

OPEN GOVERNMENT AND CROSS-BORDER COOPERATION - PERSPECTIVES FOR THE CONTEXT OF TRANSNATIONAL POLICY-MAKING IN BORDER-REGIONS

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Abstract

Open Government (OG) as a concept for modernising the public sector is becoming increasingly prominent in recent debates in administrative science. It refers to a model of government and administrative action which, guided by the three premises of transparency, participation and collaboration, shapes the development and implementation of public policies in close interaction with actors from civil society, business and science. OG thus is not necessarily something completely new, but rather follows the tradition of various reform discourses in administrative science: On the one hand, it shows references to concepts of state theory that postulate a development 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 towards the digital state of the 2000s. On the other hand, with regard to normative models of public administration, in contrast to autonomous and hierarchical administration, it can be classified between the idea of a cooperative and a responsive administration (cf. [1], pp. 253). At the municipal level, the concept is connectable to concepts that see an evolutionary development from the regulatory municipality of the 1950s and 1960s, the social security municipality of the 1970s, the service municipality of the 1990s to the civic municipality of the 2000s [2]. Finally, it is relatively easy to also establish references to the more recent debates on the topos of regional governance [3], [40].

It is therefore all the more surprising that in the literature on administrative sciences; concepts of OG have so far hardly been applied to the policy field of cross-border cooperation in Europe. In the last 30 years, the action model of territorial cooperation has steadily gained in importance within the overall approach of European policies, both in qualitative terms (contribution to horizontal integration) and in quantitative terms (financial and human resources employed). In addition to numerous INTERREG funding programme areas, a large number of cross-border action structures with varying degrees of institutionalisation have developed over time at different interlinked territorial levels (inter-local, inter-regional, macro-regional) [4]. A more recent study [5] comes to the conclusion that Europe's cross-border cooperation today has a personnel capacity of over 21,000 full-time equivalents.

Using the territorial example of the trinational border regions of the Upper Rhine, the paper examines the extent to which the premises of OG are suitable for the future-oriented development of existing approaches to cross-border cooperation in a post-COVID-19 perspective. On the basis of three case studies it will be worked out which possibilities, challenges and perspectives can concretely arise in order to use the negative experiences gained in the COVID-19 pandemic for a structural and functional repositioning of cross-border cooperation in Europe. Finally, an approach

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concept will be developed, which shows how public actors of cross-border cooperation can contribute to the realisation of a new truly transnational and development-oriented governance mode through methods and approaches of Open Government.

1. Introduction

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 [6], [7], [8].

Unlike e-government, which in its practical implementation still focuses mainly on the electronic processing of public services², this approach, which has since been taken up in Europe as well [9] and has even led to the global movement of an OGP (Open Government Partnership with 79 member countries around the globe³), 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 [11]. 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[12], 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 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 oft-repeated "triple definition" of Open Government as transparency, participation, and collaboration

² Cf. the still convincing conceptual framing of Reinermann/von Lucke [10] and 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> (as per 7 April 2021).

³ Cf. <https://www.opengovpartnership.org/> (as per 7 April 2021).

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* [39], Open Government can be 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 optimized approaches to e-government [12][13].

Open government (OG) as a concept for modernizing 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 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 (cf. [1], pp. 253) 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 [14]. 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 [2]. Finally, it is also necessary to establish conceptual references to the more recent debates on the topics of regional governance[3].

The policy field of cross-border cooperation in Europe (cf. [15], [5]) 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 program. Institution building was also actively promoted by providing the relevant legal instruments (EGCT: European Grouping of Territorial Cooperation). A recent study[16] 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 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 (cf. [4], [15]). 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 characterized 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 [17].

Cross-border territories have enormous territorial development potential. A study commissioned by the EU Commission in 2017 proved that administrative borders, which still have a strong impact, lead to a loss of 3% of European GDP. If all negative 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 [18]. 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. 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 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 [20]. Obviously, there is a particularly pronounced institutional (national) path dependency in cross-border affairs, which tends to hinder the development of existing potentials.

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?

2. 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 realized 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 [4], 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 at their external borders or at the interfaces to their neighboring systems were completely closed, no cross-border cooperation could emerge. From systems theory [21] 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 neighboring state itself, and on the other hand, the cross-border socio-economic dynamics (mobility of labor, 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 neighboring 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 [20]. 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 trinational region of the Upper Rhine (border triangle of Germany, France and Switzerland).

2.1. 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 labor force [22]. 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 labor force there is higher (44% 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 labor 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 labor force. Moreover, cross-border mobility is not limited to the aspect of occupation. The freedoms of the internal market have meant that consumer behavior in particular, and increasingly also settlement behavior, 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 [23].

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 also 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, labor law and business law are not harmonized 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 labor 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 neighboring 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 encounter hurdles when they are confronted with neighboring 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 specialized 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 neighboring 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 already at the beginning of the 1990s that is strongly oriented to the idea of the One-Stop Agency⁴. 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 centers (Infobest)⁵ were 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 neighboring country, as well as to establish the necessary initial institutional contacts. The free advisory services of the Infobest offices relate to general information on the neighboring countries and, among other topics, in particular to the areas of social security, employment, taxes, moving to a neighboring 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 specialized 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 specialized 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 neighboring 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 specialized 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 specialized administrations in neighboring offices. Individual case-related problems can be analyzed cooperatively in this way and, in most cases, also successfully solved between the respective experts on site.

