

Cross-border cooperation and the challenge of transnational institution-building – the example of the European Grouping of Territorial Cooperation (EGTC)

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Introduction

Cross-border cooperation in Europe is steadily gaining in importance. With the realisation of the European internal market, i.e. the official elimination of internal borders in Europe, at latest it became apparent that the European border regions play a very specific and central role in the European integration process (Wassenber/Beck 2011). This was reinforced by the Eastern enlargement, which extended the range of what we can define as cross-border regions in Europe, both quantitatively and qualitatively (Foucher 2007). The importance of cross-border areas can be illustrated by a few figures: approximately 40% of the EU area can be classified as border area. An estimated 30% of the EU population live in border areas at NUTS 2 level. Out of the 362 registered regions with the Council of Europe more than 140 are border regions (Ricq 2006). Only 7 million nationals of EU States (= 3,3% of the European workforce) are mobile within the EU in the sense that during their life they move somewhere other than their State of origin to live or work: approximately 1.2 million are posted in another country of the EU and 1.1 million commute as from their state of residence into a neighbouring country to work (Eurostat 2014). Thus, a high proportion of the overall still very relative mobility phenomenon in Europe takes place within the border-areas of the community.

This specific type of area, which so far has played a relatively minor role in official documents as well as in thematic and/or spatial development strategies of the European Commission (Beck 2011), provides specific functions for the achievement of the European integration process. In particular in connection with the reorganisation of the European cohesion policy (2014-2020), but also with the newly established Treaty objective of territorial cohesion, it becomes evident, that border regions in Europe experienced a strategic reevaluation in recent years (Ahner/Füchtner 2010; Beck 2014). A prominent role in this context is assigned to the European Grouping of Territorial Cohesion (EGTC) as a specific legal form, created for the promotion of territorial cooperation in Europe. The present paper analyses, what role the EGTC – understood as a tool of legal institutionalization of cross-border cooperation - plays in practice and what the causes of its recent status of implementation are. Section 2 analyzes first the genesis and task-side characteristics of cross-border cooperation as a basis. Section 3 is devoted to the actors of cross-border cooperation in the context of transnational governance. Section 4 analyzes

occurrences and explanations of the current usage of the EGTC by the actors of cross-border cooperation, the result of which is placed in perspective from a neo institutionalist perspective in Section 4. Section 5, finally addresses the need of further flexibilization of the legal and administrative framing for cross-border cooperation which is seen as a necessary prerequisite for a better and more need-related uses of institutional solutions such as the EGTC.

I. Territorial cooperation within a transnational context

Today, borders are a complex multidimensional phenomenon in Europe (Speer 2010; Blatter 2000; Rausch 1999; Beck 1997). Looking at the realities of living and working environments, as well as the leisure activities of the population (Beck/Thevenet/Wetzell 2009), the horizontal linkages between industry and research (Jakob et al 2010), the cooperation between politics and administrations (Wassenberg 2007; Kohlisch 2008; BVBS 2011; Frey 2005) etc. it becomes evident, that the border phenomenon and hence the subject of cross-border-cooperation can no longer be restricted to a perception of overcoming functions of territorial separation only (Casteigts 2010; Amilhat Szary 2015). Cross-border areas and the cooperation approaches developed there are specific subsystems (Frey 2003) that are composed of horizontal networking (and selective integration) of functional components provided by the respective participating national (politico-administrative) reference systems. In addition to the spatial dimension, border and cross-border cooperation covers both political, economic, legal, administrative, linguistic and cultural dimensions, which extend the focus of analysis of the specific structural and functional patterns of the subsystem of 'Cross-border cooperation' too (Beck 2010).

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. 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 (Beck 2011). It is obvious that the cross-border areas of Europe have strongly benefited

from the advances of the European integration process. The 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, these main European projects border-regions ultimately have not been specifically 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 (Beck 2011).

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 will be invested within 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 optimized structuring in overall organisation of cross-border cooperation itself.

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 program" 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 current program period (2014-2020) is characterised by a stronger thematic focus in programming as well as a more intensive impact-orientation when choosing and implementing new

cross-border projects (Beck 2011; Ahner/Füchtner 2010).

With regards to the functional task-focus, practical cross-border cooperation approaches in Europe are covering a wide range of material fields of action. Depending on the respective territorial context, these cover classical fields of regional development (such as spatial - and urban development planning, economic development, research and development, transport etc.), specific approaches of cooperation in sectoral policy areas (health, social security, education and training, science and research, environment, conservation and tourism, etc.) or areas of public services of general interest (supply and disposal, security, infrastructure, leisure and sport etc.). A classification of these various tasks, as relevant for the question of the possible role, an EGTC can play for their fulfillment, can be done on the basis of the dimensions of "thematic orientation" and the characteristic "functional role" cross-border-cooperation is de facto providing.

