly limited to specific aspects of cross-border cooperation and thus also reflects the reception of the topic to date at the European level: The interests regarding the creation of the EGTC, the securing of the continuation of the *INTERREG* programmes and of *Interact* or the corresponding contributions to the Green Paper on Territorial Cohesion etc. were very effectively, but ultimately rather related to less significant sub-sections of European policy development.

Finally, this may also be related to the general difficulty of getting the "cross-border argument" heard at all, because the specific situation of cross-border areas is usually regarded as a very marginal problem by higher levels. This can be explained by the fact that border regions have for a very long time been portrayed and perceived as disadvantaged peripheral regions and not as potential regions for innovation and growth. In addition, there is the so-called "5 % phenomenon" and the "grey zone" of cross-border cooperation: 90,000 cross-border commuters in a border region, for example, initially seem to represent a significant factor for territorial development. However, they are quickly relativised from the perspective of the cross-border area itself, since they represent only 3 % of an active population of 3 million! How can structural exceptions be justified for this comparatively small percentage of the total population with an actual cross-border lifestyle? In many areas (tourism, education, transport, health, social affairs, etc.) the actual cross-border reality in relation to the

respective total territorial size often seems to be hardly larger than 5 %[83]!
The situation is aggravated by the fact that, on the other hand, reliable
figures on the real potentials that could be realised through optimised
cross-border cooperation are still not available in most cross-border territo-
ries due to the lack of comparability of statistical data and the absence
of suitable prospective methods. Thus, beyond political and theoretical
desirability, there is a lack of resilient facts that quasi automatically lead
to a weakening of cross-border areas in relation to comparable areas of
the domestic context. Therefore, cross-border cooperation is perceived at
the higher decision-making level – at least in tendency – as something
very sensible, and everyone is anxious and well-intentioned to move things
forward, the only thing missing are concrete examples and approaches
for action that can form the basis for political decisions and integrated
representation of interests. Moreover, cross-border problems are often also
located in a grey area[84] : for the locally acting actors, these are often too
"big" due to a de facto lack of competence to act, while from the perspec-
tive of higher levels (nation states), these in turn are too "small" due to
their supposedly selective character to justify a nation-state approach to
solving them.

In summary, the hypothesis can be formulated that Europe's cross-bor-
der territories – despite all the positive developments that have emerged in
recent years and that are already discernible for the future – are, at least
so far, neither real objects nor actual subjects of European policy. This is
all the more surprising since the quantitative and qualitative importance of
cross-border territories for the success of European integration is obvious:
30 % of the European population lives in this type of territory, almost
40 % of the European territory has a more or less direct connection to the
border situation, and of the only about 7 % of the European population
who actually make active use of mobility rights in a united Europe, 80 %
are found in European border regions. Beyond the simple hinge function
between the different political-administrative systems, this type of territory
also stands for a new form of integrated territorial potential development,
which can be seen symbolically not only for the further shaping of the
future cohesion policy as a specific object area, but also for the impact-ori-
ented European policy and integration development as a whole.

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83 The exception, however, is the area of cross-border consumption, where there are
    sometimes significantly higher cross-border interdependencies in areas close to
    the border.
84 Lamassoure 2005

2.4 Prospects for cross-border cooperation within the process of European integration

So how can cross-border cooperation in Europe in future be given the status it should actually have as a horizontal dimension of European integration?

From the tension between the potential integration contribution of the European border regions on the one hand and the factual status of their object/subject reference in European policies on the other hand, the necessity of an expansion and re-accentuation of the corresponding integration-specific laboratory function arises: In addition to economic and social cohesion dimensions, cross-border territories stand like no other type of territory in Europe above all for the possibilities of a better realisation of territorial cohesion. New opportunities arise from the direct reference to the Lisbon Treaty, which were already explicitly pointed out in the 5th Cohesion Report. Admittedly, the report still showed an overall tendency to subsume border regions only under the category of "special areas with particular geographical features". At the same time, however, it was emphasised in the introduction that the new objective must be covered even better in the new programmes, "with a particular focus on the role of cities, functional territorial units, areas with special geographical or demographic problems and macro-regional strategies"[85].

In this respect, it is important that general reform tendencies of the cohesion policy are constantly taken up by the cross-border territories at an early stage and implemented in an exemplary manner for their respective territorial references. On the one hand, it is a matter of strengthening and differentiating the cross-border partnership on the basis of the specific territorial contextual factors. This refers to the structure of the actors involved in cross-border cooperation itself, with a stronger horizontal expansion into the areas of economy and civil society. On the other hand, the partnership should ensure a greater implementation orientation of the initiatives, programmes and measures in question in the future[86]. In addition to the elaboration of integrated territorial development concepts at the cross-border level, concrete cooperation agreements should be concluded between all relevant territorial actors, in which roles, co-financing and material contributions to action are bindingly regulated for a medium-term period.

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85 Cf. 5th Cohesion Report, p.XXVIII.
86 Casteigts 2010

Furthermore, within cross-border cooperation, a stronger concentration is required on those focal points in which innovations and development impulses can actually be developed through targeted cooperation/networking of the actors ("Strengthening strengths"). This means that, with regard to project generation, *top-down* procedures that serve the targeted development of strengths must be added to the still important *bottom-up* processes. This can be done in the form of so-called *project calls* for which, in turn, flexibly manageable budget lines should be set up within the existing programme lines, which should be implemented, if possible, in the form of lump sums. In this context, there is also a general need for a greater impact orientation with regard to cross-border development management in the future: consistent impact analyses in planning and project selection as well as in implementation and evaluation on the basis of transparent goals and real impact indicators must become the standard procedure for future cross-border initiatives and projects.

In addition to these rather instrumental-procedural optimisations, which refer to cross-border policy within a specific area itself, it seems necessary that in the future cross-border areas also participate more strongly in the development of European policy approaches within the framework of new multi-annual European strategies, against the background of their specific laboratory function. In European system of *impact assessment*[87] related to this, a specific cross-border impact category is currently still missing. If there is a tendency to generally better assess the territorial impacts of sectoral policies of the European level in an ex ante perspective, in order to promote synergies and minimise contradictory impact effects in this way[88], this should also apply to the cross-border level of this territorial dimension[89]. Cross-border regions could thus become ideal test areas for the *ex-ante* evaluation of future EU policies, as here, in an integrated analytical view, effects on the various political-administrative systems of the Community (e.g. assessment of bureaucratic burdens and so-called *compliance costs*), effects on the spatial situation of various Member States as well as on the cross-border, i.e. sub-European level itself can be recorded in an exemplary manner. Border regions also cover the spectrum of all European territorial typologies. Impacts on new and old member states, urban and rural areas as well as internal and external borders could thus

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87 European Commission (dir.), *Impact Assessment Guidelines*, 15.1.2009, SEC(2009) 92; in: http://ec.europa.eu/governance/impact/index_en.htm(2.1.2011).
88 Renda 2006
89 Unfried/Kortese 2019

be simulated in parallel through the integrated approach of a cross-border impact analysis of future European policy approaches, which should be a great attraction for the European Commission services entrusted with this task[90].

However, at the level of the actors in the cross-border territories, this presupposes that they are actively involved in the consultation processes at EU level at a very early stage, if possible as a single point of contact, and that they are prepared to contribute resources and *know-how,* but above all cross-border technical impact reflections, to the *impact assessment studies of* the European Commission. This will not be possible for all EU initiatives and – due to the relatively high transaction costs – probably not even for the most important ones, if only for reasons of capacity and coordination (corresponding cross-border procedures still have to be established and practised). However, at least for those areas in which a different implementation of EU policy within national sectoral policy would lead to contradictory or even conflictual effects in a cross-border perspective, the cross-border actors should already show corresponding motivations out of their institutional and functional self-interest.

Furthermore, lobbying and coordinated representation of interests at EU level should be further strengthened[91]. The European macro-regions have shown how the interests of specific types of cross-border territories can be incorporated into European strategies. Now it will certainly be unrealistic to believe that every single cross-border territory can develop direct lobbying functions towards Brussels and be heard individually. However, the annual European Week of Regions and Cities in Brussels has already shown how rich and exciting a joint presentation and reflection of one's own development approaches in relation to specific typologies and issues of cross-border cooperation can be.

Finally, as *Karl-Heinz Lambertz*, shows, besides the "may" (active support by the member states) and the "will" (*commitment* and willingness to take risks of the political-administrative actors themselves), above all the "ability" for cross-border cooperation will become a strategic challenge for the future development and positioning of cross-border territories in Europe[92]. The more institutions, policy approaches and procedures of cross-border governance functionally differentiate, specialise and network across sectors

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90 Beck 2014a, 2015b
91 Guillermo-Ramirez 2011
92 Lambertz 2010

and levels, the more new actors will be involved in this field[93]. In the future, beyond the promotion of the necessary foreign-language communication skills, which is already very important in itself, the focus will have to be on the even better teaching of key cross-border skills (knowledge of institutions, intercultural action skills, procedural management skills) so that the desired learning and innovation approaches can actually be realised in cross-border areas and are not hindered by mutual blockades and lengthy interpersonal and inter-institutional learning loops[94] : Innovative cross-border cooperation presupposes the existence of and the ability to engage in "reflexive learning" (so-called "*double loop* learning"[95]) at the level of the actors involved, and this can and must be taught and trained precisely in cross-border terms[96].

Not least in this context, the Euro-Institut Kehl/Strasbourg has initiated the creation of a network of future Euro-Institutes in Europe (TEIN)[97], involving national partners from different European border regions (including France, Germany, Denmark, Austria, Italy, Spain, Slovenia, Poland, Czech Republic, Ireland). The aim is to develop quality standards for future cross-border further education and qualification programmes and the creation of corresponding training facilities, among other things, on the basis of a reflection of good practices. The European level can thus have an efficient partner for all questions of cross-border education and training.

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93 Beck/Pradier 2011
94 Eisenberg 2007.
95 Argyris/Schön 1996; Schimanke et al 2006
96 Euro Institute 2007
97 https://transfrontier.eu/

3. Characteristics and perspectives of cross-border governance

"At the turn of the millennium, the term governance was one of the favourites in the competition for the title of the most used term in the social sciences"[98]. At the same time, this finding is linked to another observation: "The understanding of what governance research is supposed to be about is correspondingly varied and diverse"[99]. It is therefore not surprising that the concept of governance has also found its way into a field of research that has so far been relatively little explored by academics: cross-border cooperation in Europe. It was therefore only logical that the present publication should attempt to approach the concept of governance as well as its empirically and conceptually identifiable characteristics in the field of cross-border cooperation, in addition to other relevant questions.

The aim of this chapter is to make a contribution to this in two respects: firstly, in a comparative perspective, using the example of four very different cross-border-cooperation areas, it will be worked out in a cross-sectional manner, which forms of governance can be observed in cross-border practice, how these patterns can be characterised and how their functionality is to be assessed. Secondly, from a normative point of view, the question is whether and if so, which generalisable characteristics of cross-border governance can be worked out from this cross-sectional analysis, how these differ from other governance approaches, especially "regional governance", and which perspectives can be derived from this for the conception of a holistic understanding of cross-border governance.

The question posed in this chapter is closely related to two conceptual forms of the term governance itself. On the one hand, there is the more normative concept of governance, as it was first expressed in the concept of "good governance" in development cooperation[100] (what should governance achieve and how must it be structured?) and a more neutral, empirical understanding of the concept, as it was based in particular on the work of the circle of authors around Arthur Benz[101] (what are the forms and characteristics, what is the effectiveness and functionality?).

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98   Blatter 2006: 50
99   Grande 2009: 77
100   Theobald 2001
101   Benz et al 2007

As far as the definitional approach to the concept of governance is concerned, Renate Mayntz has presented a broad conceptual variant of governance: This serves to "designate the various mechanisms that create order in a population of actors. This can happen through unilateral adaptation (market), command and obedience (hierarchy), through negotiation in networks, or ...through the common orientation of action towards the norms and practices in a society"[102], whereby, in the sense of a narrower variant of the term, it is ultimately a matter of distinguishing between different forms of the "intentional regulation of collective circumstances"[103] and clarifying which are the circumstances in question and which are the regulating actors and their patterns of interaction.

Following Fürst[104], two analytical differentiations can be derived from this: On the one hand, there is the question of the procedure for reaching collective regulations (e.g. decision-making processes, decision-making rules, political styles, etc.), i.e. "governance in the narrower sense" as a process dimension[105]. On the other hand, there is the question of the different organisational forms of this procedure (e.g. classical institutions vs. networks), i.e. in the sense of a delimitation of "government in the narrower sense" as a structuring dimension.

In addition, further differentiations should be considered here. In this way, a third analytical dimension can be developed, which is of great importance especially in political science, namely that of governance as a specific form of governance in which private corporate actors participate in the regulation of social circumstances and which, from an analytical perspective, involves a distinction between a specific form of non-hierarchical regulation and the interaction of hierarchical and non-hierarchical or state and non-state forms of regulation[106]. Finally, as a fourth dimension, a differentiation of the concept of governance according to different levels can be made, which in the vertical perspective refers to the question of the different spatial levels of action and in the horizontal dimension to the typology of the actors involved (state/non-state; public-private-social), and which thus integrates the perspective of so-called multi-level governance.[107]

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102 Mayntz 2009: 9.
103 Ibidem
104 Fürst 2010
105 Botzen et al 2009
106 Mayntz 2009: 10
107 Benz 2009

What most conceptual definitions of governance have in common is that it is obviously something complementary that (has) developed as a rule in addition to the already established public and/or private institutions and organisations, whether because the given institutional framework for action is seen as deficient for new challenges and/or because given market or state patterns of governance need to be complemented by new forms of interaction[108] of (societal) self-governance.

In view of the complexity and great variety of existing definitions, this chapter will be based on a rather simple self-understanding of governance[109]. This refers to a complementary, vertically (spatial/functional levels of action) and horizontally (actor-specific composition) differentiated interaction and steering structure for the solution/development of collective problems/potentials, whereby its functionality/effectiveness is determined by the material-strategic content (policy dimension) in question. Especially the last feature, i.e. the material-strategic dimension of policy, which is deliberately included in the working definition, is in danger of disappearing in current governance approaches, some of which deliberately seek to distinguish themselves from the older "steering approaches" and "policy research" or sometimes focus on conceptual term innovations[110]. Especially for the analysis of cooperation approaches that are in the field of cross-border cooperation and that are characterised by a high and (as will be shown) very presuppositional practical relevance, it seems necessary to give due consideration to this rather classical dimension of analysis.

The content of the first part of this chapter is based on the results of a research project carried out within the framework of the Model Project for Spatial Planning (MORO) project partnership[111]. Within the framework of the study, the following seven analytical dimensions in particular were examined more closely in the form of a cross-sectional analysis of the cross-border cooperation areas of Lake Constance, the Upper Rhine, the Greater Region and the Euregio Meuse-Rhine: 1. Contextual conditions that represent overarching spatial, historical, cultural, socio-economic and structural determinants of the respective cross-border integration areas; 2. the most important phases and characteristics in the genesis of cooperation, their similarities but also their respective differences in terms of sub-spatial cross-border development paths; 3. the actor structures and

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108 Scharpf 2006
109 Beck/Pradier 2011
110 Töller 2018
111 Federal Office for Building and Regional Planning 2009

typologies that are characteristic of the respective cross-border integration area, with a special focus on recording the respective vertical (level-specific) and horizontal (sector-specific) degree of differentiation; 4. the legal and organisational forms to be found in each case, which allow statements about the spectrum to be found, the specific characteristics as well as the functionality of the degree of organisation in the cross-border cooperation areas; 5. contents and results of cooperation, which can be regarded as constitutive for the cross-border integration areas; 6. strengths and weaknesses of the current governance in the cross-border cooperation areas, on the basis of which, finally, 7. the strategic challenges and innovation-oriented discourses can be worked out and evaluated.

On the basis of the insights gained from the cross-sectional analysis of the individual key questions, this chapter attempts to generate core elements and possible variants of a target concept for the governance of the spatial type "cross-border interlinked area" as well as differentiated practice-related suggestions for the future design or further development of the existing cooperation and governance structures in the cross-border cooperation areas of Europe, with special consideration of the dimension of large-scale communities of responsibility.

3.1 Results of a cross-sectional analysis of four cross-border cooperation areas

Within the framework of the above mentionned research project to analyse cross-border interdependencies in western German metropolitan regions (MORO), the author conducted a cross-sectional analysis of the governance processes in four selected cross-border cooperation areas[112]. The main findings of this cross-sectional analysis of the cooperation and governance structures in the four cross-border cooperation areas studied – Upper Rhine, Greater Region, Lake Constance, Euregio Meuse-Rhine – can be summarised under the following points.

3.1.1 Specific contextual conditions of divergent polycentric structures

The comparison of the four study areas makes it clear that the delimitation of what is to be understood by a "cross-border interlinked area" is not given per se. In addition to the area, which ranges from 65,400 km2 (Greater

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112   Beck et al 2010

Region) to 10,800 km2 (*Euregio* Meuse-Rhine), the number of inhabitants also varies greatly. The same applies to the population density, the number of sub-regions included, as well as that of the participating states and their characteristics: Thus, three states are involved in the cooperation in the Upper Rhine, four in the Greater Region and four in Lake Constance. On the other hand, Lake Constance is bordered by federal states, whereas the Upper Rhine and the Greater Region are not (the latter, in turn, has an entire state, Luxembourg, as a cooperation partner). Even the common characteristic of polycentricity is very different on closer inspection. While on Lake Constance Zurich, with over 200,000 inhabitants, is linked to a city network of around 50,000 inhabitants, the core cities of Karlsruhe, Freiburg, Strasbourg, Mulhouse and Basel on the Upper Rhine tend to be of a comparable size (> 100,000 inhabitants). The urban system of the Greater Region, in turn, is characterised by a great variety of different size categories, whereby here the urban network of the major centres "Quattropole"[113] has its own networking function. With Aachen and Liège, the *Euregio* Meuse-Rhine is again home to two large cities with over 200,000 inhabitants as well as the large city of Maastricht with over 100,000 inhabitants.

Differences are also apparent with regard to cultural and linguistic disparities. While these must be classified as relatively strong in the Greater Region and the Upper Rhine (very different cultural circles and administrative cultures meet in these areas), Lake Constance cooperation is characterised by the fact that, on the one hand, there is no language barrier and that, on the other hand, the cultural differences between the partners are also rather slight. The situation in the *Euregio* is more in between: Although there is a greater linguistic proximity of involved actors (Dutch/ Flemish/German speakers), linguistic and cultural barriers definitely play a role with the French-speaking partners (Liège). In all four study areas, the regional cross-border identities of the population (beyond those parts of the population that have an explicit cross-border life orientation, such as cross-border commuters) are relatively weak. At the level of the actors of cross-border cooperation, on the other hand, this can be identified as significantly more pronounced, whereby the Lake Constance region has a particularly strong cross-border identification feature with the lake, while the Greater Region, on the other hand, tends to lack this due to the size

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113 See the "Quattropole" city network: h t t p s : / / q u a t t r o p o l e . o r g / (accessed 30.03.2022)

of its area. In the *Euregio* Meuse-Rhine, the shared history of Belgian and Dutch Limburg offers special points of contact for a sub-area.

Overall, the comparison raises the question of the optimal size of a cross-border interlinked area. This seems to be the case for the Upper Rhine and Lake Constance, while the question arises as to whether the Greater Region is not ultimately too large on the basis of the real internal interdependence structures[114] and whether the *Euregio* Rhine-Meuse is not too small in view of the increasingly differentiated socio-economic inter-dependencies. Here the *Euregio* also competes with other more extensive regional networks.

3.1.2 Comparable development phases with different finalities

All four study areas have a long tradition of cross-border cooperation. It is characteristic that the basis of cross-border cooperation was established in the early 1970s of the last century, that this form has largely been preserved until today, but that very specific adaptations and developments have taken place over the years, in which different finalities of the conceptual and practical design of cross-border cooperation are recognisable[115].

The first phase (late 1960s to early 1970s) can be characterised as administrative institution-building: After gathering initial experimental experience and establishing selective relations in the 1960s, official government commissions with sub-regional regional committees or regional commissions and corresponding thematic working groups are set up in the Greater Region (1971) and the Upper Rhine (1975) on the basis of corresponding state treaties. The *Euregio* is established in 1975 in the form of a foundation under Dutch law, and in the Lake Constance region the International Lake Constance Conference (IBK) is constituted, with its Conference of Heads of Government and its thematic commissions.

A second phase can be seen in the governmental differentiation from the late 1980s to the early 1990s: The Greater Region establishes the Interregional Parliamentary Council in 1986, followed by an Interregional Economic and Social Committee; on Lake Constance, the Lake Constance Council is formed in 1991; the *Euregio* is expanded to include the *Euregio Council* in 1995; and on the Upper Rhine, the Upper Rhine Council is founded in 1997.

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114 Niedermeyer/Moll 2007: 297
115 Similar Wassenberg 2007

At the same time, a third phase began in the early 1990s, which can be described as project-oriented professionalisation: Through the Community Initiatives *INTERREG*, not only is substantial funding available for concrete projects, which leads to a quantitative and qualitative expansion of cross-border cooperation, but a very specific model of action is also introduced through the European funding policy, which with elements such as consultation, partnership principle, co-financing necessity, programme planning and monitoring, internal and external reporting, public relations, evaluation, etc. – albeit with very different intensities – directly shapes the practical design of the existing cooperation approaches in the four study areas.

A fourth phase, which began at the beginning of 2000, can be described as level-specific differentiation. In the case of the Upper Rhine, the Greater Region and the *Euregio*, this is characterised on the one hand by the creation of (municipally supported) Eurodistricts and city networks, which began in 2004, and in the case of the Lake Constance region by the implementation of a cross-border Agenda 21 process, in which the municipal level in particular was very strongly involved[116]. The most recent example from the *Euregio* Meuse-Rhine is the declaration of intent of the Aachen city region and Parkstad (a Dutch association of municipalities) to establish a European Grouping for Territorial Cooperation (EGTC).

At the same time, all four regions began to consider the further development and reform of the existing cooperation structures (reform of the *Euregio Council* 2000[117], reform of the Greater Region 2005[118]), which continues to this day. However, in the overall view, only the Upper Rhine currently shows a consistent level-specific differentiation in the area of cross-border cooperation, in which there are not only institutional but also task-structural and functional approaches to a vertical division of labour between the (inter-) national (government commission), overall spatial (Upper Rhine Conference, Upper Rhine Council) and partial spatial levels (Eurodistricts) on the one hand, and on the other hand (in the area of common cross-sectional tasks) between the four Eurodistricts themselves.

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116 For the evaluation of the Lake Constance Agenda 21 see: https://www.alexandria.unisg.ch/id/project/31757

117 Decision of the Executive Board of the *Euregio* Meuse-Rhine of 13.12.2000 and of the *Euregio Council of* 31.1.2001 amending the Declaration of Principles and the Rules of Procedure for the functioning of the *Euregio Council*.

118 Updated exchange of notes of 23.5.2005 in: Niedermeyer/Moll 2007.

The four study areas are representative of different logics of action and cross-border cooperation finalities, which represent interesting conceptual alternatives for the question of structuring integrative cross-border cooperation[119]. The *Euregio* Meuse-Rhine, for example, follows the classic *bottom-up* principle of an *Euregio*, in which functional solutions are developed for a smaller cooperation area with regard to achievements of cross-border integration at proximity-level.. The Greater Region and the Lake Constance cooperation, on the other hand, stand for a larger spatial-structural interdependence context, in which there is a stronger interregional moment, whereby the difference is to be seen in the existence/non-existence of an identity-forming common frame of reference ("Lake Constance riparian"). The Upper Rhine, on the other hand, can be seen as a cooperation model of vertical networking of different spatial levels of action, with which a synchronisation of different spatial reaches of cross-border cooperation is aimed at.

3.1.3 Different actor structures with the same mono-sectoral orientation

In all four study areas, the analysis shows a very strong dominance of public actors. This is a characteristic that is representative of cross-border cooperation as a whole[120]. On the one hand, this can be explained by the fact that cross-border cooperation, as a so-called "secondary foreign policy"[121], is always at the interface and boundary of competences of different states and that this state level is therefore – depending on the institutional differentiations in the respective state organisation – *per se* always involved – be it as a direct actor or indirectly via the general or the specific supervisory function or via the financing function from ministerial action programmes. On the other hand, it can be historically understood that the initiators and promoters of cooperation in cross-border interlinked areas were and are primarily public actors, be they regional or local politicians or actors of the deconcentrated state administration or the regional and local authorities.

On the other hand, in all four cooperation areas, cross-border cooperation traditionally takes place in thematic fields that can be assigned to the core area of compulsory or voluntary public tasks in the participating

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119 Ricq 2006
120 Lang 2010
121 Klatt/Wassenberg 2020

countries: When developing cross-border approaches to action, for example in spatial planning, environmental protection, local public transport, education, public services or public safety and order, public actors are first and foremost responsible. Finally, cross-border projects, especially if they are funded by European programmes such as *Interreg, sometimes* require substantial financial participation in the form of national and regional co-financing. Since the project costs must first be fully pre-financed in accordance with the relevant funding criteria, actors from the social sector, for example, quickly reach the limits of their capacity. Direct funding to private actors, such as companies, is also legally very difficult due to European state aid law and the relevant Interreg guidelines.

Within this general pattern, the four study areas nevertheless show some interesting variations in terms of actor structures. For example, in the Greater Region, actors of the economic and social partners are institutionally integrated at the interregional level in the form of the Economic and Social Committee (ESC) – even if the ESC has a purely consultative character and thus a rather limited scope, and have additional formal participation opportunities via specific interregional association structures (Trade Union Council, Chambers of Industry and Commerce (CCI) and Chambers of Skilled Crafts (CHC)). A similar involvement, which is even more intensive in terms of the degree of integration, can be found in the *Euregio* Meuse-Rhine: there is a separate chamber of social organisations within the *Euregio Council*, and these actors are also intensively involved thematically at the level of the commissions.

Such institutional involvement at the decision-making level can only be discerned in the structures of the Upper Rhine and Lake Constance to date. The involvement of societal and economic actors takes place here in institutional terms more at the working level (e.g. working groups and expert committees of the Upper Rhine Conference or in the commissions of the IBK), via the chambers' own (INTERREG) project initiatives (e.g. advisory network of the Chambers of Crafts, network of Euro-advisors of the Chamber of Industry and Commerce) or via *Eurest-T*[122] (e.g. *Eurest-T* Upper Rhine).

Within the public actor segment, on the other hand, a strong regional/municipal momentum is noticeable in the *Euregio* Meuse-Rhine, while the municipal level has so far been included in the official cooperation of

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122 EURES-T sees itself as a competence centre for all questions concerning the cross-border labour market, for the Upper Rhine, see: https://www.eures-t-oberr hein.eu/ (29.03.2022)

the IBK at Lake Constance rather selectively. The Upper Rhine and the Greater Region, on the other hand, represent cooperation areas in which a mix of state and municipal actors can be observed, with the state actors or representatives of the regional authorities dominating at the overall spatial level and the municipal actors dominating at the sub-regional level. The Greater Region has the special feature that Luxembourg is involved in cross-border cooperation as an independent state, whereby the question can be asked whether this has a promoting or rather inhibiting effect on cross-border cooperation.

Another interesting differentiation criterion within the public actor segment is the question of the degree of professionalisation with regard to the specific technical requirements of effective and efficient cross-border cooperation. In addition to the linguistic and intercultural competences of the actors involved, the question of whether and to what extent full-time actors are participatingin the cooperation is an important indicator in this regard. This can be used to measure the extent to which the field of action of cross-border cooperation is established or consolidated as an independent policy field, or whether it continues to lead more of a "second-hand" existence, i.e. is more or less completely dependent on contributions to action from the national context with regard to its functional conditions. Here, the comparative analysis shows strong differences between the examined cross-border interdependencies. The most striking is the Upper Rhine region, where considerable personnel capacities have been built up in recent years, both at the level of institutional partners and within the framework of the cross-border institutions themselves: Around 100 people are involved in cross-border cooperation on a full-time basis at the various levels, in addition to around 600 experts in the Upper Rhine Conference alone, who are provided by their national administrations on a selective basis.

The less socio-economic interdependencies are oriented towards administrative borders, also in a cross-border context, and the more important the cooperative interaction of actors from different sectors becomes for territorial development, the more the question arises, also in a cross-border context, to what extent horizontal differentiations in the structure of actors, as can be observed in many national metropolitan areas[123], are also of critical importance for cross-border interdependencies[124]. How the targeted mobilisation and integration of the potentials and contributions of

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123 Ludwig et al 2009
124 Beck 2008a

public, social and private actors in the cross-border context can be ensured and, if necessary, even controlled, is – on the basis of the findings from the comparative analysis – a central question of future-oriented *governance* in functionally interdependent cross-border territories.[125].

3.1.4 Different forms of organisation for comparable goals of action

With regard to the degree of organisation, the first thing that stands out in the comparative analysis is that the institutionalisation of the regions is based on different legal forms: Whereas at Lake Constance, the Upper Rhine and the Greater Region, beyond the respective state treaties, there is no uniform legal structure at the overall spatial level and the institutions created here are based predominantly on multilateral agreements between the partners, the *Euregio* Meuse-Rhine has a framework structure, a foundation under Dutch law. The legal instruments created specifically for cross-border cooperation (cross-border local special-purpose association (GÖZ) according to the Karlsruhe Agreement, EGTC according to European Union (EU) law) are not yet applied at the large-scale level, but are used (if at all) in the sub-spatial context (Eurodistricts, individual projects).

Furthermore, it is noticeable that in the *Euregio* Meuse-Rhine, as well as in the Greater Region and the Upper Rhine, there is a significantly higher degree of formalisation and institutionalisation compared to Lake Constance. While Lake Constance consciously relies on a policy of "strength of loose coupling" within decentralised (sectoral) networks[126], the other three regions are dominated by a pattern of classic institution building with a conscious regulation of business processes and decision-making procedures. Accordingly, the actors on the ground in these three regions consider the degree of formalisation to be relatively high, whereas in Lake Constance they consciously see the need for informal cooperative relationships and specifically promote them.

In addition to the organisational structure, there are also considerable differences between the four study areas in terms of financial resources. In all regions, the *INTERREG programme* plays an important role for the realisation of strategic projects, but there are some interesting differences with regard to the question of how strongly this also determines the overall material spectrum of cooperation. Since in the *Euregio* Meuse-Rhine there are

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125 Kolisch 2008
126 Scherer/Schnell 2002

almost no proper funds for projects available, INTERREG and its model of action very much dominate practical cooperation, as well as the discourses and decision-making patterns geared to it. A strong influence of *Interreg* can also be observed in the Greater Region, as none of the diverse cross-border bodies has a significant cross-border action budget and therefore, as a rule, the problem pressure in the various areas is not sufficient in itself to develop lasting cross-border cooperation without additional financial incentives. In contrast, Lake Constance does not define itself through the *INTERREG programme* but wants to be its own platform for cross-border cooperation that uses the *INTERREG programme* to realise project ideas developed there. A similar, rather instrumental understanding is also found in this respect in the Upper Rhine. Here, the institutional partners of the cooperation have in some cases even created their own cross-border budgets with which smaller projects can be financed autonomously and very flexibly (the financing here takes place via fixed keys or annual contributions based on population figures): Eurodistricts, Upper Rhine Council, Upper Rhine Conference and Three-Country Congresses are not primarily defined by the *Interreg* programme, but each represent their own platforms for cross-border policy development and its implementation. As on Lake Constance, many projects are also initiated here outside of *Interreg*.

An important feature of the cooperation areas studied for further reflection on the future design of cross-border integration areas is that, overall, the degree of cross-border organisation is rather low. The administration and political shaping of cross-border affairs is usually carried out through a very strong reference back to the political-administrative context of the partners involved, whereby cross-border cooperation is primarily perceived there as a cross-sectional task located in the political management area: this usually enjoys a high level of political and strategic attention, but in organisational terms has the latent problem of a functional anchoring in the technical-sectoral line (specialist departments, specialist administrations, etc.). Even in cases where own cross-border structures and institutions have been created, they are very much dependent on the functionality of the underlying inter-institutional networks of their partners for the effectiveness of their work. This regularly results in challenges in interface management and inter-institutional coordination. They underline the tension between an expansive cross-border task policy at the level of the interlinked areas and the systemic limits of a corresponding integrative, competence-based institution building.

3.1.5 Strengths and weaknesses of the current cross-border cooperation systems

The main strengths of the cooperation structures studied lie first of all in the fact that they each represent specific responses to individual challenges and needs for action in different spatial and political-administrative starting conditions. In all four study areas, functional patterns of cross-border cooperation have developed that are characterised by a strong tradition, which in turn has led to independent cooperation cultures. These cooperation cultures are both internalised and shaped by the actors involved. They are mainly supported by functional inter-institutional and inter-personal networks of public institutional key actors. They are supplemented by individual personalities from business and society.

As a rule, these cooperation patterns involve high-ranking political and administrative leaders who contribute to strong media visibility and political-strategic importance: in all the cooperation areas studied, cross-border affairs are "boss business".

This pattern is complemented by a very strong project orientation, which has gained importance especially with the *Interreg programme.* At this level, as well as at the technical level of the bodies of the various cross-border structures, specialists are very much involved. These form a second, complementary level, which is also characterised by inter-institutional and inter-personal network structures. At both levels, cooperation in the four study areas is very much based on and characterised by mutual trust.

Thematically, a very broad range of policy and thematic fields can be observed within the cooperation system – again for all study areas. As a rule, permanent working structures (commissions, working groups, committees, etc.) have been set up for the individual topics at the institutional level, which lead to a stabilisation of the performance of tasks within the overall system.

On the other hand, these strengths are contrasted by a number of weaknesses in the four study areas, which can also be considered characteristic for cross-border cooperation as a whole. In summary, these can be outlined as follows: With regard to decision-making, the first thing to mention here is the unanimity principle, which in combination with the principle of "national" delegations and the resulting "compulsion to parity" tends to slow down innovations in cross-border cooperation. In addition, the mostly practised principle of rotation in the chairmanship of the committee tends to stand in the way of continuity. Furthermore, a tendency towards resolutions instead of real decisions can be identified,

which very often results in a certain implementation deficit. Low meeting frequencies at the decision-making level can also lead to breaks in the continuity of decision-making. In addition, a relatively low level of information about actual cross-border problems or potential needs for action in the cross-border context can often be observed: Projects often emerge as a result of selective initiatives by individual actors rather than in the form of a systematic implementation of action strategies, based on a joint cross-border need-analysis..

With regard to cross-border business processes, one can generally observe a significantly higher coordination effort compared to the national context, which – especially in intercultural terms – leads to a high level of complexity and a certain momentum of the processes. The work of the various institutions and bodies is usually largely decoupled, and there is a lack of joint, result- and impact-oriented work processes. Since there can be no institutional „hierarchy" in cross-border cooperation, a not insignificant lack of leadership can be observed (the steering option of cooperation "in the shadow of the hierarchy" is ruled out[127]). In connection with relatively closed working structures, the politically highly sensitive cross-border business of "secondary foreign policy" therefore often leads to a high degree of informality, but also to a lack of transparency in the processes. Conversely, the high institutional and personal feedback and coordination effort leads to comparatively lengthy process patterns (there are no easy questions across borders), which also means that a certain dominance of encounter/exchange (actors and their institutional backgrounds have to be presented and explained again and again) instead of results-oriented meeting processes must be considered characteristic in many cross-border constellations. Cooperation of autonomous actors instead of integrated structures and procedures as well as selective project work instead of consolidation on the basis of common goals, in combination with the lack of common effective working tools (diaries, databases, etc.), lead to a tendency towards lower efficiency, which must be compensated for in each case by a comparatively significantly higher personnel commitment of the actors involved.

In addition to the one-sided "public-law" actor structures already outlined above, the personnel structures of the partners involved themselves sometimes show specific weaknesses. Here, a lack of knowledge and func-

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127 There can be no cross-border hierarchy, which of course does not exclude the relevance of the shadow of institutional hierarchy from the home context (*principal-agent problem*).

tional compatibility of the national partners can be observed time and again, which can only be rudimentarily countered even with specific training measures: Very often the "cross-border reflex" takes a back seat to a certain "national tunnel vision". This is partly due to the fact that there is very little horizontal mobility at staff level. In addition, a dominance of individuals rather than a true "regional collective" can be observed. Restrictions on direct communication arise particularly at the level of the technical experts due to the need for simultaneous translation – although this problem is not significant at Lake Constance. Finally, another overriding weakness in the area of personnel structures lies in the latent tendency towards demotivation: Due to the factually low task-related cross-border competence to act, as it results from the national and European legal systems, the real scope for action is often rather low – this must be worked out and justified again and again in the intersection of different systems and competences in the subject areas to be dealt with.

3.1.6 Discourses and reform concepts

Against the background of the weaknesses outlined above, it is not surprising that intensive discussions took place in all four study areas on optimising cross-border cooperation and that concrete measures and projects have already been implemented in some cases. In the *Euregio* Meuse-Rhine, for example, a stronger opening to the state actors was currently on the agenda, in the context of which a transformation of the foundation into an EGTC was also being discussed[128]. In addition, the question arised as to how the existing administrative territorial delimitation could better accommodate changed, rather large-scale cooperations (e.g. in the area of medical university cooperation). Furthermore, the idea of creating a European experimental region with special competence models has been discussed and it was examined how Euregional committee structures and tasks (e.g. *Euregio Council*) could be optimised in the future, for example by strengthening subject-specific working groups or developing strategic annual programmes. In addition, closer cooperation between municipal actors in the future (Städteregion Aachen/Parkstad) was about to change the current *governance* model in the *Euregio* and the question as to how the work of the *Euregio* (in the current foundation structure) will have

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128 Unfried 2009

to be aligned with this. In contrast, the creation of a real budget beyond *INTERREG* was not seriously pursued.

In the Greater Region, the positioning of the sub-regions with regard to the Vision 2020[129] was on the reform agenda. Furthermore, under the guiding principle of a Greater Region of two speeds, there were isolated discourses on the territorial reorganisation of the scope of cross-border cooperation, which repeatedly also raised the question of naming. In addition to the reflection on making the work of the Greater Region Summit more effective through more regular working meetings[130], the creation of a separate budget and the improvement of the working capacity through a joint permanent secretariat supported and financed by all partners has also been raised in particular. In this context, the creation of an EGTC as an integrative supporting structure was also considered. In addition to approaches for an optimised inter-communal networking and greater involvement of civil society, the creation of a University of the Greater Region[131] was and still is is a key project.