⁴ It is noteworthy that this approach has been implemented long before the EU-level finally recognized the issue and launched SOLVIT (https://ec.europa.eu/solvit/index_en.htm). In addition, the Infobest-approach also covers policy-areas which are not covered by EU-law but still remain within national competence such as public tax-law.

⁵ <https://www.infobest.eu>

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 specialized administrations, where an individual case from a neighboring 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 (organization of opening hours) and/or quality (qualification of staff at the counter) as part of the current modernization 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 specialized administrations involved in a cross-border situation makes cross-border processing structurally more difficult. Although citizens can find digital service offerings in the respective specialized 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 neighboring 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 specialized administrations in France and Germany, is currently developing a concept for turning Infobest, which have so far functioned predominantly in analog form, into digital one-stop agencies. In doing so, the existing digitalization 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 [19]) 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 decentralized "Maison de Service au publique", www.maisondeserviceaupublic.fr 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 in the age of administrative digitalization. An interlink with the Single Digital Gateway-initiative of the European Commission⁶ as well as with SOLVIT and the Initiatives of DG Regio following the Border Review-Exercise⁷

⁶ https://ec.europa.eu/growth/single-market/single-digital-gateway_en

⁷ https://ec.europa.eu/regional_policy/de/policy/cooperation/european-territorial/cross-border/review/

will be developed in the perspective of strengthening the bottom-up awareness for the identification of the many remaining obstacles, still hindering citizens rights⁸ in Europe.

2.2. OG dimension Participation: Cross-border citizen participation in the Upper Rhine region

The topic of participation in cross-border cooperation has gained special political significance in the Upper Rhine region since the founding of the trinational metropolitan region Upper Rhine (TMO) in the mid-2000s⁹. The starting point was the consideration, analogous to the metropolitan and regional governance processes developing in many member states [3], 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 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 neighboring countries [24]. 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 organized 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

⁸ Cf. DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

⁹ www.rmtmo.eu

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 (cf. [25], [26]). Even though cross-border consumer and leisure behavior has intensified in the last 30 years, the vast majority of the Upper Rhine population still identifies with the respective sub-regional center of life in Germany, France or Switzerland.

In this context, however, the COVID-19 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' dialog 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" [27]. 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' dialog 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 has 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 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' dialog, 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.

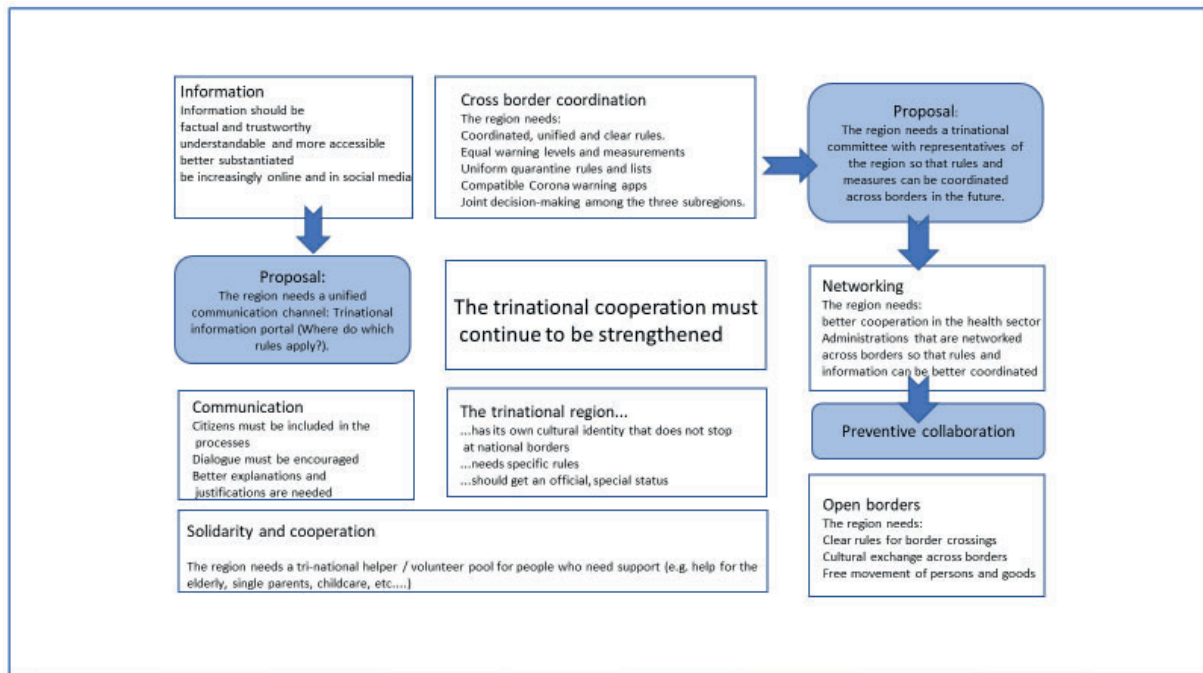


Figure 1: Results of the group work of the citizens' dialogue at Eurodistrict Basle
Source: [27], p. 7 – translation by the author.