A task-classification based on the characteristics of thematic differentiation can be developed according to the following typology (Beck 2017):

Type A: Cooperation within the framework of mono-thematic projects (bridges, bike paths, bus lines, kindergartens, information services for citizens, businesses, tourists, etc.) including INTERREG-life-cycle management ("single issue");

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

Type C: Cross-topic cooperation like programming/implementation/management of INTERREG programme; cooperation taking place within political bodies such as government commissions, Euroregions, Eurodistricts; Inter-sectoral cooperation taking place within the framework of innovative networked governance approaches of territorial development ("integrated-cross-sectorial")

In contrast, the typology of the "functional role of cooperation" refers to a variation in the intensity of cooperation requirements and the related performance of duties. Six ideal types of functional levels of cross-border cooperation can be identified here, that build on each other in practice – in the sense of a core process – and which are very often sequentially interlinked in the sense of different stages of development:

Type 1: The encounter between actors from various national political and administrative contexts can be considered as a basic function of the cross-border tasks. The aspects of mutual learning and the exchange about the respective specifications of the home context mark this level. Mutual meeting promotes mutual understanding and thus forms the basis for building trusting reciprocal relationships.

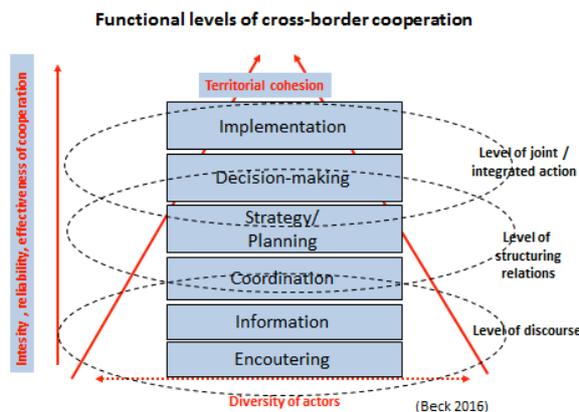
Type 2: On this basis, the partners can then enter into the second phase, which is characterized by a regular mutual information.

Type 3: Once informative cross-border relations are sustainable, these lead to the cross-border coordination of the relevant actions and policies of the partners involved in the third step.

Type 4: From this, the demand to develop joint cross-border planning and strategies that can ensure a coordinated, integrated approach in relevant fields arises as a fourth level.

Type 5: On this basis, then joint decisions can be made, which eventually lead to Type 6: Shared, integrated and coordinated cross-border implementation of tasks on a sixth level. On the one hand, this classification of six cross-border functional levels built on each other, stands for the empirical observation that both the intensity, the liability, as well as the integration of the cooperation growths from one level to the other. Each stage itself represents a necessary and legitimate dimension and precondition of the effective fulfillment cross-border tasks. In addition, the six levels are also representing different logics of interaction between the actors involved: while the first two levels are primarily a level of discourse, the following two stages focus rather on the structuring of the relations of interaction as such whereas the last two levels refer to implementation-related joint actions in a transnational context. Accordingly a reliable cross-border task-fulfillment is therefore only given (and possible) if all functions in all six reference levels are realized. The observation, that the two functions "decision" and "implementation" often still show empirical deficits (Beck/Pradier 2011) illustrates the challenges regarding the state of implementation of an integrated cross-border policy in many cross-border constellations. The following figure summarizes the model of different functional levels of cross-border cooperation:

Figure 1



Territorial cooperation of the new generation tries to increasingly promote integrated development of cross-border potentials (Ahner/Füchtner 2010). Thus the question, by which forms of governance this territorial development can best be accomplished, is more and more on the agenda in many border regions. The EGTC is conceived and seen as a central instrument in this regard. Based on the above outlined typology of tasks, the next chapter will analyze the types of actors involved in cross-border governance. These actor-constellations represent and/or are closely interlinked with both the thematic and the functional tasks - which in turn can be interpreted as an important precondition for the functional added value an EGTC can promote in this regard.

II. Actors as the basis of cross-border governance

In light of the impressive career of the governance concept in Social Sciences (see Blatter 2006),

Governance is today one of the central concepts being discussed in the practical and theoretical field of cross-border cooperation too. However the definition of the term governance is quite often not clear in its use. It seems therefore useful to have a closer look on its initial conceptual definition first, before presenting in more detail the specific patterns of cross-border governance.