On the Upper Rhine, the realisation of the Trinational Metropolitan Region Upper Rhine (TMO) was and still is at the centre of internal and external modernisation discourses. Internally, cooperation was to be optimised in the future through the synergetic networking of the four pillars of politics/administration, economy, science/research and civil society, with which sectoral and horizontal networks are to be consistently oriented towards the strategic development of the existing cross-border potentials[132]. In addition, task-structural divisions of labour between the Eurodistricts (inter-communal) and the region as a whole (inter-regional) have been developed in relevant policy fields in the sense of vertical *multi-level governance.* Each pillar has developed its own strategies for action for the realisation of lighthouse projects with which critical masses are

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129 Cf. on the Future Vision of the Greater Region: https://www.grossregion.net/Institutionen/Weitere-Akteure/Haus-der-Grossregion/Institut-der-Grossregion-IGR; Niedermeyer/Moll 2007

130 Although the summit is to take place only every two years from 2011, there are to be regular meetings of the specialist ministers (transport, environment, research, spatial planning, etc.) in addition to the summits; Cf. on the whole in detail: Wille 2011; 2012

131 Cf. website of the University of the Greater Region: http://www.uni-gr.eu/ (30.03.2022).

132 Cf. contribution of the Upper Rhine to the " Green Paper on Territorial Cohesion – Territorial Diversity as a Strength " of the European Commission {SEC(2008) 2550} of 25.2.2009

to be reached. These lead to corresponding task-critical optimisations and networking approaches in and between the existing institutions of cross-border cooperation. In the perspective of external positioning, targeted lobbying strategies towards the level of the EU and the governments of the participating nation states have been defined, which have already led to very concrete external support.

On the other hand, in Lake Constance there wer signs of a conscious retention or further development of the existing informal cooperation culture, which was and still is also very much based on personal and decentralised networks. At the same time, however, there was definitely a focus on strengthening the personnel capacities for cross-border cooperation in the individual sub-regions and on how cross-border cooperation could be made even more dynamic in the future and, above all, structured in such a way that even conflictual issues can be tackled and effectively dealt with[133]. In addition, the question of even better integration and networking of the municipal level was also on the agenda, which, in addition to targeted projects (e.g. in the area of regional marketing and tourism promotion), also addressed questions of institutional strengthening of this level. The International Lake Constance University continues to be a European lighthouse project, within the framework of which innovative approaches to inter-institutional collaborative research are currently being conceived.

3.2 Perspectives of cross-border governance

The comparative analysis of the existing cooperation and governance structures has made it clear that in the cross-border integration areas studied, the encounter of different political-administrative systems and cultures in particular leads to a high degree of complexity and momentum in the procedures. The networking of different national political arenas implies a pronounced multi-level problem, in which the level-specific functions and functionalities are still relatively unclear in the overall view[134]. In addition, it is particularly difficult at the large-scale level to find cross-border recognised "leading figures" to initiate, promote and symbolise cross-border cooperation. Original competences to act for substantial cross-border policy production (in the sense of regional self-governance) do not exist per se, but must be justified on a case-by-case basis and specifically legitimised

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133 Scherer/Schnell 2002
134 Beck 20010

in each case. Cross-border cooperation is network-like but mostly interpersonal and not really intermediary. Important preconditions that exist in regional governance approaches in the national context must therefore still be created systemically in the cross-border perspective. Whereas in the national regional context networks, due to the loose, intermediary linkage of their members, represent suitable modes of governance for a needs- and potential-oriented regional development, which is oriented on the basis of functional socio-economic interdependencies and not only on the basis of administrative distributions of responsibilities, the cross-border context is, at least so far, much more strongly relegated to public-legal and political-administrative functional conditions. In particular, the governance of large-scale interdependence contexts still shows characteristics of cross-border government rather than governance in the normative sense.

The analysis of the four cross-border cooperation areas examined also allows the conclusion that the specific characteristics of what one seeks to understand as cross-border governance are very strongly determined by the respective spatial and structural starting conditions as well as the resulting genesis of a specific cooperation culture in each case. Just as it is very difficult to identify the one standard model of regional or sectoral governance in a national context[135], it is hardly possible to work out a uniform empirical pattern that could justify a normative target concept of cross-border governance.

What can be identified, however – and this is a first conclusion of the analysis – are common features of cross-border cooperation that can be worked out from the cross-sectional analysis of the case studies and which can be interpreted as constitutive basic components of cross-border governance, and with which the specifics of the corresponding functional conditions can be explained at the same time. Four constitutive features appear decisive in this context.

The first characteristic is that cross-border governance first of all always has a territorial dimension[136]. The cooperation and coordination processes that can be observed are constituted within a spatial parameter that encompasses the territories of two or more countries bordering each other. The respective given cross-border spatial structure (e.g. existence of natural borders, population density, degree of socio-economic interdependence,

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135 On the great institutional and functional diversity of German metropolitan regions, see Ludwig et al 2009.
136 Casteigts 2010

polycentricity)[137] as well as the resulting challenges with regard to the production of coordinated spatial solution approaches (development of given potentials, creation of infrastructural prerequisites, balancing of sub-spatial functions, etc.) form both the occasion and the framework for this form of cooperation[138]. Characteristic here is both the strong reference to political-administrative boundaries and the existence of socio-economic spill-over effects that transcend these boundaries. This results in the tension and challenge of adapting the spatial parameters of cooperation to the scope and content-related references of the various degrees of functional interdependence, as well as mobilising the relevant territorial actor structures in the sense of a "regional collective"[139] by networking them intermediately. In this respect, cross-border governance has strong links to the challenges of classic "regional governance"[140].

The second characteristic of cross-border governance is that this regional governance operates in a context that concerns relations between different states. The transnational dimension of cross-border governance is thus a specific characteristic that contributes significantly to explaining the specific functions and functionalities of this cooperation approach. Unlike "classic" regional governance, cross-border governance is characterised by the fact that decision-making arenas of different political-administrative systems are linked to each other. The resulting cross-border negotiation systems are characterised by a much stronger principal-agent problem than national regional governance. Here it is not only a matter of the encounter and functional coordination of different system characteristics, but also of the specific challenge of mediating back and thus of the possibilities and limits of the functional "embeddedness" of a cross-border territorial subsystem[141] into its respective constitutive national political-administrative systems. In addition, there is the intercultural function of mediation and understanding, which is also closely connected to the transnational dimension of cross-border governance. This refers not only to the interpersonal but also to the inter-institutional components of the cross-border negotiation system and explicitly includes the question of the compatibility of divergent European administrative cultures[142]. Finally, features such as the

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137 Ricq 2006: pp. 18
138 Federal Office for Building and Regional Planning 2009
139 Prince 2010
140 Kleinfeld et al 2006.
141 Frey 2003
142 Beck/Thedieck *2008*

consensus principle, the delegation principle, the non-availability of hierarchical conflict resolution options, the rotation principle in committee chairmanship, the tendency to postpone decisions or the structural implementation deficit can also be explained by this transnational dimension. Cross-border governance thus obviously also shares to a large extent those general characteristics that have been elaborated in international regime research with regard to the functionality of transnational negotiation systems[143].

The third constitutive feature of cross-border governance can be seen in its European dimension[144]. It is true that national patterns of regional governance also generally have European references, especially when it comes to questions of external regional positioning and/or the use of corresponding funding programmes. However, cross-border governance is comparatively much more strongly related to this European dimension in terms of its character and its finalities. Thus, on the one hand, cross-border cooperation in the European context fulfils a specific horizontal integration function[145] – not only in the political discourses of the acting actors on the ground, but also and especially in the objectives of European policies and institutions: the "growing together of Europe at the borders of the member states", the "Europe of the citizens", "territorial cohesion" or the "European Neighbourhood Policy" are concepts that directly refer to the European dimension of cross-border cooperation[146]. Thus, in perspective, cross-border cooperation is constituted as a separate level of action in the European multi-level context[147]. In addition, there is the (sectoral) laboratory function that cross-border territories have for European integration: In all those policy fields that are either not harmonised at the European level or in which European regulations are implemented differently at the level of the member states, adapted cross-border solutions must be developed as answers to real horizontal interdependence problems. These often represent a proper innovation perspective with regard to the development of a European cross-borderproximity-level. In addition, with the INTERREG programme and its characteristic functional principles, cross-

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143 Hasenclever et al 1997; Müller 1993; Kohler-Koch 1989; Finger et al 1990
144 Lambertz 2010
145 Schwok 2005: pp. 123
146 This is also illustrated, among other things, by the fact that only 7 % of the EU population is cross-border mobile, but that over 80 % of this mobility takes place in European border regions. On the functions of border regions in this regard in detail see: Beck/Thevenet/Wetzel 2009: pp. 3
147 Benz 2009: pp. 134

border governance is very strongly structured by an external model of action conceived at the European level. As a rule, this model of action shapes cooperation more strongly than it is the case in the national context, in which, in case of doubt, other than European funding and/or programme logics can also be resorted to. Finally, cross-border cooperation, and thus also its governance, is particularly strongly shaped by specific structuring approaches at the European level, for example at the instrumental, procedural and/or regulatory level, which has a comparatively high influence in the bilateral or multilateral constellation of cross-border cooperation between actors coming from different European countries[148].

Finally, the fourth characteristic of cross-border governance can be seen in the factual-strategic dimension. At the substantive level, cross-border issues are by no means a separate policy field, but contain more or less integrated cooperation approaches in and between different policy fields. The character of these individual regulatory, distributive, redistributive, allocative, innovation- or production-related policies[149] not only shapes the respective actor constellations and the corresponding degree of politicisation of the issues in question, it also decisively determines the different institutional requirements of the governance structures necessary for this[150]. These vary considerably from policy field to policy field and thus complicate the functionality and practical design of an overarching cross-border governance related to the overall territorialdevelopment control. The complexity of such a highly presuppositional governance is increased by the fact that the (variable) policy type in question also directly influences the interests and action strategies of the actors involved and thus significantly shapes the style of interaction, the decision-making rules applied and ultimately the efficiency of cross-border problem-solving patterns. The difference to the functionalities of cooperation patterns that take place within the uniform institutional system context of one single jurisdiction[151] can be seen in the fact that the systemic determinants and thus also the intersections for actor qualities, decision-making competences, action resources and the synchronisation of strategic interests in the cross-border context can vary greatly here from policy field to policy field. Constellations and

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148 As an example, the EU regulation on EGTC can be considered, which – irrespective of the material necessity – causes a relatively strong " regulatory push " of cross-border cooperation in many border regions and thus has direct consequences for the design of cross-border governance regimes.
149 Windhoff-Heritier 1990, 1993; Jann 2009
150 See already Beck 2007: pp. 279
151 Benz/Scharpf/Zintl 1992

logics of action that are evident in the domestic context and can thus be constructively shaped in the sense of a "social investment"[152], lead to completely different patterns of interaction and decision-making styles in the perspective of cross-border governance. This, in turn, can be used to explain the specific culture of cooperation, which usually is characterised by a much higher complexity and inherent dynamics of the processes in question, with a simultaneous tendency to decouple factual and interest-driven interaction.

In addition, in contrast to national and international patterns of conflict regulation, where tying and deliberate cooperation in the area of the game-theoretical Kaldor optimum are relatively easy to achieve[153], this is rather difficult in the cross-border context. Although the breadth of the issues dealt with offers, in principle, a good prerequisite for coupling transactions: due to the low binding effect of cross-border decisions and the highly complex nesting of thematic and factual decision-making arenas, coupled with the very low original competence profile of cross-border cooperation, coupling transactions, but above all the factual-logical "zoning up" of conflicting issues to higher decision-making levels, are, however, very difficult. The dilemma is that there is no hierarchy across borders and that complementary cooperation at the intergovernmental level follows other functional logics[154] (see transnational dimension). Thus, the functionality of cross-border governance in these areas is limited and patterns of negative coordination tend to dominate in such cases.

The particular distinguishing feature of cross-border governance is to balance the interdependencies between these four constitutive dimensions. A holistic understanding of cross-border governance is therefore much more complex and presuppositional than is the case in a regional, national or international context. The following diagram summarises the four constitutive dimensions of cross-border governance:

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152 Beck, D. 2001: pp. 297
153 The Kaldor optimum is reached when a policy measure brings an improvement for at least one individual and the losers could be compensated by the winners, cf. Scharpf 2006: pp. 123
154 Lamassoure 2005 speaks in this context of the "grey zone" of cross-border cooperation: the dimensions of the issues dealt with are often too "large" for the sphere of responsibility of local/regional actors, but too "small" for the national states, precisely because this relates only to partial sections of their own territory.

Figure 4: Dimensions of cross-border governance

European Dimension
- Multi-level Challenge
- Thematic laboratory function
- Horizontal integration function
- Role model cohesion policy
- External EU structuring (Instruments, procedures)

Territorial Dimension
- Spatial characteristics
- Need for integrated solutions (development potentials, compensation)
- Intermediate actor structure (formation of a regional collective of actors)

Cross-Border Governance

Thematic Dimension
Policy-type defines
- Composition of actors
- Level of politicisation
- Need for institutionalization
- Strategic interests of actors
- Interaction style
- Effeciveness of problem solution

Transnational Dimension
- Interlinked decision arenas of different PAS
- Negotiation-system with strong inverse principal-agent constellation
- Need for intercultural mediation
- Consens rule without exit option
- Implementation challenge

Source : Beck/Pradier 2011

A second characteristic feature of cross-border governance can be seen in the fact that it can refer to different functional levels. Ideally, six functional levels of cross-border cooperation can be identified, which in practice – in the sense of a core process – very often build on each other sequentially in the sense of different development stages.

The encounter between actors from different national political-administrative contexts can be regarded as a basic function of cross-border governance. At this level, the focus is on aspects of getting to know each other and exchanging information about the specifics of the respective home context. Mutual encounters promote mutual understanding and thus form the basis for building trusting mutual relationships. On this basis, the partners can then enter the second stage, which is characterised by regular mutual information. If the informative relationships are sustainable, they lead in a third step to cross-border coordination of the respective actions and policy approaches of the partners involved. This then leads to the need to develop joint cross-border planning and strategies on a fourth level, which can ensure a coordinated, integrated approach in relevant fields of action (problem solving and potential development). Building on this, joint decisions can be made, that finally lead to an integrated, cross-border coordinated and jointly supported implementation of programmes and projects on a sixth level.

The model of the six cross-border functional levels, which build on each other, stands on the one hand for the empirical observation that the intensity, commitment and integration of cooperation grow across the individual levels. Each level in itself represents a necessary and legitimate dimension of cross-border governance. On the other hand, it takes into account the practical necessity that the spectrum of actors involved tends to decrease across the individual stages, while the need for institutionalisation tends to increase. Thus, the six stages can be brought into a context with three overlapping interaction typologies: the first two stages primarily represent a discourse level, the following stages rather a structuring or action level. It is characteristic that the genesis of cooperation structures has historically passed through these different levels, but that in the practice of inter-institutional cooperation – depending on the subject matter in question – the different levels very often mix interactively. New topics and projects, on the other hand, tend to pass through the level model sequentially. Therefore, if we are to speak of holistic cross-border governance, the different functional levels of this governance would have to be recorded as a whole and evaluated in a differentiated manner according to the diverse factual, sectoral, actor-specific and/or thematic references of cross-border cooperation. Empirically reliable cross-border governance therefore only exists if all functional levels are at least partially realised in all the reference levels in question. The fact that many deficits can still be observed , especially with regard to the two functions "decision-making" and "implementation", illustrates the real world challenges to realizing an integrated cross-border governance. The following diagram summarises the functional stage model of cross-border governance.

Figure 5: Functional levels of cross-border governance
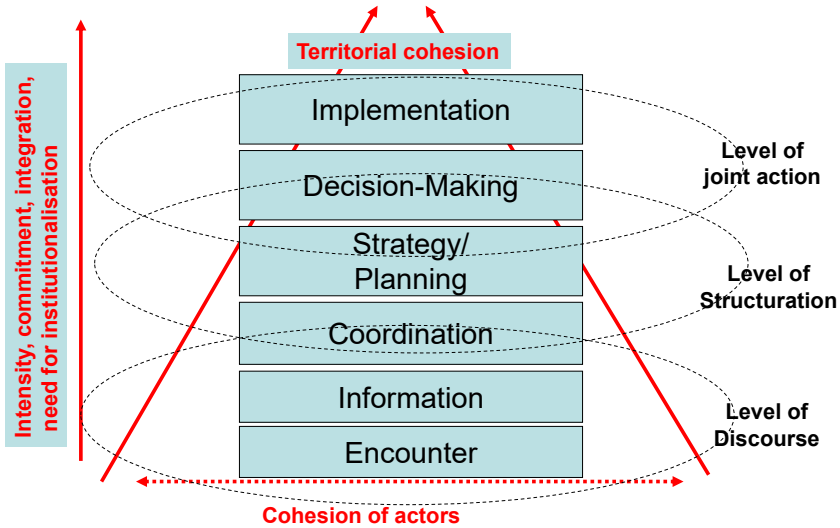
From the combination of these two general characteristics of cross-border governance (reference levels and functional levels), conceptual foundations for the generalisation of basic components of cross-border governance can be derived as a first approximation. These lead to 24 strategic fields of action, the holistic realisation of which would have to be the normative orientation of cross-border governance in the narrower sense. The following diagram summarises the central fields of action of such a holistic cross-border governance in key words.

Figure 6: Holistic model of cross-border governance

	Territorial Dimension	Transnational Dimension	European Dimension	Thematic Dimension
Implementation	Flagship projects for synergistic potential development	Delegation of the responsibility for cross-border tasks	Obtaining funding for cross-border demonstration projects	Creation of cross-border organisations with their own task competence
Decision-Making	Creating vertically and horizontally integrated processes and structures	Targeted cross-border networking of political arenas	Mobilisation of European decision-makers (from the territorial environment)	Management of cross-border policy-related negotiation systems
Strategy/Planning	Integrated CBC development concepts	Anchoring cross-border goals at the level of the prinicipals	Practive participation in EU projects (consultations, EU Impact Assessment System)	Anchoring cross-border objectives and opening clauses in national law
Coordination	Development of regional CBC collective	Cross-border synchronisation of national missions and decision makers	Development of joint lobby strategies of the (intermediary) representatives in Brussels	Cross-border synchronisation of domestic sectoral objectives and action programmes
Information	Development of cross-border spatial information systems	Institutional interface management	Optimisation of vertical information flow	Proactive cross-border dissemination of information on national policies
Meeting	Creation of CBC forums of intermediary actors	Intercultural mediation (systems, actors)	Intensification of joint direct contacts with European institutions	Cross-border networking of experts at all levels

In order to realise such a holistic cross-border governance approach, it is essential in the territorial dimension to enable regular meetings between actors from different sectors and to establish the necessary territorial references (real-world problems and potentials) of corresponding needs for action through the development of cross-border spatial information systems, on the basis of which regional key actors can be mobilised as an intermediary in the sense of a cross-border collective. The development of integrated territorial development concepts is of central importance, especially in cross-border terms: on their basis, vertically and horizontally

networked decision-making procedures and structures can be developed, which enable the integrated implementation of strategic lead projects for synergetic (cross-sectoral) territorial potential development.

In the transnational dimension, this requires active intercultural communication of the respective systemic[155] and actor-related[156] specifics of the neighbouring states, active interface management of the different informational levels and procedures, synchronisation of the task and decision makers as well as better anchoring of the cross-border sub-system at the level of the institutional headmasters (the principals) of cross-border cooperation. In this way, an optimised networking of cross-border and national decision-making arenas can be achieved, which strengthens the implementation functions of cross-border cooperation in the sense that the headmasters gradually delegate their own sponsorships for cross-border tasks to the cross-border area.

In addition to optimising the functional embedding of the cross-border cooperation system in its national political-administrative context, the step-by-step model for the European dimension in its basic function implies first of all the establishment of direct contacts with the relevant institutions at the European level, on the basis of which a then consolidated vertical flow of information can be developed with regard to relevant EU initiatives (top-down) as well as the communication of the results of cross-border flagship projects with regard to their contribution to the European model and laboratory function (bottom-up). The cross-border actors are thereby enabled to realise joint European lobby initiatives in order to speak with one voice in Brussels. This makes them attractive as actors and partners for the European institutions and they can also actively participate, for example, in the elaboration of relevant EU initiatives (e.g. in the framework of official consultations or more informally for the ex ante quantification of territorial impacts in the framework of the EU Impact Assessment (IA) procedure). An active mobilisation of European decision-makers from the sub-regions of the cross-border cooperation area (especially at the level of the European Parliament, but also e.g. at the level of the national or regional representations), who act as a cross-border "intergroup", can also accompany the process of cross-border cooperation at the European level and ensure that support for the realisation of cross-border pilot projects and/or programmes is actively provided by the European level.

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155   Beck 2008
156   Euro Institute 2007

Finally, the thematic dimension also contains different levels of intensity, the sequential and/or complementary realisation of which is to be regarded as a central prerequisite for a holistic cross-border governance approach. At the level of encounter, it will be important to optimise the functional networking of policy specialists and other sectoral actors in the sense of "horizontal professional fraternities", with which common professional, linguistic and conceptual understandings can take place. Building on this, the second step is to intensify the mutual information functions with regard to developments and reforms in the national sectoral policies in question, so that in a third step the necessary "cross-border reflex" is ensured with regard to the early synchronisation and coordination of sectoral needs, goals, strategies and policy-specific approaches to action. In the fourth step, it will be essential to anchor cross-border territorial objectives at the level of sectoral policies (e.g. cross-border opening and/or experimentation clauses at the level of legal regulations as well as the opening of cross-border perspectives in sectoral programmes) in order to provide an even broader basis for cross-border approaches to action in both technical and financial terms. Finally, in order to strengthen the decision-making and implementation functions, there is a need to make the existing structures and procedures more flexible, with which the policy and sector-specific interests and rationalities of the actors involved can be taken into account even better. Cross-border cooperation in higher education and research differs fundamentally in terms of the functionalities of the negotiation and interaction logics in question, for example, from those in the field of economic promotion, nature conservation, the health sector or culture and civil society[157]. Likewise, the policy-specific structuring needs of cross-border cooperation are variant and can neither be satisfactorily mapped exclusively by the alternatives of soft "functional/informal networking" nor the classic hard "institution building" or a simple temporary "project organisation". Here, cross-border governance must actually also be multi-level governance and enable differentiated, policy-specific approaches for the design of negotiation systems and the practical design of integrated sponsorships for cross-border tasks.

Such a holistic approach makes it possible to do justice to the real-world complexity and multi-layeredness of cross-border cooperation in perspective and to avoid conceptual narrowness that focuses only on selected indi-

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157 With regard to the respective sector-specific administrative cultures, there are close links back to the transnational dimension as well as the general question of what characterises sectoral action regimes in the transnational dimension, cf.

vidual aspects of governance (such as the creation of networks, integration of civil society, joint external lobbying). At the same time, it stands for the real breadth and differentiation of the fields of action to be tackled in order to make use of the potentials of cross-border governance as a complementary, vertically and horizontally differentiated interaction and control structure for the future-oriented development of cross-border areas in Europe.

4. On the importance of administrative culture in cross-border cooperation

4.1 The concept of administrative culture

The concept of administrative culture ultimately goes back to political science cultural research, as established by the early works of Almond/Verba from the 1960s on civic culture[158]. Since the 1980s it has become increasingly important, especially in political science research on administration, as a specific differentiation of the sub-disciplines of "comparative government" and „policy research". The starting point was, on the one hand, the observation that the political-administrative systems of different countries are characterised by specific functional mechanisms, which in turn can be explained by the influence of different national cultures. These basic findings were confirmed by comparative implementation research of European programmes and legislation as well as by corresponding cross-sectional analyses of sectoral policy fields in different member states. One of the first comprehensive empirical studies in this context was presented by Werner Jann[159]. He has identified three dimensions of administrative culture: He defines administrative culture I as the sum of social values that exist in a particular country with regard to its own administration. This is supplemented by an understanding of administrative culture that refers to the values existing within an administration itself (administrative culture II). The combination of both dimensions can then be used to analyse and explain country-specific patterns of administrative action/style in policy-implementation (= administrative culture III). According to this, administrative culture can be understood as the sum of values, attitudes and behaviours that exist in and towards an administration. The dichotomy of systemic hardware (= structural level) and administrative culture "software" (= interaction/value level) of public administration is sometimes used for conceptual purposes. In this tradition, Thedieck defines administrative culture as follows: "In contrast to the (legal and organisational)

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158 Almond / Verba 1993
159 Jann 1983

structure, administrative culture captures the values, norms, orientations and patterns of action of public administration"[160].

Another, more systemic approach to the phenomenon of administrative culture can be found through organisational studies. Following the early work of Parsons/Linton, Rudolf Fisch[161] has presented a broader definition of organisational culture, which is particularly suitable for the purposes of cross-border cooperation, and which can be understood as a cooperative subsystem of national institutions[162]. According to this definition, one can always speak of an appropriate organisational *culture* or, in a figurative sense, a cooperation *culture*, if the members of an organisation/cooperation system have identical motives for action and self-understandings, refer to common and recognised symbol systems, share identical norms and congruent value systems and if they have developed specific patterns of action and reaction for standard situations.

The administrative historian Stefan Fisch from Speyer, in turn, has coined the very memorable and beautiful image of administrative culture as "coagulated history"[163], while Dieter Schimanke, following recent work by Werner Jann[164], has recently elaborated the following four dimensions and thus laid a foundation for administrative culture research, with special regard to aninterdisciplinary and comparative approach[165] :

a) Opinions, attitudes, values concerning public administration (administrative culture in the narrow sense and part of the political culture),

b) Typical models of roles and orientations of the members of public administration,

c) Specific typical behaviour in public administration (e.g. in a national public administration with a difference to other national public administrations), and

d) Administrative culture in the broadest sense would cover patterns of behaviour, organisational forms and principles stable over time in a defined unit (e.g. a nation); this definition is close to the classical understanding of the anthropological definition of culture

What these definitions have in common is, on the one hand, an understanding of the object that can be located between the macro-level of a

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160 Thedieck 2007: 9
161 Fisch 2002
162 Beck 2007
163 Fisch,2000
164 Jann 2002
165 Schimanke 2008: 14

state and the micro-level of the individual as a country-specific "culture bearer" and that can thus be interpreted as an (administrative) organisational meso-level. On the other hand, it takes into account the fact that administrative culture is always both an independent variable that can be used to explain different political-administrative patterns, outputs and outcomes of public policies, but on the other hand is itself a contingent phenomenon that – in the sense of a dependent variable – can be influenced and is indeed influenced by external factors, albeit in a corresponding temporal dimension[166]. Administrative culture cannot be viewed in isolation from the basic cultural characteristics of individual countries or global cultural circles[167] – but conversely, it is not the all-explanatory factor either – as could be observed in the recent past, for example, with the uniform New Public Management model of administrative modernization, when normative protagonists of the new "movement" complained that the implementation of the modern approach had failed due to the inertia of an "outdated" bureaucratic administrative culture. Rather, in most cases, an understanding of administrative culture as an intervening variable can realistically be justified, which does not diminish the importance of the concept, but seeks to further differentiate it in the sense of a contingency model.[168].

The following diagram schematically represents the previous considerations on the concept and analytical dimensions of administrative culture[169] :

Figure 7: Administrative culture as meso-level of analysis

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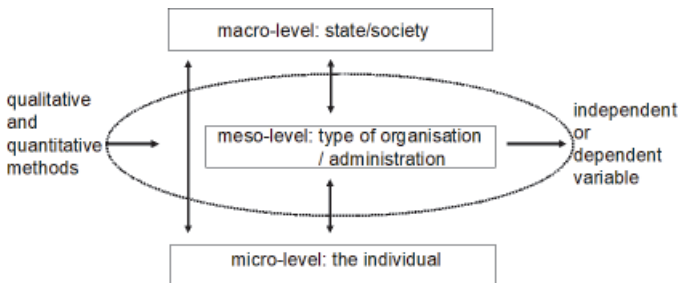
166 Beck 2007
167 See König 2008 who distinguishes between Anglo-Saxon civic-culture and continental European legalistic administrative culture.
168 Beck 2008
169 Beck 2007: 34

In (comparative) cultural research, a number of analytical criteria can be identified that are used for the analysis of both the macro and micro level. In the sense of locating administrative culture as an institutional meso level, the application of these criteria is of great importance with regard to the identification and description of country-specific basic cultural characteristics: they can also form the contextual starting point for the comparative analysis of different "national" administrative cultures. In summary, the analysis of relevant publications reveals the following seven criteria of (inter-) cultural differentiation[170] :

– Communication style: Cultural differences between countries can be determined by which general social communication styles dominate. The empirical findings in this regard range from cultural groups that cultivate a rather implicit communication style to countries in which an explicit communication style dominates.

– Perception of time: The perception and interpretation of the role that the factor of time plays in social relationships is another cultural differentiation feature. In so-called polychronic cultures, an understanding of time prevails according to which man dominates time, while in so-called monochronic cultures, time tends to dominate man, which in turn has direct consequences for the respective self-image, the handling of time and its relative importance in social interaction.

– Action orientation: International comparative analyses have also identified countries in which the primary social action orientation relates to people as concrete counterparts. In contrast to this, there are country cultures that attach greater importance to the task in question. From this, the cultural differentiation criterion of object orientation versus person orientation can be derived.

– Degree of differentiation: Uniformity versus difference, both socially and organisationally, forms another important differentiation criterion by which different basic cultural patterns of different countries can be analysed.

– Discourse orientation: The way in which social discourses are structured also represents an intercultural differentiation criterion. The two contrasts that can be worked out in empirical studies in this regard are, on the one hand, countries or cultural circles in which dissent is

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170 The following classification is based on an interpretative cross-sectional analysis of the work of Hofstede 1980; Hofstede 1994; Hall 1984; Jann 2002; Jann 2006; Eder 2000; Todd:1999; Demorgon 2004; Davoine 2005: Thedieck 1992; Thedieck 2007

an important characteristic: Dissent is not seen as negative per se but as productive. On the other hand, there are countries that are characterised by a pronounced culture of consensus. An interesting indicator in this context is, for example, the strike rate (= number and duration of strikes per social conflict event) of a country.

– <u>Power distance</u>: The spatial and/or personal distance between different levels of power and decision-making can also vary considerably between different countries/cultures. Elitist cultures usually have a much higher social and then also organisational power distance than so-called egalitarian cultures.

– <u>Problem-solving style</u>: Finally – not least as the sum of the criteria mentioned so far – the prevailing individual and collective problem-solving patterns of different cultural groups also differ, sometimes considerably. In certain countries, according to the empirical findings, problem solving takes place predominantly in the form of a linear, very strongly analytical style in which the individual problem components are usually prioritised and then worked through sequentially. Other national cultures, on the other hand, are characterised by the fact that problems are approached in a circular manner, whereby non-linear problem solving can sometimes involve creative combinations of the initial problem dimensions, which usually leads to the parallel processing of different, more holistically shaped problem solutions.

This view reveals that comparative cultural research is characterised by a real dilemma: on the one hand, criteria are needed to be able to identify and explain cultural differences and similarities at all. On the other hand, such a comparison must always remain sweeping and latently carries the danger of reproducing cultural stereotypes. For the analysis of the administrative-cultural dimension of cross-border cooperation, such a comparative view is nevertheless worthwhile in several respects. On the one hand, it makes clear that there can be "national" cultural profiles in a cross-border area, which obviously differ in important criteria, sometimes quite considerably. At the same time, it shows that these cultural profiles cannot be regarded as alternative or contradictory per se and that a sweeping contrast is of little use. It is precisely this high degree of difference in detail that makes practical dealings between different national cultures so presuppositional and (in both a positive and negative sense) sometimes so fraught with tension. The following diagram attempts to illustrate this using the

example of the basic cultural profiles of the three neighbouring states on the Upper Rhine:[171]

Figure 8: Cultural patterns oft he Upper-Rhine region

Style of communication	implicitly	F			CH	D	explicitly
Role of time	polychrone	F		CH		D	monochrone
Orientation of action	person	F		CH		D	mission
Differenciation	uniformity	F			D	CH	variety
Style of discourse	disagreement		F		D	CH	consent
Power distance	high	F		D		CH	low
Problem-solving	circular	F		CH		D	linear

Such a criterion-based comparison suggests that the differences in administrative culture between different countries are likely to go much further than simple dichotomies such as the one between the "central state" of France on the one hand and the "federal state" of Germany and Switzerland on the other. At the same time, it can be asked to what extent there are differences in the details of the prevailing basic patterns of administrative culture beyond the common affiliation to a continental European administrative family, which are of interest for variances in the performance[172] and/or the style of public administrative action.

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171 In a first step, the author based the location of the country profiles on participative observation during meetings and professional work-experience within a cross-border context. As a second step the „hypothesis" of the graph was validated by several self-assessments by numerous actors from the three countries during exercises and workshops on „intercultural management" guided by the author..Actors were asked to first locate their own cultural profile and then locate the culural pattern of the neigbours as they perceive it. In a third step, the findings were analysied and taken into account by the author, wich lead to the final graph.
172 See e.g. Kuhlmann 2011

Cross-border cooperation and the transnationality of interaction between actors from different administrative cultural contexts that characterises it thus offers an interesting subject for administrative culture research in Europe. Here, the focus is not on the comparative analysis of different administrative-cultural patterns of the partners involved (although these naturally have a very strong impact on the cooperation context as independent variables), but rather on the question of which *specific* patterns characterise cross-border cooperation in the sense of a dependent variable, and whether the emergence of a specific administrative-cultural pattern can be concluded from this. A conceptual understanding of cross-border cooperation culture as a *transnational administrative culture*[173], which refers to the specific patterns of action of cross-border cooperation *between* administrations from different countries and which can be distinguished from comparable patterns in the context of the respective "home administration", would guide the investigation.

4.2 Administrative cultural patterns of cross-border cooperation in the Upper Rhine: results of a survey

In the following, an attempt will be made to approach the administrative cultural factor in cross-border cooperation at the level of cooperation culture in the trinational Upper Rhine region. This chapter is based on the results of a survey amongst more than 500 actors in cross-border cooperation in the area of the Upper Rhine region[174], in the course of which the German, French and Swiss participants evaluated, among other things, specific working hypotheses for recording and describing selected characteristics of the cross-border cooperation culture. The research design followed the variables of the GLOBE-Study[175] and implemeted them to the specific context of cross-border cooperation, which enabled the first empirically proven recording of those specific interaction patterns that take place within the sub-system of cross-border cooperation in the Upper Rhine.

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173 Cf. Beck/Dussap/Larat 2012

174 The survey was conducted by the Büro für angewandte Psychologie BAP on behalf of a PEAP-funded project in November 2011. A detailed study report was published in 2015 as Speyerer Arbeitsheft Nr. 221: Beck/ Becker-Beck/ Beck, J. (2015)

175 Chhokar/Brodbeck/House 2007

One basic question referred on how actors perceive the cross-border cooperation context in comparison to their domestic cooperation-context. The results show a specific and distinct pattern of cross-border cooperation culture which is illustrated in the following graph[176]:

Figure 9: The cultural pattern of cross-border cooperation in the Upper-Rhine
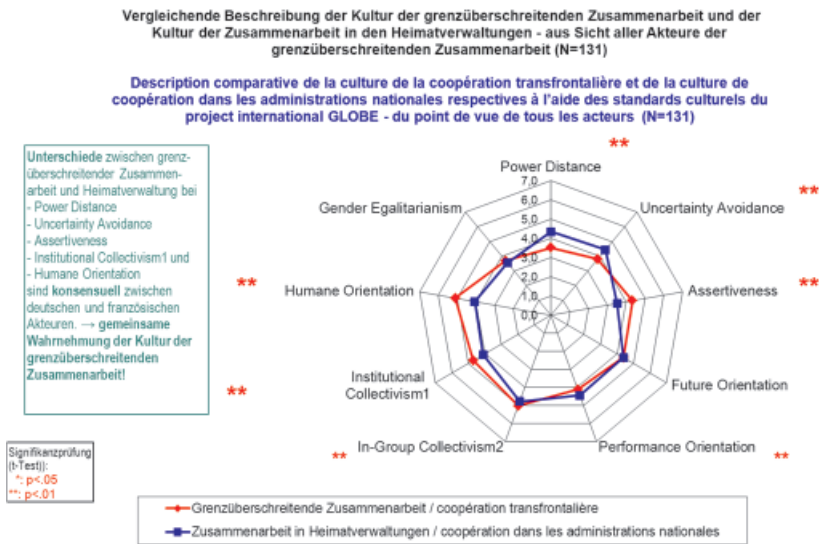
Source: Beck/Becker-Beck/Beck/Dussap 2015

The different basic administrative cultural patterns of the three neighbouring states on the Upper Rhine[177] have a formative effect on the design of cross-border cooperation and thus on the functionality of the cross-border cooperation system as a structural framework condition. Firstly, with regard to *problem perception and analysis*, the survey shows that there are obviously different time horizons and levels of problem analysis between the partners involved, which usually also lead to diverging assessment criteria and goals. The difficulties of reconciling these different approaches lead to the result that cross-border cooperation is generally characterised by a low degree of original problem analysis, a low degree of strategy orientation

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176 The red line shows the pattern of cross-corder cooperation which is distinct from that of cooperation, taking place at domestic level (blue line), with rergard to seven out of nine items

177 See Beck 2008: pp. 196 for more details.

and often a one-sidedness of the initiative function of individual actors for new projects[178].

With regard to cross-border *agenda-setting*, one can observe a replication or synchronisation of national topic contours. In addition, local interests often dominate over cross-border needs. Differences also relate to the roles of administration and politics as providers of topics and ideas, which generally leads to a low selectivity or an addition of diverse thematic approaches in cross-border cooperation.

The *process organisation* of cross-border cooperation is characterised by the challenge of synchronising very different responsibilities and competences for action, which results in very small-scale work processes with diverse informal feedback loops. The large number of committees and meetings that can be observed thus stands for a high procedural and a relatively low result orientation of cross-border cooperation[179].

The different basic patterns of administrative culture are also reflected in the high complexity of cross-border *decision-making*. Different roles, competences and self-perceptions of the actors regularly lead to an increased complexity – compared to the national context – in the preparation and structuring of working meetings, resulting in lengthy processes[180]. In this context, administrative cultures that define themselves more strongly through project ideas that are kept open and ready for discourse contrast with those cultures that present elaborated project proposals with plans, draft contracts and business plans at a very early stage. A lack of knowledge about the partners' functional conditions also means that cross-border patterns of decision preparation are characterised by delays at the working level as well as the need to synchronise different administrative cultural self-understandings, with the result that decision preparation takes an unusually long time.