2.3. OG Dimension Collaboration: The INTERREG Program

If, as a third example, we look at the central funding instrument INTERREG and ask about the potentials and limits of its contribution to the realization 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 program Upper Rhine¹⁰.

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[4],[28], [41]. 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,

¹⁰ This section is based on practical insights the author has gained via participative observation over a period of 20 years, holding different functions within the INTRREG Upper-Rhine programme (evaluator, project-applicant, project-manager). For similar evidence from other birder-regions see [28]; [30] and [29].

the Regio Basiliensis as coordinating body, as well as the cantons of Basel-Stadt, Basel-Land, Aargau, Solothurn and Jura. This program-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 program 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 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 organizations 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 program. Thus, the action model of INTERREG in the border regions of Europe has led to a very specific design of both program 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 program planning procedures in many border regions. In particular, a broad stakeholder consultation has been developed in the Upper Rhine region for several program 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 program: 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 [15]. 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 synchronization, not least of different administrative cultures and system logics, lead in practice to the fact that the formal decision-making processes are characterized by a considerable informality in the sense of making informal preliminary decisions (so-called non-decision-making) [16]. 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 criticized by external applicants with regard to the practice of the INTERREG program. 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 program, 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 labor market, nature conservation, biodiversity and environmental protection, mobility and transport, public services and cooperation between administrations, cooperation 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 program 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 TRISAN¹¹, which has brought all relevant health actors in the Upper Rhine into a collaborative working context, or the tri-national project ATMO-Vision¹², 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 program's approval criteria, which are very restrictive compared to national programs, 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

¹¹ www.trisan.org

¹² <http://www.atmo-grandest.eu>

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 programs is criticized. 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 the project executing agency without retroactive subsidization by the program. 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 realized as planned precisely because of its secondary organizational 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 realized 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 realization of the Open Government principle of collaboration on the program 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 program development. The alignment of program 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 program. The rather small-scale, input-oriented program and project management should lead in favor 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 program for cross-border cooperation, target groups are treated appreciatively as potential-oriented partners and not as simple applicants.

A third approach, which is primarily effective at the project level, could be to take the findings of modern project management more into account at the level of INTERREG. Many approaches of Open Government implement agile methods of public management. This means taking into account the fact that projects usually deal with innovative and complex issues, which are characterized by a high degree of momentum, and whose quality gain often consists precisely in adapting not only the content but also the structure and roles of the project participants flexibly and as needed during the course of the project (Cf. [32]; [33]; [34] and [31]): Exclusively linear, "mechanistic" project planning, as it is currently demanded especially with regard to the preparation of a binding financing and realization 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 [35] 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.

3. Conclusion

The above analysis shows that CBC is a promising field of the implementation of OG principles. It has been shown, that those principles are - at least for the case of the Upper-Rhine region - partially already implemented. On the other hand the field of cross-border cooperation also still provides much potential in going further into this direction from the point of transnational policy-making.

Against the background of the examples, however, it is suggested that Open Government should not be seen as a normative model for the creation of a participatory transnational administration, but rather as a method by which the greatest possible transnational openness can be developed within given nation-state structures and procedures with regards to the objectives of cross-border cooperation.

Accordingly, the expected impact should also be viewed in a differentiated manner, which may contrast the normative thinking of quite a number of related publications (Cf. [8], [36] and [37]). From a practical application point of view, open government is concretized 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 organizational *meso level*, open government can contribute to an optimization 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 organizational development, and systemic innovations, for example in the area of the development of new forms of work or personnel development oriented toward 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 legitimization 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 (Cf. [38] and [5]).

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.

On the other hand, the case studies suggest, that more work needs to be done in order to adapt the rather general OG principles to the specific inter-institutional and inter-cultural context of cross-border policy-making [24]. In doing so, including Open Government principles into the Territorial Cooperation approach of the European Commission could help to close the still existing gap between concepts and approaches of administrative digitalization and participation developed and implemented mostly at MS-level so far, without taking into account the increasing cross-border dynamics of people, goods, capital and services in a transnational proximity perspective. In addition, this may also contribute to better interlinking the many EU-wide policy approaches designed at the European level with both the realities and potentialities of European border-regions. Cross-border territories could thus become horizontal interfaces and implementation-areas of European citizens-oriented policy-approaches such as the single digital gateway or SOLVIT. Also integrating the case of cross-border inter-institutional challenges as analytical category in the Commissions system of ex ante Impact Assessment could be a promising approach in this regard in order to better anticipate possible impacts of future European policy-approaches. This may help both recognizing the role these territories are de facto playing in the context of European integration, strengthening their practical contribution with regard to the realization of a horizontal dimension of the European Administrative Space[16¹] and promoting a better implementation of fundamental European Citizens rights - which are ultimately at the core centre of Open Government principles.

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