In its more generic definition, governance refers simply to the different mechanisms which generate order within a given population of actors in a specific policy-field. This can happen through unilateral adaption (market), command and obedience (hierarchy), negotiation and functional interaction (networks) or through a common orientation of behaviour based on generalized practices of a society (norms, values) (Mayntz 2009: 9).

Following Fürst (2011) a second analytical dimension must be distinguished in this respect: the procedures that lead to such collective order (decision processes, rules of decision making, styles of policy-making) which can be defined as governance in the narrow sense of the term and the different forms of how these processes are organized (classical institutions versus non-hierarchical networks), which can be defined as government in the narrow sense of the term.

According to Beck/Pradier (2011) a third analytical component can be added, in order to fully exploit the concept of governance, and which seems very important especially from the point of view of territorial development: this is the practical shaping of governance. Two dimensions must be distinguished in this regard, the horizontal dimension which refers to the types of actors involved (governmental, non-governmental, society, private) and the vertical dimension which refers to the different territorial levels involved (local, regional, sub-national, national, European).

It is striking that in most literature on European governance, especially in the case where the notion of multi-level-governance is highlighted, the perception of the vertical dimension is predominant. Mostly, both in literature as in practice, European multi-level governance is perceived and discussed not only in a normative way but also with a special focus on the "vertical" dimension: different territorial levels should better cooperate in order to better taking into account the fact, that in most states (thematic) power is shared between different territorial levels and that this internal differentiation is more and more extended to - and thus becomes impacted by- the European level of policy-making. What is overseen in many recent reports and political statements on the future of European multi-level-governance, however, is the horizontal dimension of multi-level governance. Especially for the case of cross-border territories this dimension is very important.

Cross-border governance is characterized by a number of features that represent a distinctive pattern compared to a classical „mono-jurisdictional“ approach (Beck/Pradier 2011): The first distinctive feature is that cross-border governance initially always has a territorial dimension (Casteigts 2010). The observed cooperation and coordination processes are constituted within a spatial parameter including areas of different

bordering countries. Each given cross-border spatial context (eg presence of natural boundaries, population density, degree of socioeconomic integration, polycentricity) determines the resulting challenges to be matched with regards to the production of joint spatial solutions (development given potentials, creating infrastructure conditions, complementarity of sub-regional spatial functions, etc.) and thus constitutes the functional framework of this type of cooperation. Characteristically, however, the territorial dimension of cross-border cooperation has a strong inter-relation with the given politico-administrative boundaries which makes it more difficult to handle socio-economic spill-over effects that typically exceed these limits. This creates the challenge of adapting the spatial parameters of the cooperation to the scope and content of different levels of functional integration, with the practical difficulty that a "regional collective" (i.e. the mobilization/integration of all relevant intermediary actors of a territory) is hardly emerging on a cross-border basis, which is a distinct pattern compared to "classical" regional governance taking place within a single domestic context (Kleinfeld/Plamper/Huber 2006).

The second feature of cross-border governance is that this type of regional governance takes place within a context that involves relations between different countries. The transnational dimension of cross-border governance is a specific characteristic, which greatly contributes to the explanation of the specific patterns and functionalities of this cooperative approach. Unlike "classic" regional governance, transnational governance is characterized by the fact that decision arenas of different political and administrative systems have to be inter-connected. The resulting cross-border bargaining systems are marked by a clearly stronger principal-agent problem, compared to the national regional governance. The challenge here, however, is not only to coordinate different delivery-mechanisms of different politico-administrative systems but also to manage the complex "embeddedness" of the cross-border territorial sub-system into the respective national politico-administrative systems (Frey 2003). In addition, the intercultural mediation and communication function, which is also closely linked to the transnational dimension of cross-border governance, is a real source of complexity. This refers not only to the interpersonal but also to the inter-institutional components of the cross-border negotiation system and includes the open question about the possibilities and limits in matching divergent administrative cultures in Europe. Finally, features such as the strong consensus-principle, the delegation principle, the non-availability of hierarchical conflict resolution options, the principle of rotation of chairs in committees, the tendency to postpone decisions rather than implementing them can also be explained by this transnational dimension. Cross-border governance obviously shares largely general features which were highlighted in the research on international regimes and which reflect (dys)functionality of transnational bargaining systems. At the same time this allows to explain, why it is sometimes so difficult for cross-border actors to agree on even the very basic components of the governance approach: terms such as "actors", "networks", "decision rules", "civil society", "project", "cluster" etc in fact represent deeply culturally bound concepts upon which inter-cultural differences and conflicts very quickly can arise.