With regard to cross-border *decision-making* itself, the transnational negotiation system can be characterised by the fact that there are very strong blockades due to veto positions at the working level. This is not only caused by the unanimity principle[181], but also by the fact that in the

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178 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.9
179 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.2 and 4.1 respectively
180 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.2
181 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.8 and 3.6 respectively

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different administrative cultures there are different self-understandings of what a decision is and who has to make it. The informal preliminary decision-making function is therefore performed by a close interpersonal and inter-institutional network of representatives of the official cooperation partners[182]. The fact that – beyond the institutionally very low competence profile for original cross-border decisions – there is not infrequently a large discrepancy between the chief level and technician level between the administrative cultures involved can also be seen as a cause for the generally observable tendency to postpone and/or avoid decisions. Different interpretations of the contents of decisions as well as the institutionally low binding effect in implementation also lead to the fact, that the material dimensioning of cross-border decisions is very often limited to basic statements, announcements and superordinate external support aspects of cooperation in the "external relationship"[183]. Obviously, there is much less coupling or bartering in cross-border decision-making processes, as there is little "bargaining power" or original competence to act on the part of the actors acting across borders.[184] The cross-border decision-making processes are also complicated by the fact that the decisions made by the subsystem of cooperation must always be followed up and democratically validated at the level of the decision-making bodies of the institutional partners involved in the respective national context, with the risk that, in case of doubt, "external" interests very often dominate.[185] It is therefore not surprising that the material scope for action is not experienced as very wide by the actors involved.[186]

Finally, with regard to *policy implementation*, a (systemic) restriction can be observed to those thematic areas that are located in the intersection of professional, spatial and political responsibility between the actors involved. Since this is not evident per se, delays in implementation can very often be observed due to different sub-spatial, political-administrative im-

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182 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.2

183 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.7

184 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.6

185 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.0

186 On a rating scale from true (5) to false (0), this hypothesis was only confirmed by all respondents with 2.8

plementation cultures[187]. In addition, the implementation of cross-border decisions is dominated by the great dependencies of the cross-border cooperation system on technical and financial contributions from "external" actors. Here, the cross-border cooperation system can only rarely break up the different programme and administrative cultures of the "external" ministries in Paris, Berlin, Stuttgart, Mainz, Basel and partly in Bern: In the implementation of cross-border projects and initiatives, the actors of cross-border cooperation are highly dependent on the support of these "external" partners, who themselves are often not directly involved in the preparation of decisions[188]. The complex implementation conditions of cross-border cooperation often lead to projects and plans being delayed again in the implementation phase due to different administrative-cultural patterns: inter-administrative-cultural problems, misunderstandings and sometimes also conflicts very often come to light here, without these being able to be solved by suitable institutional structures and procedures within the framework of the sub-system's own genuine problem-solving competences.[189]

Thus, the de facto binding effect of decisions, once taken in the implementation, in the cross-border cooperation must generally be classified as rather low.

The tendency of cross-border cooperation to be less effective, efficient and sustainable than national regional policy can be very much explained by the high divergence of the administrative cultures involved. However, the search for the "administrative culture" factor in cross-border cooperation has another dimension. Over the years, the subsystem of cross-border cooperation has itself developed its own administrative cultural pattern, which can be interpreted in terms of systemic organisational culture on a supra-individual basis and as an institution in the broader sense. This administrative culture of cross-border cooperation is highly functional and makes it possible to mitigate the direct "spillover" of national administrative cultures.

If we look at the *motives for action and the self-image of the actors involved*, the history of cross-border cooperation on the Upper Rhine, for instance,

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187 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.8

188 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.6

189 On a rating scale from true (5) to false (0), the hypothesis of own problem-solving skills was only confirmed by all respondents with 2.9

shows that it is characterised by phase-specific, jointly supported leitmotifs that have shaped the actions and mutual interaction of the actors over time[190] : In the 1950s, for example, the motive of reconciliation between former wartime enemies was in the foreground and had a formative effect on cooperation. This was supported by individual personalities who saw themselves as pioneers and, for example, developed direct contacts through town twinning arrangements close to the border. The 1960s, on the other hand, were characterised by the discovery of the necessity of overcoming administrative and national borders due to increasing socio-economic interdependencies that did not stop at national borders. It is no coincidence that the Regio Basiliensis, for example, was founded in this phase. The 1970s, in turn, were marked by the belief in the necessity and usefulness of joint institution-building, which found expression in the founding of the D-F-CH Intergovernmental Commission (with its two regional committees, the later Upper Rhine Conference) as well as other commissions and committees. In the 1980s and then 1990s, a common leitmotif was the conviction, that it was not enough to just plan together, but that also joint projects should be realised. The use of EU funds for joint projects was and is a strong common motive for action, which can also stand for the self-image of cooperation as a whole in this phase. Today, on the other hand, the interest of all actors in a joint utilisation of the potentials of the three sub-regions for the positioning as an integrated European metropolitan region, as well as a uniform external appearance are in the foreground. This is combined with the desire for optimisation and better networking of the existing institutions and the sectors of politics/administration, business, science and civil society in the sense of synergetic, high-performance cross-border governance.

Interesting patterns of cross-border administrative culture can also be identified at the level of *common symbol systems*. The creation of common facilities and institutions, the development of their own legal forms (Karlsruhe Agreement), the importance of common logos, the use of symbolic places for meetings and events, the role of flags, etc. symbolise a common cross-border self-image today[191], which in its specific manifestation can be considered just as characteristic of cross-border cooperation as the (still unsuccessful) search for a universally valid logo and a branding for the

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190 Wassenberg 2007
191 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.7

trinational cooperation region on the Upper Rhine that can be communicated to the outside world.

With regard to the *normative systems* (written and unwritten rules), patterns can also be identified that can be considered characteristic of cross-border cooperation. At the formal level, this is usually structured by cooperation contracts and agreements between the partners involved, in which formal decision-making procedures and rules are laid down. In addition, the partnership and co-financing principle is generally valid, which ultimately means that no project can be realised without all competent partners and thus not against the will of one of the partners involved. There are also structured patterns of decision-making via project and working groups, as well as established patterns of informal trinational coordination via personal networks. Bilingual documents and the differentiation between "official" and "other" forms of cooperation are further elements of the cross-border norm system. This also includes the informal rule that projects only come into being if all partners can find themselves in them. In contrast, informal tying, which is usually the case for negotiation systems, does not exist in the cross-border context due to the lack of sufficient negotiating mass. The informal rule is rather, that everyone can speak his or her mother tongue, but it is good manners to speak the language of the neighbour, if a meeting takes place on its territory[192] -only then does one have a chance of actual acceptance there within the framework of informal networks. The fact that observing the unwritten rules in particular is crucial for the functionality of the cross-border cooperation system was considered very important by all respondents.[193]

With regard to the question of shared *value systems*, cooperation in the Upper Rhine region has always been characterised by the demand for particularly good, high-quality and intensive cooperation[194]. Efforts are always made to present a positive image and consequently (also as a result of intensive coordinated press work) there are hardly any critical press articles in the regional media, but rather success stories about cross-border cooperation. The actors involved at all levels also see themselves as "doers of conviction" who constantly adhere to the necessity of cross-border co-

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192 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.2

193 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.1

194 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.0

operation, even if immediate results and communicable benefits are not always immediately apparent. They also see themselves as a laboratory of European integration and define themselves vis-à-vis the nation state through the claim of a so-called "small foreign policy". The Upper Rhine is therefore always presented as a European model region with the firm intention of seeing cross-border cooperation as its own policy field and further upgrading it[195]. In addition, respect for cultural differences, efforts to create a partnership of equals, and cooperation based on trust and conflict avoidance are further elements of this common value system[196].

Finally, the cross-border cooperation culture is also characterised by the fact that common *patterns of action have* developed *in and for standard situations.* Its most visible expression is that today all institutional partners in cross-border cooperation have created special organisational units for cooperation. These form a supra-individual network of cross-border responsibilities and are characterised by a high degree of professionalisation in cross-border affairs[197]. Furthermore, the creation of joint working processes for policy development and implementation can be observed, which represent a very specific Upper Rhine pattern[198] : Relevant topics are prepared by so-called three-country congresses, the results of which are then taken up and implemented by the Upper Rhine Conference and implemented with the help of the available INTERREG funds. New topics are first prepared in the Upper Rhine through trinational basic studies. The work is structured by setting up bi- and trinational project groups at the working level, which in turn work for the decision-making level (steering committee). An important role is played by those working full-time on cross-border cooperation who, as sherpas, form a dense, informal network of 30 people[199]. In addition, a high degree of routinisation of decision-making content and processes can be observed through a standardised meeting procedure (cross-border meetings usually follow the same procedure – regardless of whether they are held on the German, French or

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195 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 3.8

196 On a rating scale from true (5) to false (0), these hypotheses were confirmed by all respondents with 3.8 and 3.9 respectively

197 Botthegi 2014

198 Beck/Pradier 2011

199 On a rating scale from true (5) to false (0), this hypothesis was confirmed by all respondents with 4.2

Swiss side)[200]. Particularly at the executive level, importance is attached to a smooth course of meetings[201] : conflicts must be resolved in advance at the working level, because the "zoning up" of and thus direct involvement of the political level with conflict-prone issues is to be avoided. This would collide with another standard constellation: that of creating a particularly pleasant environment for the meetings, which may well include the culinary dimension.

As a result, the Upper Rhine multi-level system[202] certainly has its own culture of cooperation, which can be interpreted as a transnational administrative culture not least because this cooperation takes place almost exclusively between public actors[203]. It is characteristic of the system that this Upper Rhine cooperation culture is founded less on an integration of the existing national administrative cultures than on the functional requirements (solving common problems, developing common potentials), the jointly held values or benefit expectations (reconciliation, programme management, regional positioning in Europe) as well as the specifics of cross-border cooperation as a "small foreign policy" (symbolism, diplomatic gesture) or "decentralised European domestic policy" (laboratory of European integration). In this respect, it should not differ significantly from other border regions.

4.3 On the contingency of administrative culture in cross-border cooperation

The analysis of cooperation on the Upper Rhine, however, reveals another facet of the administrative-cultural phenomenon in cross-border cooperation, namely its relativity or contingency in relation to other factors relevant to cross-border policy-making[204]. In this respect, the analysis of cross-border cooperation in the Upper Rhine confirms the experience-based hypothesis according to which the administrative-cultural factor is always either overrated or undervalued[205]. It is certainly undervalued in a view that sees cross-border cooperation merely as a transnational regime, making analogies with international negotiation systems, for example at the

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200 On a scale from true (5) to false (0), the relevant hypotheses were confirmed by all respondents with 3.7, 3.6, 4.1 and 4.2.
201 Similarly Hartmann 1997
202 Nagelschmidt 2005
203 Beck/Pradier 2011
204 Cf. Benz/Scharpf/Zintl 1992
205 Eisenberg 2007

EU level or in the field of international relations[206]. In fact, this facet has so far only been partially explored in the literature and thus represents a very innovative new field of research. Such an interpretation suggests that the cultural factor as an institution in the broader sense is overlaid by the power- and interest-driven interaction between rational actors. Following the corresponding modelling of the rational choice school and then also the basic assumptions of game theory[207], the interaction in cross-border networks of institutional (headmasters) and individual (agents) actors is likely to be determined by the material and strategic objects of negotiation in question, the institutional context, but above all by the respective constellations of interests, rather than by administrative cultural differences[208].

Conversely, the danger of overemphasis exists in academic approaches to comparative cultural research and then specifically in the field of intercultural communication[209]. Here the reader of relevant studies sometimes has the impression that every interaction in international networks or every institutional and individual relationship between actors in transnational space is exclusively culturally determined. Practitioners of cross-border cooperation will then tend to raise critical objections regarding the viability and performance of models of acculturation or oscillation[210] and point to the relativity of interpersonal learning potentials compared to the inter-institutional challenge of cooperation[211].

A pragmatic approach can be developed with the concept of cultural contingency in cross-border cooperation[212]. This is based on the observation that in cross-border affairs, both of the perspectives outlined above are often linked to each other. Rational, interest-driven interaction and (administrative) cultural contingency are mutually dependent and are coupled with each other in many different ways. Criteria that can be used to illustrate this contingency are, in addition to the character of a policy field at issue in cross-border cooperation, the nature of the respective task, the degree of institutionalisation within which the cooperation takes place, the nature of the actors' relationships to each other, and the typology of the actors who encounter each other in the respective cooperation relationship.

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206 Hasenclever/Mayer/Rittberger 1997; Müller 1993; Kohler-Koch 1989; Efinger/Rittberger/Wolf/Zürn 1990
207 Scharpf 1993; 2006
208 See already Beck 1997
209 Demorgon 2005; Eder 2000
210 Euro Institute 2007
211 Lang 2010; Lambertz 2010
212 Beck 2011b

Such a consideration can lead to a corresponding contingency model, which I have formulated elsewhere as a proposal[213] :

Figure 10: Contingency-model of administrative culture in cross-border cooperation

		Type of policy problem	Type of mission	Degree of institutionalisation	Type of relation	Type of actors involved
Impact of administrative culture	rather high	- redistributive - geostrategic - innovative - regulatory - cross-sectoral	- cooperation - implementation - planning	- secondary organisation (projects)	- impersonal - formal - unregular - mutual mistrust	- new comers - technical staff - low autonomy of action
	rather low	- distributive - routine - sectoral - self-regulatory	- coordination - information - representation	- primary organisation (institutions)	- personal - informal - regular - mutual trust - „win-win"	- exp. seniors - politicians - professionals of cooperation - high autonomy of action

Accordingly, the relevance of the (administrative) cultural factor varies depending on the characteristics of other variables relevant to cooperation: it correlates with these and cannot be seen independently. In other words: If cross-border policy is characterised by aspects of strategic redistribution and presupposes cooperation in the sense of material reconciliation of interests, takes place irregularly in projects with a zero-sum character and between technocratically acting newcomers with little autonomy of action, then the inter- (administrative-) cultural conflicts will be much more pronounced than in such constellations that can rather be located in the lower half of the matrix. This can be explained by the fact that in cases that correspond to the first pattern, the respective differing institutional factors are much more important than in the latter, in which, as a rule, little is at stake materially.

It is no coincidence that large parts of cross-border cooperation have tended to move in the lower range of the contingency matrix in recent years and were thus only relatively little problematic from an inter-(administrative)cultural point of view. In contrast, newer approaches to integrated cross-border governance[214] appear to be much more demanding. They re-

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213 Beck 2008; 2015b
214 Hooghe 1996; Hooghe/Marks 2001; Piattoni 2010; Grande 2000

quire effective network management[215], which optimises both the internal and the external dimension of cross-border cooperation as a subsystem[216]. Functional institutionalisation can cushion the direct impact of different national administrative cultures and increase the effectiveness and efficiency of cross-border cooperation[217]. Moreover, it is often the prerequisite for transnational administrative culture to come into being at all and to unfold its functionality for the cross-border cooperation context[218]. Regional governance[219] is (normatively) also the right answer to future challenges in the cross-border context. Therefore, there is currently great euphoria and expectation among many actors in cross-border cooperation, and the concept is being actively taken up by consensus. In the medium term, however, considerable intercultural tensions are likely to arise over the concrete design of its basic components. In order for these to lead to productive intercultural learning and innovation processes[220] and thus ultimately serve to deepen the transnational administrative culture, the functional autonomy of the cross-border sub-system vis-à-vis the institutional context of its home institutions would have to be increased[221]. Keywords that are currently being discussed in this context, especially with regard to creating the conditions for the further development of the cross-border administrative or cooperation culture, are: Cross-border opening clauses in sectoral legal ordinances (e.g. on the basis of cross-border *de minimis* regulations), political will to transfer material tasks and competences to cross-border institutions (so-called horizontal subsidiarity: see chapter 5.3), flexible EU programmes with compatible funding criteria as well as networking and functional change of existing structures[222]. There is thus the prospect that the administrative-cultural patterns of cross-border cooperation will also be more strongly oriented towards the future requirements of cross-border areas in Europe. Conversely, only then will it really be possible to speak of the emergence of a distinct *transnational* administrative culture in cross-border affairs.

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215 Cf. Benz/Lütz/Schimank/Simonis 2007; Jansen/Schubert 1995; Marin/Mayntz 1990; Mayntz 1992
216 Cf. Kilper 2010
217 Beck/Pradier 2011
218 Critically, Debray 2010
219 Prince 2011
220 Casteigts 2008
221 Similarly, Schlie 2008; Blatter 2000
222 Janssen 2007; Beck 2012

4.4 The relativity of cross-border cooperation culture

On the basis of this finding, however, the question then arises in a second step as to the extent to which this cross-border culture of cooperation, which in practice is predominantly constituted by a cooperation of public administrations, can actually be interpreted as a transnational *administrative culture in* the sense defined above, beyond its relatively plausible organisational systemic dimension.

Here the assessment will be rather cautious. On the one hand, the system of cross-border cooperation presents itself more as a cross-border *negotiation system* than a transnational *administrative system:* Both the quantity of the cross-border policy profile per se and the cross-border degree of organisation are – compared to the respective functional and institutional context of the partner regions involved – rather low. A few simple figures from the trinational region of the Upper Rhine may illustrate this: 90,000 cross-border commuters in the Upper Rhine may seem a lot in absolute terms, but they represent just 3 % of the total working population, i.e. 97 % of the working population in the Upper Rhine may commute between their place of work and their place of residence – but they do not do so on a cross-border basis. Even if the more than 30,000 motor vehicles that pass the Europabrücke between Kehl and Strasbourg every day appear to be significant, this is very relative when one realises that many times that number of people commute into Strasbourg from the surrounding Alsace region and out to the rest of Alsace every day. More people also commute between Freiburg and Karlsruhe and Mulhouse and Strasbourg than between Offenburg and Strasbourg, Freiburg and Mulhouse or Lörrach and Basel.

The following chart illustrates how strongly commuter flows on the Upper Rhine, with the exception of the Basel-Mulhouse axis, are still oriented towards the national sub-areas:

Figure 11: Commuting flows in the Upper Rhine
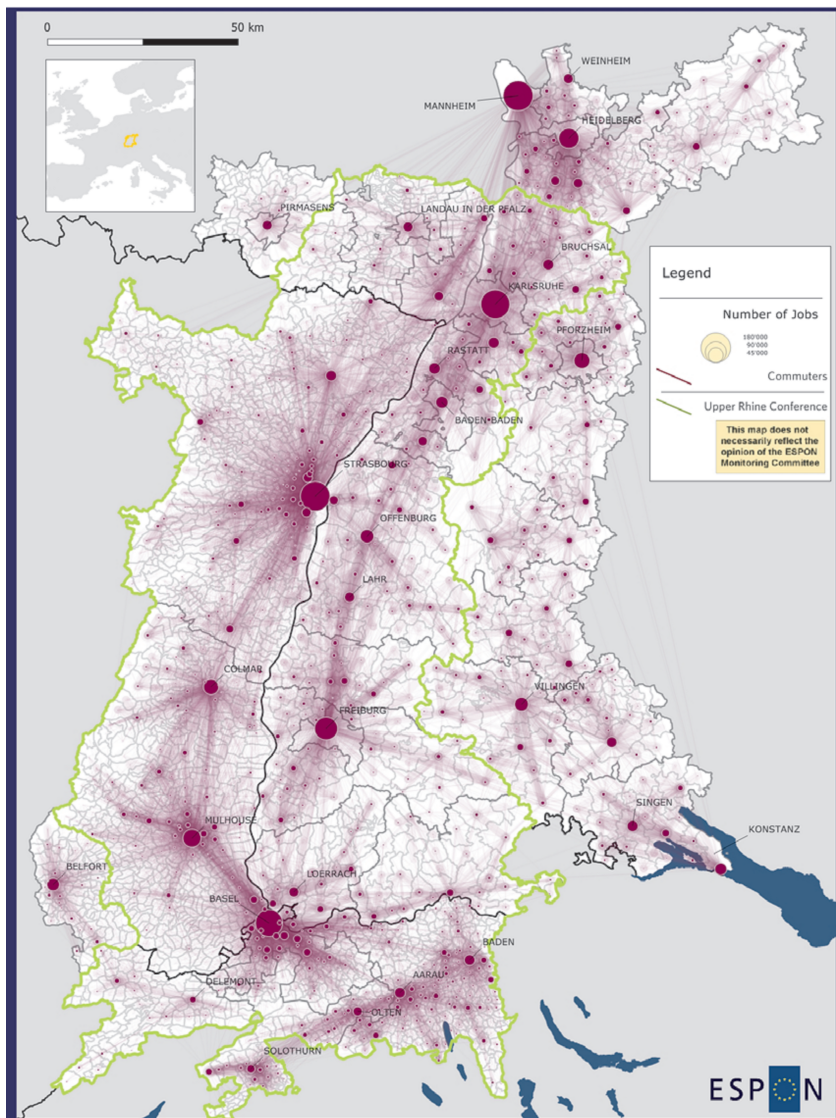
Source: ESPON Metroborder 2012: 42

Although there are over 300 SME networks in the Upper Rhine, only 12 are active across borders. It is estimated that of the 200,000 companies in the Upper Rhine, no more than 5 % are involved in direct cross-border cooperation relationships. Of the approximately 175,000 students enrolled in the Upper Rhine, a maximum of 1,500 are likely to be mobile across borders between different universities and higher education institutions within the framework of EUCOR. There are 38 cross-border study programmes in the Upper Rhine – but there are also many more study and other training programmes that are not designed to be cross-border and/or are at least explicitly open to cross-border students.

Although these few figures show the enormous potential for cross-border cooperation, they also illustrate that the factuality of cross-border cooperation is still very low in many areas and, above all, in comparison to national contexts, still the exception rather than the rule. An even clearer picture emerges when one attempts to quantify the cross-border organisational profile. On the basis of the available statistics and using the average shares of the public service in total employment in France (23 %), Germany (11 %) and Switzerland (22 %), it can be assumed that in the trinational region of the Upper Rhine, for an area of 22,000 sq. m. and with 6 million inhabitants, around 470,000 public servants are employed at the various institutional levels of the deconcentrated state and territorial self-government. Of these, a maximum of 1,000, i.e. 0.2 %, are estimated to be involved in cross-border cooperation.[223] Of this already very small group, in turn, hardly more than 100 FTE (= 0.02 %) are likely to be employed as full-time actors in cross-border institutions and projects or in the corresponding staff units and specialist departments of public administrations. Although the Euro-Institut trains almost 4,000 public servants in cross-border cooperation every year, it reaches only 0.8 % of its potential target group.

Secondly, it should be noted that a public legal framework for cross-border cooperation does not exist in substantive terms. Although codified cross-border administrative tasks can be derived in individual areas of law (e.g. domestic law on spatial management planning may provide for consulting the neighbour in the case of relevant impacts, or the relevant

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223 The number was calculated from the 700 actors working in the various working groups and expert committees of the ORK, 170 actors working on cross-border issues in cross-border institutions and with the institutional partners of the cooperation, and 130 other actors at the municipal level and in cross-border projects/project groups.

EU-wide regulations also provide for corresponding procedures in the environmental field), there is no transnational general or specific (administrative) law, i.e. an essential prerequisite of public administration is missing: the legal programme of tasks. In addition, the intergovernmental and supranational agreements that have codified instruments and forms of cross-border cooperation do not constitute transnational law either, since the details of the functioning of e.g. a cross-border local special-purpose association according to the Karlsruhe Agreement , an EGTC[224] or also the instrument of Euroregional Cooperation Groupings (ECG) newly created by the Council of Europe within the framework of the 3rd Supplementary Agreement to the Madrid Convention, are materially determined by the legal systems of the respective host country. The German Länder, for instance, have not yet really made use of the possibility of transferring sovereign rights to neighbouring institutions in areas where the Länder are responsible for the execution of state tasks, which was codified in Article 24 (1a) of the Basic Law as part of the reform of federalism in 2006 – although cross-border cooperation in the area of security, for example, would be an obvious option for this.

Thus, from the overall spectrum of the classic administrative functions of regulatory administration, economic administration, organisational administration, political administration and service administration[225], only service administration and coordinating administration can actually be practised in a cross-border perspective. If, however, any cross-border subordination structure is to be excluded from the outset, then large parts of classic administrative activity are excluded from the cross-border perspective too – also the planning and thus ultimately also prospectively shaping administration, if it wants to produce more than symbolic planning documents without implementation competence. A planning requirement, such as that established in the cross-border context of the Verband Region Stuttgart in the German context or the creation of Metropolitain region in France at the supra-local level, would de facto be just as inconceivable cross-border as the supra-municipal (and, from the point of view of the affected districts, cross-border) "upzoning" of task competence in the area of social policy, as it happened with the creation of the Hannover Region in Germany: On the one hand, the corresponding legal foundations are lacking in *all* national partners, and on the other hand, no political will on the part of the acting actors to tackle such a transnational structural

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224 EGTC REGULATION.
225 Hesse/Ellwein, 2012: pp. 465

formation can be discerned to date. Also, a new administration[226] based on the criteria of effectiveness and efficiency of public task fulfilment, i.e. the adaptation of administrative scales to new socio-economic or functional challenges in a cross-border perspective (so-called 360° perspective) is hardly possible at present, although there have been and still are repeated (more or less successful) attempts to redesign cross-border relations administratively, e.g. in the urban-rural relationship, on the basis of national and international examples[227].

The various cross-border institutions themselves, on the other hand, can at best be regarded as symbolic rather than constitutive elements of a cross-border *system of government:* Neither the Upper Rhine Council nor the Eurodistrict councils or even the project councils can be understood as transnational elected parliaments, a cross-border judiciary is completely missing, and the Upper Rhine Conference, Eurodistrict offices, INFOBEST, city-networks as well as the various cross-border working groups cannot be interpreted as executives in this sense. In contrast, what appears to be a characteristic structural feature of analytical interest from an administrative science perspective is the de facto dominance of project organisation as a cross-border organisational pattern. However, this opens up an understanding of cross-border administration that must be regarded as secondary from an organisational science point of view: if the secondary organisational patterns have a formative effect on the cross-border administrative context, this is likely to be a further indicator that cross-border administration in the classical self-understanding of a primary organisation – and thus ultimately also the prerequisite for the emergence of a transnational administrative culture – does not exist in the proper sense. Using the criteria and definitions presented above , the subject of study would simply be missing from the administrative analysis, and the question would have to be asked to what extent the search for the corresponding "software" makes sense at all without the existence of a proper "hardware".

On the other hand, the analytical perspective, if it wants to do justice to the cross-border realities from the perspective of political and administrative science, should not be narrowed by the search for the normative figure

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226 Wagener 1974
227 In the past, these were, for example, in the Strasbourg-Ortenau area, the attempt in the 1970s to form a district based on the Washington D.C. model, in 2004 the initiative to create a Strasbourg/Ortenau Eurodistrict and, most recently, the procurement of Eurometropolis status for Strasbourg with a strong cross-border orientation.

of thought of a cross-border administrative culture. In the cross-border context, intercultural and inter-institutional project structures certainly stand for a specific form of cross-border administrative and cooperation culture, and they differ in their functionality from project structures and "cultures" of the national context. If project organisation is still the exception rather than the rule in the national home administrations, the opposite pattern can apply in the cross-border context. And if, moreover, the dominance of management careers in the public administration can be used to draw conclusions about specific administrative-cultural patterns of the national public administration[228], this applies in the opposite direction to the cross-border context: the facticity of the project organisation can be interpreted as an indicator of an administrative-cultural pattern in the cross-border organisational structure and the corresponding cross-border project careers as a corresponding pattern of their administrative-cultural personnel structure. This pattern is complemented in the view of the organisational structure of cross-border cooperation by a dominance of the staff unit structure: Due to the cross-sectional character on the one hand and the specific inter-institutional coordination needs on the other, the cross-border responsibilities at the level of the partner administrations involved are usually not located in the line organisation, but close to the management level. In addition, within the staff units, these are again only one subtask among others, alongside European or international and/or territorial or functional prospectus tasks. Accordingly, the mediation functions between staffs and the technical lines are very preconditional: The functional anchoring of cross-border issues in the day-to-day business of the departments must be carried out again and again in a political "top-down procedure" and then from within the staffs themselves. The classic field of tension between staff and line[229] is particularly pronounced in cross-border affairs – and thus of particular relevance from the perspective of transnational administrative culture – because in addition to the usual conflicts of responsibility, which in case of doubt can still be controlled by committed political leadership, there are further "veto potentials" at the motivational and competence level of the departments: Without proof that a cross-border engagement can also generate real added value from the point of view of the professional fulfilment of tasks as well as the individual career perspective, the professional level will usually limit itself to soft forms of encounter with the "colleagues on the other side of the

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228 Cf. Hopp/Göbel 2008: 392
229 Cf. König 2008: pp342; Hopp/Göbel 2008: 188

border", and in the process, in case of doubt, will use the existing systemic differences (lack of comparability, different distribution of responsibilities, different work cultures, etc.) as an obstacle to a cross-border engagement – an option that does not exist in this form within in the domestic national context. Admittedly, there are also cases in which cross-border cooperation is initiated and consolidated precisely from the professional line, as the example of the working and expert groups of cooperation structures designed for the long term, such as the Upper Rhine or Lake Constance Conferences, shows. In contrast to the "vertical professional brotherhoods" (Frido Wagener) of the national context, the enabling function and thus the functionality of such cross-border "horizontal professional brotherhoods", which would then be understood as enabling transnational sectoral administrative working-cultures, must, however, be regarded as comparatively much smaller in view of the existing system differences: a closer look shows, that it is usually the selective cooperation of professional „lone fighters“ – who see themselves as "cross-border pioneers" and who, in part, are motivated by personal affinities.T The following diagram summarises the essential differences between the national administrative context and the functional characteristics of the cross-border cooperation system:

Figure 12: Major differences between national administrative context and cross-border cooperation system

	National administrative context	**Cross-border cooperation system**
Task justification	Substantive legal framework, permanent tasks	voluntary, selective
Administrative functions	Regulatory administration, economic administration, organisational administration, political administration, service administration	Coordinating (service) management
Organisational structure	Line organisation with sectoral specialisation and complementary project organisation	Project organisation with complementary staff units

	National administrative context	**Cross-border cooperation system**
Staff structure	Specialist teamwork rather rare	GeneralistsTeamwork dominates
Career path	Management and specialist career	Project career
Process pattern	formalised, division of labour	informal, integrated
Control pattern	output/impact oriented	input / legitimacy oriented
Funding	Usually permanent: Voted policy-budgets	Usually limited in time: Project budget
Institutional differentiation	Legislative, executive, judiciary	Executive only

In this respect, there does not seem to be just one transnational cooperation culture, but different path dependencies in the development and design of cross-border cooperation. Thus, in perspective, the search for the relevance of the administrative culture factor on the transnational "meso level"[230] would also have to differentiate, depending on the sectoral administrations involved.

Such a cross-border system of action, differentiated according to the principles of horizontal and vertical subsidiarity, as described in more detail in the following chapter, appears to be a necessary prerequisite for better developing the existing territorial, intercultural and identificatory innovation potentials of cross-border territories and thus their specific function for European integration in the future. The question of the emergence of a transnational administrative culture is directly linked to this.

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230 Cf. Beck 2007: 34

5. Capacity development, horizontal subsidiarity and mutual recognition as basic operating principles

5.1 The practical challenges of cross-border governance – a need for capacity building

The horizontal analysis of the contributions of a joint research project with the title "Living and Researching Crossborder-Cooperation", carried out by the Euro-Institute and the University of Strasbourg with more than 100 contributions coming from both the academic field and from practitioners of cross-border cooperation[231] allowed to identify two generalized patterns of cross-border-policy-making in Europe. One first conclusion that we were able to formulate on this basis[232] is the hypothesis of a certain *convergence* with regards to the practical functioning of cross-border cooperation in Europe. This convergence is mainly caused by the procedural logic of the financial promotion programmes of the European Commission with regards to the ETC objective ("Interreg") leading to more or less unified practices regarding the implementation of elements like the partnership-principle, the principle of additionality, multi-annual programming based on SWOT-analysis, project-based policy-making, project-calls, financial control etc. As a consequence we can observe, during the last two decades , a general pattern of CBC policy-making that is characterized by a shift from informal exchanges to more concrete projects, from general planning to attempts for a more concrete policy- implementation, from rather symbolic to real world action, from closed informal networks to more transparent and official institutions.

In addition the role and the perception of the very concept of the border has changed considerably: the separating function is less important today but more and more replaced by an integrated 360° perception of the cross-border territory and its unused potentials. At this level it is not so much the impact of the European programmes and their sometimes a bit too ambitious objectives as such, but rather the change in the perception of the local and regional actors themselves, which after years of

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231 Wassenberg 2010; Wassenberg/Beck 2011a, 2011b, 2011c; Beck/Wassenberg 2012a, 2012b
232 Beck 2012a

sometimes frustrating experiences, leads to a certain positive pragmatism when it comes to cross-border issues: it becomes more and more evident that cross-border institutions today are more platforms than real administrative units, allowing for the very pragmatic search for joint solutions to common local problems resulting from the increasing border-crossing socioeconomic dynamics[233], in areas such as transportation, spatial planning, environmental protection, risk prevention, citizens advice and health cooperation, etc. rather than for the definition and implementation of big strategic ambitions.

The research project has on the other hand allowed to identify a second general pattern, which is represented by *seven central challenges* of *CBC policy-making*, determining and often still hindering – however with differences regarding their intensity and combination – the horizontal interaction in cross-border territories everywhere in Europe[234]:

– Developing functional equivalences between different politico-administrative systems: How to develop functional interfaces that allow for successful cooperation between partners coming from different institutional domestic backgrounds with regards to distribution of power and resources, professional profiles and sometimes even the scope and the legitimacy for transnational action as such[235]?

– Creating effective knowledge-management for the cross-border territory: How to generate and use valid information about the characteristics, the real world problems, but also the potentialities of a cross-border territory in a 360° perspective, how to base future action on a sound and integrated empirical basis and thus avoiding a negative "garbage can model"[236] practice of cross-border policy making (ad hoc solutions developed by individual actors, based on individual preferences in search for an ex post justification and a real world problem).

– Transferring competencies from principals to agents: How to reduce the dependency of cross-border actors and policy-making on the respective domestic context by identifying fields of cross-border action that best can be implemented by a transfer of real administrative and functional competence from the national jurisdictions towards cross-border

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233 Beck/Thevenet/Wetzel 2009
234 Beck 2014; Casteigts 2010; Chilla 2015; De Sousa 2012; Harguindéguy/Sànchez-Sànchez 2017
235 Beck 2008
236 Cohen/March/Olsen 1972

bodies with sufficient administrative, financial personnel capacity and how to design decision-processes in this regard[237]?

– <u>Optimizing the interaction between actors:</u> How to turn the confrontation of different cultures, attitudes, expectations, assumptions, values, interests etc into a productive working context, which allows for the avoidance of mutual blockages and the development of innovation and real added-values instead[238]; how to integrate actors representing different sectors (public, private, societal) and cultures into existing patterns and structures of cooperation, how to create and manage inter-sectoral synergies in a cross-border perspective[239]?

– <u>Finding the right level of organisation and legal structure:</u> How to find the right degree of institutionalization and the right legal form for different cross-border tasks by developing a good balance between open network and classical organizational approaches when structuring the cross-border working context; how to avoid both the case of institutional sclerosis and informal/individual arbitrariness[240]?

– <u>Capturing and measuring the value added and the territorial impacts:</u> How to pre-assess cross-border impacts of different policy-options before taking action on the preferred one; how to develop and inform specific indicators allowing for a better demonstration of the specific value added of the integrated cross-border action compared to an action taken by the neighbouring jurisdictions separately[241]?

– <u>Increasing the sustainability beyond a simple multi-project approach:</u> How to avoid the case of multiple uncoordinated sectoral projects which creates fragmented cross-border activity for a certain time (funding) period only, by strengthening the target-orientation and selectiveness of cross-border policy-development based on integrated (eg. inter-sectoral) territorial development strategies[242].

It is evident, that the seven challenges cited above are at the same time the central fields for any capacity-building approach responding to the needs of a future multi-level-governance perspective of cross-border cooperation[243]. This includes not only the question of how individual actors or

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237 Benz/Scharpf/Zintl 1992
238 Demorgon 2005; Eisenberg 2007; Euro-Institut 2007
239 Beck/Pradier 2011
240 Beck 1997
241 Tailon/Beck/Rihm 2011
242 Casteigts 2010
243 Scharpf 1994; Beck/Pradier 2011; Jansen/Schubert 1995; Nagelschmidt 2005; Beck/Wassenberg 2011

members of institutions can be better trained in order to cope with these challenges. Rather the overall systemic question is on the agenda, e.g. how the entire cross-boder cooperation-system can be improved and professionalized in order to reach a new level of quality which allows for a better development of the endogenous potentials of this type of territory within the context of the overall objective of territorial cohesion in Europe[244].

It is amaizing to see, how the well known and very basic definition of the concept of " capacity-building ", developed by the UNDP within a rather different context, can inspire such a reflexion on the future of cross-border policy-making in Europe. According to UNDP (2006), capacity-building or capacity-development "...encompasses ... human, scientific, technological, organizational, institutional and resource capabilities. A fundamental goal of capacity-building is to inhance the ablility to evaluate and address the crucial questions related to policy choices and modes of implementation among development options, based on an understanding of environment potentials and limits and of needs perceived by the people of the country concerned "[245]. Accordingly, capacity-building has to cover three levels : a.) the creation of an enabling environment with appropriate policy and legal frameworks, b.) institutional development, including community participation and c.) human resources development and strengthening of managerial systems.

As these three elements refer directly to the seven challenges of cross-border cooperation identified above it seems promising to better exploit the concept of capacity-building within the context of cross-border cooperation in Europe.

5.2 Training and facilitation as basis of capacity building in a cross-border context – The Euro-Institut apprach

Border regions everywhere have specific characteristics. A wide range of social and economic phenomena have a 'border crossing' dimension, in areas as different as transport, labour markets, service delivery, consumption patterns, migration, criminality, pollution, commuter movements, tourism and leisure time activities. All of these require close cross-border cooperation between neighbouring states. However unlike in the national context, where regional cooperation takes place within a uniform legal, institution-

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244 Frey 2003
245 UNDP 2006: 7

al and financial framework, cross-border cooperation faces the challenge of managing different politico-administrative systems which have a distinctive legal basis and are usually characterised by different degrees of vertical differentiation in terms of structures, resources and autonomy of action[246].

After a long post-war experience, where cross-border-cooperation was mainly marked by it's reconsiliation function[247] we are now in Europe on the threshold of cross-border cooperation of a completely new quality[248]. With the new cohesion policy of the European Union, attaching much greater importance to territorial cohesion and the extent of real impacts of cross-border actions[249], but also thanks to a new generation of actors[250], who are more interested in results than procedures, many border territories are currently redesigning and trying to strengthen their given pattern of cooperation[251]. At the same time, cross-border cooperation should continue to be developed and enhanced by a capacity building structurally and functionally, so that it is up to the real importance of border territories for the future European integration process[252]. Two practical fields seem of particular importance in this respect : strengthening training/facilitation and further developing the institutional capacity of cross-border cooperation.

One of the key bottlenecks preventing the deepening of cross-border cooperation in Europe is the lack of knowledge and understanding of the political and administrative systems of the neighbouring countries. A successful cross-border cooperation needs qualified actors who are able to close the gap between the subsystem and its specific functional characteristics and the functional preconditions provided by the different domestic juristictions involved[253]. One approach, which has been very successful for more than 25 years now, is the creation of a specific institution, which exclusively works on CBC training – the Euro-Institute Kehl/Strasbourg[254]. This bi-national institution contributes to the improvement of cross-border cooperation by continuing education and training and provides practical advice and coaching to practitioners in the cross-border field. In this

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246 Casteigts 2010; Beck 1997; Lang 2010
247 Boehm/Drápella 2017
248 Beck 2011
249 Tailon/Beck/Rihm 2011
250 Botthegi 2014
251 Casteigts 2010
252 Jakob/Friesecke/Beck/Bonnafous 2011
253 Jann 2002; Beck/Thedieck 2008
254 Beck 2008b

way, the Institute has become a facilitator for successful cross-border cooperation in the Upper Rhine region and in Europe with regard to public policies, and contributes actively to the resolution of problems resulting from different legal and administrative systems.

The Euro Institute`s training product is structured according to the needs identified by the actors involved in cross-border cooperation. The main characteristic of this product is its bi-national and bicultural orientation, and the main target groups are the employees of the state and local administrations in Germany, France and increasingly Switzerland. Its training courses are also open to participants from the private sector, and from research institutions, universities, civil society associations and other groups.

Based on the Euro-Institute's experience, training in a cross-border context as part of an overall capacity-building approach should develop at least three levels of personal skills:

Basic training on cross-sectoral competences

The basic component of such a training approach is the development of the cross-sectoral skills and competences necessary for any cross-border and/or inter-regional cooperation. The main objective here is to provide those involved with the necessary institutional and legal knowledge about the politico-administrative system of the neighbouring states and about the system of cross-border cooperation itself. In addition, the relevant instrumental, methodological and linguistic skills must be trained in order to prepare and structure the proposed cross-border activity in advance. It is very important to sensitise the future actors about the importance of the intercultural factor and to provide them with the necessary tools and methods of intercultural management. Curses should also provide participants with the specifics of managing cross-border projects in terms of planning, financing, organisation of meetings, and monitoring and evaluation.

The courses and qualifications provided under this first level meet an increasing demand at our Institute. The more cross-border cooperation becomes an everyday reality, the more new actors face the challenge of becoming better trained and qualified in terms of the skills the course covers. Nearly all public institutions in the Upper Rhine valley are now seeking well qualified people who can represent them in both formal and informal cross-border cooperation situations.

Specialised training

A cross-border training programme should then also provide specialised training courses which are more oriented towards representatives from the different administrative sectors in the neighbouring states. The content of these courses consists of selected policy-oriented topics within cross-border cooperation. The aim is to provide a neutral platform for exchanges between specialists from the different countries so that they can better understand the specific sectoral competences and organisational structures in the other countries, and identify differences and similarities with their own – or just allow them to get current information and analysis on policy developments and good practice in the neighbouring state. At the Euro-Institute, this training mainly consists of two day seminars, including informal exchanges during an evening event on the first day. As most cross-border problems have a sectoral or thematic component, and thus require cooperation between the relevant sectoral services, these specialist seminars are very often the starting point for future joint projects, and sometimes even lead to the establishment of bilateral or trilateral standing working groups.

A specific programme deals for instance with cooperation between the French and German police, justice and gendarmerie services in the context of the Schengen treaty. This programme, which consists of five annual seminars, was established in 2004. It is accompanied by a steering committee of high-level representatives from the participating administrations which select the topics and annually evaluate the course, which has been developed by the Euro Institute.

Developing competences on European affairs for local and regional authorities

At a third level, it seems necessary to enhance the capacities of national public administrations with regards to European integration. Most local and regional administrations take a very pragmatic view and see Europe mainly as an opportunity to access EU financial support programmes like INTERREG. This is a legitimate position which raises numerous practical questions: how to find the right partner across the border; how to fill in the application form; how to set up a project's organisation; how to manage a cross-border budget; how to justify expenses; how to define good progress and impact indicators, and how to make a project-oriented

monitoring and evaluation system work. Although the INTERREG secretariats of the relevant Operational Programmes usually do a very good job, practical experience shows that local and regional partners are very often overloaded by the complexity of the reporting and accounting demands, imposed on them by the funder. In addition, project partners coming from different jurisdictions often have different perceptions of these demands, and have to deal in the day-to-day running of a cross-border project with national administrations with quite different administrative cultures. This is why the Euro Institute, using its own extensive experience of such projects, provides adaptable practical coaching to both the individual project leader and the bi- or tri-national project teams as an intercultural group. This contributes to the smooth functioning of the project teams, helps to avoid blockages, and thus facilitates both project and programme implementation.

Under the EU-objective of territorial cohesion, more and more local and regional authorities want to participate in inter-regional or even transnational projects, and are developing partnerships with other European regions. In this context the question of good practice in international network management arises: how to build and maintain a solid international partnership; what is the relative position of the actors in the network; how to prepare and manage international meetings and so on. Here the Euro Institute also provides practical assistance.

Last but not least, the local and regional authorities are increasingly realising to what extent they are affected by European legislation. The fact that at the sub-national level 70 % of all local and regional administrative action is more or less determined by EU law, raises the question of how to become more actively involved in the preparation of this law and how to better represent local and regional interests in its formulation. Based on the wide practical experience of its former Director, who has since 2004 been an accredited trainer on Impact Assessment for the European Commission's Secretariat General, the Institute helps local and regional actors to become more familiar with the relevant procedures at EU-level and teaches them how to contribute actively to stakeholder consultations and *ex ante* impact assessments, which increasingly have to consider regional and/or trans-regional dimensions.

A thorough knowledge of the politico-administrative system of the neighbouring country is a prerequisite for any efficient cross-border cooperation. The main difference of the Euro Institute's training courses compared with those of a national training organisation is therefore a real concentration on themes arising out of the needs of the cross-border pro-

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fessionals within the various sectors. Also, the fact that the training courses are always inter-service, bi-national and bilingual in nature has contributed to their high acceptance among participants. We have found that partnerships between the relevant administrations are best developed when the courses are prepared by an *ad hoc* group of different national specialists. Such preparation requires a lot of time and investment by the partners – but it is a necessary precondition for any effective bi-national training product, which not only considers the intercultural dimension but actively uses it in terms of content, methodology and participation. For successful cooperation with no 'mental frontier', trainers too must understand that they have to reconsider their whole way of thinking, recognising that constructive cooperation is not possible without knowing and respecting the structures, working methods and ethos of the neighbouring country's system – as well as fully understanding one's own!

The contribution of the Euro Institute in making this partnership principle really work is twofold: providing a neutral platform, and facilitating intercultural and inter-service exchange. Most important in this respect is a strategic positioning which is able to respond quickly to the real needs of the participants. Sometimes this means to be modest in one's aims and to provide only technical and logistical support. However, the provision of methodological and linguistic competence along with solid experience of good practice in intercultural management[255] are the hallmarks of the Euro Institute[256].

The success of this Euro-Institute approach has ultimately lead to the creation of a new European actor: the transfrontier Euro-Institut-network (www.transfrontier.eu) aiming to built up training capacity on cross-border questions at an EU-wide level. 12 partner-institutions coming from 9 different cross-border contexts all over Europe decided to propose a coordinated answer to the increasing need for knowledge, competences, tools and support on cross-border affairs. Regarding the rising awareness of the importance of cohesion policy in Europe, the idea of the Network is to build capacities in cross-border and transfrontier contexts and this way strengthening the European integration. In order to achieve this goal and to have an extensive overall view of the territorial specificities in Europe, the project coordinator has been careful to invite partners from different parts of Europe to participate in the project. Hence, the partners involved in this project come from "maritime borders", "old European borders",

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255 Hall 1984; Hartmann 1997
256 Euro-Institut 2007

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"new eastern borders", "peace keeping borders", "external borders", as well as "overseas borders between outermost regions". As such, the partnership will be able to gain a comprehensive overview of the need for the professionalization of actors in cross-border cooperation and also gain insight into the current situation regarding transfrontier cooperation.

TEIN gathers training organizations and universities and aims at facilitating cross-border cooperation and at giving concrete answers to the need of Europe for professionalizing actors on transfrontier issues. The "identity and reference grids" of all the partners testify from the quality and the great experience of each partner. The partners of TEIN exchange best practices, analyse the specificity of training and research on cross border issues/in cross border contexts, capitalize on and draw synergies from the different local initiatives, work on new products like transferable training modules (training for cross-border project managers, etc.), methods (need-analysis methods in cross-border regions, etc.), tools (impact assessment toolkit, etc.), produce valuable research in this field and assure that newest research results within this field are disseminated to actors involved in transfrontier cooperation. TEIN will develop a joint certification system for cross-border training in Europe and will also enable bilateral projects in fields of common interest (exchange of learning units, of lecturers, common research programme, involvement in conferences, etc.) and an increased knowledge and awareness of cross border issues (at local, regional, national and European level) by producing higher quality work in this field.

5.3 Horizontal subsidiarity : setting the frame for a systemic capacity building

In addition to training/facilitation, which has been outlined in more detail above, three further and more fundamental components of a systemic cross-border capacity-building seem to be of particular strategic interest:

Strengthening the evidence base of cross-border policy-making: One central weakness of most cross-border policy-making consists in the lack of tangible base-line information regarding both the real world strengths/weaknesses and the potentials of the cross-border territory in question. The national and regional statistics often suffer from a lack of comparability and specific analysis on the characteristics and the magnitude of the socio-economic cross-border phenomenon (be it mobility of citizens, economic exchanges and relations, transport and traffic movements, exchanges between universities, students, associations etc) which results in a

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challenge of both quantification and qualification. In addition, the results of the SWOT-analysis carried out at the beginning of a new INTERREG programming period, are often not really binding later on, when the selection of project applications actually takes place. In turn, both the programme and the project level have difficulties to describe and capture the specific cross-border added-value of the actions that were funded – mostly due to the absence of credible impact-indicators and a meaningful data generation that requires both specific qualitative and quantitative methods.

Under the new generation of the cohesion policy, the idea of evidence based policy-making has a prominent place. Cross-border territories will have to strengthen their efforts to creating and proceeding tangible impact information in the near future. This is also a prerequisite for any cross-border policy-approach that wants to become more strategic in the sense of a more focused and concentrated pattern that concentrates on the integrated development of territorial potentials (360° perspective) instead of multiplying disconnected sectorial projects.

With the Impact Assessment toolkit for cross-border cooperation, the Centre for Cross Border Studies in Ireland and the Euro-Institute have developed an instrument that can be very significant in this regard, allowing for a much more evidence based policy- and project development in the future[257].

<u>Promoting CBC at EU-level:</u> From the perspective of cross-border territorial cohesion the frequently different implementations of EU law by the neighbouring countries regularly leads to technical and political asymmetries, which often even reinforce structural differences rather than leveling them. It must be worrying that the comprehensive annual work output of the European Commission (on average, these are several thousand proposals for directives, policies, regulations, decisions, communications and reports, green papers, infringement procedures per year) does not explicitly consider possible impacts on the European cross-border territories so far – although it is evident how strongly they are affected by it. It therefore seems necessary that cross-border territories become more visible with regards to their specific implementation role and thus get more explicitly considered by the European policy-maker when developing strategic key-initiatives. In the European Commission's impact assessment system[258] a specific cross-border impact category is currently still lacking. However,

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257 Tailon/Beck/Rihm 2010
258 European Commission 2017

cross-border territories could become ideal test-spaces for the ex-ante evaluation of future EU policies. On the other hand this would require a real awareness of cross-border territories to also actively engage in this in a coordinated manner, and – for instance – present joint opinions and impact analysis throughout official thematic consultations, launched by the European Commission. It is evident, that also a joint and coordinated thematic lobbying and advocacy activity of cross-border territories should be strengthened in this regard. The European macro-regions have shown how the interests of specific types of cross-border areas may well find their way into European strategies.

Developing a multi-level-governance based on "horizontal subsidiarity": In the perspective of a systemic capacity-building approach it seems desirable to strengthen and enlarge the scope of action of the sub-system of cross-border-cooperation in Europe. Overcoming the seven challenges cited above would require multi-level governance that leads both to a much closer and more integrated cooperation and a much clearer functional division of labour between the different levels of cooperation. In such a perspective the EU-level would anticipate impacts of future EU-initiatives on the cross-border territories at an early stage and would allow for a better inter-sectoral coordination between the different thematic policy-areas and institutional competences which have a logical border crossing dimension. Integrated policy-making would require, for instance, standing inter-service groups on cross-border cooperation, which are themselves interlinked with relevant groups of the Committee of the Regions and the European Council and Parliament.

The member states (and their territorial subdivisions) would on the other hand support cross-border cooperation actively and would allow for flexible solutions to be developed on the borders. This would lead to a new operating principle, which I recently described as *horizontal subsidiarity*[259] : Whenever a policy-field that is relevant for horizontal exchange, cannot be harmonised at the European level, member states should then at least try to set the frame via direct coordination with their neighbouring states. The term "horizontal subsidiarity" means in this respect, that with regards to cross-border policy-issues the "smaller" cross-border unit should have the possibility to solve a problem or handle a question prior to the intervention of the "bigger" national jurisdiction. This would then require that the smaller unit will become enabled by the provision of the necessary legal flexibility: experimental and opening clauses in thematic regulations and

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259 Beck 2012b

exemptions based on de minimis rules, allowing for diverging solutions to be developed „bottom-up" in the border area compared to the national context (whenever a cross-border phenomenon does not exceed a certain level of magnitude – e.g. 5 % of the population being commuters, 3 % of the students studying at the neighbouring university, 2 % of patients asking for medical treatment with a doctor beyond the border – an execution to the national rules will be allowed). It is promising to see, that these ideas have ultimately been taken up by the national legislators in France and Germany within the socalled „Aachen Treaty" from 2019[260]. The proposal of the European Commission to establish a socalled „European cross-border mechanism (ECBM)"[261] goes into the same direction (see also chapter 8).

The local and regional actors on the other hand would have to develop shared cross-border services[262] and transfer domestic local/regional competencies to joint cross-border bodies with real administrative competencies for concrete implementing missions within relevant cross-border fields. Instead of building or maintaining relatively expensive public infrastructures separately on both sides of the border in service areas such as health, leisure time, schools, kindergarden, fairs, libraries but also transport operators, hospitals, fire department or civil protection etc., local and regional actors would develop complementary fields of specialization and share their infrastructures with local and regional actors from the neighbouring state. This could give cross-border cooperation a completely new finality, allowing not only to save scarce resources but also to symbolize both the permeability and the added-value of the "joint" cross-border territory from the point of view of the ordinary citizen.

The conceptual foundation of the interlink between the subsidiarity and the governance dimension on the one hand and the vertical and horizontal differentiation of both principles on the other are illustrated – for the case of cross-border-policy making – in the following graph:

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260 Beck 2019
261 Proposal for a "mechanism to resolve legal and administrative obstacles in a cross-border context" COM(2018)373
262 Tomkinson 2007; AT Kaerny 2005

Figure 13: Horizontal Subsidiarity within cross-border cooperation

The vertical and horizontal dimensions of multi-level governance and subsidiarity in cross-border cooperation
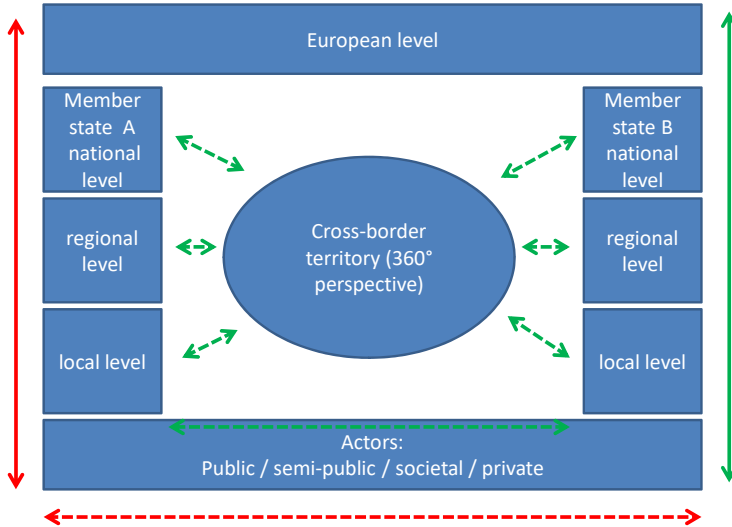
In the perspective of European integration, a great deal has already been discussed and written about the principle of subsidiarity. With the reform of the Treaty of Lisbon, this was enshrined in Art. 5 (3) and, in particular, two important instruments were made available to the national parliaments in the form of the early warning system and the subsidiarity complaint. In the academic and practical debate on integration, however, it is noticeable that the concept of subsidiarity, and thus subsidiarity as a normative concept, is used almost exclusively in a vertical perspective: An upper (in this case European) state level may only take action if a lower level (in this case a national or sub-national level) cannot fulfil a certain task better or would be overburdened with the fulfilment.

In terms of the history of ideas, however, the concept of subsidiarity has its origins in a more horizontal perspective: namely as a general maxim according to which the individual responsibility of a smaller unit (individual, private, small groups) should have priority over that of larger units (groups, collectives, higher forms of organisation such as the state); the public sector should therefore only become active if the individual, a social organisation or association, the economy, etc. cannot fulfil a task equally or better.

Subsidiarity can be regarded today as a general principle of social organisation, whereby in the state-theoretical perception the primacy of action of the more efficient smaller unit is accompanied by a duty ofsupport by the larger unit if it is overtaxed, which has led to the development of two alternative concepts with regard to the "burden of proof" (defensive = view of the smaller level vs. complementary = view of the larger unit).

If one considers the cross-border areas of Europe and the cooperation taking place in them as a specific, horizontal form of European integration, it is obvious to (re)interpret the principle of subsidiarity in this sense as well: Subsidiarity in cross-border cooperation then refers to the horizontal relationship between a cross-border area and the institutional or individual stakeholders acting in it, and which are thus forming a subsystem of decentral transnational cooperation (= the smaller unit) and their national political, legal and administrative domestic („mother") systems, by which they are functionally supported and on which they are dependent (= the larger units). Accordingly, the smaller unit would always be given priority over the larger units if a task related to the cross-border area (development or problem-solving task) can be better fulfilled horizontally-decentrally. Conversely, the larger units should only be responsible if the smaller unit cannot perform the cross-border task better.

The conceptual justification of such a horizontal subsidiarity thinking follows a rather simple consideration: If cross-border cooperation is depending on active contributions by actors coming from diverging political-administrative and legal sytems, and if this divergence creates substantive legal and administrative obstacles, then a transnational cooperation system should be equipped with the necessary formal and functional implementation competences, that allow the stakeholders, acting on the transnational ground, to develop effective and efficient solutions jointly without beeing hindered by externally caused structural or functional restrictions.

A "horizontal" understanding of subsidiarity in cross-border cooperation interpreted in this way would mean consistently changing the de facto distribution of competences that exists today and thus also the "burden of proof" on the side of tasks and competences: It is not the member states and/or their territorial subdivisions that are primarily responsible for cross-border matters, but rather these are only responsible if cross-border (corporate) actors of the smaller unit cannot properly fulfil the integrated cross-border territorial responsibility. Conversely, this would of course first of all require that the smaller unit be put in a position institutionally, materially and functionally to the extent that an appropriate fulfilment of tasks for the cross-border area is possible at all. Through the necessary

development of a functionally appropriate cross-border administrative capacity – similar to comparable cross-border approaches to action in the national context, such as the city-regional associations or the metropolitan regions[263] – the situation that still exists in many cases today could be overcome, whereby cross-border matters – at least from the point of view of the "home administrations" involved – are often still regarded as something "voluntary", selective, etc. and thus only as a "secondary" policy field.

Now it is obvious that in cross-border cooperation under the real-world conditions of "micro-diplomacy"[264] such a principle of horizontal subsidiarity cannot mean that the larger units relinquish state sovereignty or the responsibilities for the fulfilment of tasks laid down in the national legal systems to the cross-border area in favour of the smaller units, i.e. that this area reconstitutes itself as its own autonomous cross-border state entity. This is a "conditio sine qua non" for the participation and support of the member states, especially in young or politically sensitive, but also in established European border regions. The principle of horizontal subsidiarity is not intended to strengthen the autonomy aspirations of minorities or separatists at the Community's borders. Rather, what is meant by this is a new division of labour between the cross-border areas and their national partners, which is necessary in the interest of efficient cross-border task fulfilment that is appropriate to the problems and potential. In this context, the smaller unit should be given as much leeway as possible in the development and implementation of tasks so that it can best solve its specific cross-border challenges itself through the decentralised development of its own, adapted and flexible procedures.

A pragmatic first step in this direction could be to create separate cross-border areas of competence for the joint implementation and execution of tasks with genuine cross-border relevance (e.g. cross-border local transport, education and training, supply and waste management, labour market and business promotion, environmental protection and hazard prevention, social security and health care, etc.). For the participating municipalities, this requires the willingness to horizontally transfer the implementation of tasks in relevant areas of responsibility to usually supra-municipal cross-border administrations[265]. For the participating member states and their sub-national administrative subdivisions, this means that in all those areas

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263 BVBS 2011
264 Klatt/Wassenberg 2021
265 For example, in the Greater Geneva area, responsibility for the organisation and operation of cross-border public transport has been transferred to a newly creat-

of responsibility or law, in which the European legislator has not yet taken harmonising action – mostly due to a self-interest of the member states – and where a transnational need uof action is prooefd and can be justified, the issue in question would have to be horizontally bundled at least at the cross-border level and technically and inter-institutionally coordinated, i.e. carried out in an *integrative manner*.

To this end, of course, not all national specialised laws in mobility-relevant areas such as tax, labour, social or economic law can be adapted to all the different territorial specifics of the border areas (this would not work, if only because of the principle of equal treatment). However, it would be conceivable to insert at least at the ordinance level cross-border opening or experimentation clauses or – analogous to the so-called de minimis rule – at least certain exemption regulations for cross-border circumstances, which could allow for a more flexible adaptation to cross-border circumstances. The contours of a transnational administrative law would also have to be reflected for the future in order to provide resilient cross-border procedural regulations.

In addition, the role of the member states and their sub-national subdivisions should increasingly be to examine future initiatives of the European and national legislators from an ex-ante perspective (e.g. within the framework of the impact assessment procedures of the EU Commission or through national approaches to legislative impact assessment) to see whether they are also compatible with the cross-border conditions of the respective neighbouring states, so that – e.g. in the case of the "subsidiarity-friendly" directives – when European law is implemented by the member states, technical differences on both sides of the border are not established rather than harmonised. At the level of national legislators, a "border impact assessment" should be institutionalised analogously or within the existing systems of regulatory impact assessment, with which possible negative consequences of national law on neighbouring states can be recognised and taken into account at an early stage[266].

Within such a cross-border area of action strengthened by horizontal subsidiarity, two subsidiary internal perspectives would have to be taken into account. On the one hand, vertical subsidiarity between the different

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ed joint cross-border structure in which the two national municipal transport operators each hold a 50 % share.

266 A pioneering approach in this sense was realised in the German-Dutch border context through the establishment of the ITEM Institute at Maastricht University; cf. Unfried/Kortese 2019

spatial cross-border levels of action would have to be realised, in which the overall spatial level (e.g. the overall area of the Danube macro-region, the overall area of the Lake Constance Conference, the overall area of the Upper Rhine Trinational Metropolitan Region, etc.) would only become active within the cross-border task areas if smaller cross-border units (inter-communal cooperation, Eurodistricts, Euregios, etc.) are overburdened in their spatial and material competence. In this way, functional level-specific task divisions could develop in the cross-border area, which are suitable for reducing the duplication of work between different institutional actors and bodies of cross-border cooperation that can still be observed in many cases today. The prerequisite for such a perspective, however, would be the willingness of the actors acting at the decentralised level to actually trans-fer implementation and/or material design competences for the integrative cross-border performance of tasks to cross-border institutions within their nationally existing municipal fields of organisation – the exclusive creation of such institutions with legal personality seems to make little sense from a perspective without the second step of transferring material competences for action.

On the other hand, inter-sectoral subsidiarity should be strengthened much more. Whereas today in the vast majority of cross-border areas in Eu-rope cross-border affairs are primarily a matter for the political-administra-tive actors (the EU funding programmes in their current form sustainably reinforce this tendency), subsidiary cross-border cooperation would have to emphasise much more strongly the self-responsibility of the cross-border subsystems of economy, science and research, civil society itself. Public contributions to action in these sectors, which would have to organise themselves much more strongly in the future, would therefore be either catalytic (e.g. to stimulate project initiatives) or complementary (e.g. in the form of financial participation in initiatives that come from these sectors themselves), but not primarily representative of them[267]. In addition to the cross-border public core tasks (infrastructure, provision of public services, hazard prevention, etc.), public actors in such a perspective could ultimate-ly derive functional legitimacy to act in a subsidiary manner from the task of cross-border, future-oriented protection of the environment[268], which would have to manifest itself in integrated approaches of a cross-border sustainability strategy.

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267 See already Grabher 1994; Scharpf 2006
268 Cf. Böhret 1990, 1993; Dror 2002

Such a perspective of differential cross-border action based on the principles of horizontal and vertical subsidiarity appears to be a necessary prerequisite for a future capacity-building-approach, allowing for the better deployment of the potential for innovation of cross-border territories and therefore of their specific function within the context of a new horizontal dimension of European integration and the emerging European Administrative Space[269].

5.4 Cross-border territories and the principle of mutual recognition – towards a new quality of transnational administrative cooperation?

5.4.1 The principle of mutual recognition within the context of European construction

The elimination of technical obstacles to the free movement of goods is one of the main objectives of the internal market-policy of the European Union: Article 34 TFEU prohibits obstacles to free trade and Article 36 TFEU provides a closed list of justifications for such obstacles. One of the means of ensuring the free movement of goods within the internal market – besides the principle of non-discrimination (prohibition to maintain distinctive state measures hindering trade between Member States) and the principle of free access to national market (beyond discrimination, impossible to maintain state measures which substantially restrict the possibility to sell a product or a service on another market) – is the *principle of mutual recognition*. The principle derives from the case-law of the Court of Justice of the European Communities and applies to products which are not subject to Community harmonization legislation, or to aspects of products falling outside the scope of such legislation (so-called non-harmonized products). According to that principle, "a Member State may not prohibit the sale on its territory of products which are lawfully marketed in another Member State, even where those products were manufactured in accordance with technical rules different from those to which domestic products are subject".[270] Only on the basis of overriding reasons of public

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269 Siedentopf/Speer 2002; Beck 2017b
270 European Commission 2010; See Alinea 3, REGULATION (EC) No 764/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008; The principle originated in the famous Cassis de Dijon judgment of the Court of Justice of 20 February 1979 (Case 120/78 Rewe-Zentral [1979] ECR 649) and

interest and which are proportionate to the aim persued, a Member State can refuse the free movement or justify a domestic regulation or technical specification going against this principle.

The principle usually applies, when actors such as companies or professionals offer non harmonized goods or services abroad. The area of free movement of non-harmonized goods is of great economic importance to the functioning of the internal market: approximately 21 % of industrial production or 7 % of the GDP inside the EU is covered by mutual recognition and about 28 % of intra-EU manufacturing trade. It is estimated that the failure to properly apply the principle of mutual recognition reduces trade in goods within the Internal Market by up to 10 % or €150 billion[271]. Accordingly, the Commission has set up a proper policy for analysing and enforcing the application of this principle. On the grounds of evidence that the principle is not working smoothly (a supporting study of an Impact Assessment identified in 2007 around 11,000 technical exceptions at Member State level and a high number of technical, procedural and information related obstacles)[272] the European Union issued in 2008 a regulation laying down procedures and actions to enforce the functioning of the principle. The philosophy of the Regulation followed the twofold approach of "combining transparency and efficiency: transparency of information to be exchanged between enterprises and national authorities, efficiency by avoiding any duplication of checks and testing"[273].

The importance of the principle of mutual recognition increased constantly during the last decades – leading even to popular concern when it was again enforced after the enlargement of the Union via the so-called "Bolkestein" directive[274] – and at least in a normative perspective some academic observers even estimate, that the EU has de facto in the meanwhile

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was the basis for a new development in the internal market for goods. While at the beginning not expressly mentioned in the case-law of the Court of Justice, it is now fully recognised (see, for example, Case C-110/05 Commission v Italy [2009] ECR I-519, paragraph 34)

271 See Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, Impact assessment COM(2007) 36 FINAL, p. 42

272 DIE ZEIT, 18 October 2007, p. 32

273 European Commission 2012: 6

274 DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006
on services in the internal market

become a "mutual recognition space"[275]. Beyond the single issue-orientation of allowing the free movement of goods and services in the non-harmonized area – what are the implications of mutual recognition from the broader point of European construction and the EAS?

Firstly it is evident that mutual recognition constitutes a very pragmatic alternative to harmonisation. With the Treaty of Lisbon the functional division of labour between the European and the national level with regards to policy-competences has been re-adjusted and many observers come to the conclusion that the degree of supra-nationalization that has been achieved by the Lisbon Treaty will be the working basis for the next decades or so. It is not very realistic to expect any significant efforts of further harmonisation at the EU-level going beyond approaches that aim at a level-playing field in very specific sectorial areas. A horizontal analysis of the Impact Assessments carried out by the Commission during recent years[276] may demonstrate the efforts of the European law-maker to search for alternatives to classical regulatory approaches and rather implement a "soft-law" policy within the context of the "smart regulation" strategy[277]. In this context, Member States who do not want to delegate further competencies to or share domestic competencies with the European level may indeed consider mutual recognition as a feasible alternative when aiming at a better horizontal cooperation with other Member States in such areas, where functional equivalence can be deemed. Especially in the administrative reality where for the case of transnational administrative cooperation it is not realistic or possible to develop substantive legal "exemptions" (avoidance of new borders and risks before the constitutional courts of the member states – how can a transnational exemption be justified at all?) mutual recognition can give – as I will show in the next chapter – a new dimension to the horizontal functioning of the EAS, allowing for a smarter inter-organizational cooperation of administrative bodies depending on different but functionally equivalent jurisdictions.

Secondly, mutual recognition creates extraterritoriality[278]. Territoriality constitutes a classical criteria of the Westphalian State, guaranteed by an external border and limiting the competence of both the state and its

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275 Nicolaidis 2007: 687
276 See: www.europa/IA; The author has been – on behalf of the SEC GEN – for 10 years trainer and consultant on European Impact Assessments and has accompagnied several Impact Assessment projects at EU-level
277 See Commission communication "Smart Regulation in the European Union" -COM(2010)543 (8 October 2010)
278 Nicolaidis/Shaffer 2005: 267

administration. Mutual recognition, on the other hand, extends de facto the regulation, defined by one member state onto the territory of another member state who recognizises it. Mutual recognition regimes thus can be seen as a constitutive element for an emerging global administrative law regime: "Mutual recognition represents the operation of a third, 'middle-way' of transnational economic governance... (it constitutes)...an extension of the territorial principle of national treatment and a cooperative 'mutu-alized' approach to the inherent demand for and challenge of extraterrito-riality in a global economic order"[279]. Such a notion of extraterritoriality based on mutual recognition can also strengthen the transnational dimen-sion of the EAS, which itself already goes into this direction but gives it a specific new dimension: The functional enlargement of a national adminis-trative competence to the territory of another Member state, however, is a new and not yet existing in the area of public law but can lead to new and interesting managed and negotiated forms of transnational administrative cooperation[280].

This leads to the third dimension of mutual recognition which can be understood as a new mode of governance[281] : Transnational cooperation is an example for what has been described in the context of internation-al cooperation as governance without government[282], e.g. the need to develop cooperative solutions in a non-hierarchical way. One central cate-gory of such a mode of cooperation in transnational governance is social capital, built on mutual trust. Mutual recognition both depends on and contributes to the emergence of trust. The inherently difficult definition of where functional equivalence starts and where it may end needs to be ne-gotiated amongst the partners concerned: "Instead of agreeing on common regulatory solutions, governments agree on a patchwork of equivalent national rules. It is only by focusing on this alternative to hierarchy that the growing transnational activities of national administrations become a focus of analysis"[283]. In a broader sense, this transnational governance may lead to a new perception within the European Administrative Space which I described as "Horizontal Subsidiarity"[284] : When a transnational or cross-border phenomenon needs a specific e.g. adapted and thus diverg-

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279 Nicolaidis/Shaffer 2005: 267
280 Beck/Larat 2015
281 Schmidt 2007
282 Rosenau/Czempiel 1992
283 Schmidt 2007: 670
284 Beck 2014

129

ing solution, the concerned neighbouring jurisdictions give priority to it compared to the domestic regulatory frame. Mutual recognition can strengthen such a perspective of horizontal subsidiarity within the EAS: The "managed recognition" may lead to pragmatic choices of the best solution on either side of the border.

Finally, as the notion of governance indicates, transnational mutual recognition can also develop and/or strengthen the mode of transnational policy-making in its relation to other economic and societal actors. Based on mutual recognition, the necessary horizontal and vertical differentiation, that is inherent to the notion of multi-level-governance within the European context, can finally lead to a rationalization of new transnational relations between administrations and their respective economic and/or social environment: if more and more new transnational needs of enterprises, citizens, associations, consumers, patients etc. are articulated, which cannot effectively be handled by a single administrative approach only, mutual recognition can contribute to the emergence of new negotiated and pragmatic solutions for the transnational EAS. Innovation thus can both occur on the basis of new transnational arrangements and or the diffusion and integration of good practices of the neighbour state.

The key element of mutual recognition, as derived from the Cassis de Dijon doctrine, is the notion of functional equivalence which could indeed contribute to the strengthening of the transnational dimension of the EAS. The prospective element here would be to go beyond a case by case perspective, related to the horizontal mobility of persons, services capital and goods and develop an integrated transnational – e.g. cross-border perspective. The principle could bring clarity to many cross-border constellations where the unproductive back and forth between neighbouring administrations de facto leads to a high level of red rape and administrative burden, which makes cross-border activities still much less attractive then a domestic orientation – both from the perspective of individual (citizens, commuters, enterprises) and corporate (public and private organisations) actors. Combined with the principle of proportionality (only where it makes sense and where it is relevant, mutual recognition will be applied) mutual recognition has a strong potential to improve transnational and cross-border cooperation, especially, when it is based on mutually agreed *de minimis* levels: if a cross-border and/or transnational administrative case does not constitute/represents a mass-phenomenon (which in reality is exactly the case: the level of cross-border activity phenomenon is in many

policy-fields clearly lower than 5 % compared to the domestic context[285]) but the typical exception to the administrative rule (because the individual case comes from a different administrative context) then – if it is the case of a neighbour administration – the public servant in charge should have the right to accept the "incoming" administrative standards. The only exception allowed then would lie in too different technical standards that is the case of non-equivalence of administrative standards. At first glance, one could expect a high number of cases of such non-equivalence due to the big differences between the politico-administrative systems in Europe, both in terms of structure and administrative culture. On the other hand, having the case of the new member states, who accepted and implemented the democratic European administrative standards relatively quickly, in mind, one could argue that all administrative systems of the European Union today are based on basic principles of the EAS which in turn are derived from the Acquis Communautaire. Differences between national administrations in Europe certainly do exist and indeed we are witnessing both processes of convergence and persistence of historically developed systems[286], but it must be questioned if, at the beginning of the 21st century, they are really constituting a case of non-equivalence in the functional sense of the term or still rather symbolize the case of non-cooperation, the lack of willingness and/or incentive of mutual exchange and learning.

5.4.2 Fields of application within cross-border cooperation

With regards to typical problem constellations – which at the same time represent specific types of transnational cooperation – the following fields of application of the principle of mutual recognition seem to be promising in the context of cross-border cooperation:

   Simplifying citizen's mobility: It is amazing to see that the level of transnational mobility of individuals in Europe still is clearly below 1 % but that a large part of this phenomenon is actually taking place within the European border regions (European Commission 2009). Assuming that citizens 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 – eg. choose their place of work, residence, childcare, medi-

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285   For instance the 91,000 cross-border comunters in the Upper-Rhine region are representing only 3 % of the entire active population!
286   Kuhlmann/Wollmann 2013

cal treatment and practice their consumer behaviour independently from national borders – the public services responsible for these issues on both sides of the borders should not constitute obstacles in the sense that they are practicing different standards and regulations, but should provide for a coherent administrative framing of this horizontal mobility of persons, services and goods in the cross-border perspective. However, the reality still looks different, mostly due to the fact, that the legal areas which are covered by this mobility are mostly still within the remit of national competence. Mutual recognition could bring a lot of practical facilitating for the everyday life of citizens with a border-crossing live-orientation. The list of everyday obstacles caused by the lack of mutual trust and recognition between national (deconcentrated) state administrations is long, not to mention the red tape and administrative burden this is creating both at the level of the citizens, their employers but also the competent administrations themselves.

Simplifying the management of CBC bodies: A second field of optimization which could be achieved via the application of the principle of mutual recognition is the case of cross-border bodies. Here the target groups are mostly local and regional authorities who want to improve cross-border cooperation by approaches of integrated and joint institution building. 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. The practical functioning of such bodies is very often still limited by the difficulty to define joint implementing provisions: The symbol of a joint approach is counteracted by numerous practical difficulties when it comes both to the authorisation of such a transnational body, the every-day management of its human and financial resources and the legal supervision of its functioning. At these levels, very often a doubling and complexification of administrative procedures, formal requirements and/or reporting obligations is taking place which can be considered as one of the main reasons of the still very limited acceptance of these legal forms and which could be solved if the

principle of mutual recognition was not only implemented by the signing partners, but also the administrative framework of both states involved.

Stimulating the development of cross-border shared services: A third field of application where the principle of mutual recognition could bring a substantial innovation 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 approach, allowing for the coordination of partners with regards to overall development objectives of a territorial unit. Compared to this, the idea 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 could be reorganised between neighbouring local communities with the objective to develop new economies of scale and/or to maintain services, which under a single organisational approach, would no longer be affordable (e.g. in rural and/or peripheral regions suffering from demographic change). Mutual recognition, if considered openly, could stimulate mutual learning and innovation, leading to new combinations and/or choices of good practices to be adopted by one of the partners via real processes of mutual bench-learning.