The third distinctive feature of cross-border governance can be seen in its European dimension (Lambertz 2010). Stronger than national patterns of regional governance, which also may refer to European policies, especially when incorporating issues like external territorial positioning strategies and / or the use of appropriate European support programs, the characteristics and finalities of cross-border governance are much more interlinked with the project of European integration as such. Cross-border territories are contributing a specific horizontal function to the European integration process (Beck 2011). European notions, objectives and policy approaches such as "Europe is growing together at the borders of Member States", "Europe for Citizens", "territorial cohesion" or "European Neighbourhood Policy" are concepts that relate directly to the European dimension of cross-border cooperation. Cross-border cooperation today is a specific level of action within the European multi-level context. Accordingly cross-border territories have a (sectoral) laboratory function for the European integration: in all these policy areas that are either not harmonized at European level or where European regulations on the national level are implemented differently, practical solutions and answers to real horizontal integration problems have to be developed in a cross-border perspective. This represents a specific innovation perspective for European integration, taking place at the meso-level of cross-border cooperation. In addition, the Interreg program with its characteristic, "externally defined" functional principles, is determining the cross-border governance to a large extent. This European action model characterizes the cooperation in general much stronger than it is the case within the national context, where also other than European funding opportunities (i.e. national programs with much less administrative burden) do exist. Yet, this leads to 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 promotions 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 or so 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.

The fourth feature of transnational governance can finally be seen in its thematic dimension. Cross-border cooperation in no way represents a distinctive policy field but consists of more or less integrated approaches of cooperation between different given national policy areas. The character of these regulatory, distributive, redistributive or innovation-oriented policies not only enhances the respective constellation and the corresponding degree of politicization of the factual issues in question; it also determines crucially different institutionalization requirements of the governance structures (Beck 1997). These may vary considerably by policy field, and make it very difficult, to develop an integrated, cross-sectoral governance-approach at the

cross-border level. The complexity of such governance is increased by the fact that the (variable) policy types may determine the interests and strategies of the actors involved directly, thus also affecting the interaction style, the applied decision rules, and ultimately the efficiency of cross-border problem-solving significantly. The difference to the functionality of collaboration patterns that take place within a single institutional system context must be seen in the fact, that the systemic determinants and thus the intersection of actors, decision skills, resources for action and the synchronizing strategic interests in the cross-border context can vary widely by policy-field and the partners involved. Thus, constellations of action and actors, which are evident within the national context and which allow for the development of "social capital" and a constructive and productive problem-solving within a specific territorial/or sectoral governance approach are often completely different in the perspective of a cross-border governance. This leads to very specific patterns of cross-border (non-) policy-making, which is characterized by much higher complexity and informal dynamics of the processes on the one hand and a decoupling of thematic and interest-related interaction on the other, and which have therefore been described as a specific pattern of transnational administrative culture (Beck / Larat 2015).

As the four features presented above underline, cross-border cooperation is characterized by a high complexity both with regards to its specific functional patterns and prerequisites. Both the emergences, forms and results of cooperative approaches in the field of cross-border-cooperation but also the question, as to what extent institutional solutions such as the EGTC may generate added values, cannot be understood properly without considering the policy-content and the related actors-constellations in question.

Looking at the reality of the actors involved in the cross-border cooperation in Europe, a strong dominance of the public as opposed to private and/or societal actors falls in the eye first. Cross-border cooperation is a "public" affair, in which State and local actors play a significant role in all transnational spaces. This can be explained, firstly, from the fact, that this form of so-called "small foreign policy" of course still very much depends on the legitimacy, recognition and support of the States concerned, as it is taking place in the sensitive area of „decentralized" foreign relations, classically and historically owned and defined as the core competency of the nation-States involved. Cross-border cooperation is and must therefore always be protected and covered by bi - or trilateral treaties and/or agreements, since national laws still provide for an external material competence of decentralised units of the State organization only to a very limited extent (Blatter 2000).

On the other hand, cross-border cooperation classically is focussing on policy-areas which are typically allocated to the core competence of public tasks in the participating countries: For the development of cross-border approaches in policy-fields such as spatial planning, environmental protection, public transport, education, research and innovation, or the public safety and order, first of all public, and to a large extent even only State actors are responsible. In addition, cross-border projects often require substantial financial investments in the form of national and regional co-

financing - especially if they are funded by European programmes such as INTERREG. Such EU-funded projects require solid institutional sponsorships, for example with regard to the full pre-financing in the context of the so-called reimbursement principle, which create particularly for civil society actors often systemic limits. Due to EU State-aid rules a direct (sometimes even indirect) promotion of private actors is also hardly possible, making it significantly difficult for example to involve private companies in cross-border projects. Usually there are municipal and State administrative actors or other institutional actors, such as Chambers of Commerce and organisations of the third sector, who are both involved in the cross-border cooperation and the main co-financing partners of projects and programs (Zumbusch/Scherrer 2015).