Optimizing thematic cooperation between sectorial administrations: The starting point for this fourth pillar for application of mutual recognition 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 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. etc.. As it is the case for the mobility of citizens, in these areas mostly (deconcentrated) state administration is competent, often however, on a multi-level basis

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with a rather complex mix of public, private, national, regional and local actors to be involved too. An approach could be here to insert mutual recognition clauses in areas where cross-border legal provisions are missing in thematic law. Mutual recognition could lead here to a dissemination of the same standards within a given cross-border territory. The other constellation are areas where a territorial cross-border need for optimisation is given and the absence of a joint standard leads to comparative disadvantages of the cross-border territory compared to is national "competitors". This could be the case with the area of professional training, when for instance in Member State A there is a lack of qualified people and in Member State B a high unemployment rate between young people exists: mutual recognition here would not only refer to formal diploma but also cover the very educational content, allowing for an increase of horizontal mobility dramatically and for the same career chances in the neighbouring state. Finally, mutual recognition could also promote the emergence of multi-thematic sectorial governance regimes in the interest of territorial development in various areas such as health, tourism, transport, infrastructure, environmental protection, economic promotion, renewable energy, in which a joint reflection of national standards by the competent sectorial actors from both sides of the border could lead to innovations in the sense that mutual recognition will result in combination of the best practice elements from either side of the border. Such a managed mutual recognition will finally also contribute to the emergence of a managed functional extra-territorialization within a cross-border territory which constitutes an innovative element for the prospects of a transnational EAS: The idea of horizontal subsidiarity[287] could be further developed on a sectorial case by case basis in areas where a real added value can clearly be demonstrated by the cross-border territory.

The principle of mutual recognition has often been criticized for its danger of softening standards according to the lower level of one of the participating partners[288]. This can indeed be a risk when it comes to the question of the free movement of such goods that have been produced according to lower social and/or environmental standards – an issue that was especially discussed within the context of the political decision process of the "Bolkestein-Directive". However, as shown above, this article has argued that the principle of mutual recognition must not be interpreted in a single-way perspective. As the very term indicates its content must always

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287 Beck 2013
288 Nicolaidis 2007

be mutually discussed and voluntarily decided on a bi- or multilateral level. This is why it contains a specific potential for the case of transnational cooperation within the context of the EAS. Different to the application at the level of Member States a limitation to the specific needs of cross-border territories in Europe could both facilitate its application and avoid it's possible negative consequences. On the other hand, the arguments presented above were also underlying the necessity of a close cooperation between neighbouring member states willing to apply it in a given cross-border territory – especially in the light of the restrictions defined under Article 197 of the Treaty on the Functioning of the EU.

This leads to the question on how such an approach could best be realised in the real world situation of transnational policy-making. Given the institutional competences of most Member States in Europe it is evident, that such an approach will have to be decided and agreed mutually by the governments of the respective neighbouring countries in order to set a solid framing. In addition, it seems also important to demonstrate the political will to allow for flexible solutions at the level of cross-border territories from the point of view of all relevant jurisdictions. In this respect bilateral joint communications, like for instance for the case of Germany and France, could lead to a programmatic fixation of the will to experiment the principle of mutual recognition in the so-called German-Franco Agenda? Secondly, and on this basis, a careful study of sectorial fields where the principle could indeed create a real added value and in which form functional equivalences are feasible would be necessary. This could lead to the fixation of de minimis standards (both territorially and thematically) in the form of bilateral (sectorial) agreements, defining and embellishing the concrete levels/thresholds within a mutual recognition practice can be practised by the competent administrations in the future. A third step would then require the codification of the principle with regards to administrative standards and procedures at the level of prescription law within the given national thematic law framework in the form of so-called opening clauses.

The notion of trust and proximity – both preconditions for building social capital – is usually better given in a cross-border rather than a more global inter-state context: it is not an anonymous administration here, that asks for a mutual recognition of foreign procedures, but the administration from the "next door neighbour", which actors can easily learn to know better[289], where exchanges of both practices and personnel

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289 Beck 2008a

can take place at a formal and informal basis[290], and where the necessary administrative capacity 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 must be questioned if Member States are at all willing to overcome this principle and enter into an open reflection on mutual recognition in order to spoon out the potentialities which I have tried to sketch above. The strong protectionist attitude of both Member States and some enterprises in the area of non-harmonized goods and the necessity of the Commission to launch together with the regulation of 2008 a proper mutual recognition policy[291] demonstrates the strong opposition that may be emerging. On the same time, this shows that the principle of mutual recognition is indeed a very meaningful and strong concept. The key word for the application of mutual recognition in the transnational cross-border context, however, must therefore be its evidence base. It will be necessary to carry out ex ante impact assessments in order to identify both areas and magnitudes of a meaningful implementation, especially with regards to the definition of le right de minimis level allowing for its application on a cross-border basis[292]. If, however, based on the application of the mutual recognition, a cross-border phenomenon over time will exceed a defined de minimis level, e.g. when the exception tends to becomes the rule, it will then be ripe for the other alternative which is harmonization at EU level. This could indeed lead to a new understanding of the laboratory role that cross-border territories might play for the future of both the EAS and European integration.

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290 Larat 2015
291 Lake: https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition-goods_en (30.30.2022)
292 Taillon/Beck/Rihm 2010

6 Territorial institutionalism and the European Administrative Space

As a result of the process of European integration, administrative interaction between the national and European levels has intensified over the years. Both the design and implementation of European policies now depend on collaborative working relationships between the historically evolved national political-administrative systems of the Member States and a supranational system of governance that is constantly evolving and changing. Against this background, the concept of the European Administrative Space (EAS) has attracted increasing interest both in academia and in practice. Originally directly linked to the idea of the ever more intensive integration of a European system of governance and thus the assumption and prediction of a process of increasing convergence and harmonisation of the various national administrative systems towards a more uniform European reference model[293], the discussion and perception of what is to be understood by the European Administrative Space has constantly evolved over time and is now discussed in the perspective of a highly differentiated European governance.

Although the term is frequently used, definitions of EAS in the literature refer to very different things: from the question of the emergence of shared administrative values, some see EAS as a "harmonised synthesis of values emerging from the EU institutions and Member States' administrative authorities in the process of creating and implementing EU law"[294]. Others emphasise the emerging dimension of joint action in the context of the EAS as "an area where increasingly integrated administrations jointly exercise powers delegated to the EU in a system of shared sovereignty"[295]; highlighting issues such as "coordinated implementation of EU law", the Europeanisation of national administrative law"[296] or the creation of a "multilevel Union administration "[297]. Other questions relate to the dimension of the actors involved and focus on the emergence of an increas-

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293 Siedentopf / Speer 2003; Olsen 2003
294 Torma 2001: 1
295 Hofmann 2008: 671
296 Hofmann 2008: 662
297 Egeberg 2006

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ingly differentiated European multi-level governance[298] or the analysis of a new relationship between the governed and the governed, which pays particular attention to the dimension of policy instrumentation within the EAS[299].

Furthermore, Sommermann[300] refers to the procedural dimension from the perspective of administrative law and distinguishes between a process of direct Europeanisation (both at the level of substantive administrative law, administrative procedural law or administrative organisational law) and a process of indirect Europeanisation (functional adaptation of administrative norms and procedures in relation to the principle of cooperation, spill-over effects from EU law into other national legal areas and adaptation due to the competitive phenomena of an increasing transnationalisation of administrative relations).

In an overarching perspective, Trondal and Peters[301] have recently proposed an "EAS II" concept that takes into account the multi-level approach and the idea of loosely coupled inter-institutional networks[302]. The concept is based on a more functional view of the European Administrative Space, which refers to the empirically ascertainable joint development and implementation of public tasks between different administrative levels. On this basis, it is proposed to assess the emergence and functionality of the EAS on the basis of three central criteria: 1. creation of an institutional capacity independent of national administrative systems, 2. integration of actors as task bearers with regard to the fulfilment of European public tasks, 3. co-optation of national actors and structures for the purpose of fulfilling European tasks.

The above dimensions are de facto interlinked, suggesting that the EAS is both influenced by and contributes to European integration at the administrative level. The fundamental question here from a systemic perspective is ultimately to what extent the EAS represents an institutional capacity that supports both the design and the implementation of European policy-making. This question in turn relates to the more fundamental consideration of the functions that institutions generally fulfil in the context of public decision-making. Institutions can be understood as stable, enduring bodies for the production, regulation or im-

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298 Kohler-Koch / Larat 2009
299 Heidbreder 2011: 711- 714
300 Summer man 2015
301 Trondal / Peters 2015: p. 81
302 Benz 2012; similarly already Beck 1997

plementation of specific purposes[303]. Such purposes may relate to social behaviour, norms and concrete tangible or intangible objects. From an administrative science perspective, institutions can be interpreted as corridors of collective action that play the role of a "structural proposal" for organised interaction between different individual and collective actors. The question of the emergence and changeability of such institutional arrangements in the sense of an "institutional dynamic"[304] is the subject of the academic school of neo-institutionalism, which attempts to integrate various monodisciplinary theoretical premises. According to Kuhlmann / Wollmann[305], three main theoretical lines of argumentation can be distinguished here: Classical-historical neo-institutionalism[306] assumes that institutions as historically evolved artefacts can only be changed very partially. Institutional change ultimately presupposes broader historical, political or technological ruptures. In this interpretation, institutional functions tend to have restrictive effects on actors who try to change given institutional arrangements or develop institutional innovations (thought model of path dependency). In contrast, rational-choice and/or actor-centred neo-institutionalism[307] emphasises the fundamental interest-related configurability of institutions (in the sense of "institutional choice"); institutions are de facto shaped in an interest-driven manner by the respective acting actors and their individual premises of utility maximisation. The rational decisions of the actors, however, depend in turn on the (limited) variability of higher-level social, legal and political framework conditions. The sociological neo-institutionalism approach[308] in turn essentially also recognises the interest-related configurability of institutions, but – while rejecting the institutional economic model of simple individual utility maximisation of homo eoconomicus, which is considered rather limited – emphasises issues such as group membership, thematic identification or cultural imprinting as explanatory variables. When analysing the institutional dimensions of EAS as a dependent variable, it may be promising to refer to such neoinstitutional assumptions as independent variables to explain the form and specific features of identified institutional patterns.

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303 Schubert / Klein 2015
304 Olsen 1992
305 Kuhlmann / Wollmann 2013: 52
306 Cf. Pierson 2004
307 Cf. Scharpf 2000; March / Olsen 1989
308 Cf. Edeling 1999; Benz 2004

In assessing the current state of research on the EAS, three research gaps can be identified. Leaving aside the literature on European spatial planning[309], most social science thinking on the institutionalisation of the EAS follows an exclusively vertical understanding of European integration[310]. This distinguishes between local, regional, national and supranational levels of government and examines the vertical interactions and interdependence between "domestic" and European administrative actors. The aim is to analyse the extent to which a still new, additional administrative level directly linked to the European integration process has been developed at the supranational level and how this affects historically developed administrative systems. However, this vertical thinking carries the risk of ignoring those patterns of inter-agency cooperation that move on a horizontal, partly transnational level: Administrative actors – both at national and sub-national and / or local levels – increasingly cooperate directly with administrative units from another (neighbouring) state. This, as I will elaborate below, represents a significant institutional pattern and should be taken into account when developing a holistic understanding of the EAS. Following the theoretical premises of modern governance concepts[311], which always cover both the vertical and horizontal dimensions of actor constellations, such a horizontal dimension could lead to a complementary view and understanding of the vertically and horizontally differentiated nature of the EAS.

A second research gap can be seen in the lack of inclusion of a spatial dimension: While the temporal and functional definition of the EAS has been recognised[312], its spatial dimension, which is very relevant in practice, has not been reflected in the literature so far. The astonishing "spacelessness" in the previous concepts on the European Administrative Space contradicts the established construction principles and traditions of public administration, for which territoriality, e.g. via the dimensions of (de-)concentration or (de-)centralisation, forms a central configuration criterion[313]. European Territorial Cooperation, as I will show in the following, can add such a spatial connotation to the previous conceptual considerations of EAS and thus lay the foundation for a differentiated understanding of what the term EAS can mean in practical terms (both in terms of design

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309 See e.g. Jensen / Richardson 2004
310 See, for example, the contributions in Part VII of Bauer / Trondal 2015
311 Benz et al 2007
312 Howlett / Goetz 2014
313 König 2008; Schimanke 2010; Kilper 2010

and precisely the administrative implementation of European policies on the ground). The concept of "territorial institutionalism", which I describe in more detail below, can also develop new questions for applied administrative research, following neo-institutionalist concepts.

A third observation is that most of the literature on the EAS focuses on officially established institutions and thus usually focuses on the European Commission, the European Parliament, the European Council, the European agencies and, expert groups, etc. and their formal and / or informal linkages with other institutional equivalents at other levels. Less studied, in contrast, are the patterns of vertical and horizontal administrative interaction within so-called "unsettled administrative spaces"[314]. There are numerous examples of this, such as networks, forums, projects, committees, programmes, etc., which go beyond classic, functionally "closed" European organisational forms. Such "open/non-solidified" administrative spaces can draw researchers' attention to new and even less analysed interactions between European administrative actors and their thematic or sectoral administrative environments at different spatial levels. The example of an emerging European territorial governance system, which is intrinsically intersectoral, may also illustrate the extent to which the study of such "unsettled" institutional patterns could contribute to a more holistic understanding of the EAS.

This chapter relates to European Territorial Cooperation (ETC) and explores three key analytical questions: 1. to what extent can patterns of ETC-related institutionalisation be interpreted as part of a horizontal dimension of the EAS? 2. how can these patterns be conceptualised and what explains the diversity of this type of institutionalisation?, 3. to what extent is reflection on the horizontal dimension of the EAS productive for further research in this field?

This part first assesses the governance model of European territorial cooperation as an example of "open/non-solidified " horizontal transnational policy-making. Based on recent empirical findings from the field of cross-border cooperation and applying the three criteria of the Trondal / Peter concept of EAS II, it is then analysed to what extent the administrative foundations of territorial cooperation can be understood as a horizontal dimension of EAS. On a diioesal basis, it is then examined how the identified institutional patterns can be classified and explained. Finally, a broader theoretical conceptualisation of these findings from the perspective of neo-institutionalist assumptions is developed, which can serve as a basis

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314 Trondal / Peters 2015

for further prospective research on the territorial dimension(s) of the EAS from a transnational perspective.

6.1 European territorial cooperation as a model of unsettled administrative cooperation

Territoriality is a central construction principle of public administration. In a classical understanding, administrative territoriality is linked to the concept of the nation state, which is characterised by internal and external sovereignty over its territory[315]. According to this, administrative boundaries, which are usually designed according to spatial criteria such as accessibility, efficiency in the sense of organisational redundancy avoidance or effectiveness in the provision of services, usually not only determine the external competence boundary of an administrative unit, but also define the internal relationships and interfaces between different administrative levels and / or units that exist within a state.

In the context of territorial development, the link between territorialisation processes and institutional change is currently discussed under the theoretical assumption of regional governance[316]. It is assumed that a wide variety of different forms of institutionalism can be observed in the context of territorial development, ranging from rather informal networks to sectoral projects to classical inter-local cooperation or newly established and / or changed regional administrative organisations. The design of a territorial governance mode, and thus the specific form of institutionalism it represents as a corridor (and for) collective regional action, is the result of processes that procedurally link different actors, levels, sectors and decision-making procedures on the basis of given territorial development needs[317]. Unlike approaches developed in the national context of a single legal order, regional governance processes and associated e institutional capacity building in cross-border territories have also been taking place more recently between the different political-administrative, legal and cultural systems of different states. In order to support such forms of cooperation, which are often hampered by a high degree of structural obstacles, the European Commission has promoted cross-border cooperation under a policy concept now known as "European Territorial Cooperation" (ETC).

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315 König 2008: 27
316 Kilper 2010
317 Fürst 2010

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Territorial cooperation has gained importance in Europe over the last 25 years. Two main factors have influenced the emergence of this policy field. First, the fall of the Iron Curtain in Central and Eastern Europe has created more than 27,000 km of new borders[318] and the question of how to manage transnational relations at a decentralised, territorial level has thereby become a very practical challenge for many newly created border regions. Secondly, the long experience from "older" border regions in Western Europe, which initiated territorial cooperation approaches immediately after the Second World War[319], has shown both the necessity and the potentials of territorial cooperation for the process of European integration[320] : Statistics at the NUTS-II level (administrative regions) show that almost 40 % of the territory of the EU can be classified as a border region, which in turn is home to 30 % of the EU population[321]. Moreover, with the official inclusion of the objective of territorial cohesion in the Lisbon Treaty, territorial cooperation has been strengthened in the framework of the European cohesion policy[322], thus also promoting the perception of border regions as laboratories for European integration[323].

In terms of territorial institutionalism, the political approach of European Territorial Cooperation (ETC) can be divided into two interrelated basic patterns: The first and most obvious pattern is the INTERREG funding programmes of the European Commission, which, after an experimental phase between 1988 and 1989, was continuously expanded both conceptually (starting as a Community initiative under INTRREG I and II, then integrated into the Structural Funds regulation under INTERREG II and IV, and finally transferred into its own separate regulation under INTRREG V) and financially (from an initial 1.1 billion euros to 10.1 billion euros, of which almost 7 billion euros exclusively for cross-border cooperation) in five phases. Today, these are characterised by a programmatic differentiation into three programme lines: A-programmes = cross-border cooperation with a focus on neighbourhood relations at contiguity level; B-programmes = transnational cooperation with a focus on planning in strategic areas relevant for European cohesion, C-programmes: Interregional cooperation with a focus on networking and exchange of good

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318 Foucher 2007
319 Wassenberg 2007
320 AEBR 2008
321 MOT 2007; AGEG 2008
322 Bailo / Menier 2012; Ahner / Füchtner 2010
323 Kramsch / Hooper 2004; Lambertz 2010

practices. Although territorial institution building is not the main focus of this approach, it has – as I will show in the next chapter – contributed significantly to the creation of cross-border institutional capacities both at the level of projects and of programme-related governance structures.

The second pattern goes beyond INTERREG-funded programmes and projects and focuses directly on cross-border institution building at the territorial level. The best-known examples of this are the so-called Euregios, which have been established between Germany and its western neighbours since the 1950s, intergovernmental commissions with territorial differentiations such as the Upper Rhine Conference, the Öresund Council / Greater Copenhagen and Skåne Committee, the Greater Region Assembly (formerly SaarLorLux), which have been developed since the 1970s and 1990s, or the relatively new Eurodistricts. Here, territorial actors of directly neighbouring states develop approaches of political and administrative cooperation either to solve specific problems, to jointly develop territorial potentials or to implement European sectoral policies in a coordinated manner with the aim of promoting integrated territorial development across borders. As these bodies usually do not have a specific budget, their functioning nevertheless often depends on EU funding. With the creation of a specific legal form, the EGTC (European Grouping of Territorial Cooperation), the European Commission then also tried to strengthen this form of institutionalised territorial cooperation in 2006[324].

The governance mode of territorial cooperation varies according to these two basic (but in practice quite interdependent) characteristics. The so-called "INTERREG world" is characterised by a pattern in which both the financial and thematic design is negotiated vertically between the Member States and the EU, leading to a specific form of results-oriented framework planning in which core elements, such as strategic objectives, the specifications for financial management and control, or basic principles of cooperation (such as partnership, co-financing and pre-financing, etc.) are set centrally by the Commission but then decided at decentralised level by the Member States.) are defined centrally by the Commission, but then fleshed out at decentralised level by the territorial actors themselves (design of a territorial development strategy, details of eligibility criteria, preparation and selection of projects, co-financing rates, etc.). With regard to the second pattern of territorial cooperation, the absence of European or national programming is characteristic: cooperation approaches between

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324 A revised version of the Ordinance entered into force on 22 June 2014; see for an overview: https://www.interact-eu.net/ (30.03.2022).

public (and private) actors on both sides of the border are developed on a purely voluntary, bottom-up basis. No legal or financial programme actively determines or demands participation in cross-border cooperation at this level, and competences, roles, procedures and forms have to be negotiated and shaped horizontally individually in each case on the basis of voluntary decisions.

Following René Frey[325], territorial cooperation can be seen as a horizontal subsystem created and operated by the involved (domestic) partners of different levels in order to create a manageable inter-institutional network to realise the joint design and implementation of institutional arrangements for programmes and projects. Since the practical functioning of this subsystem is not guaranteed per se, but rather has to be stabilised by the contributions of the participating domestic partners, and thus depends on them (often even ad hoc), this tends to lead to a more open/non-established mode of governance. Both INTERREG, which is formally established and structured by conventions, and institutional cooperation, which is often also based on bilateral agreements and conventions, are de facto rather fragile creations that can erode very easily as soon as the necessary financial, logistical, administrative or political support services are no longer provided by the partners involved – which can sometimes already be the case after a change of government or personnel at one of the main partners involved, which leads to other political preferences[326].

ETC can be interpreted as a specific form of administrative capacity building based on transnational territoriality with a specific relevance of direct horizontal administrative interaction between sub-national and local actors to address challenges of territorial development and cohesion. Unlike in the domestic context, where this takes place within a single legal order and a European connotation is rather indirect, the territorial dimension of this transnational administrative capacity building is directly linked to the process of European integration. The open/non-established character also distinguishes territorial cooperation from the vertical, multi-level administrative interaction that takes place within the established constellations of the classical European administrative system[327]. However, as I will show in the next chapter, territorial cooperation has nevertheless produced over time a distinct permanent horizontal administrative profile whose

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325 Frey 2003
326 Hooper / Kramsch 2004
327 Farmer / Trondal 2015

administrative integration contribution should be even better recognised within the EAS.

6.2 The administrative dimension of European Territorial Cooperation (ETC)

In order to be able to analyse the administrative dimension of territorial cooperation and its relationship to the EAS in more detail, my analytical approach refers to the concept of EAS II, developed by Trondal / Peters[328]. Accordingly, the ETC would be functionally relevant within the EAS if three main features of the EAS II are fulfilled: 1.) There must be an identifiable institutional capacity for dealing with European affairs that is independent or distinct from national administrative systems. 2.) There must be a structure of integrated administrative action that enables effective coordination of administrative units to fulfil cross-border tasks; 3.) The ETC is characterised by the fact that it is a recognised partner for external actors and knows how to use their potential for its own goals and / or joint task fulfilment.

Independence of institutional capacity[329]

Different indicators for the analysis of the institutional capacities of territorial cooperation in Europe are possible. Since the independence of institutional capacities is a central criterion of the EAS, I will focus my analysis on two main indicators. First, I will identify the total number of transnational institutional arrangements at different functional levels. The relevance of this indicator relates to the path dependency hypothesis of neo-institutionalism[330] and assesses the distinction between the given institutional capacity path of the national partners involved and the specifically created transnational / cross-border capacity path.

The second indicator relates to ETC-related staff capacity, measured in terms of full-time equivalents (FTEs). This indicator is relevant for the identification of an independent institutional capacity in the sense that

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328 Trondal / Peters 2015
329 This following analysis focuses on ETC in the narrower sense of the concept – it leaves out other EU cooperation dimensions such as ENI and TACIS, which exemplify the horizontal dimensions of European external cooperation.
330 Pierson 2004

FTEs created/provided exclusively for ETC-related issues constitute a specific transnational/cross-border capacity that is distinguishable from the domestic context[331].

To apply both indicators, my first analytical approach is to determine the total number of ETC programmes officially co-financed by the European Union. According to official statistics[332], the number of INTERREG programmes (all sectors) has developed considerably over the last 25 years. Starting with only 14 pilot projects in 1988, 31 programmes were created in the first INTERREG period (1990 – 1993), 59 in the second (1994 – 1999), 79 in the third (2000 – 2006) and 92 in the fourth (2007 – 2013). The current funding period (2014 – 2020) includes 107 ETC programmes, 60 of which focus exclusively on cross-border cooperation. In the last INTERREG IV period, 14,965 projects were financed under programme line A alone and most of them were also fully implemented, resulting in the creation of 50,179 new cross-border partnerships between mainly public actors. Given the average duration of the projects of three years, a permanent annual project capacity of 6,413 and a permanent partnership capacity of 21,505 were thus created in the seven years of this programming period.

In terms of management capacity, it should be recalled that, according to EU rules, each ETC programme must establish a specific management structure at decentralised horizontal level. This management structure consists of a steering committee responsible for defining the programme strategy and selecting projects (usually composed of the programme partners at MS level and / or their designated sub-national representatives), a competent managing authority for the operational management and implementation of the programme (technical representatives of the programme partners), and a joint secretariat responsible for the day-to-day implementation of the programme, project preparation and the production of documents and reports for the meetings of the other structures (programme officials

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331 Other relevant indicators such as the amount of budgets specifically dedicated to cross-border cooperation, the autonomy of cross-border bodies in setting their own policy priorities and / or the autonomous performance of public tasks or the right to regulate policy areas independently in a CBC perspective are discussed qualitatively in the following sections – their quantification would require specific research and thus go far beyond the focus of this paper

332 The following figures were calculated on the basis of statistical information available in the KEEP database at the time of writing at the end of 2019 – they may have changed in the meantime if necessary – (see: https://keep.eu/keep-eu-is -adding-value/ 30.03.2022)

financed from the overhead of the respective programme). In addition, the programmes and projects create corresponding transnational institutionalisations in the form of legal conventions or agreements committing public partners in terms of financial obligations, thematic contributions and procedural patterns as well as roles in implementation and / or type of decision-making. INTERREG IV has led to the conclusion of more than 15,000 such agreements linking public actors at both Member State and sub-national, regional and local levels (either for the duration of the whole programming period or at least for the funding period of an individual project). These agreements have been instrumental in structuring the model of transnational action in many cross-border areas of Europe.

While both Steering Committee and Managing Authority functions are in practice often carried out by administrative representatives of the programme partners on a part-time basis, the members of the joint secretariats are usually employed on a full-time basis – either in the form of seconded national experts or directly recruited and employed by the programme. It is difficult to quantify the number of civil servants working in the ETC programmes, as the practical implementation of the administrative structures varies considerably between programmes. However, a realistic estimate of the number of civil servants working at programme level can be calculated based on the share of staff costs as part of the overall technical assistance budget (which de facto covers the general overhead costs of a programme). In the absence of valid statistical data, it can be assumed that the average number of officials working at the level of the Managing Authority and the Joint Secretariat is 10 FTE[333], which would mean that a capacity of 1,070 FTE has been created for the management of ETC programmes in Europe in the current INTERREG V funding period. In addition, most INTERREG projects themselves require professional handling of both formal and thematic implementation and therefore usually lead to the development of professional capacities for project management. Such posts can be supported by the programmes themselves. Assuming that the project management capacity per INTERREG project is at least 2 FTEs / project[334], INTERREG IV would have created a permanent project-based capacity of 12,826 FTEs between 2007 and 2013.

My second analytical perspective goes beyond the EU-funded ETC approach. Besides the "INTERREG world", many other forms of horizontal

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333 This figure was already determined in 2017 as part of an internal survey of programme managers within DG Regio initiated by the author (cf. Beck 2018).
334 Cf. Beck 2018

administrative cooperation have developed in Europe over time, taking place at different transnational territorial levels. In a recent study, Reitel and Wassenberg[335] have developed a classification that distinguishes at the <u>local level between the</u> *urban* spatial dimension (cooperation between two or more neighbouring urban municipalities such as Frankfurt / Oder – Slubice; Eurode Kerkrade-Herzogenrath)), the *rural* spatial dimension (cooperation between neighbouring municipal / inter-municipal bodies in sparsely populated areas such as Pyrenees-Cerdanya or Mont Blanc); on a <u>regional scale, a</u> distinction is made between the cross-border *metropolitan* spatial dimension (cooperation between contiguous territories – NUTS 3 or 4 – with a monocentric or polycentric metropolitan structure such as the trinational Eurodistrict of Basel, the Meuse-Rhine Eurodistrict or the Lille-Kortrijk-Tournai Eurometropolis) and the *non-metropolitan* dimension (cooperation between contiguous territories – NUTS 3 or 4 – without a metropolitan structure such as the Euregios or the Catalan border Eurodistrict); and at the <u>supra-regional level</u> again between the *metropolitan dimension* (cooperation between contiguous territories – NUTS 2 or 3 – with a metropolitan degree such as the Greater Region or the Upper Rhine) and the *non-metropolitan* dimension such as the Channel Arc. According to this typology, Reitel and Wassenberg have identified 364 "official manifestations"[336] of institutional cross-border cooperation in the EU. In addition, there is a macro-regional scale with cooperation approaches that integrate classic cross-border, interregional and transnational levels into a broader territorial space covering more than three member states based on common territorial features (e.g. the Baltic Sea; Danube Region, Adriatic / Ionian Sea or Alps).

In terms of territorial institutional capacity building, the main forms of this type of inter-agency cooperation "beyond INTERREG" are inter-municipal / euroregional (local and regional level) and intergovernmental / network structures (supra- and macro-regional level). The Association of European Border Regions (AEBR) has identified a total of almost 200 euroregional cooperations in Europe, most of which maintain permanent secretariats with full-time staff. Assuming that at least 80 % of these euroregions have a permanent joint secretariat with a minimum average of 3 FTE (without carrying out INTERREG management tasks, but only referring to project and other management tasks related to the euroregional working structures), the horizontal "euroregional" institutional capacity created

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335 Reitel/Wassenberg 2015: 19
336 Reitel/Wassenberg 2015: 18

here would be around 480 FTE. Moreover, most of these euroregional cooperation structures are rights-based and aim at a more binding and sustainable transnational administrative linkage than a simple project convention. In this context, more than 50 European Groupings of Territorial Cooperation (EGTCs) have been created in Europe so far, but most of them do not serve to structure material euroregional tasks, but to fulfil the project-related cooperation and implementation needs of the participating partners themselves[337].

Less well documented are intergovernmental bodies and commissions that have been established between many member states since the 1970s. Based on bilateral agreements, such intergovernmental structures and bodies very often govern the cross-border cooperation of an entire border zone between two or more states. These structures are primarily supported by officials from national ministries or administrative units at the sub-national level (such as ministries of the governments of the German Länder, the prefecture in France, the voivodeship in Poland, etc.). Most of these intergovernmental bodies are organisationally divided into territorial and / or thematic sub-units. The horizontal administrative capacities created and symbolised by these intergovernmental bodies differ greatly between the individual cross-border territorial constellations. For example, while around 600 representatives of the respective state and regional governments of Baden-Württemberg, Rhineland-Palatinate, Alsace and Northwest Switzerland meet on a part-time basis in 12 permanent thematic working groups of the Trinational Upper Rhine Conference, the governance structure created to implement the 6 thematic cooperation agreements concluded between the Republic of Ireland and Northern Ireland under the Good Friday Agreement in 2013 comprises a total of 578 FTEs.

Moreover, recent initiatives to create European macro-regions have given rise to specific transnational governance structures linking the three levels of meta-governance (interaction between the European Commission, the European Council, a high-level group, national contact points and annual fora), thematic governance (focal point coordinators, steering groups, governing bodies, thematic working groups) and implementation governance (project partners and the corresponding funding programmes and institutions)[338]. The hundreds of new project initiatives as well as the annual forums with more than a thousand participants each represent

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337   European Parliament 2015
338   Sielker 2014: 89

a complex mix of public and private sector and/or third sector actors. However, cooperation between the administrative authorities of the participating countries is also the core of cross-border cooperation here.

The examples presented can certainly give a first impression of the quantities and structural characteristics of cross-border cooperation in Europe. However, they can only provide an incomplete picture of the institutional capacities sought. In order to grasp the overall picture, a superordinate methodological approach is necessary. An established method in applied administrative research for calculating the staffing needs for an administrative unit is to develop a realistic estimate of the administrative burden measured in FTE per million inhabitants of a territorial unit[339]. Applying this method to the context of territorial cooperation, a pilot study of the TEIN network[340] initiated by the author concluded that – in the case of cross-border cooperation – an average administrative burden of 55 FTE per million inhabitants of a cross-border territory can be assumed as realistic[341]. This indicator can then be used in a second step for an extrapolation to determine the administrative capacity for cross-border cooperation at the level of the entire European territory: Based on the assumption that 150 million EU inhabitants (i.e. 30 % of the EU population) live in border areas at NUTS 2 level, a total direct administrative capacity of 8,250 FTE can be determined using the above indicator. Adding the permanent capacity at project level calculated above (12,826 FTE) and the 600 FTE from the 60 INTERREG A programmes, the total independent horizontal cross-border capacity would be 21,676 FTE. However, the total horizontal capacity of the entire European territorial cooperation is certainly likely to

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339 Hopp / Göbel 2008: 329
340 Cf. https://transfrontier.eu/ (30.03.2022)
341 The calculation was made on the following basis: TEIN partners were first asked to calculate for their respective cooperation area the full-time positions for persons working exclusively on cross-border cooperation issues on a full-time basis (covered were secretariats of cross-border bodies, staff of other permanent JCC institutions, management authorities of INTERREG, full-time project managers as well as full-time JCC services at the level of institutional partners). In addition, the extent to which actors from partner institutions contribute to cross-border cooperation but only on a part-time basis, such as civil servants working in local and regional authorities, where thematic cross-border cooperation is only part of their job description, was estimated. Based on an annual capacity of 1575 working hours, the average assumption per employee here was 5 %, which means approximately 10 working days per year. The individual RTD shares thus determined were then added up to an institutional RTD capacity for cross-border cooperation in the entire cooperation area.

be considerably higher, as this figure is only a conservative estimate for the narrower field of cross-border cooperation at the contiguity level.

In order to evaluate the calculated figure in terms of an independent institutional profile, it is necessary to relate it to the total number of all public employees working in the European border regions, who usually do not have an exclusive or explicit cross-border task reference. The basic assumption for this is that in the OECD the active population makes up 47 % of the total population (=OECD average in 217). Thus, with the 150 million inhabitants of the European border regions, an active population of approx. 71,910,000 people can be assumed. Assuming that the public employment rate is on average 15 % of the active population (=OECD average in 2017), the total number of public employment in the European border regions would be approximately 10,786,500. Thus, the specific cross-border staff capacity of 21,700 FTE corresponds to 0.002 % of the total staff administrative capacity in the European border regions.

The analysis of the indicators examined above points to a paradoxical conclusion: On the one hand, they certainly point to the existence of an independent institutional capacity for dealing with ETC matters at the horizontal administrative level. However, the general contextualisation of this finding points to an overall relatively weak profile of the comparatively young transnational / cross-border institutional path compared to the well-established domestic institutional path. I will take up this point later on when interpreting this horizontal ETC profile from the standpoint of neo-institutional theory.

Integrative task performance

With regard to the second criterion of the EAS, which refers to the need for the existence of a distinct administrative and functional integration, the case of territorial cooperation is also very interesting. The main pattern of territorial cooperation is still the project approach. For a long time, the guiding principle in the transnational / cross-border context was ultimately that the project would create the territory and not vice versa[342]. However, project development has changed considerably over the years. While in the early days of INTERREG I and II most territorial cooperation was characterised by a strong bottom-up approach leading to a patchwork of relatively isolated individual projects and associated networks, project

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342 Casteigts 2010: 305

generation has now become more strategic. Project selection is more often based on expression of interest procedures for the submission of proposals, which in turn serve to implement the strategic development objectives jointly agreed by the programme partners[343]. A typical example is the thematic concentration principle required by the EU Commission under INTERREG V, which has been followed by most territorial programmes, and which represents an attempt at much more integrated policy coordination that has led to new forms of integrated horizontal administrative cooperation between local actors and regional partners on both sides of the border. Besides INTERREG, many Euregios and Eurodistricts, but also territorial cooperation approaches at supra-regional level, such as the Upper Rhine, the Greater Region, Lake Constance, Öresund, not to mention the European macro-regions, have in the meantime formulated integrated territorial development strategies and are increasingly using strategic objectives as selection criteria for identifying such lighthouse projects that are expected to have a positive impact on the entire transnational territory.

The second relevant pattern concerns the role of political leadership. Territorial cooperation is usually supported by political networks of high-level decision-makers who actively demand this policy field[344]. Party political preferences are usually much less relevant here – analogous to international diplomacy – than is the case in the domestic context. The administrative staff responsible for territorial cooperation at the level of the participating partner institutions are also usually very close to the top political leadership of these institutions (cabinets, staff units at local, regional and sub-national level) in terms of organisational connection. This gives such actors "borrowed" power, which enables a relatively strong position both in relation to the classical thematic organisational departments of their domestic administrations (line departments) and in relation to their counterparts from the neighbouring state. In this way, close and functional interpersonal network constellations[345] are created, which lead to functional patterns of informal preliminary decisions at the technical level and thus bring about relatively stable forms of networked transnational executive leadership[346] : The pattern of executive leadership known from the municipal space[347] is once again much more pronounced here, which in the end

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343 Marin 1990
344 Hansen / Serin 2010: 207
345 Jansen / Schubert 1995; Beck 1997
346 Beck et al. 2015
347 Bogumil 2004

contributes to a functionally closed but closely coordinated and integrated cross-border performance of tasks.

A third, closely related pattern is that productive territorial cooperation approaches at the transnational / cross-border level are able to develop interpersonal trust networks that enable formal administrative differences to be overcome[348]. This contributes to the increasing synchronisation of domestic capacities for transnational purposes based on inter-institutional decision-making processes at the informal level. In most transnational spatial planning processes today, there is a high degree of synchronisation and horizontal coordination, as well as an increasing attempt to develop more integrated approaches. While in the past mainly distributive policies were dealt with at the transnational level, today successful transnational territorial cooperation can even allow for redistributive decisions (e.g. joint approaches to a more integrated labour market policy or economic and tourism development[349] or an integrated transport policy[350]. This is an increasing attempt to overcome the classic territorial "location egoism" of the partners in order to promote the development needs of the entire cross-border area.

Finally, a fourth pattern can be pointed out in this context: In contrast to the normal population, which still has a rather national territorial frame of reference[351], actors of transnational territorial cooperation have a particularly strong identification with cross-border issues. A survey conducted by the author in 2015 among 132 cross-border actors in the Upper Rhine region, using the analytical variables of the international GLOBE project[352] at the transnational territorial level[353], identified a strong task-related action orientation based on a culture of cooperation based on shared values and levels of conviction. This leads to the fact that the transnational subsystem of cooperation is de facto a close-knit community of committed actors that clearly differs from the institutional internal context of the partners in terms of variables such as in-group and institutional collectivism, power distance, human orientation, assertiveness orientation or uncertainty avoidance. On the other hand, of course, this finding also indicates that cross-border issues are obviously still far too often a topic for exclusively

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348 Chrisholm 1989
349 Zschiedrich 2011
350 Drewello / Scholl 2015
351 Schönwald 2010
352 Chhokar / Brodbeck / House 2007; Hoppe / Eckert 2014
353 Beck et al 2015

political-administrative elites, which takes place in the personnel and func-tionally closed circles of a narrow community of "believers"[354].

Co-optation

As the sub-systems of territorial cooperation in their constituent politi-cal-administrative contexts are mostly not yet equipped with their own material competences for action and/or a solid legal basis, co-optation can be understood as a sine qua non for their proper functioning. Territorial cooperation is a constant process of negotiation both between actors com-ing from different systemic and cultural administrative backgrounds and between actors on the ground who have to convince their institutional, political and legal superiors when more substantive commitments beyond symbols are needed. In this sense, co-optation in the cross-border context means first of all both forging coalitions for "win / win" constellations and also obtaining the necessary institutional and financial support from local partners and national governments in the first place[355].

A second area where co-optation in cross-border cooperation takes place is the strategic approach of obtaining active support from the European level. It is interesting to see how, after long years of decoupling, rele-vant co-optation approaches from cross-border territories are becoming more and more successful in this respect: from the pilot phase of 1989, when cross-border issues were first drawn into the general orientation of European cohesion policy, followed by the creation of INTERREG as a Community Initiative and then its transformation into a so-called main-stream programme. mainstream programme, the creation of the EGTC regulation, the macro-regions approach, the Green Paper on territorial cohesion, today the Commission's major efforts to remove structural ob-stacles to cross-border cooperation, or the CoR's proposal to develop a specific territorial impact assessment for border regions – all these devel-opments can ultimately be interpreted as the result of the efforts of cross-border actors trying to obtain support from the European institutions to put pressure on national and sub-national governments in the interest of promoting cross-border cooperation[356].

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354 Decoville / Durand 2018
355 Beck / Wassenberg 2011
356 Cf. Harguindéguy / Sánchez 2017; Keating 1998

A third level of co-optation consists of recent attempts to develop cross-sectoral governance approaches. While cross-border cooperation has been practically the exclusive preserve of administrative actors for the last 40 years, new forms of territorial governance in the cross-border context have recently been increasingly developed. These are inspired by good practices taking place in regional governance in the national context[357]. These are characterised by integrated networks of actors from business, society, research and the public sector, combined with new participatory approaches and forms of collective policy development[358]. For the existing subsystem of cross-border cooperation, such newly conceived approaches offer opportunities to co-opt existing capacities of other sectors and to use them for transnational territorial institution building: newly created bodies and platforms, specific INTERREG projects, steering committees, governing bodies with (or without) a permanent secretariat function, etc. contribute to the horizontal networking of new economic, social, scientific actors and thus strengthen both sectoral and intersectoral capacity building at the horizontal level This leads to new dynamics and growth paths for cross-border policy-making, which in turn strengthen the administrative actors involved on the ground[359].

6.3 Conceptual foundation of European territorial institutionalism

According to the three basic criteria developed by Trondal / Peters, territorial cooperation, as analysed above, can be interpreted as a specific, horizontal pattern of EAS. However, there are features that also clearly distinguish this horizontal from the more classical vertical perspective of the EAS. In particular, the horizontal administrative profile is less pronounced, both quantitatively and qualitatively. With the challenges of an inverted principal-agent constellation, complemented by the lack of both substantial thematic competences at the level of cross-border bodies, but above all with regard to the fulfilment of permanent cross-border tasks[360], the design of both the institutional and functional framework of territorial cooperation is still relatively limited compared to the vertical dimension of the EAS; as this vertical dimension can rely on the institutional context of

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357 Cf. Fürst 2011
358 Cf. Kilper 2010
359 Cf. Jansen / Schubert 1995; Beck 1997
360 Harguindéguy / Sánchez 2017: 257

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the European institutions, characterised by adequate thematic competence and administrative capacity based on European law and specific staff status[361].

In the horizontal dimension of territorial cooperation, on the other hand, the diversity and degree of institutional frameworks is by far more varied than is the case with the more uniform administrative cooperation approaches that are part of the officially established, vertically-networked inter-institutional cooperation relationships. The spectrum of institutional and organisational solutions at the horizontal level includes loosely coupled mono-thematic networks, quasi-institutionalised groups, bodies and organs without legal form/personality, and organisations such as euroregions with their own legal status and permanent staff (seconded or directly recruited)[362].

Based on criteria used in administrative science for the analysis of international public administrations (IPAs)[363], the institutional patterns of cross-border institution-building identified in Part 3 of this paper can be condensed into the following three "ideal types"[364] :

Figure 14: Ideal-types of cross-border cooperation

	Type A	Type B	Type C
Form	Project / Network	Body	Formal Organization
Temporality	Limited/Short-term	Limited/Mid-term	Unlimited/Long-term
Organizational characteristics	Secondary organisation	Process-Organisation	Primary Organisation
Task assignment	Single-issue / Implementation	Policy-related / Coordination	Multi-issue / Development and Implementation
Resource-attribution	punctually	functional	permanent
Degree of autonomy	low	medium	high
Institutional integration	Very low	medium	Very high

Type A stands for a cross-border cooperation approach that is primarily focused on the joint definition and implementation of individual projects. Actors from both sides of the border create a cooperation structure for a limited time (in the form of a classic project organisation or even still

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361 Demmke 2015
362 Zumbusch / Scherer 2015
363 Ege 2017; Bauer / Ege 2016; Heyduk 2021
364 Beck 2018: 14

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at a lower level of institutionalisation in the form of interpersonal or interorganisational networks) to deal with an individual problem. The project partners allocate the necessary resources for the duration of the project, but not necessarily beyond. As only partners with a strong vested interest participate (otherwise they would not co-finance the project) and the content is usually clearly predefined and limited, the overall degree of autonomy is rather low in terms of institutional capacity of the partners involved.

Type B, on the other hand, represents a cross-border cooperation approach manifested through the creation of cross-border bodies. Such bodies do not necessarily have to have a high degree of formal organisation (sometimes they are established around a simple convention, for example) and sometimes they are even set up with a clearly defined time limit (a programme committee, for example); what characterises this form most obviously, however, is its procedural functionality: the bodies created aim to coordinate the decision-making processes between the partners, since in most cases these do not assign any independent thematic competence to the cross-border body. The implementation functions remain with the competent national partners within the legal systems applicable there,, resources are only allocated according to limited functions and not according to thematic tasks. On the other hand, there is a medium degree of autonomy in relation to the spherical cross-border functions for which the bodies were created: Although the actors involved always act on behalf of their institutional home institution, they can develop a relatively pronounced autonomy in terms of informal "preliminary decisions" with regard to preparing and bringing about collective cross-border decisions.

Type C ultimately stands for the creation of a cross-border organisation in the true sense of the word, i.e. the organisation has its own legal personality, which enables it to act independently, and the employment relationships of its (directly recruited or seconded) staff have no time limits, as they have been recruited to fulfil permanent tasks. They can draw on resources that have been permanently provided by the sponsoring institutions for the pursuit of the cross-border tasks and organisational goals. The tasks in question are defined holistically and are completely transferred from the partners to the cross-border organisation, which has the exclusive competence to implement and – if necessary – further develop them. For this reason, such an organisation has a maximum of autonomy vis-à-vis its partners – it acts exclusively on their behalf.

A high degree of institutional organisation and the formal transfer of thematic competences can contribute to the institutional integration of a

given cross-border territory (Lundquist / Trippel 2009). Regarding the last criterion, i.e. the promotion of "institutional integration" within a given cross-border territory, it is evident that this is increasingly better realised in the evolution from Type A to Type C. Type C ultimately stands for its own cross-border institutional development path, which can be clearly distinguished from the national administrative systems involved through the transfer of task-related autonomy of action.

Taking into account the results of the analysis presented above, the specific institutional pattern of territorial cooperation in Europe is still mainly a Type A and Type B approach, based on (informal) inter-institutional and interpersonal networks, rather than a primary organisation administrative pattern, including a specific thematic or programmatic profile, a differentiated staff and an independent budget, so that identifiable programmatic priorities can be developed in the sense of Type C[365]. In this context, it is striking that even the EGTC, which is supposed to serve as an instrument for the creation of an independent cross-border / transnational administrative capacity, is still relatively sparsely used: only 17 % of all official cooperation areas classified by Reitel/Wassenberg use the EGCT – with a strong geographical concentration on South-Eastern Europe[366]. And even where EGTCs are established, their potential for developing an integrated cross-border approach is obviously not well developed[367]. On the other hand, the three types of territorial institutionalism are not necessarily alternatives, but can even coexist within a given transnational territory, resulting in a "patchwork of local arrangements"[368], which gives European territorial institutionalism a specific characteristic. This in turn can be interpreted as a specific characteristic of the horizontal dimension of the European Administrative Space.

From a neo-institutionalist perspective, this finding can be interpreted in different ways: From the perspective of economic-actor-centred institutionalism, the finding indicates that the (national) partners involved are obviously not interested in the creation of formalised and functional cross-border institutions with adequate thematic and/or resource endowments. The non-formalisation of the transnational corridor for territorial cooperation in the form of a preference for inter-institutional and inter-personal projects and networks ultimately promises greater added value in terms

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365 Dominguez / Pires 2014
366 European Parliament 2015
367 Engl 2016
368 Harguindéguy 2007: 332

of maximising individual institutional interests: A maximum number of projects can make it possible to tap a maximum of EU funds without having to change given national structures or distributions of competences[369]. A perspective of historical institutionalism, in turn, would argue that the more recent ambitions to create their own approaches to transnational institution-building are simply not compatible with the historically evolved (and de facto non-harmonised) political-administrative systems of the partners involved: In the absence of adequate transnational and / or European administrative law and procedure, even existing European legal forms such as EGTCs ultimately depend on a decision being taken in favour of a national territory (home-country principle) – thus creating obstacles not least with regard to submission to a foreign jurisdiction[370]. Such an interpretation would also be shared by a sociological institutional view, albeit with a different explanation: the different legal and organisational cultures, but also the differentiated group membership of transnational bodies are ultimately not compatible with the political-administrative cultures and institutional competences of the partners involved. Moreover, the formalisation of transnational institutional capacities would jeopardise existing informal and interpersonal networks, which are seen as highly functional in meeting the multiple challenges of finding flexible and informal interinstitutional solutions to specific territorial problems[371].

With regard to the conceptual use of neo-institutionalist thinking, territorial cooperation represents a twofold interesting application area. First it constitutes an object-based framework, to which the three above lines of argument are related: the territorial reference-frame of politics, in which institutional arrangements are de facto materializing themselves. Second, territorial cooperation itself, as dependent variable, can only be understood rightly, if – with regard to its genesis, structural and procedural functioning and material effectiveness – both the historical, actor-centered and sociological factors are considered as explanatory variables, taking into account their respective interdependency. The related research question here would refer to the functionality of different degrees and arrangements of such territorial institutionalism from the point of the partners involved: What institutional functions are delivered and/or expected and where can they be situated within the continuum of loosely coupled (inter-institutional and inter-personal) networks in the sense of a "transnational

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369 Engl 2016; Zumbusch / Scherer 2015
370 Krzymuski / Kubicki / Ulrich 2017
371 Blatter 2004

governance" on the one hand[372] and more formal, institutionally solidified organisational structures in the sense of a "transnational government" on the other hand[373].

The basic reference points of such patterns of European territorial institutionalism are the related territorial cooperation-needs, which are in turn derived from the different thematic and functional tasks of territorial development itself and which can be understood as intervening variables of such forms of institutionalism: Different degrees of cooperative institutionalization, such would be the related hypothesis, can be interpreted as a territorially influenced function, resulting from the collective adjustment between different historically evolved and thus still rather persisting national systems (public administration, law, political, economic and social order, characterised by diverging functionalities), the interest-related interaction between the actors involved (local communities, territorial governments, enterprises, associations, universities etc.), and the territorial cooperation-needs, which are in turn derived from the different thematic and functional tasks of territorial development itself and which can be understood as intervening variables of such forms of institutionalism. with individual institutional interests), and the cultural and group-related formations (administrative and organisational cultures, norms, leading ideas, mental models etc. of both the collective and individual actors) which are finally, in turn, impacted/influenced by an (interdependent) intervening territorial variables such as geographical location, socio-economic situation, the practical handling of functional development needs, policy-typologies and/or policy-mix, inter-cultural understanding[374].

The fact of different interests and systems meeting each other within the subsystem of cross-border cooperation marks both the complexity and the conditions under which joint institutional solutions can be developed cooperatively. Referring to the above described typology of CBC tasks and functions, in principle, the need of institutionalization would depend on and increase in relation with the expanded level of both the tasks and the functions to be fulfilled. Following Beck[375], Blatter[376] and

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372 Benz at al 2007; Blatter 2006
373 Fürst 2011; König 2008: pp 767; König 2015: pp. 216
374 for further explanantion see: Beck 2017a
375 Beck 1997; 2017
376 Blatter 2000

Zumbusch/Scherer[377] the following figure suggests a model of territorial institutionalism in cross-border cooperation:

Figure 15: Territorial institutionalism in cross-border cooperation
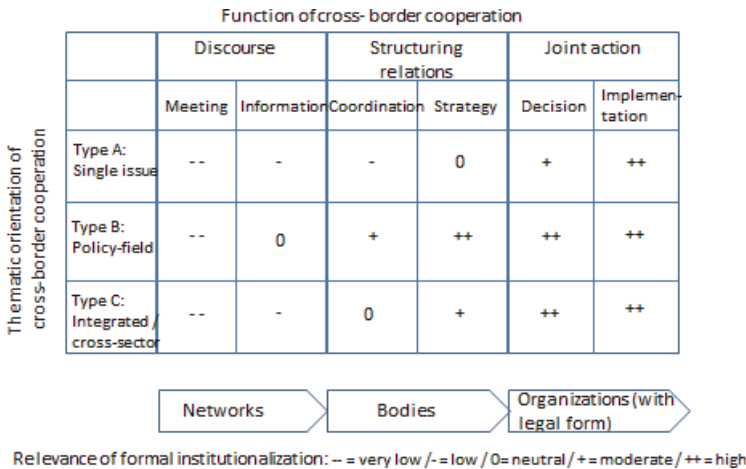
Such classical neo-institutionalist thinking, however, cannot adequately explain the divergent institutional patterns and in particular the coexistence and specific mix of different types of cooperation, as the three equally important explanatory variables from a territorial point of view cannot capture important causes.... In order to better understand both the form and the causes of the identified horizontal transnational institutional patterns developed within the ETC, it may be promising to include additional dimensions that can serve as intervening variables. Different degrees of cooperative institution-building, the related hypothesis would be, can be interpreted as a territorially influenced function resulting from the collective adjustment between different historically developed and thus still divergent national systems (public administration, law, political, economic and social order),, the interest-based interaction between the actors involved (local actors, territorial authorities, deconcentrated state administration, enterprises, associations, universities etc. with individual institutional interests) and the cultural and group structuring patterns (administrative and organisational culture, norms, guiding ideas, mental models, etc. of both collective and individual actors), which in turn are

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377 Zumbusch/Scherer 2015

influenced by (interdependent) intervening territorial variables[378]. These intervening variables can be classified according to the following five main territorial characteristics[379]:

Geographical location: A very obvious territorial variable is the geographical location of a cross-border region[380]. While most cross-border areas are peripheral rather than central regions – at least from the perspective of the respective national and often even regional capitals – the question arises whether this is also true for areas on both sides of the border. Secondly, natural borders also continue to play an important role: mountains, rivers, seas, etc. can have both a separating (as in the past) and a specific integrating function, as has recently been the case with the macro-regions initiated by the European Union or historically with Lake Constance, where cooperation is largely based on an identification with the respective natural situation. Such constellations differ from types of regions whose landscape, has always been characterised by a continuous topography with permanent territorial accessibility, which a priori tends to be more conducive to an integrated cross-border use of space. As Reitel and Wassenberg (2015) point out, the different territorial scaling of cross-border regions can also have a significant impact on their functionality. Finally, the given settlement structures of a cross-border area can be mentioned as another variable that varies between more monocentric and polycentric cross-border constellations.

Socio-economic situation: Cross-border areas can vary greatly in terms of the dynamics of everyday socio-economic interaction i.e. exchange of people, goods and services, e.g. in the form of cross-border commuters, residents, tourists, etc.[381]. This is an important pattern that very often determines the extent to which cross-border issues are perceived as important / promising from the perspective of both policy actors and relevant target groups[382]. Areas characterised by high cross-border mobility often have a stronger commitment to cross-border cooperation (and are therefore more willing to develop territorial potential) than areas where the level of exchange is still relatively low and both the needs and opportunities for cooperation are less evident. However, this is often closely related to the given socio-economic situation, which is another variable: whether a

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378 De Sousa 2012
379 Cf. Beck 2018: pp.16
380 Jones / Jones / Woods 2004
381 Hamman 2006
382 Zschiedrich 2011

cross-border region is economically either rather prosperous / dynamic, or rather poor l / not dynamic, can respectively be an incentive or even an obstacle for the development of collaborative cross-border cooperation approaches. The same applies to the given economic structure: diversified vs. mono-structured, industrial/agricultural vs. service/innovation-oriented regional economies can have both facilitating and hindering functions. From a cross-border perspective, however, the question of the extent to which a given socio-economic structure is characterised by territorial differences between the respective sub-regions within a given cross-border area can play a decisive role in the way in which identified cooperation needs must be secured – or not – not least also institutionally.

Practical handling of functional development needs: A third set of territorial variables can be derived from the way territorial actors perceive and transform the functional development needs of a given cross-border area[383]. On the one hand, many collaborative cross-border initiatives are mainly characterised by a coordination and / or synchronisation of existing domestic policy approaches across the border and not by a genuine cooperation in the sense of a joint development of new approaches. Whether ultimately only the synchronisation of existing policy approaches of the partners or genuine cooperation in the sense of material reconciliation of interests is practised certainly has an impact on the effectiveness of cross-border policy. Furthermore, the question of whether cross-border cooperation is primarily perceived as a necessity for collaborative policy-making and whether the focus is also on the joint implementation of jointly reflected strategies/goals is an important variable that ultimately also has consequences for the structuring/institutionalisation of cooperation. The content and nature of the cooperation must also be considered: is the primary pattern the development and implementation of individual projects (i.e. secondary organisational solutions to problems with a defined start and end) or should the cooperation also extend to areas with permanent public tasks, such as cross-border shared services, which require a much more robust structuring and institutional safeguarding. Finally, another variable that can be important is the question of the types of actors involved: do thematic technical specialists, who have concrete solutions within a policy field in mind, or rather generalists, who have the overall space with its interdependent relations between different policy fields in mind, cooperate. In the former case, more binding forms of cooperation will be sought (e.g. legal forms for the permanent sponsorship of an insti-

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383 Cf. Benz / Scharpf / Zintl 1992; Beck / Pradier 2011

tution to be created) and these will also want to be institutionally secured, while in the latter case, institutional solution patterns are more likely to be sought that serve to legitimise the process (open forums, networks, planning cells, working groups, etc.).

Policy typologies treated and / or policy mix: A fourth group of variables can be delineated around the policy typology in question[384] practised in a given cross-border area. The classic dichotomy here is a distributive versus a redistributive policy approach. For example, a financial support programme such as INTERREG can be implemented in a very distributive way, e.g. in the form that projects are developed exclusively bottom-up, a funding objective can ultimately be found for each project and thus – provided the formal requirements are met – funding can be granted for all project initiatives. Or it can be implemented in a redistributive manner, i.e. projects are selected on the basis of project calls that are consistently aligned with the defined strategic goals. However, according to a more classical understanding of policy field analysis[385], the distinction between a distributive vs. redistributive strategy is based on the functional character of a thematic policy for the respective target groups / populations / areas. I.e. a certain policy approach is distributive if its effect benefits all target groups in a delimited area (win-win constellation); if, however, only part of the target group benefits and other groups are disadvantaged and / or they even have to cover additional (direct or indirect) costs, the policy is redistributive. A third policy typology is regulatory policy, which establishes a binding normative framework for the entire target group (e.g. common standards). Finally, a fourth policy type can be called constitutive, which builds institutions and / or organisational structures to either address collective issues or provide services to a specific population – provided that all actors involved have to participate in the financing (either in the form of financial contributions directly related to a specific service used, or in the form of a global contribution with unspecific allocation to concrete services, e.g. taxes for public goods).

In the case of cross-border cooperation, the particularity is that the respective population in the context of a given cross-border territory usually consists of target groups living in sub-regions, which in turn belong to different jurisdictions. Accordingly, policies that are designed as distributive programmes in a domestic context (e.g. programmes to promote the economy) may change their character in the cross-border perspective if it is

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384 Parsons 1995
385 Blum / Schubert 2009

not ensured that the positive effects are actually generated in the same way on both sides of the border. The negative effects of redistributive measures (such as environmental or nature protection) can also be asymmetrical, i.e. one-sided in a cross-border perspective, while regulatory approaches would theoretically (depending on the definition) require clear responsibility for all target groups if they are to go beyond a voluntary and thus usually less effective approach – a prerequisite that de facto does not exist in a cross-border constellation. It can thus be seen that the political character of the thematic approaches developed and implemented in cross-border cooperation plays a decisive role in the effectiveness and efficiency of the common political challenges and problems as well as in the design of the institutional framework[386]. The extent to which "package solutions", which are often developed in the national context to maximise the benefits and compensate for deficits of individual policy approaches, are feasible at all in the cross-border context represents another relevant territorial determinant for the practical design of cross-border cooperation and its policy-related effectiveness.

<u>Culture:</u> The last group of variables refers to the role culture plays in cross-border cooperation[387]. It is obvious that the diversity of polit-ical-administrative systems and cultures in Europe plays an important role in the functional design of cross-border constellations. Kuhlmann / Wollmann[388], for example, have identified five different basic types of administrative cultures in Europe:t: the Continental European Napoleonic group of countries (France, Italy, Spain, Greece, Portugal), the Continental European group of countries (Germany, Austria, Switzerland), the Scan-dinavian group of countries (Sweden, Denmark, Norway, Finland), the Anglo-Saxon group of countries (Great Britain, Malta, Ireland), and the Eastern European group of countries (Hungary, Poland, Czech Republic, Bulgaria, Romania). In addition to the challenge of inter-systemic coop-eration (differences between political-administrative systems and cultures meeting at the border must be overcome via functional equivalents), there are always the more classic challenges of intercultural communication (differences in values, formal and informal rules, and norms as well as traditions of society that lead to stereotypes) that influence the interaction between actors across borders. Both factors influence the functioning of

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386 Cf. already Beck 1997
387 Euro Institute 2007
388 Kuhlmann / Wollmann 2014: pp. 56

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cross-border cooperation[389]. In addition, historical experiences obviously also play an important role, as these often shape perceptions (collective memory) and often even motivate cross-border cooperation in the first place[390].

These five types of territorial factors act as (interdependent) intervening variables on the respective manifestation of the independent variables of classical neo-institutionalism. They can explain, for example, the type of actors involved in cross-border cooperation (primarily public or economic and / or social?), the specific interests and strategies they pursue, but also the (diverging) institutional preferences of certain cross-border actors. Furthermore, such territorial factors also affect the sociological structure of cross-border cooperation: What types of networks exist (open / closed), what is the main conceptual orientation of actors,, what patterns / forms / preferences of institutional change exist within networks and to what extent do they represent common (or diverging) cognitive / thematic identifications in terms of "epistemic communities"[391]? Finally, the relative explanatory power of historical institutionalism can also be influenced by these territorial factors: To what extent can a structural persistence and / or a specific path dependency within a cross-border constellation be explained by the compatibility / incompatibility of institutional structures and/or the different administrative cultures of the partners involved, by (negative or positive) experiences in the past or by common traditions and patterns of cooperation that have developed over time (or not yet) and that represent a common understanding of "good practice"?

The following diagram illustrates the conceptual classification of such intervening variables in relation to the configuration of patterns of cross-border cooperation in the context of "territorial institutionalism"[392] :

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389 Eisenberg 2007
390 Wassenberg 2007
391 Haas 1992
392 Beck 2918: 19

Figure 16: Conceptual framing of territorial institutionalism within cross-border cooperation
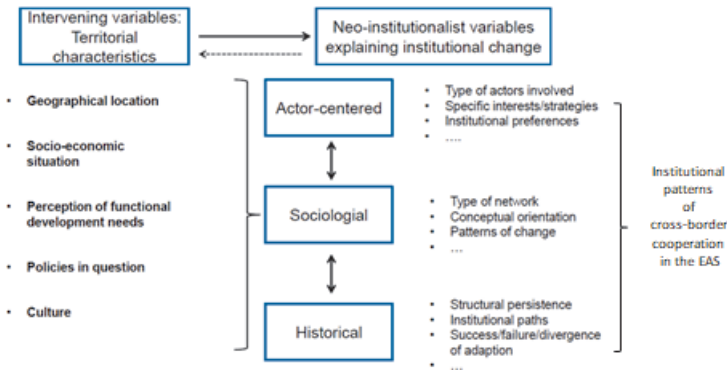
6.4 Territorial institutionalism and the European Administrative Space

This chapter was guided by three research questions; 1. to what extent can patterns of ETC-related institutionalisation be interpreted as a horizontal dimension of EAS? 2. how can these patterns be conceptualised and what explains the diversity of forms of this kind of institutionalisation?, 3. in what way is reflection on a horizontal dimension of the EAS productive for further research in this field?

It could be shown, with reference to the three core elements of the EAS proposed by Trondal / Peters 2015 (independence of institutional capacity, integration, co-optation),, that the institutional patterns developed in the ETC context can indeed be interpreted as a horizontal dimension of the EAS. Based on relevant indicators (total number, types and levels of ETC-related institutionalism representing a specifically created transnational pathway, full-time equivalences representing specific staff capacities).The institutional profile of the ETC represents a horizontal structural capacity for addressing transnational territorial governance issues, directly involving local and regional administrative actors coming from different jurisdictions in a transnational subsystem of cooperation. Finally, although this horizontal profile turns out to be rather modest in quantitative terms compared to the domestic administrative capacities present in border regions without a direct link to the ETC, it complements the other well-established vertical multi-level cooperation taking place within the context of the European administrative space.

The analysis of the identified overall profile allowed an answer to the second research question: Based on criteria used in administrative science, a classification of three ideal types was developed, even though these ideal types usually interact or coexist in practice within a given CBC area. The established explanatory approaches of neo-institutionalism allowed to explain the design of this profile. Moreover, it was shown that a comprehensive conceptual understanding of the different forms of territorial institutionalism requires the addition of intervening territorial variables to the independent variables of neo-institutionalism. A conceptual proposal for further analyses was developed in this context.

With regard to the third question, three conclusions can be drawn from the above analysis:

1. Cross-border institution-building can play an important role for positive integration[393] in Europe in the future by modifying existing institutions and creating new capacities: Border areas can be seen as innovative levels of horizontal European integration, although it might be useful to examine more closely which factors hinder the further development of such positive integration at the horizontal level. Recent studies show that – despite the consequences of supranationalisation – a relatively high number of legal and administrative obstacles remain in many policy areas in Europe, which de facto hinder cross-border / transnational mobility[394]. These have their causes in many cases in the non-coordinated or non-harmonised legal and administrative systems of the member states and point to a still strong dominance of national law in relation to European law. The extent to which transnational territorial cooperation and the associated horizontal institution-building approaches are able to compensate (or not) for the lack of vertical supranationalisation can thus lead to a more comprehensive understanding of the plurality of functional dimensions that de facto characterise the European Administrative Space today. One hypothesis in this regard could be that more bilateral approaches to negative integration (e.g. the removal of structural barriers that restrict the mobility of people, goods and services) at the sub-national level between neighbouring member states may ultimately foster further positive institutional integration at the transnational as well as the European level.

2. A greater focus on patterns of territorial institution-building can help to fill the three research gaps identified in the introduction: Beyond the importance of the horizontal dimension of direct transnational coopera-

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393   Scharpf 1997
394   Decoville / Durand 2018: 2

tion at sub-national and local levels, a more nuanced understanding of the interdependencies between the independent variables of established neoinstitutional theories, as suggested by the proposed set of complementary intervening variables, can also help to make the informal and little established patterns of cooperation at the territorial level, which have been insufficiently captured so far, useful for the analysis of the European Administrative Space. These should be conceptually understood as an integral pattern of the EAS. This may also require that recent academic work on interactions between public institutions and their socio-economic and social environment be better incorporated[395] : While historical institutionalism may explain the persistence of national administrative systems in this respect, a sociological perspective could assess the emergence of a normative framework for new forms of (inter-) administrative cooperation. On this basis, actor-centred and sociological approaches – provided they support them with relevant intervening variables based on different territorial constellations[396] – may allow for a more nuanced understanding of why and how actors develop their specific institutional strategies and in what way they thereby contribute to shaping (or preventing!) the European administrative space.

3. In a context in which the classical "Westphalian" equivalence between territory, power and population seems to be increasingly dissolving in the course of glocalisation[397], such a horizontal focus on the EAS can finally also contribute to which new functional equivalences de facto emerge in a bottom-up perspective or already co-determine the European administrative space in functional terms. Referring back to the concept of territorial institutionalism outlined above can in any case help to differentiate the somehow blurred and very generalising argument according to which a transformation from territory to function is ultimately the new basis for cross-border cooperation in the future[398]. In this respect, the analysis of territorial institutionalism rather points to a renaissance of the relevance of classical territorial factors and issues, whose capture and significance in their horizontal genesis should be even better conceptually appreciated in order to ultimately be able to develop a complete understanding of the institutional dynamics of the European Administrative Space.

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395 Decoville / Durand 2018
396 De Sousa 2012
397 Amilhat Szary 2015
398 Blatter 2003

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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

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-ser vices-spocs (30.03.2022)
419 https://data.europa.eu/doi/10.2826/480977; European Commission 2020

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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-20 14-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.

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 determining 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 differences, 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 assess 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

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

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

E. Stimulating territorial development – Optimizing thematic coopera-tion between sectorial administrations: The focus of this fifth area of activi-ty 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, spa-tial 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/Meet-ing, Information, Coordination, Stragey/Panning, Decision-Making, Im-plementation (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 de-velopment of an externally funded project-proposal which is actually lack-ing 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 re-spective 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 cooperation
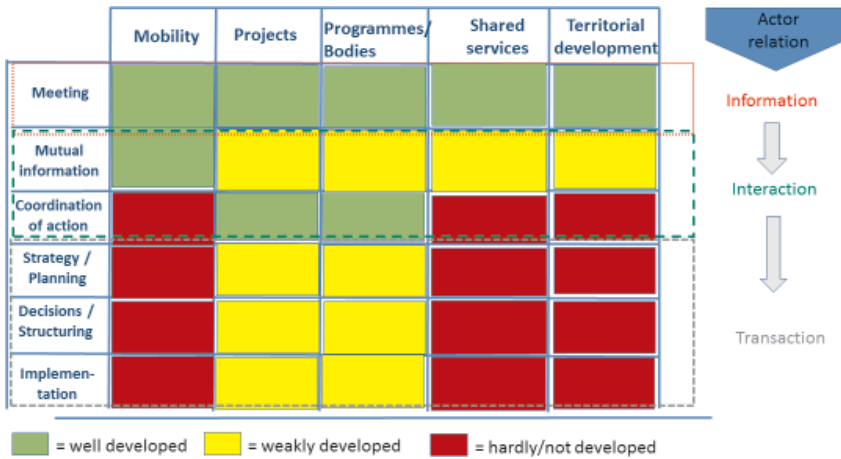
With regards to the question of how well the different CBC activities are fulfilled, we can see that in three areas (mobility, shared services and territorial development) the cooperation is still very much limited to the functional levels of meeting and mutual information. Only the activities of project-management 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 innocuous) 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

– <u>better informed joint decision making between actors</u> (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)

– <u>better informed and structured work-processes</u> (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

– <u>better interaction between public, private and societal actors</u> 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)

– <u>better monitoring and impact assessment of</u> 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 <u>all</u> 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

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

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)

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

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
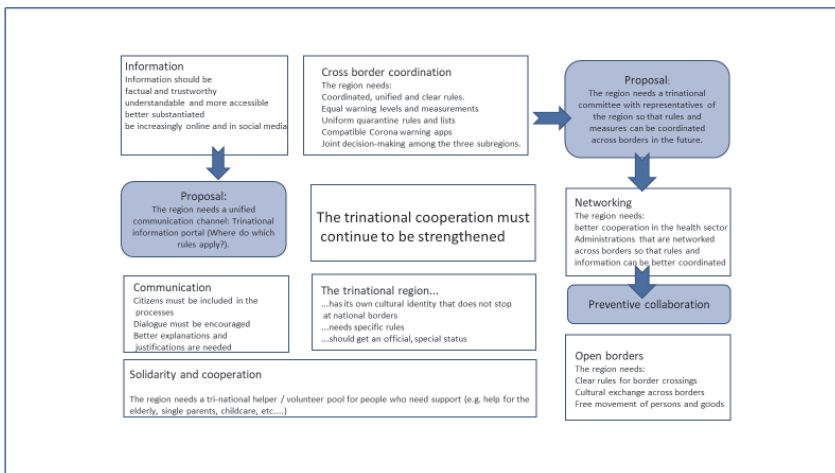
Source: Ministry of State 2020: 7 – translation by the author.

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 INTERREG 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)

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 co-operation, 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 im-plement 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 need-ed 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 gener-ally 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

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
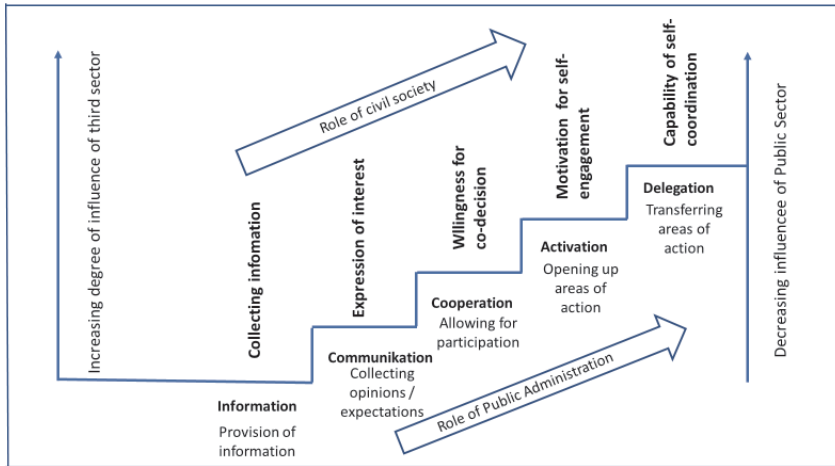
Source: own illustration following Kegelmann 2015: 378

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

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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.

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

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

8 Needs and approaches of legal flexibilisation in the cross-border context

The symbolic character, function and attention given to border regions have undergone significant change in recent decades. The advantages of European integration, but also the hurdles that still exist, can be experienced here in everyday life[500] – this resulting special role in the context of Europeanisation is also expressed by the designation of the border regions as "laboratory and motor for the development of the European continent".[501] Nevertheless, border regions are less developed than the rest of the respective nation states.[502] According to the European Commission, a reduction of only 20 % of the existing border-related restrictions could lead to an increase in GDP of 2 %.[503] A reduction of the existing legal and administrative barriers is therefore necessary to fully exploit the potentials of border regions.[504]

After the legal framework of cross-border cooperation has been rather static in recent years[505], there are now new approaches to reduce legal hurdles in the context of cross-border cooperation: the proposal for a regulation on a new cross-border mechanism[506] is essentially based on an initiative launched by the Grand Duchy of Luxembourg during its Council Presidency. The resolution on the 55th anniversary of the Elysée Treaty

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500 AGEG 2008: 11.
501 Lambertz 2010: VIII.
502 European Commission 2017: 4.
503 European Commission 2017: 7.
504 Beck 2015; 2018.
505 The main legal framework conditions for cross-border cooperation result from the Madrid Framework Convention of the Council of Europe and its implementing agreements (in the Upper Rhine region this is the Karlsruhe Convention); in terms of EU law, the EGTC Regulation should also be mentioned. The Madrid Framework Convention entered into force in 1981, the Karlsruhe Convention in 1997 and the Third Additional Protocol to the Madrid Framework Convention in 2013. The EGTC Regulation adopted in 2006 was amended in 2013. There have thus been no significant changes to the legal framework since 2006.
506 Proposal for a Regulation of the European Parliament and of the Council establishing a mechanism to overcome legal and administrative obstacles in a cross-border context, COM(2018) 373 final.

calls for a strengthening of cross-border cooperation, including the transfer of own competences to the "Eurodistricts" – if necessary by introducing the use of exception and experimentation clauses. According to the Aachen Treaty[507] it should be possible to provide for exception clauses for territorial authorities of border regions and cross-border units if obstacles in the context of cross-border cooperation cannot be overcome otherwise, Art. 13 para. 2 Aachen Treaty. Finally, another proposal is to apply the principle of "mutual recognition" originally developed by case law to cross-border administrative and legal situations.[508]

Against this background, this article examines whether there is a need to make the existing legal framework of cross-border cooperation more flexible, what the possibilities and limits of the practical areas of application are, and the question of further needs for concretisation. The Upper Rhine region and two projects implemented here serve as examples: the extension of the tramway from Strasbourg to Kehl and the water supply between the municipality of Bad Bergzabern and the French municipality of Wissembourg.

8.1 Flexibilisation needs in the context of cross-border governance

The Upper Rhine region is an originally common living space that has been subject to numerous border shifts and armed conflicts and shifts in borders.[509] As a result, the region today certainly has a common cultural heritage, but no common cultural identity.[510]

A characterisation of the cultural profiles of France and Germany, as carried out by Beck[511] on the basis of criteria known in the literature (based in particular on the work of Hofestede, Hall, Jann and others), shows that the two cultures are often at different ends of the scale of characteristic expression with regard to communication style, the role or perception of time, action orientation, differentiation, argumentation style, power distance and problem-solving strategies.[512] This has implications for cooperation.

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507 Treaty between the Federal Republic of Germany and the French Republic on Franco-German Cooperation and Integration.
508 Beck, 2015.
509 Wassenberg 2011: pp. 72.
510 Dussap-Köhler 2011: 131.
511 Beck, 2011b.
512 Beck, 2011b: pp. 153.

European administrative systems are closely linked to the cultural background and historical development of the respective country.[513] Even between Germany as a federal state and France as a centralised state, there are differences in the distribution of competences, hierarchies, responsibility holders, processes and foundations of public action.[514] This makes the search for the right contact or cooperation partner on the other side difficult or even impossible.[515] At the same time, this is a symptom of the administrative systems – both institutionally and procedurally – designed for national action as "visible differences".[516] Added to these is the respective administrative culture, which also shows clear differences with regard to various aspects, for example the structure and function of meetings.[517]

It can thus be stated that on the one hand, cross-border cooperation aims to overcome existing border-related restrictions that exist due to historical development and cultural factors. On the other hand, cross-border cooperation itself is under the influence of these factors.[518] The degree of impact, especially of administrative cultures, is determined by the object of cooperation, the type of task, the interaction relationships and the actors involved, as well as the degree of institutionalisation.[519]

In accordance with the multilevel governance approach,[520] which has become established to explain the European Union and its own distribution of sovereignty as a sui generis organisation, the concept of governance is also applied in cross-border cooperation.[521] While cross-border cooperation initially had a strongly territorial logic of action, i.e. an orientation towards the territories defined by national administrative units, this changed in the context of progressive European integration.[522] The development towards a functional logic of action of governance structures has been analysed in the literature with numerous models for the characterisation of (cross-border) governance, which often refer back to previous develop-

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513 Beck, 2011b: 146.
514 Dussap-Köhler 2011: 130.
515 Dussap-Köhler 2011: 130; Wassenberg 2011: 79.
516 Dussap-Köhler 2011: 130; European Commission 2017: 9.
517 Beck 2011b: pp. 155.
518 Beck 2017b: pp. 351.
519 Beck, 2011b:163.
520 Marks 1993.
521 Beck/ Wassenberg 2011.
522 Blatter 2004.