Regarding the actors-structure, this general finding can be differentiated in vertical and horizontal ways. One reveals that within the overall spatial level of cross-border cooperation („supra-regional") much more State actors are involved. Those are either representatives of the relevant national ministries and/or – in countries such as Germany, who have a three-tier administrative structure – representatives of decentral state authorities (regional or district governments, etc.). On the decentral level of cooperation (Euroregions, Eurodistricts etc.), in turn, more municipal actors can be identified, complemented with representatives of the Chambers of Commerce and Industry, the Science Sector as well as institutional representative of civil society. As regards the working and steering structures a very wide range of forms and procedures can be identified both at the central and decentral level. This covers quite different patterns such as monitoring or steering committees, joint commissions, Parliament-like gatherings and councils, informal control-networks, technical secretariats as well as classical project- and initiative groups. In general, the institutional intensity (number of existing bodies, institutes, institutions) of cross-border cooperation can be classified as rather well developed.

On the other hand, it is characteristic that usually no substantive task-side transfers of competence from the national to the cross-border context has been taking place so far (Beck 2014). The challenge of institutional representative action (also known als principal-agent problm) can be considered as a basic pattern of cross-border governance, differentiating it from the domestic context of territorial policy-making: the decisions taken in cross-border bodies of institutional representatives must always be implemented in the respective domestic context of the national jurisdiction. In addition, resolutions may be passed only on basis of the unanimity rule, no partner may be forced by another to do a project (exclusion of hierarchical control modes), negotiations need to be informally pre-discussed in complex procedures and cosponsored by all, while during the implementation of cross-border decisions in the national context, the binding effect often gets lost. Through the involvement of actors, coming from different political and administrative contexts, the processes of decision preparation as well as the finding and implementing of solutions is highly complex and error-prone. Innovation is often hindered this way and we can find a tendency to rather agree upon memoranda of understanding than real substantive decisions – a situation which gives technical experts a very important role in sorting out joint ways of

implementation both prior and after the formal meetings of elected representatives.

At the level of working groups and project groups, finally, the actor spectrum widens in horizontal terms, according to thematic or functional orientation of the project in question. Actually project-organization can be identified as the main characteristic pattern of the cross-border cooperation (Beck 2015). It takes place within the official structures of cooperation as well as in the form of networks between stakeholders with similar interests and complementary technical profiles. However, and because a project always inherently represents a finite form of cooperation, this very often raises the question of sustainability.

The high diversity of structures and forms of cross-border cooperation, on the other hand, also symbolizes different degrees of integration of territorial cooperation. We can find cross-border regions such as the Upper-Rhine, the Greater Region, the Lake of Constance, or the Euroregions on the German-Dutch border that consistently are characterized by relatively strongly integrated governance structures: at all levels we can find a shared bi- or tri-national institutional sponsorship, own budgets dedicated to cross-border bodies, integrated forms of control, as well as bodies and institutions featuring own or seconded personnel to carry out the tasks assigned to them by the members. Cooperation areas such as Bavaria-Austria, Germany-Poland, Germany-Czech Republic and also Germany-Denmark (only to draw on the example of cross-border cooperation with German participation) on the other hand, represent cross-border territories, where the degree of integration is still less pronounced, because for instance a cross-border Euregio is supported by different national associations and thus de facto consists of two separate control patterns, or the program-specific secretariat functions are provided by two or more competent ministries or the joint institutions are designed only in a very weak manner, maintaining (and even strengthening) very strong regional powers at the domestic level of the partners involved (Beck 2017).

An interesting pattern is finally the personnel capacity that has been developed within the context of European territorial cooperation over time. In the absence of reliable data only an estimation can be one here. One established method to calculate the personnel-needs for an administrative unit – in the absence of quantitative figures – is to develop a realistic vision about the administrative overhead (FTE¹) required per million inhabitants (Hopp/Göbel 2008, p. 329). Applying this method to the context of territorial cooperation, a pilot survey carried out by the author among members of the TEIN-Network², came to the result, that – for the case of cross-border cooperation – an average total administrative overhead relation of 55 FTE/one million inhabitants of a cross-border territory can be realistically assumed³. This indicator can be

¹ FTE= Full time equivalent = 100% capacity of a single administrative job-function

² <http://www.transfrontier.eu>; I'd like to thank the colleagues of TEIN for their kind assistance in carrying out the survey.