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ments.[523] With this development towards a functional logic of action, cross-border cooperation itself developed many levels ("multi-level") and a broad spectrum of actors ("multi-actor")[524] and thus shows its typology as part of the multi-level system itself.

Specifically for cross-border cooperation, Beck/Pradier propose a definition of governance with four dimensions: a territorial, a transnational, a European and a factual/strategic dimension.[525] The latter of these four dimensions refers to the tasks fulfilled within the cooperation, which in turn has an impact on the necessary actors as well as the degree of politicisation and institutionalisation of the respective governance structure.[526] Structures of cross-border cooperation can thus be differentiated according to the subject of cooperation (single issue, policy-related or integrated cross-sectorial) or their functional logic, which in turn is determined by the degree of institutionalisation.[527] This structure can also be considered from the point of view of the reference points of holistic governance[528] (see following figure).

A general trend observed in the literature is a change in the tasks of cross-border cooperation: on the one hand, a development towards the integrated perception of overall territorial development tasks (thematic dimension), on the other hand, a development towards decision-making and implementation functions, i.e. in functional terms, towards an implementation of cross-border cooperation at the action level.[529] At the implementation level, however, institutionalisation plays an important role. With regard to the EGTC, however, it must be noted that it is used to a rather limited extent and the intended institution building has not yet been really successful.[530]

From the perspective of the factual-strategic dimension of cross-border governance, the anchoring of cross-border territorial objectives in sectoral sectoral policies is necessary at the structuring level, which, according to Beck/Pradier, could be achieved through experimentation clauses at the level of legal regulations and cross-border perspectives in sectoral programmes.[531]

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523 e.g. Hooghe/ Marks 2003; Blatter 2004; Beck/ Pradier 2011; Fricke 2015; Zumbusch/ Scherer 2019.
524 Zumbusch/Scherer 2019.
525 Beck/ Pradier 2011: pp.124.
526 Ibid.
527 Beck/ Pradier 2011; Beck 2017: pp. 348
528 Beck/Pradier 2011: pp. 129.
529 Beck 2017b: 361.
530 Beck 2017b: pp. 361.
531 Beck/ Pradier 2011: pp. 130.

Figure 20 Thematic and functional differentiation of cross-border cooperation in the context of the dimensions of cross-border governance[532]

	Thematic differentiation			Functional levels of cross-border cooperation		Dimensions of cross-border governance			
	"single issue"	"policy-related"	"integrated cross-sectorial"			Territorial Dimension	Trans-national Dimension	European Dimension	Thematic Dimension
Organisations (with legal form)	++	++	++	level of implementation	implemen-tation	Flagship projects for synergistic potential develop-ment	Delegation of the respon-sibility for cross-border tasks	Obtaining funding for cross-border demon-stration projects	Cross-border organi-sations with their own task compet-ence
	+	++	++		decision-making	Vertically and horizon-tally integrated processes and structures	Targeted cross-border net-working of political arenas	Mobili-sation of European decision-makers (from the territorial environ-ment)	Manage-ment of cross-border policy-related negotiation systems
Facilities	0	++	+	level of structuring	Strategy/ Planning	Integrated CBC develop-ment concepts	Anchoring cross-border goals at the level of the prinicipals	Proactive partici-pation in EU projects (consul-tations, EU Impact Assessment System)	Anchoring cross-border objectives and opening clauses in national law
	-	+	0		coor-dination	Developm-ent of regional CBC collective and	Cross-border synchroni-sation of national missions and	Joint lobby strategies of the (inter-mediary) represen-tatives in	Cross-border synchroni-sation of domestic sectoral objectives
Networks	-	0	-	level of discourse	infor-mation	Develop-ment of cross-border spatial informmation systems	Manage-ment of insti-tutional interfaces	Optimi-sation of vertical information flow	Proactive cross-border dissemi-nation of information on national policies
	--	--	--		encounter	Creation of CBC forums of inter-mediary actors	Inter-cultural mediation (systems, actors)	Intensifi-cation of joint direct contacts with European institutions	Cross-border networking of experts at all levels

With increasing functional level: increasing intensity, commitment, integration, need for institutionalisation

Source: Beck/Weigel 2021: 290

The number and breadth of legal and administrative hurdles that the European Commission has compiled in the context of the "Cross-border review"[533] shows that the step across the border is still the exceptional case. There can therefore be no talk of anchoring cross-border dimensions in national specialised law. Most of the legal areas relevant for cross-border cooperation remain within the competence of the member states.[534] The sovereign area is excluded from cooperation in the current legal framework (Madrid Framework Convention, Karlsruhe Convention, EGTC Regulation).

Additionally, when looking at the tasks of existing EGTCs and other cross-border organisations of public actors, it is noticeable that they usually have an abstract mission ("promoting cross-border cooperation"). Examples where an EGTC manages cross-border infrastructure or provides services of general interest, such as the EGTC Hôpital de Cerdanya, are in the minority.

It therefore seems as if the current legal framework hinders an increasing integrated potential development in the border regions. Progressive institutionalisation and the increased use of synergy effects in broad thematic fields can only take place if the legal framework for joint task fulfilment exists. Legal flexibility in cross-border cooperation could therefore not only contribute to the reduction of existing obstacles, but also promote the further development of cross-border cooperation.

8.2 Instruments of legal flexibility

In order to adapt the legal framework to the special needs of border regions, various approaches are discussed. In general, making the legal framework more flexible should be understood here as the possibility of finding special legal solutions for border regions that are appropriate to their situation.[535] The use of experimental or exception clauses is conceivable, as is mutual recognition, the creation of exceptions analogous to

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532 Presentation based on Beck/ Pradier 2011 and Beck 2017a.
533 The list of these obstacles is available online at http://ec.europa.eu/regional _policy/en/policy/cooperation/european-territorial/cross-border/review/#1, (30.03.2022)
534 Beck 2015: 16.
535 Weigel 2019: 33.

the de minimis rule in state aid law[536] and the introduction of a new mechanism through European law.

Experimental clauses are *"a legislative technique by which the legislator authorises the executive to exceptionally deviate from or dispense with applicable law in order to test a project to be carried out by the administration, which is to be finally standardised at a later date on the basis of the experience gained"*[537]. There are experimental clauses in both German and French law. However, the objective has so far been rather to modernise the administration,[538] for example in Germany at the turn of the millennium to test the new budget law.[539]

In France, the right to experiment is even enshrined in the constitution, Art. 37–1 and Art. 72–4 constitution française. The idea, which is becoming stronger in the course of decentralisation efforts, that the needs of territories and territorial authorities could differ depending on their location is very surprising, especially in view of the principle of "uniformité", which has a very high value as a central constitutional principle in France[540]. The two articles distinguish experiments with two different objectives: on the one hand, the transfer of new competences (Art. 37–1), on the other hand, it is a question of temporarily entrusting a territorial entity with normative power in the field of application of a given law or regulation.[541] In the second case, Art. LO-1113–1 to LO-1113–7 CGCT, which concretise the implementation, however, define so many requirements for the application of the experimental possibilities that hardly any use has been made of them to date.[542]

Since, according to their definition, experimental clauses serve to test a new regulation, they cannot be valid indefinitely. Especially with regard to the use of experimental clauses for cross-border cooperation, this can create uncertainty if it is unclear whether a regulation will be generalised after the trial phase.

The use of experimentation clauses proposed in the resolution on the occasion of the 55th anniversary of the Elysée Treaty finds no mention in the Aachen Treaty. The situation is different with the exception clauses: For the purpose of facilitating the daily lives of people living in border

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536 Beck 2015; 2017b.
537 Maaß 2001 : 39.
538 Maaß 2001; Bouillant/ Duru 2018.
539 Maaß 2001 : pp. 4.
540 Bouillant/Duru 2018.
541 Bouillant/ Duru 2018.
542 Bouillant/ Duru 2018.

regions and removing obstacles hindering cross-border projects (Art. 13 para. 1), local authorities of border regions and cross-border units are to be provided with "dedicated funds and accelerated procedures"; if this is not possible with any other instrument, "derogations may also be provided" (Art. 13 para. 2). As a special authorisation, derogations are explicitly regulated in the law.[543] In German law, derogations have so far been found, for example, in building law (§ 56 para. 3 LBO).

The creation of exceptions analogous to the de minimis rule under state aid law would also be conceivable for cross-border situations.[544] In this regard, EU Regulations 1407/2013 and 1408/2013 regulate when aid that meets the criteria of Article 107 TFEU can be exempted from the obligation to notify the Commission under Article 108 TFEU. Here, the idea of thresholds could be transferred to ensure that exemptions remain so.

Another conceivable way of making the legal framework more flexible is to apply the principle of mutual recognition to cross-border cooperation.[545] The principle goes back to the so-called "Cassis de Dijon" decision of the EugH[546] and is a central principle for the realisation of the free movement of goods in the European internal market.[547] According to this principle, the consumption within the European internal market of goods which are not subject to harmonisation regulations and which have been lawfully produced and put on sale in another member state may not be prohibited even if the regulations applied to their production differ from the domestic regulations.[548]

Transferred to the context of cross-border cooperation, this could mean that the regulation of an administrative matter which corresponds to the provisions applicable in one Member State is recognised by the other Member States. Central to this would be the criterion of functional equivalence.[549] This approach provides very pragmatic solution perspectives; at the same time, it would not be necessary to generate exceptional circumstances on a large scale – which, apart from the question of constitutional admissibility, would not overcome borders, but only shift them.[550] Thresh-

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543 Maaß 2001 : pp. 64.
544 Beck 2017b: pp. 22.
545 Beck 2015.
546 ECJ, Judgment v. 20.02.1979, 120/78, European Court Reports1979–00649.
547 Beck 2015 : 18; Craig/ de Bùrca 2011 : pp. 595.
548 paragraph 3 of the recitals of Regulation (EC) No 7264/2008.
549 Beck 2015: 21.
550 Beck 2015: pp. 19.

olds analogous to the de minimis regulations could in this case help to maintain proportionality and not apply the regulation to mass phenomena.[551]

For the introduction of a "mechanism to overcome legal and administrative obstacles in a cross-border context", a draft regulation on a mechanism to overcome legal and administrative obstacles in a cross-border context has been available since the end of May 2018.[552] Essentially, it is intended to make it possible to apply the legal provisions of a state involved in cooperation on the territory of the other state in the context of cross-border cooperation. For this purpose, the mechanism provides for the following procedure:

The initiator[553] identifies a legal obstacle in connection with the planning, development, staffing, financing or operation of a joint project[554]. After the legal obstacle has been identified, the initiator prepares an initiative proposal, Art. 8 No. 3 of the proposed Regulation; the requirements for this are contained in Art. 9 of the proposed Regulation. First, a preliminary analysis is carried out by the adopting Member State, Art. 10 of the proposed Regulation, on the basis of which the content of the draft commitment or declaration is elaborated, Art. 13f. VO proposal. The proposal is then sent to the transboundary coordinating body of the receiving Member State, Art. 15 of the proposed Regulation. The coordinating body examines the proposal in consultation with the competent authori-

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551 Beck 2015: pp. 21.

552 COM (2018) 373 final.

553 This is the actor who identifies the legal obstacle and activates the cross-border mechanism by submitting a so-called initiative proposal, Art. 3(5) Draft Regulation. The initiator can be a public or private body responsible for initiating or initiating and implementing a joint project (lit. a), one or more local or regional authorities established in a cross-border region or exercising sovereign rights there (lit. b), a body established for cross-border cooperation, e.g. an EGTC (lit. c), an organisation serving to promote the interests and exchange the experience of cross-border territories and their actors (lit. d) or one or more of these bodies (lit. e), Art. 8 Par. 2 Draft Regulation.

554 Infrastructure measure with effects on a specific cross-border region (a cross-border region is an area that extends to neighbouring NUTS level 3 regions with internal borders of two or more landlocked states, Art. 3(1) Draft Regulation) or service of general economic interest provided in a specific cross-border region, Art. 3(2) Draft Regulation.
NUTS3 level refers to small areas comprising districts or counties of 150,000 to max. 800,000 inhabitants, Art. 3 para. 2 Regulation (EC) 1059/2003 of the European Parliament and of the Council of 26.5.2003, OJ L 154 of 21.6.2003, p.1.

ty of the transferring state, Art. 16f. Proposal of the Regulation. In the framework of the implementation of the commitment, the administrative acts necessary for the implementation of the joint project are adopted by the competent authorities applying the substantive law of the transferring state or administrative acts already adopted are amended, Art. 18 of the proposed Regulation. Formally, the procedure for issuing or amending an administrative act under national law must be observed. In the case of a declaration, the necessary administrative acts can only be adopted after the amendment of national law, Art. 19 of the proposed Regulation. Monitoring of the application of the obligation or declaration can be carried out either by the accepting or the transferring authority, Art. 20 of the proposed Regulation. In addition, the proposed Regulation contains provisions on legal protection against the application and monitoring of the commitments and declarations in Art. 21 and Art. 22.

According to Art. 4 para. 2 lit. c) TFEU, the area of economic, social and territorial cohesion falls within the scope of shared competences. Specific regulations on economic, social and territorial cohesion can be found in Art. 174 ff. TFEU. The legal basis of the proposed Regulation is Article 175 (3) TFEU, according to which "specific actions" may be taken outside the funds referred to in Article 175 (1) TFEU in order to achieve the objective of economic, social and territorial cohesion referred to in Article 174 TFEU.[555] According to the explanatory memorandum of the proposed regulation, the proposed mechanism is also in line with the principle of subsidiarity enshrined in Art. 5(3) of the Treaty on European Union (TEU)[556] as well as the principle of proportionality from Art. 5(4) TEU.[557] Here, the voluntary nature of the mechanism is emphasised in particular.[558]

8.3 Investigation of practical application perspectives

As outlined above, from the perspective of cross-border cooperation and increasing institutionalisation, making the legal framework of cross-border cooperation more flexible seems desirable. In the following, concrete examples of application will be used to show which needs for flexibility exist,

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555 COM (2018) 373 final, p. 3.
556 Ibid.
557 COM (2018) 373 final, p. 4.
558 COM (2018) 373 final, p. 3.

i.e. how legal and administrative hurdles make themselves felt and to what extent the mechanisms presented can contribute to their solution.[559]

8.3.1 Extension of the Line D of the Strasbourg Metropolitan Area tramway to Kehl

Already at the turn of the millennium, it was discussed whether the Strasbourg tram could run to Kehl.[560] It was to take some time, but on 28 April 2017, the cross-border tram was finally inaugurated.[561] This not only has a great symbolic effect thanks to the newly built Rhine bridge, but also serves to alleviate daily traffic problems[562] and thus creates a concrete added value in the everyday life of the citizens.

The cooperation of the city of Kehl, the Eurométropole Strasbourg and the Strasbourg Transport Services (CTS) for the extension of the tram line and the operation of the tram can be qualified as a "single issue" cooperation in thematic terms. A joint institution was neither created for the construction of the infrastructure nor for the operation of the tram line. The implementation is closely coordinated and jointly supported; from a functional point of view, the cooperation is therefore to be assigned to the action level.

In the course of the project realisation, numerous hurdles of an administrative and legal nature arose. Although the project was realised, i.e. a solution was found for all hurdles, some of them are rather circumvention strategies.

The legal hurdles described had different causes. For example, in the case of divergent legal institutions regulating ownership of public infrastructure and the implementation of ticket controls, the reason can be found in the fact that French and German law make a different allocation to public and private law in these cases. The application of mutual recognition or experimental clauses cannot lead to a solution here, as these cannot provide solutions for collisions that subsequently arise with national law. It would be conceivable in the case of the regulation of property relations

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559 for more details, see Weigel, 2019.
560 Kehl, 2017: 65.
561 Kehl, 2018a: 21.
562 On an average weekday, the Europabrücke, which crosses the Rhine, is traversed by 30,000 -40,000 cars https://www.wro.de/presse/detailansicht/news/ein-motor -der-stadtentwicklung/ (30.03.2022)

(in the concrete case the tram bridge over the Rhine) to subject the bridge as a whole to the legal order of a state (e.g. the "domain public") with the help of a cross-border declaration. Here, however, a declaration would be necessary, as the handling of the "imported" legal institution would have to be regulated in German law.

With regard to the tendering and awarding of the construction of the tram line and the operation of the tram line, the German public procurement regulations provide for different procedures, which in turn are the prerequisite for public allocations. This is therefore less about fundamental differences in legal nature than about the definition of standard procedures in implementation of the European directives on public procurement law. Not only does it make little sense to apply different tendering procedures to cross-border infrastructure, depending on the structure, it is also technically impossible to carry out two construction projects and combine them. This is a suitable area of application for the cross-border mechanism. In the case of cross-border tenders, it would also be conceivable to introduce an experimental or exception clause to enable the testing or application of the tendering procedure of the respective neighbouring country. Provided that a uniform European mechanism exists, however, this would be preferable.

A legal hurdle also existed in the transfer of construction management to CTS, which on the French side as the concessionaire of Eurométropole also makes all investments in the infrastructure of the tramway network. The agreement that exists here and is contractually presupposed, that CTS will also exercise the authority to build on the German side within the framework of the concession, is an example of a solution that is actually not a solution. The concession area is congruent with the Eurométropole area and thus ends at the border. The application of this regulation by means of a cross-border mechanism would not be suitable for extending the concession area to German soil. The same applies to mutual recognition. Here, there would have to be much more of a possibility on the French and German side to transfer the building authority to a cross-border institution; this could be achieved through exception clauses in French law.

Another area where instruments of legal flexibility could be used is the area of technical requirements. Here, for example, the existing obligation on the German side to equip tram trains with "indicators" should be mentioned. In fact, this problem was solved by retrofitting the tram trains. However, the cross-border mechanism or mutual recognition could make this step superfluous and help to reduce the duplication of procedures and standards in cross-border projects. However, mutual recognition would

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need to be given a reliable legal framework for this, for example in the form of a European regulation.

Finally, the enforcement of claims arising from the cooperation agreement is a field in which the instruments of legal flexibility cannot contribute to a solution of the problem. Both the Karlsruhe Agreement and the Freiburg Agreement on Border Bridges in Municipal Burden of Construction provide for a decision on the applicable law and the competent court. In purely factual terms, however, there is no legal basis on the basis of which an administrative court is authorised in a matter of public law to pronounce justice over a foreign territorial authority and to enforce such a judgement.

8.3.2 Extension of the cross-border water supply of the municipality of Bad Bergzabern and the municipality of Wissembourg

The municipality of Wissembourg in Alsace and the Rhineland-Palatinate municipality of Bad Bergzabern already have existing cooperation in the field of wastewater disposal through a cross-border sewage treatment plant and in the field of drinking water supply. For ecological reasons, the decision was made as early as the 1970s to jointly manage a groundwater reservoir from a borehole located on German soil. However, in its current form, only the supply of water to Wissembourg is possible; conversely, Wissembourg cannot supply water to Bad Bergzabern due to topographical differences. The aim of the project under investigation is to enable the delivery of water to Bad Bergzabern through several construction measures. The cooperation covers the subject area of water, so it is thematically a policy-related cooperation. At the action level, there is a high need for institutionalisation here; a cross-border institution exists in the form of the Wissembourg – Bad Bergzabern LGCC.

One conceivable administrative hurdle in this context could be different requirements for drinking water quality. In purely factual terms, however, the drinking water quality is above the European as well as the German and French regulations. Compliance with the values is checked by taking samples before the water is "mixed" and can thus be proven. In this specific case, therefore, no legal flexibility is required.

The situation is different with regard to the distribution of competences: in implementation of the loi NOTRe, the city of Wissembourg will lose responsibility for drinking water supply on 1 January 2020, and this will be transferred to its French association of municipalities. With regard to

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project implementation, this creates uncertainty among the German partners, who are reluctant to end the project with another partner. Since the cause here lies in a national competence regulation, an exception clause as a regulation under national law could provide a remedy, for example by enabling regional authorities in border regions in the respective sectoral law to implement tasks with the corresponding counterpart on the other side instead of with the French association of municipalities (in this concrete case, therefore, the fulfilment of the water supply together with the Bad Bergzabern association municipality).

8.4 Assessment of the different instruments

The cross-border mechanism[563]

For the cross-border mechanism, the area of technical requirements in particular seems to come into question as a field of application. Here, with a view to different types of the mechanism, there is also the advantage that the provisions are often regulated in regulations and would therefore enable the direct application of the mechanism in the form of the cross-border obligation.

Some details, however, seem to be in need of improvement or concretisation. First of all, the mechanism described by the regulation suggests a long duration of the procedure, which could certainly have a negative impact on projects. It is also not yet clear how narrowly or broadly the term "legal obstacle" is defined. Applying the mechanism to several obstacles within a project or to a service of general economic interest would considerably increase the administrative burden. If the mechanism were applied to the entirety of the project or service, it would appear to be too inflexible – it seems quite conceivable that within a project, for one obstacle the regulation of one jurisdiction, for another obstacle the regulation of the other jurisdiction would make more sense. In the Upper Rhine region, the fact that Art. 2 para. 1, Art. 3 no. 1 of the draft regulation restricts the scope of application to member states, according to Art. 4 para. 3 member states should also be able to "use" the mechanism in

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563 Cf. legislative resolution of the European Parliament of 14 February 2019 on the Proposal for a Regulation of the European Parliament and of the Council on a Mechanism to overcome legal and administrative barriers in a cross-border context (COM(2018)0373 – C8–0228/2018 – 2018/0198(COD)).

cross-border regions with third countries, is also a problem. However, the Parliament has already introduced this point in its first reading position and proposes that the Member States can also "use" the mechanism here voluntarily.[564] Finally, according to the draft, the period of application of the mechanism should be limited. Particularly in the case of the creation of common infrastructure, however, there must be certainty that the legal construction will also exist in the future.

The mechanism also raises critical questions with regard to questions of the territoriality of law and, associated with this, sovereignty, since it enables the application of law on the territory of another state. However, the EU in its capacity as a supranational organisation, which has been transferred sovereign rights of the member states to a considerable extent, already challenges the classical nation-state concept.[565] This also applies to cross-border interdependencies, which challenge the classical concept of territoriality.[566] Dealing with territorial frictions in border areas is therefore a challenge that runs through all areas of the European multi-level system.[567] However, the fact that increasing European integration abolishes classical concepts of territoriality and sovereignty is deceptive[568] – much more, a greater complexity is emerging,[569] with overlapping European spatial images and nation-state territories.[570] However, the emergence of "post-sovereignty" as a "notion of shared, overlapping and thus no longer classically autonomous sovereignty"[571] goes back to the voluntary transfer of sovereign rights by the member states to the European Union. This transfer of competences corresponds to the withdrawal of a state claim to exclusivity,[572] the EU legislatively fills the gap that has become free in the area of transferred competences, as in the case of the new mechanism.

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564 http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2019/02-14/0118/P8_TA-PROV(2019)0118_EN.pdf. (30.03.2022)
565 Jureit/ Tietze 2015: 8.
566 Chilla 2015: 193.
567 Chilla 2015: 191.
568 Chilla 2015: p. 8; Jureit/ Tietze 2015: 23.
569 Chilla 2015: 209.
570 Tietze 2015: 78.
571 Jureit/Tietze 2015: pp. 7.
572 Niedobitek 2001: 426.

Experimentation and exception clauses

The creation of "independent competences for the Eurodistricts", as proposed in the resolution on the 55th anniversary, is to be rejected, as it would not overcome border-related restrictions but only shift them further inland. It is also problematic, especially with regard to infrastructure projects and a further institutionalisation of cross-border cooperation, that experimental clauses are limited in time. Before the end of the trial phase, it is not clear whether the regulation will subsequently be generalised.

Exception clauses therefore seem to make more sense[573]. Particularly in the area of competence regulations, these could allow for a deviation in favour of cross-border instead of national task fulfilment[574]. However, the implementation of both experimental and exception clauses requires a very high degree of consensual political will, which could considerably limit their practical usefulness.

Both experimentation and exception clauses raise questions about their compatibility with the principle of equality in Article 3(1) of the Basic Law. However, not every unequal treatment under the law is prohibited. Rather, there must first be a constitutionally relevant unequal treatment, i.e. unequal treatment of essentially the same thing.[575] In a next step, it must then be asked whether there is a constitutional justification for the inequality, i.e. whether it serves a legitimate purpose and is suitable, necessary and appropriate to achieve it.[576] The introduction of internal administrative experimentation clauses will generally affect public authorities at the legislative level and thus not fundamental rights holders.[577] Incidentally, the balancing of hurdles created by the border location seems quite suitable to justify a constitutionally relevant unequal treatment – although a detailed examination in the individual case is of course indispensable.

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573 Beck 2015 a/b
574 Cf. chapter 4, Aachen Treaty of 22 January 2019.
575 BVerfG 1, 14(52); Papier/ Krönke, 2012: 98.
576 Papier/ Krönke 2012: pp. 97.
577 See Weigel 2019: pp. 37.

The principle of mutual recognition

The principle of "mutual recognition" could enable a very pragmatic reduction of administrative hurdles[578]. The "mutual recognition of educational qualifications from the school, vocational and academic sectors" called for in the resolution on the occasion of the 55th anniversary[579] could also be achieved through such an approach. The area of technical requirements in administrative procedures would also be a possible area of application for mutual recognition.

Analogous to Regulation (EC) No. 764/2008 for the movement of goods, however, the application in the area of administrative procedures would also have to be secured by a Union legal framework. Particularly in the area of technical requirements or procedures that serve to prevent health risks, this would provide the necessary legal certainty.

Cross-border projects encounter obstacles in their planning and implementation, not only of a legal nature, but also of a legal nature. The origin of these hurdles often lies in national law; the local and regional authorities involved in cross-border cooperation cannot compensate for integration steps that have not been taken here.

Greater legal flexibility could be made possible by applying uniform procedures to the cross-border provision of services of general economic interest or cross-border infrastructure projects. This in turn could provide positive incentives to transfer the uniform project implementation to a cross-border body and thus contribute to further institutionalisation in cross-border cooperation. Legal flexibilisation could thus provide an important impetus for the development of cross-border cooperation in the sense of integrated cross-border potential development.

However, the reactions to the cross-border mechanism already show major concerns on the part of the member states, for example with regard to the voluntary nature of the mechanism and its compatibility with national constitutional law.[580] In the case of the Aachen Treaty, too, it remains to be seen whether it will stay a mere affirmation of will or whether local authorities in border regions and cross-border bodies will actually be equipped with procedures, including exception clauses, to reduce legal and administrative hurdles.

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578 Beck 2015a/b
579 German Bundestag / Assemblée nationale 2018: 6.
580 http://data.consilium.europa.eu/doc/document/ST-15428-2018-REV-1/EN/pdf, p.5.

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Cross-border cooperation has established itself as an independent policy field at the European level at the latest since the fall of the Iron Curtain. While important groundwork was already done in the 1980s by the Council of Europe, the policy field of cross-border cooperation has also gained strategic importance in the context of the treaty goal of "territorial cohesion", not least due to the Interreg programme and, most recently, the European Commission's attempts to establish its own legal forms and to minimise the still existing legal and administrative hurdles through appropriate action programmes. The realisation and practical design of cross-border cooperation nevertheless still depends to a considerable extent on the interaction of different political-administrative systems as well as acting actors on the ground. In the everyday life of cross-border cooperation, corporate and individual actors are dependent on systemic support services from the participating member states. In this context, the Aachen Treaty is of central importance. The contributions of a recent anthology on this very issue underline both the fragility and the great potential of cross-border cooperation, especially in the Franco-German context[581]. The contributions also make clear that the border closures that took place during the first phase of the Covid19 pandemic have left their mark, not least in the academic debate on this research topic.

Cross-border cooperation – not only in Franco-German relations – is at a crossroads today. Can a new and truly sustainable dynamic develop out of the pandemic experience that has enough strength to consistently use the potential inherent in the Treaty of Aachen and the approach of the cross-border mechanism? Or will also the post-pandemic phase be characterised by the fact that cross-border cooperation continues to suffer from the much-cited implementation deficit[582], because the compatibility of different legal and administrative systems as well as the challenge of bringing different political and administrative cultures to a productive horizontal interplay is extremely preconditional and ultimately depends on the will of individual courageous actors[583]? To date, cross-border cooperation is exclusively a subsystem that is constituted out of the main political and administrative systems of the participating member states and is inconceivable without active support contributions from this side.

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581 Beck 2021
582 Harguindéguy/Sànchez-Sánchez 2017; Blatter 2004; Hooper/Kramsch 2007
583 Eisenberg 2007; Casteigts 2010; Botteghi 2014

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The contributions of the anthology on the Aachen-Treaty[584] provide a rich source of ideas and application material for the foundation of a sustainable development perspective of cross-border cooperation after the pandemic. For the implementation of the innovation and flexibility potentials laid out in the Treaty of Aachen, these contributions contain a practice-oriented action programme that should be actively taken up by the cross-border committee and the cross-border parliamentary council in particular. Cross-border territories are laboratories of European integration[585] – the Aachen Treaty, if it is used and properly developed by the actors involved, can in this sense be an important catalyst for a new quality of horizontal integration in Europe.

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584 Beck 2021
585 Lambertz 2010

9 Transdisciplinary perspectives of research in administrative science

Public administrations play a prominent role in the development and implementation of cross-border cooperation in Europe. Whether at local, regional, national or EU level – wherever policies, cooperation approaches, projects, programmes, structures, etc. are conceived and developed in a cross-border perspective, the question arises as to which administrative level is involved, in what form and in what vertical and horizontal inter-dependence. The public administration is thus both the object and the acting subject of cross-border cooperation. It is all the more interesting that administrative science in continental Europe, despite more than 50 years of post-war development, has so far only rarely dealt with the research topic of cross-border cooperation. This can be explained primarily by two factors: Firstly, despite increasing internationalisation and beyond all Europeanisation, the actual subject matter of administrative science is still strongly oriented towards the context of national administrative systems – even in its comparative form. Experiments in implementing internationally valid concepts such as the New Public Management (NPM) movement of the 1990s have hardly changed this. On the contrary, imple-mentation analyses show that despite the increase in certain congruencies, the persistence of national systems remains high. And especially within Europe, public administration is still a very different phenomenon from one member state to another – despite the different legal harmonisation efforts of the European institutions[586].

On the other hand, approaches in administrative science as such are characterised by a high degree of disciplinary plurality. Even if administra-tive science in the singular certainly pursues the goal of an integrative single discipline[587], it is de facto the case that research in administrative science – despite an increasing inter- or transdisciplinary orientation in recent times – is still strongly monodisciplinary. As a rule, the specific view of a discipline on the subject area of public administration still dominates, which then also determines the respective approach in administrative science. Accordingly, it can be observed that within business administra-

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586 Summerman 2015
587 König 2008; Bogumil/Jann 2009; Becker 1989

tion a specific research approach of public business administration[588] has developed. Sociology has already opened up a research field of public administration in the social sciences since the 1970s[589]; – with reference to the work of Max Weber, it can even be considered *the* mother discipline of administrative science besides public law.[590]Political science has increasingly reflected research approaches to questions of policy development[591], policy implementation[592], policy-field analysis[593] or, more recently, governance[594], in each case also with an explicit reference to public administration; in the legal sciences, too, the analysis of the specific functions and structures of government and administration has been established as a separate branch of research alongside established approaches to the study of state and administration[595].

However, all of the mono-disciplinary approaches mentioned are ultimately to be understood as an extension or differentiation of a traditionally jurisprudential view of public administration in continental Europe, in which law still plays a dominant role in the practical functioning of public administration[596]. It was not until the 1970s that administrative science substantially developed its subject of study by drawing on research results from organisational science, especially from the Anglo-Saxon context[597], whereby the question of the transferability of identified rationalities, structural principles and functional logics of the private sector to the public sector was not always critically reflected[598]. More recently, however, this classic duality has been increasingly differentiated by more integrative concepts of multirational management[599].

In thematic terms, too, a broad spectrum is covered in administrative science. If one looks at textbooks on public administration or studies the curricula of corresponding training programmes at Bachelor's and Master's level, it very quickly becomes clear that the subject of public administra-

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588 Bals/Fischer 2014; Barthel 2016; Beck/Böhmer et al 2019
589 Mayntz 1985
590 to the overview: König 2008;2015
591 Mayntz/Scharpf 2005
592 Wollmann 2000; Sanderson 2002
593 Héritier 1993; Schubert 2012
594 Benz et al. 2007
595 Cf. Thieme 1995; Hesse/Ellwein 2012
596 Püttner 2007
597 Seibel 2017
598 König/Beck 1997
599 Schedler/Rüegg-Stürm 2013; Fleischmann 2014

tion is dazzling in the diversity of its thematic differentiation: More classical topics such as public and private law, the basics of public organisation or personnel and financial management or even decision-making are now being expanded to include topics such as IT, project- and programme-management, planning and strategy formation, marketing and communication, intercultural-management, e-government, participation-management, change-management, team-building, leadership, controlling, cost and performance accounting, etc. As with sociology, one can easily get the impression that administrative science is about to become a "hyphen science".

Administrative science has often been referred to as "reform science", since many of its theoretical concepts have in the past both influenced the design of practical reform approaches, but have themselves in turn been influenced by the practical challenges and patterns of such reforms. This can be well illustrated for Germany already by the example of the Stein-Hardenberg reforms in Prussia, and since the post-war period by the reforms on territorial organisation in the 1960s, the modernisation of state planning in the 1970s, the redesign of public tasks in the 1980s, the introduction of instruments of New Public Managment in the 1990s or the strengthening of intersectoral participatory approaches in the form of the governance debate or by new concepts of Open Government around the turn of the millennium. Most of these approaches were conceptually promoted and reflected with the support of academics from the established centres of administrative science, such as the Universities of Speyer, Konstanz, Potsdam and Berlin, but also and especially by the Universities of Applied Sciences on public administration. Overall, however, a certain predominance of normative (wishful) thinking over empirical evidence of changes in administrative reality can still be observed in administrative science. One reason can be seen in the fact that there is still a strong recourse to management and organisational theories developed from the private sector context. To date, administrative science has still not developed an original theory[600] – a task that, due to its high practical relevance, offers specific perspectives fort he Universities if Applied Sciences in this field[601].

Against this rather complex and diverse background of administrative science, this chapter must limit itself to a few selected questions of administrative science. Since the subject of study has so far been analysed primarily by historians, geographers, lawyers and, more recently, increasingly by political scientists, the core question of administrative science dealt with

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600 Seibel 2017
601 Beck/Stember 2018

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here will be limited to working out what conceptual contributions can be made to a better understanding of cross-border cooperation as a horizontal level of integration within the European Administrative Space[602].

From the perspective of administrative science, three questions are addressed to this subject area, each of which refers to fundamental principles of construction and function of public administration: 1.) What is the connection between tasks and territoriality in a cross-border context and to what extent can this connection be used as a basis for institutional configurations? 2.) To what extent is it possible to empirically establish a separate institutional capacity to perform cross-border tasks and functions that is independent of the political-administrative systems of the partners involved? 3.) To what extent is cross-border cooperation as a transnational sub-system capable of development-oriented adaptation in order to be able to react to changing environmental conditions in a future-oriented way? Based on this, questions for future transdisciplinary research approaches will be developed.

9.1 Task structure of cross-border cooperation

Territoriality is a central construction principle of public administration. In the classical understanding, administrative territoriality is linked to the concept of the nation state, which is characterised by internal and external sovereignty over its territory, symbolized by national borders[603]. Accordingly, administrative boundaries, which are usually designed according to spatial criteria such as accessibility, efficiency in the sense of organisational redundancy avoidance or effectiveness in terms of public service provision, usually not only determine the external competence boundary of an administrative unit, but also define the relationships and interfaces between different administrative levels and/or units within a state. For many approaches to administrative modernisation, the redesign of administrative boundaries is crucial – be it in the horizontal perspective of adapting a given administrative structure to new socio-economic interdependencies and challenges and thus expanding the territorial scope of action of the administration (e.g. the creation of new inter-municipal structures, the incorporation of smaller municipalities into larger territorial units, the restructuring of the functional interdependence between cities and their

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602   see in more detail Beck 2018
603   König 2008: 27

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neighbouring municipalities, but also the formation of clusters and new inter-sectoral networks at the local and regional level) or in the vertical perspective of reshaping the functional competences transferred to the different administrative levels (concepts such as concentration vs. deconcentration, centralisation vs. decentralisation are relevant in this regard.

A second classic design principle of public administration can be seen in its function as an institutional capacity for the effective and efficient performance of public tasks. Whenever a public administration is to be established or changed, this is not an end in itself, but rather this should be directed towards the finality of optimising the production and provision of public goods. As a rule, public administrations in this respect can be thought of as a structural/institutional capacity designed according to the public function assigned to it (the common denominator here is the famous management phrase "structure follows function"). In this respect, the institutional choice of public administration should not be separated from the functional needs and structural requirements of the related public tasks. Different degrees of institutionalisation can thus lead to different organisational designs, each of which in turn has specific advantages and disadvantages.

A third fundamental design principle of public administration is its function as an open social system. In public administration, as in any organisation, membership, competence, task orientation, formal and informal structures etc. are all defined by the boundaries of an organisation, which can be understood as a constituting criterion. Social systems are characterised by specific codes that govern the communication and connections between their members[604] and which at the same time distinguish a system from its environment. However, a social system does not stand in isolation from its environment; in fact, it is dependent on systemic external interaction and cooperation for its own survival. Interdependence and open communication with a system's environment are therefore essential – especially for public administration, which draws both resources and legitimacy from its political-social environment. 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 a cross-sectoral network governance ("New Public Governance") of the future. Change and changeability of a system in re-

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604 Cf. Luhmann 2001

lation to its increasingly complex environment are thus central assessment yardsticks of a modern public administration.

The fundamental starting point of any consideration of the role and function of public administration in a given state is its explicit reference to public tasks. Unlike private or social sector institutions, public institutions must be justified by, or able to refer to, codified public tasks and missions in order to provide the basis for the public sphere in a country/state. The sources of such public tasks are manifold: at the macro level, constitutions (albeit with very different cultural expression across systems and continents) define basic public tasks and functions in the form of state goals, followed by myriad norms defined at the level of thematic and organisational public law. Furthermore, public tasks and missions can also be identified below the level of law itself, e.g. in the form of directives, communications, decisions of public bodies and or even in the preambles of contracts concluded and/or implemented by public institutions[605].