³ The calculation was done on the following basis: The TEIN partners were asked to first calculate the FTE's for persons working exclusively for cross-border

used for an extrapolation of the administrative CBC capacity at the level of the entire European territory: Based on the assumption, that at NUTS 2-level 150 million EU inhabitants (e.g. 30% of the EU population) are living in border- regions⁴, one can estimate a total direct horizontal administrative capacity of 8.250 FTE. Adding a calculated permanent capacity generated at project level (12.826 FTE), the total number of independent horizontal cross-border capacity would thus amount up to 21.076 FTE's. The overall horizontal capacity of the entire European territorial cooperation, however, would be certainly significantly higher, as this figure is only a conservative estimation for the narrower range of cross-border cooperation at contiguity level, letting aside the many forms and levels of transnational co-operations taking place with or without EU funding. Yet, the permanent personal capacity of European territorial cooperation at cross-border level alone represents nearly half of the personnel-capacity of the European institutions in Brussels.

The less both socio-economic linkages are impacted by administrative boundaries, and the more important cooperative interaction of actors between different sectors becomes a prerequisite for a successful territorial development, the more the question arises also in the cross-border context, as to what extent horizontal differentiation within the given structure of actors, as can be observed in many national spaces, constitutes also a precondition for the further development of cross-border cooperation in Europe. Especially in the perspective of the use of an EGTC, the question of how the targeted mobilization and integration of both the potentials and contributions of public, social and private actors in the transnational context can best be organized and, where appropriate, even be managed, is a central challenge for the future cross-border governance. The importance in determining the appropriate level and form of institutionalization in the cross-border context is crucial in this regard.

III. Territorial development and transnational institution-building

cooperation issues on a full-time basis (captured were secretariats of CBC bodies, personnel of other permanent CBC institutions, Management-authorities of INTERREG, full-time project managers as well as fulltime CBC services at the level of institutional partners). In addition it was estimated to what extent actors from partner institutions contribute to cross-border cooperation, but only on a part-time basis, such as public officials working in local and regional authorities with thematic cross-border cooperation being just a part of their job description (based on an annual capacity of 1575 working hours the average assumption per agent here was 5%, which means approximately a total of 10 working days per year). The individual FTE's were then added to an institutional FTE-capacity dedicated to cross-border cooperation. Five territories of quite different structural peculiarities, but in a way representative for the European territory, were captured by this qualitative survey: the border-regions between France and Switzerland and France and Italy, between Poland, the Czech Republic and Slovakia, between Germany and Denmark and between Germany, France and Northwestern Switzerland.

⁴ This calculation is based on the conservative assumption of an average cross-border population of 2,5 Mio for each of the 60 INTERREG A programs

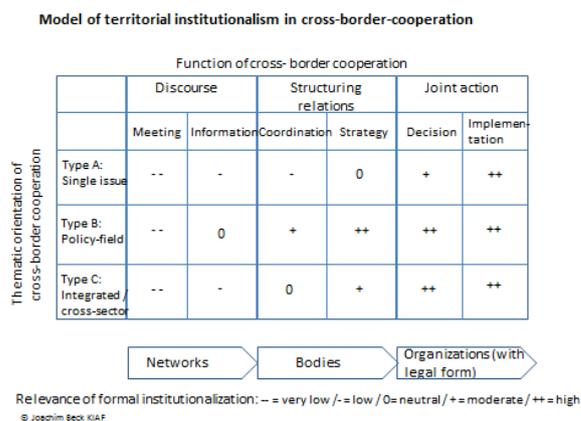
Institutions, such as the EGTC, can be understood as stable, permanent facilities for the production, regulation, or implementation of specific purposes (Schubert/Klein 2015). Such purposes can refer both to social behavior, norms, concrete material or to non-material objects. Following the understanding of administrative sciences, institutions can in this way be interpreted as corridors of collective action, playing the role of a “structural suggestion” for the organized interaction between different actors (Kuhlmann/Wollmann 2013, p.51). The question of the emergence and changeability of such institutional arrangements in the sense of “institutional dynamics” (Olson 1992) is subject to a more recent academic school of thinking, trying to integrate the various mono-disciplinary theoretical premises under the conceptual framework of neo-institutionalism. Following Kuhlmann/Wollmann (2013, pp 52) three main theoretical lines of argument can be distinguished here: Classical historical neo-institutionalism (Pierson 2004) assumes that institutions as historically evolved artefacts can be changed only very partially and usually such change only takes place in the context of broader historical political fractures. Institutional functions, in this interpretation, impact on actors, trying to change given institutional arrangements or develop institutional innovations, rather in the sense of restrictions. The classical argument here is the notion of path-dependency. In contrast, rational-choice and/or actor-centered neo-institutionalism (Scharpf 2000; March/Olsen 1989) emphasizes the interest-related configurability of institutions (in the sense of “institutional choice”), however, the choices that can realistically be realized depend on the (limited) variability of the existing institutional setting. Approaches of sociological neo-institutionalism (Edeling 1999; Benz 2004), on their turn, also basically recognize the interest-related configurability of institutions, however - rejecting the often rather limited model in institutional economics of a simple individual utility maximization of actors - emphasize more on issues like group-membership, thematic identification or cultural adherence as explanatory variables for the characteristics of institutional patterns.

With regard to the conceptual use of neo-institutionalist thinking, territorial cooperation represents a twofold interesting application area. First it constitutes a 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 (including the role of a EGTC) 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 governance“ on the one hand (Benz et al 2007; Blatter 2003) and more formal, institutionally solidified organizational structures in the sense of a “transnational government” on the other hand (Fürst 2011; König 2008, pp. 767; König 2015, pp. 216ff).

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, characterized by diverging functionalities), the interest-related interaction between the actors involved (local communities, territorial governments, enterprises, associations, universities etc. with individual institutional interests), and the cultural and group-related formations (administrative and organizational cultures, norms, leading ideas, mental models etc. of both the collective and individual actors) which are finally, in turn, impacted/influenced by a (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 (for further explanation see: Beck 2017).

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 fulfill. Following Beck (1997; 2017), Blatter (2000) and Zumbusch/Scherer (2015) the following figure suggests a model of territorial institutionalism in cross-border cooperation:

Figure 2



Under strand A of the ECT-approach⁵ alone 14.965 projects have been funded and mostly already implemented during the last INTERREG IV period, leading to the creation of 50.179 new cross-border

⁵ The following figures have been calculated on the basis of statistical information available under the KEEP-database, see: <http://www.keep.eu/keep/>

partnerships between mostly public actors. The thematic orientation of the overall orientation of these cooperations can be classified under the above mentioned type A (single issue)

Interreg-programmes and their related management-structures in turn, can be classified unter type C (integrated/cross-sector), as well as cross-border bodies and other representative institutional arrangements. According to official statistics the number of INTERREG-programs (all strands) has evolved considerably over the last 25 years. Starting with only 14 pilot-projects in 1988, the first INTERREG period (1990 – 1993) created 31, the second (1994 – 1999) 59, the third (2000 – 2006) 79, the fourth (2007 – 2013) 92 and the current (2014 – 2020) over 107 ECT programs, with 60 exclusively focusing on cross-border cooperation.

In addition to the EU-funded "INTERREG-world" many other forms of horizontal administrative cooperation, taking place at different transnational territorial levels, have evolved in Europe over time. In a recent study Reithel, Wassenberg and Peyrony (2015, p. 19) have developed a classification that distinguishes between a local, a regional and a supra-regional scale. According to this typology, the authors have identified 364 "recognized frameworks" (p.18) of institutional cross-border cooperation in the EU. The Association of European Border regions (AEBR) has identified a total of nearly 200 euro-regional cooperations in Europe, the great majority of them running permanent secretariats with full-time staff. To this can be added a macro-regional scale with a specific institutional cooperation approach integrating classical cross-border, inter-regional and transnational levels into a broader territorial space covering more than 3 member states on the basis of shared territorial characteristic (such as the Baltic Sea; the Danube region, the Adriatic/Ionian Sea, or the Alpine space).