Consideration of the (re)definition and fulfilment of public tasks and missions, and thus the related question of public institution building, has been discussed in administrative science along the concept of vertical and horizontal differentiation. Vertical differentiation refers to the question of how public tasks and missions should best be located at different spatial levels of a state. In federal states, for example, this includes both the division of tasks between the federal and state governments, their internal territorial differentiation, and the division of labour between them and the level of local government. In unitary states, vertical differentiation is primarily a (often still quite normative) question of how (centralised and/or deconcentrated) state competences and tasks at the various spatial levels (local, inter-municipal and regional) can/should ultimately be transferred to the level of territorial self-government. The classical concepts applied by administrative science in this respect are decentralisation and deconcentration of public functions within the public space of a given country and in terms of effectiveness and efficiency of task fulfilment[606].

Horizontal differentiation, in turn, refers to the broader question of which tasks are de facto public and which tasks are (or should be) rather dependent on the private sector or society and therefore have to be performed by it. The necessity and scope of this horizontal differentiation of tasks are often questioned and – depending on political or societal values and/or leitmotifs – different horizontal divisions of labour between the

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605 Cf. Bogumil/Jann 2020; König 1989
606 Wagener 1974

public and private or societal sectors and thus also different public institutional designs and profiles can be observed when comparing different countries and states, both within Europe and at the global level[607].

Both the vertical and horizontal differentiation of public tasks are subject to permanent change, and issues such as territorial reforms, deregulation, privatisation and/or re-regulation continue to determine the reform agendas of many countries in Europe. Institutions can be understood as stable, permanent bodies for the production, regulation or implementation of specific purposes[608]. Such purposes can refer to social behaviour, norms, concrete-material as well as non-material objects. Following the understanding of administrative science, institutions can be interpreted in this way as corridors of collective action that play the role of a "structural proposal" for the organised interaction of different actors[609]. The question of the emergence and changeability of such institutional arrangements in the sense of an "institutional dynamic"[610] is shaped by the school of thought of neo-institutionalism[611], whose conceptual foundation is in turn closely related back to the public task reflection.

Cross-border cooperation is confronted with and sometimes even comes into conflict with the principle of territorial sovereignty of the respective nation states involved[612]. Even in those regions where the level of cooperation is well developed, cross-border cooperation must therefore be considered as a transnational political-administrative *subsystem*[613] created and composed by the respective "domestic" national partners. The level of reference of this subsystem is clarified by the definition of cross-border regions as "functional and contractual spaces capable of responding to common problems in similar and convergent ways" "[614]. On the other hand, the fact that cross-border cooperation does not take its place, but – on the contrary, is highly dependent on the competence and role of the respective national partners[615], does not automatically mean that this cooperation is a priori less effective than regional cooperation taking place in a domestic

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607 Kuhlmann/Wollmann 2014
608 Schubert/Klein 2015
609 Scharpf 2000; Kuhlmann/Wollmann 2014: 51
610 Olsen 1992
611 Cf. Benz 2004
612 Beck 1999
613 Frey 2003
614 Ricq 2006, p. 45
615 Blatter 2000; Rausch 1999

context[616]. Research on multi-level governance in Europe has shown that productive interweaving and networking of different actors from different administrative levels and backgrounds can be just as effective as classical institutionalised problem solving[617]. However, the institutional and functional preconditions for cross-border cooperation are far more complex and subject to different conditions, which also has a direct impact on the way cross-border institution building can de facto be practised. The central criterion for evaluating such cross-border institution-building is both the degree of mobilisation and participation (structure and quality) of the relevant institutional and functional actors and the effectiveness of the problem-related output produced by this subsystem of cooperation[618] – and both are in turn closely related to the cross-border tasks in question.

With regard to the functional task priorities, the practical approaches of cross-border cooperation in Europe cover a wide range of material fields of action. Depending on the territorial context, these include classic areas of regional development (e.g. spatial and urban development planning, economic development, research and development, transport, etc.), or specific approaches to cooperation in sectoral policy areas (health, social security, education and training, science and research, environment, nature conservation and tourism, etc.). A classification of these different tasks as a basis for cross-border institution building, can be made on the basis of the criteria of "thematic orientation" as well as the characteristic "functional role" that cross-border cooperation de facto plays in this context. With regard to the criterion of *thematic orientation,* a task classification as outlined above in Chapter 7 can lead to the following typology[619] :

Type A: Cooperation within the framework of monothematic projects (bridges, cycle paths, bus routes, kindergartens, information services for citizens, businesses, tourists, etc.) ("single issue");

Type B: Cooperation in entire policy areas (environment, health, transport, education, science and research, etc.) ("policy-related")

Type C: Cross-thematic cooperation such as programming/implementation/management of the INTERREG programme; cooperation within political bodies such as government commissions, euroregions, Eurodistricts; cross-sectoral cooperation within innovative networked governance approaches to territorial development ("integrated cross-sectoral") …

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616 Cf. Fürst 2011; Kilper 2010
617 Benz 1998; Benz/Scharpf /Zintl 1992; Grande 2000
618 Casteigts/Drewello/Eisenberg 1999
619 Beck 2017

In contrast, the typology of the *"functional role of cooperation"* criterion refers to a variation in the intensity of the demands on cooperation and the associated fulfilment of duties and tasks. Six ideal-typical functional levels of cross-border cooperation can be identified here, which in practice – in the sense of a core process – build on each other and are therefore sequentially linked in the sense of different development stages: Encounter, Information, Coordination, Planning/Strategy Building,m Decision, Implementation (see above chapter Governace). This division into six successive, cross-border functional levels stands for the empirical observation that both the intensity, the binding nature and the integration of cooperation grow from one level to the next. Each level itself represents a necessary and legitimate dimension and prerequisite for the effective fulfilment of cross-border tasks. Furthermore, the six levels also represent different interaction logics between the actors involved: while the first two levels primarily represent a discourse level, the following two levels are more about structuring the interaction relations as such, while the last two levels refer to implementation-related joint actions in a transnational context. Reliable cross-border task fulfilment is thus only given (and possible) if all functions are realised in all six reference levels. The observation that the two functions "decision" and "implementation" often still show empirical deficits[620], illustrates the challenges regarding the implementation status of an integrated cross-border policy in many cross-border constellations.

The new generation of territorial cooperation seeks to increasingly promote the integrated development of cross-border potentials[621]. The question of which means of transnational and interregional institution building can best achieve this territorial development is therefore increasingly on the agenda in many border regions[622]. From an administrative science perspective, classical concepts (and related academic literature) such as decentralisation/centralisation, deconcentration/concentration or integration/differentiation, understood both vertically and horizontally, can inform and/or even rationalise the debate on how transnational institutional frameworks should best be designed to meet changing transnational tasks and missions and the challenge of fulfilling them together on the basis of inter-institutional division of labour. In terms of a better understanding of the logics of transnational institution-building, it may be useful to consider the related needs of territorial cooperation as a

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620 Beck/Pradier 2011
621 Ahner/Fuechtner 2010
622 Cf. Hooper/Kramsch 2007

starting point, which in turn are derived from the different thematic and functional tasks of territorial development itself and can be understood as intervening variables of such forms of transnational institutionalism: Different degrees of cooperative institutionalisation, the related hypothesis would be, can be interpreted as a territorially influenced function resulting from the collective adjustment between 1. different historically evolved and therefore still persistent national systems (public administration, law, political, economic and social order, characterised by divergent functionalities), 2. the interest-related interaction between the actors involved (local communities, local authorities, companies, associations, universities, etc.) 3. the respective group-related constellations (administrative and organisational cultures, norms, guiding principles, mental models, etc. of the collective and individual actors). This function is in turn influenced by (inter-dependent) intervening territorial variables such as geographical location, socio-economic situation, practical handling of functional development needs, policy typologies and/or policy mix, mutual intercultural understanding[623].

The confluence of different interests and political-administrative systems within the subsystem of cross-border cooperation shapes both the complexity and the conditions under which common institutional solutions can be developed cooperatively at the transnational level. The model of territorial institutionalism described above in chapter 7 takes this circumstance into account**.**

9.2 Institutional capacity to act

Social differentiation can be considered a central feature of modernity.[624] Accordingly, division of labour can also be seen as the starting point of modern management theories, which have strongly influenced management science. In scientific management thinking and writing, the ultimate goal is always to achieve the basic principles of effectiveness and efficiency through effective management of the division of labour. Organising in the sense of optimising order must therefore be seen as a prerequisite for management. A distinction must be made between the institutional dimension (those who manage) and the functional dimension (the various tasks and activities of management). While the former is closely related to the for-

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623 For further explanations see Beck 2017
624 Cf. König 2008

mal position of the actors in an organisation (the management/leadership level), the latter encompasses a wide range of activities that differentiate the basic need for organisation into a number of classical management functions, which are described under the famous POSDCORB acronym (Planning, Organising, Staffing, Directing, Coordinating, Reporting, Budgeting), or described as the classic life cycle of management with its phases of "problem analysis", "goal setting", "strategy development", "alternatives evaluation and selection of the preferred option", "resource provision", "implementation", "evaluation", "closure / redesign"[625].

Public management and organisational theory provide two interesting assumptions that can be applied to the case of cross-border cooperation: At the macro level, theories of policy development and implementation (policy cycle thinking) can be used in combination with (theoretical and empirical) insights into decision-making processes to better understand and interpret the functional characteristics of the subsystem as such. Classical public administration approaches, in turn, allow to compare and interpret the very specific characteristics and functional challenges of cross-border structures in comparison to the domestic administrative context and can provide methodological and instrumental guidance for further optimisation[626].

As the independence of an emergent institutional capacity is a key assessment criterion, the total number of transnational institutional arrangements at different functional levels was determined above in Chapter 7 – this indicator refers to the path dependency hypothesis of neo-institutionalism[627] and assesses the distinction between the given institutional capacity path of the national partners involved and the specifically created transnational / cross-border capacity path. The second indicator in Chapter 7 measures the staff capacity of cross-border cooperation, measured in terms of full-time equivalents (FTE = Full-time equivalent, i.e. 100 % job capacity). This indicator is relevant for the identification of an independent institutional capacity in the sense that RTD created/provided exclusively for handling cross-border tasks also points to a specific transnational/cross-border capacity that is distinct from the domestic context.

As shown above, the overall analysis of the indicators points to a paradoxical conclusion: On the one hand, these certainly point to the existence of an independent institutional capacity for dealing with cross-

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625 Schreyögg/Koch 2015
626 Beck 2018
627 Pierson 2004

border issues at the horizontal administrative level. However, the general contextualisation of this finding points to an overall relatively weak profile of the comparatively young transnational / cross-border institutional path compared to the well-established domestic institutional path: In the European border regions the 21,676 FTEs who deal with cross-border cooperation matters on a full-time basis contrast with 10,765,424 FTEs of public servants whose fields of activity relate exclusively to the performance of domestic public tasks[628].

9.3 *Systemic development capacity of cross-border cooperation*

Institutions and organisations can be interpreted as structural configurations that serve to fulfil the tasks and functions assigned to them. Their main purpose is thus not necessarily change, but stability and reliability to ensure effective and efficient fulfilment of tasks. Unlike projects, which are secondary patterns of organisation, primary organisation institutions, such as public administrations and/or political-administrative systems, are usually created with the temporal perspective of permanence. On the other hand, institutions and organisations are obviously also social systems that become established and rely heavily on functional exchange with their respective environments. While this interdependence with the environment is very obvious in the case of private organisations and leads to a more or less well-developed direct ability to react and adapt to changes perceived as essential (if companies or entire economic sectors do not react to new developments and challenges of the markets, they will be eliminated in the medium term), the issue of change within public systems is less obvious. Of course, public institutions also have to change and do so de facto, but the specific functional (the nature of public tasks and their respective legal bases), structural (constitutional law and civil service regulations), procedural (political decisions that have to be made and justified on a democratic basis) and temporal (administrative cultures that – unlike organisational culture – represent and express national cultures that have often existed for centuries or at least several decades) prerequisites for such change often create more obstacles than opportunities in the public sphere.

With regard to the question of cross-border cooperation and in order to ground a reflection on possible practices of institutional change, three lines of research in administrative sciences may be of interest. First of all,

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628 Cf. Beck 2018

the school of comparative public administration has recently gained more and more insights into the question of institutional dynamics[629]. Strongly influenced by the interdependent reform developments of European integration[630], the emergence of a European Administrative Space and a European Administrative System[631] on the one hand, and the implementation of internationally conceived normative approaches to administrative modernisation (the New Public Management movement of the last two decades) on the other, two main conclusions can be put forward: The hypothesis of *persistence* is developed on the basis of the observation that, at both European and international levels, the historically evolved national patterns and cultures of public administrations override most attempts at harmonisation/unification at supra- and/or international levels. This confirms the assumptions made by historical neo-institutionalism.

The *convergence* hypothesis, on the other hand, suggests that increasing exchanges between national experts and systems will eventually lead to convergences at many levels (individual, technological, theoretical) of public administration, especially when it is not constructed according to normative models but develops on the basis of the practical experiences and professional standards of the respective experts involved.[632]. Recent research on international public administration (IPA) confirms specific patterns of international and transnational public administrations. It is assumed that the emergence of functional transnational patterns of public administration depends, among other things, largely on the degree of autonomy of these IPAs in relation to their domestic / founding partners[633].

The practice of cross-border cooperation in Europe can rather be interpreted as confirming the hypothesis of the persistence of national versus transnational or European administrative structures. Both the relatively low degree of use of existing legal solutions for cross-border issues, such as the EGTC, and the practical functioning of cross-border institutions, which is still primarily oriented towards the legal and administrative rules and standards of the respective home state, point to relatively strong preferences of the actors involved for national political-administrative systems. Alternative approaches to supranational integration, such as the principle of mutual recognition, which could bring many advantages at

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629 Olsen 1992
630 Beck 2017
631 Bauer/Trondal 2015
632 Cohendet/Grandadam/Simon/Capdevila 2014
633 Bauer/Ege 2016; Beck/Larat 2017

the territorial level of cross-border cooperation (trust as a relevant prerequisite for mutual recognition could also be built up much more easily by neighbouring administrations than at the rather anonymous inter- or supranational level), have not been developed to any significant extent either[634]. Furthermore, innovative administrative methods and processes such as e-government show a significantly lower degree of implementation at the cross-border level compared to the national level. Finally, concepts of administrative modernisation are also mostly conceived and implemented in a national context – here, for example, the many practical difficulties in integrating the different budgetary rules and practices of the national partners within the framework of a joint cross-border INTERREG project should be mentioned.

On the other hand, surveys seem to indicate that in cross-border cooperation spaces characterised by a high continuity of institutional arrangements over time, such as the Upper Rhine, patterns of a specific transnational working culture emerge that can be conceptualised as a distinct transnational administrative culture. These patterns are the result of well-established "horizontal professional fraternities" that represent a specific form of hybrid transnational public administration[635].

Theoretical assumptions of policy analysis and organisational learning, which are among the most important concepts in public administration, can provide useful indications and insights for further analysis of issues of change in the context of cross-border cooperation. For example, policy analysis[636] not only allows a distinction to be made between the formal (structural level), procedural (decision-making) and the actual substantive level (different thematic and functional policies) of cross-border cooperation, which in turn provide interesting dimensions for a differentiated understanding of different levels at which possible changes within a cross-border cooperation system can be captured. The more fundamental distinction within the so-called "policy-cycle" between different phases of policy-making (problem analysis, goal setting, policy formulation, policy decision, policy implementation, policy evaluation, policy reformulation or termination) also explicitly refers to the notion of change in the sense of policy-oriented improvement and learning: To what extent policy learning takes place in a cross-border context and which factors contribute to

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634 Beck 2015b
635 Beck/Larat 2015
636 Schubert 2012; Héritier 1993

and/or hinder this kind of learning can be answered through approaches of administrative policy analysis.

Another question that arises in this context is to what extent cross-border policy-making is ultimately evidence-based and what kind of change this can bring about in practice. Beyond the concept of evidence-based policy making[637], which – as part of the general policy of better regulation – is currently a prominent approach at the level of the European institutions[638] (promoting change-oriented approaches such as a better quantification of problems with their causes and negative effects, a consideration and impact assessment of different policy options or the generation of real monitoring information during implementation), the concept of "organisational learning" in particular can provide relevant and stimulating scientific support in this regard. The concept of organisational / systemic learning may seem irritating at first sight, since "organisations have minds and senses other than those of their members"[639]. In this respect, what characterises this kind of supra-individual/collective learning as part of a broader understanding of organisational/systemic change?

According to organisational theory[640], organisational learning is the ability of an organisation and/or system not only to discover and correct errors, but also to change the value and knowledge base of an organisation in such a way that new problem-solving and action competences can be generated. Learning at the first level of the individual members of an organisation leads to changes in the relevant, collective theoretical frame of reference at both the cognitive and operational levels of action. Organisations are understood in this respect as knowledge systems, whereby organisational learning leads to a broadening of the organisational knowledge base – which includes both the active acquisition of new knowledge and the active forgetting and discarding of outdated knowledge and action routines. A prominent concept in this regard is the differentiation of three levels of intensity of organisational learning: At the first level of learning (so-called *single-loop learning*), learning takes place in the more mechanistic form of external challenges that come from the perceived organisational environment evaluated according to predefined norms, values and standards – but both the normative and the actual framework for action remain unchanged. At the second level of learning (so-called *double-loop*

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637 Beck 2015c
638 See https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en
639 Hedberg, 1981: 6
640 Cf. Gourmelon/Mroß/Seidel 2014: pp 300–323

learning), the external challenges require an active forgetting and discarding of the predefined framework, a new framework on both normative and operational levels has to be developed, which replaces the old frameworks (completely or at least partially). Ultimately, organisational learning at the third, so-called *deutero level,* leads to a reconsideration of past levels of learning as such, which takes the form of self-reflection and the analysis of underlying motives and norms for future and past successes or failures[641].

Knowledge and its associated management is a key concept for all organisational learning, as learning accordingly takes the form of a systematic shaping of the organisational knowledge base, encompassing both factual and practical, explicit and tacit, individual and collective, operational and strategic knowledge stocks. Among many other approaches, the cycle model of knowledge management developed by Probst/Raub/Romhardt (2012) offers a holistic and applied orientation here. The authors distinguish between eight phases of knowledge management: 1. the definition of knowledge goals that cover the knowledge relevant to the entire organisation, 2. the identification of existing relevant internal and additional external knowledge, 3. knowledge acquisition and the closing of knowledge gaps at all organisational levels, 4. knowledge development in order to develop innovative ideas and skills within the organisation, 5. Knowledge diffusion to ensure the right level of penetration, 6. Active use of knowledge by all members of the organisation, 7. Knowledge retention to avoid the loss of important (tacit) knowledge in case of staff leaving 8. Knowledge assessment to reflect the defined objectives and optimise the organisational approach as such.

Surveys among cross-border cooperation actors in the Upper Rhine region[642] show that – unlike at the level of individual actors, where acculturation and experience exchange processes are reported as positive side-effects of engagement in cross-border cooperation approaches – very little mutual learning takes place between entrepreneurial actors. Despite being partners in many joint INTERREG projects over many years and/or representing the participating organisations of cross-border institutions, neighbouring administrations linked by cross-border territorial constellations (thus creating a transnational sub-system of cooperation) hardly seem to adopt good administrative practices from the other side of the border and incorporate them into their national and even transnational context. With regard to the functioning of the cross-border cooperation system,

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641 Schreyögg/Koch 2015: pp. 302 – 304
642 Beck/Becker-Beck/ Beck/Dussap, 2015

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on the other hand, studies from the same region[643] point to a relatively pronounced adaptability and system-specific internal learning over time. Using indicators such as common self-image and motives for action, common symbols, common standards (written and unwritten rules), common values or common solutions to standard situations, it can be shown that the transnational system changes over time and adapts its functional framing[644]. However, whether this can be interpreted as learning at any of the above three levels is not evident per se. While standard business processes and the relatively well-established transnational work culture can be seen as a strong and hardly changeable framework, the adaptation to new challenges, such as the opening to new categories of actors in the context of new transnational governance models[645], can be seen as an indication of reflection on given mental and functional frameworks. New generations of actors also bring in new ideas, expectations, professional profiles and ways of working, which can be seen as impressive impulses for internal changes and learning processes. Another element that brings change – but within a stable institutional framework and based on the overarching pattern of pragmatic search for feasible solutions – is that the presidencies of delegations, working groups and/or cross-border institutions usually change between national partners. This always provides a new thematic, strategic and, above all, internal cultural stimulus for changes in the way such institutional frameworks operate de facto. A whole series of INTER-REG projects could also be interpreted from the perspective of "successful failure"[646] : The originally envisaged objectives were not necessarily fully achieved – but the project has produced quite different and valuable divergent results that have led to impressive learning effects for the partners involved. On the other hand, there is also a tendency to "imitate" national thematic conjunctures[647], which tend to be taken over and continued in a loop internally by the given internal mechanisms and frameworks.

However, systems of knowledge management in the sense described above are difficult to find in most cross-border cooperation contexts. One reason for this is the lack of transnational inter-organisational learning, which itself must be considered a relevant prerequisite for the creation of cross-border knowledge. The knowledge available and applied in a transna-

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643 Nagelschmid 2005; Weber/Jacob/Regio Basiliensis 2013; Wassenberg 2007
644 Beck 2008
645 Beck/Wassenberg 2011
646 Seibel 2017
647 Beck 2008

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tional perspective is mostly of a practical, tacit, individual and operational nature rather than factual, explicit, collective and strategic. A relevant example illustrating this challenge is the lack of territorial information systems in most cross-border regions: robust problem analysis, policy development, impact assessments, etc. Approaches that promote e.g. policy learning are hardly possible in a cross-border perspective due to the lack of relevant basic data and information due to incompatibilities in national statistics and/or technical difficulties in producing such information. Finally, the literature on change management in public administration can also provide additional insights for a more fundamental understanding of how cross-border cooperation systems can (or cannot) adapt to new external and/or internal challenges. Two analytical concepts are relevant in this context: the distinction between the form (intended vs. unintended) and the intensity/complexity (first and second order level) of the concept of change itself[648].

The concept of *intended change* refers to a linear understanding of change and changeability of organisations, assuming that the identified weaknesses/challenges can be solved through the rational (top down) implementation of predefined change projects/measures (classical methodological approaches are business reorganisation, restructuring, organisational/systems analysis). The assumption of *unintended change*, in turn, is based on the notion of evolution and life cycle thinking: organisations go through different phases of "maturity" and/or growth, each representing both developmental stages and challenges for change, which are not necessarily controllable, but which are crucial for the further development (and survival!) of the organisation. The main impetus for change here is not external challenges but internal crises caused by and symbolising the transitions between different stages of life-cycle growth.

Differences in the intensity of change are both a prerequisite and an expression of how change is managed. Whereas *first-order change is* limited to single dimensions and aspects,, focuses on a quantitative dimension and is incremental,, factually rational and designed without changing the underlying organisational paradigms, *second-order change is* much more far-reaching in the sense that change is multidimensional, encompasses different organisational levels at the same time, refers to qualitative dimensions, intends new directions and paradigms and is assumed to be non-rational and non-linear.

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648 Gourmelon/Mroß/Seidel 2014: pp. 281–286

A formative theoretical framework for the issue of change management was developed as early as 1958 by the social scientist Kurt Lewin. Interested in the question of how group performance could be enhanced, and considering that "...group decision-making is a process of group management or self-management"[649], Lewin developed a model of change as a three-stage process. Based on the observation that groups tend to return to earlier levels of equilibrium after a short period of change, and the analysis that this is due to two antagonistic forces (progressive and reluctant), he concluded that it is not enough simply to formulate the goal of change, but that it is necessary to ensure the "...permanence of the new level"[650]. Therefore, it is important first to unfreeze the first level of antagonistic equilibrium (L1), then to lift the group to the new level (L2) and then to re-stabilise group life at the new level (Lewin calls this "refreezing"). The figurative unfreezing (and later refreezing) is essential both as a prerequisite and as an initiation of successful change processes, as it implies both challenging and overcoming well-rehearsed behaviours, norms and habits – which in itself can be a very challenging situation: "In order to break open the shell of complacency and self-righteousness, it is sometimes necessary to deliberately induce an emotional stir"[651]. Lewin's model can be seen as a basis for participatory change processes of systemic organisational development[652], it also underlines the importance of the role and profile of good "change agents"[653], both for the initiation and the successful course of change processes in organisations and systems.

Changes in cross-border cooperation systems can be interpreted as unintended patterns that take place primarily at the first level of change. In a historical perspective[654], the analysis of institutional arrangements at the cross-border level allows for the detection of evolutive developments that are characterised by a distinct temporality and can indeed be interpreted as life cycles of different degrees of maturity: While in the initial period (after the Second World War and until the early 1970s) peace, reconciliation, mutual trust and exchange were the basic prerequisites for cross-border cooperation, especially at the local level, the 1970s and 1980s are characterised by formalisation and institution-building as well as joint planning

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649 Gourmelon/Mroß/Seidel 2014; 211
650 Gourmelon/Mroß/Seidel 2014: 211
651 Lewin 1958: 211
652 Schein 2010
653 Lunenburg 2010
654 Wassenberg 2007; Reitel/Wassenberg 2015

approaches at the territorial meso level; with the provision of funding by the EU, much more concrete project-based cooperation emerged in the 1990s and 2000s, while more recent cooperation approaches envisage integrated policy-making stimulated by territorial governance models[655]. However, as institutional and functional arrangements have been relatively stable over time and cross-border cooperation hardly ever leaves its "niche position" in terms of dominance of domestic over cross-border issues on the policy agendas of the partners involved, this change has mostly not (yet) reached the broader dimensions of second-level change.

Three main factors may explain this. First, any approach to change requires a corresponding degree of pressure in the sense that the driving forces become stronger than the constraining forces, which can then be used to "unfreeze" a given stable situation and enter a phase of more fundamental change. However, such an incentive does not usually exist in institutionalised cross-border constellations, which are shaped by and – following the idea of micro-diplomacy – even built for the *purpose of* avoiding conflict and risk. Secondly, change processes are heavily dependent on leadership in the form of change agents who are able to "unfreeze" a given situation. These are difficult to find in a cross-border, i.e. transnational constellation, as they would have to have the necessary power and assertiveness at all levels of the different participating national legal systems and administrative systems. Ultimately, change that is to be successful and sustainable must include action at the deeper levels of mental frameworks and values. However, such dimensions are deeply culture-bound phenomena that usually have very different connotations in a transnational context[656]. The transnational cooperation culture, in turn, is both an expression and a symbol of the intercultural bridging function that a cross-border cooperation institution stands for, and can therefore be interpreted as a functional equivalence between divergent national systems. A change in this relationship would jeopardise the long-term achievements of mutual learning and understanding – a common understanding that subsequently leads to stability rather than promoting a climate of change between the partners involved.

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655 Beck/Pradier 2011
656 Beck 2011a; 2014

9.3 Research perspectives

Cross-border cooperation in Europe is now on the threshold of a new functional and conceptual phase. As the process of European integration will become more difficult in the coming years, but in any case more differentiated[657], cross-border cooperation, understood as a specific form of horizontal European multi-level administration, conveys an increasingly attractive perspective, also and especially from the perspective of administrative science. Many of the reform proposals currently being discussed at both European and national level show a direct connection to the role to be changed in the future that the established legal and administrative systems will have to play in this transformation. Clearly, approaches such as mutual recognition, thematic law testing clauses, new joint cross-border public services, implementation of legislation such as the EGTC Regulation, new cross-border e-government applications[658], new approaches to cross-border institution building and (participatory) multi-level governance based on new functional territorial justifications, etc. have a direct link to issues that are currently also being discussed in administrative science. This normative shift from cross-border cooperation perceived as a means to develop and implement pragmatic project-based solutions to specific problems to an understanding of cross-border cooperation as a means to develop integrated territorial potentials in a 360° perspective, based on flexible legal and administrative structures that enable smooth interaction between individual and collective actors across borders[659], will certainly require appropriate scientific support in the near future.

Based on the operating principle of "horizontal subsidiarity"[660], which aims to strengthen the role and function of cross-border territories for the future design and implementation of European integration, the following four research questions in particular seem to be of special interest in the field of administrative science:

1. How can approaches to make the institutional framework of cross-border cooperation more flexible through mutual recognition and experimentation clauses be concretely designed and what new and innovative forms of transnational public administration can this lead to?

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657 Cf. already Eppler/Scheller 2013
658 Cf. Beck 2015a
659 Cf. Amilhat Szary 2015
660 Beck 2012

2. How can approaches such as open government and agile public administration and management promote flexibilisation and innovation in the way both cross-border programmes and projects are managed in practice? In the inter-systemic and inter-cultural perspective, what specific functional and structural requirements need to be met within the cross-border cooperation sub-system for this to happen?

3. How can new approaches to shared services and cross-border business process management lead to a new quality of cross-border service provision, what are the structural and management implications of this, how can specific e-government and open data offerings be practically designed in this context between the administrations involved?

4. what is the role and function of institutionalised approaches to cross-border cooperation as specific forms of an International Public Administration (IPA)[661] and what contribution do they thus make to the realisation of a European multi-level governance system and a differentiated understanding of the horizontal dimensions of the emergent European Administrative Space?

Administrative science research can be understood as a particularly viable approach to transdisciplinarity[662]. The starting point of the concept of transdisciplinarity is the thesis that the constant differentiation of the science systems of developed countries leads to a continuous increase in the number of different (sub-) disciplines. This leads to an ever smaller specialisation of science through processes of sub-disciplinary demarcation and thus hides the diverse thematic interdependencies that de facto exist in most areas of the natural sciences, but above all in social object areas, with the consequence that actual knowledge gain and thus ultimately theory-oriented knowledge generation is less and less possible. This poses the danger of a decoupling of the science system from real-world object areas and a focus of scientific research on sub-disciplinary, ultimately normative self-referentiality[663].

Accordingly, a transdisciplinary research approach not only aims at a (re)integration of differentiated disciplinary perspectives, but also and above all intends a fundamental change in the starting point of scientific knowledge: not the knowledge interests developed in the internal discourse of the science system should form the starting point of research approaches, but practical questions of the respective research object. In

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661 Cf. Ege 2016; Bauer/Ege 2016
662 Cf. König 2020
663 Cf. Mittelstrass 2005; Hirsch et al 2008

a transdisciplinary approach, the classical separation between science and the object area is abandoned, as is the narrow disciplinary demarcation. In contrast, it is assumed that within the individual disciplines involved in a research project, specific specialisations have developed for the respective research object, through which corresponding subject representatives of the individual disciplines are able to actually develop integrative questions and methodological approaches in a way that does justice to the complexity and interdependence existing in the respective research object. Moreover, in a transdisciplinary understanding, the science system opens itself up in the research process to the respective practice of the object of study: this means not only that a consistent empirical approach must be taken, but above all that the development of integrative questions and methods is closely coordinated with the respective community of practice in each of the individual research steps. In this respect, a transdisciplinary approach to science not only produces integrated theory-oriented knowledge – a very important objective is also to generate action-oriented knowledge for the respective practice[664]. Thus, the transdisciplinary research approach is based less on a scientific-theoretical than on a research-guiding self-conception, with which the objectives of interdisciplinarity can nevertheless be promoted in the corresponding areas of investigation. Accordingly, it is not so much institutional (specific institutes, journals, platforms) as programmatic and project-related approaches to networking between science and practice that are at the centre of corresponding transdisciplinary stabilisation. The following diagram summarises the basic approach of a transdisciplinary approach to administrative research:

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664 Beck/Stember 2019

Fig. 13: Transdisciplinary research approach of administrative science
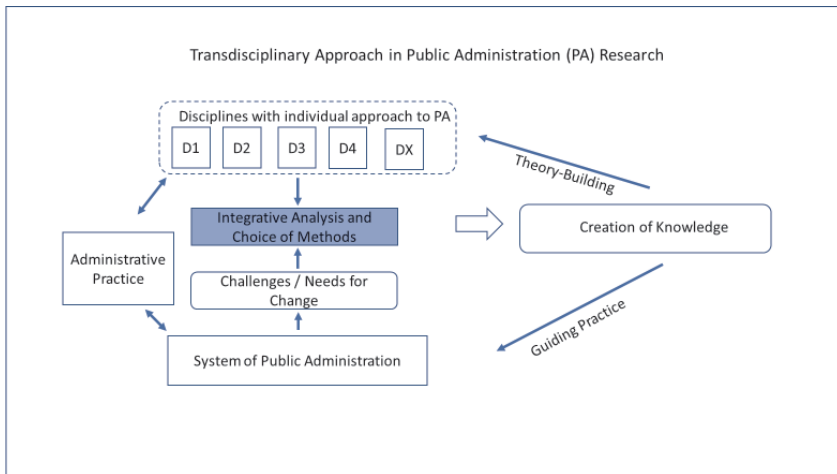
Source: (Beck 2023)

In a real-world perspective, however, a narrow disciplinary demarcation can hardly be observed today. Particularly in the social sciences, but also in the relationship of these to law and economics, not only a pluralism of methods but also theory-based interrelationships and conceptual transitions can be observed in many research approaches.

For a research perspective in administrative science that relates to cross-border cooperation as a horizontal dimension of the European Administrative Space, a transdisciplinary research approach that defines itself less normatively than as a method appears to be particularly purposeful[665]. On the one hand, an administrative science of integration defined in this way refers to an object of research which, although its purpose is not initially directed towards change, but rather towards continuity and predictability with regard to a defined and expected fulfilment of tasks, is nevertheless to a large extent also related back to social developments and is thus definitely open to development. Accordingly, the history of ideas in administrative science in Europe, especially after the Second World War, provides numerous examples in which real-world challenges to public administration have always been the cause and thematic focus of research in administrative science – be it the fundamental question of the role and

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665 Cf. for example the contributions in Beck 2019

position of public administration in democracy, the question of opening up to and greater participation of target groups of public administration, the question of reorganisation of the local and regional level oriented towards the standards of effectiveness and efficiency, the question of better planning to rationalise the contributions of public administration with a view to achieving welfare state objectives, the question of making public administration and its procedures more flexible and streamlined in the context of economic rationalisation, the question of changing national administrative systems that have grown up in the context of increasing European integration and international interdependence, the question of recruiting personnel and changing the way tasks are performed in the context of demographic and value-oriented social change, or the question of optimising target group-oriented services and business processes in the context of more or less comprehensive digitalisation.

On the other hand, these practice-oriented questions also refer to the dimension of action-oriented knowledge generation: thus, administrative science not only has the task of scientifically analysing real-world phenomena and preparing them in a theory-oriented way, it has also always defined itself in its history as a science that formulates science-based design recommendations for administrative practice. In this respect, administrative science can be understood as an integrative science not only from a transdisciplinary perspective, but also and especially as a reform science in which the science-theoretical distinction between basic research on the one hand and applied research on the other, which is increasingly questioned today, is overcome in favour of an integrative transdisciplinary perspective.

However, a transdisciplinary integration science defined in this way, if it wants to counteract the double danger of both fragmentation and marginalisation[666], cannot do without a plausible answer to the question of what its unique selling point is that integrates both the disciplines involved and administrative practice. Following the established basic understanding of the sociology of science, a scientific discipline is primarily constituted by its respective object of study. In the case of administrative science, this is undoubtedly public administration in Europe, which is characterised by considerable diversity and differentiation. In order to make this subject area accessible for scientific categorisation and corresponding analyses and theorising from a transdisciplinary perspective, the Speyer administrative scientist Klaus König recently proposed[667] to base an

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666 Cf. Bauer/Grande 2018: 14
667 Cf. König 2020

integrative administrative science that sees itself as a "discipline-carrefour" on the theoretical approach of a systemic institutionalism[668].

Such an approach appears to be groundbreaking in two respects in particular. On the one hand, the theoretical approach of systemic institutionalism can perform the integrative function of a resilient bridging concept between established individual social science disciplines[669]. Thus, in a neoinstitutional perspective, corresponding questions are being pursued today both in economics (new institutional economics, systemic management theory) in political science (actor-centred institutionalism, policy research and government studies) in sociology (sociological institutionalism, network research, governance research) and also in jurisprudence (new administrative law theory, better lawmaking). Technology-centred approaches, such as the digitalisation of administration[670] or approaches that attempt to relate scientific theorems to social issues from a more fundamental perspective[671] are also mostly based on a systemic view of administrative institutions. From this in turn, a corresponding integrative view of the subsystem of cross-border cooperation as a horizontal, inter-systemic level of integration of the European Administrative Space can be developed.

On the other hand, systemic institutionalism allows for the differentiation, relevant to public administration as an object of study, between a systemic institutional internal view on the one hand (research into the constitutive system features of public administration as well as their characteristic development and changeability = systemic micro-level) and on the other hand the relationship of the system of public administration to its various surrounding systems, from which it not only receives institutional impulses for stabilisation and change (culturally differently shaped in the international comparative perspective), but on which this in turn has a feedback effect (research into the interdependent relationship between administration and its social, economic, political, technical etc. environment as well as the specific culturally shaped environment of public administration). (research into the interdependent relationship between administration and its social, economic, political, technical, etc.

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668 Of course, there is no such thing as systemic institutionalism in the singular; what König proposes in this context is a systemic institutionalism as contoured in particular by the early work of Niklas Luhmann; cf. also Luhmann 2021

669 König 2020

670 Cf. already Reinermann/von Lucke 2002; Windoffer 2018;

671 Cf. Böhret 1990; Zohar/Marshall 1995

environment as well as the specific culturally shaped paths of systemic administrative design in a given state = systemic macro level). Such a differentiation between the internal and external perspective, oriented towards the thought model of systemic institutionalism, can be of particular analytical use for the development of an integrative view of the object of study of cross-border, inter-administrative cooperation, since its functionality in the real-world perspective is shaped precisely by this *interplay* between the territorial-transnational "micro-level" of the cooperation subsystem on the one hand and the support services of the participating national or European "macro-systems" on the other.

The specific and sustainable systemic capacity building that results from the interplay between micro and macro levels in a horizontal perspective will ultimately determine the actual function that cross-border territories can play in the wider European integration process. Administrative science research, understood as a transdisciplinary approach, can provide applied research to both inform and stimulate such a systemic approach to capacity development in the field of cross-border cooperation. At the same time, it can help to better establish cross-border cooperation as a promising thematic field within administrative science by integrating the hitherto rather separate administrative science research lines of "Public Management/Governance" on the one hand and "European Multilevel Administration/European Administrative Space" on the other hand via this subject area.[672]

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672 Cf. Beck 2023

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Publication reference

The individual chapters of this book are based on revised versions of the following publications by the author:

Chapter 2: Beck 2011a;
Chapter 3: Beck/Pradier 2010; Beck 2015b;
Chapter 4: Beck 2011b; Beck 2008; Beck 2014a, Beck 2007
Chapter 5: Beck 2013; 2013a; Beck 2015a;
Chapter 6: Beck 2018; Beck 2017; Beck 2018b;
Chapter 7: Beck 2015d; Beck 2021
Chapter 8: Beck/Weigel 2021; Beck 2021b
Chapter 9: Beck 2023; Beck 2019;

I would like to thank the publishers / journals for their permission to use these publications for this book.