While types A and C are well represented both within the context of INTERREG and outside, it is striking that type B (entire policy-field) seems to be less developed yet. Although one might expect, that policy-specialists from either side of a given border, due to their similar thematic socialization and mostly also comparable educational background would cooperate much easier, practical experience shows that this is not necessarily the case. Policy-field related cooperation approaches are often de facto either developed on a single-issue basis (pilot-projects and/or single-issue studies for instance) or handled at the level of committees and/or commissions. Mostly such policy-areas which are not harmonized at the EU level and where the (diverging) legal preconditions are still set at the level of the member states are subject to efforts of cross-border cooperation here (e.g. education, labor-market, environmental policies, social security, health etc.), leading to some times frustrating experiences with regards to the limited level of possibilities and scope of action at a decentral territorial level - compared to a predominating national framing, not allowing for deriving solutions on a cross-border basis yet. (Beck 2015)

Considering the role, a EGTC can play in this context, it seems important to firstly assess, which functional logic the respective cross-border cooperation should primarily follow from the point of view of the acting

actors. In interface between the functionalist premise of a "structure follows function" and the structuralist point of view that „function follows structure" it appears that in the cross-border context, often the latter is predominating. Unlike the European integration, manifested through actual functional socio-economic and political linkages, a socio-economic and political cross-border reality is per se still not given, but (beyond specific phenomena such as e.g. frontier workers), still has to be constructed on a case by case basis (Gailing/Kilper 2010). Institution building, in a cross-border context, thus always comprises also a broader symbolization (Edelman 1990) that goes beyond the respective policy-issue in question. This is why a sustainable cross-border structure formation is also one of the most important objectives of INTERREG programmes: each project continued after the end of the promotion-phase (and realistic estimations show a degree higher than 50% in this regard) establishes a cross-border-reality amongst actors, which previously did not exist in this form. Institutionalized structures thus always establish cross-border functionalities (Röber 2015).

Recent empirical surveys on the EGTC prove that obviously in the context of cross-border cooperation a growing openness for institutionalization and improvement of the transnational governance can be observed (European Parliament 2014). Closer looking, however, shows that this need is quite varying in thematic, functional and territorial terms and that it is not necessarily linked with the EGTC: The original intention of the EU, e.g. creating an instrument allowing for the professionalization and integration of the often still differentiated and even blurred responsibilities between different programme partners of INTERREG programmes (= EGTC as a program approach) is hardly realized. Also the inherent function of increasing the liability of the joint implementation of common thematic tasks (= EGTC as task carrier approach) is less developed in territorial reality so far. Most EGTC-projects, are obviously primarily driven by the motivation of the participating actors, to increase the binding nature of the political functions as well as the coordination of cross-border co-operation in general (= EGTC as committee approach) (European Parliament 2014). This suggests that obviously in practice a basic cross-border pattern-change is taking place, moving from individual project approaches towards more integrated territorial policy-development missions (see Blatter 2000, pp 256) and from the basic functions of discourse towards more integrated decision making and implementation functions (coordination and joint action).

On the other hand, however, the present studies remind, that the EGTC in the practice of cross-border cooperation in Europe is only very hesitantly used: If there are only 60 EGTC-projects up to date all over Europe this means that in barely half of all INTERREG programme areas an EGTC can be found. Also out of the 364 cross-border institutional framings, analyzed by Reithel/Wassenberg/Peyrony (2015), only around 15% are using this legal form for structuring the (mostly cross-sectoral) work taking place at this level. Cross-border institution-building based on a EGTC-approach, thus by no means, can be perceived as a real success-story.

From the point of institution-theory this finding can be interpreted in quite different directions. On the one hand, it is an indication that the existing degree of cooperation (inter-personal and inter-institutional networks) is considered as insufficient – but only among a relatively small of cross-border professionals, which can be understood as epistemic community, seeing itself as „spearheads of the movement“ and following the normative vision of conveying a more integrative binding of the sub-system of cooperation, by taking advantage of the EGTC. This ultimately symbolizes a desire for a further development of cooperation through the creation of a resilient institutional action corridor for new, more binding forms of territorial development control – a hypothesis that would be backed by sociological neo-institutionalism.

Referring to the neo-institutionalist notion of rational actors, on the other hand, the rather low degree in the use of the EGTC-instrument can be explained by the argument, that cross-border actors obviously mostly still do not see the necessary added-value of a joint and more binding institutional approach – at least by referring to the rather heavy legal option of an EGCT, with softer and easier applicable legal instruments being available within domestic law, if needed. Either they are still not ready to enter into a larger scale, and thus not perceiving added values of enlarging the transnational corridor of action, and/or they fear losing existing positional power, thus practicing a policy of non-design of EGCT-based new institutional constellations. Different to the (domestic) national context, where diverse processes and forms of territorial re-institutionalization are taking place in the context of metroplization (Wassermann 2007; Ludwig et al 2009), the perceived development potentials are obviously not comparable, thus limiting the incentive of actors to change established systems and patterns of cooperation in a cross-border perspective.

An interesting explanation can also be derived from a historical perspective: one could conclude, that the new EGTC instrument is simply not compatible with the temporal perspective of the historically evolved political and administrative systems and cultures of the participating partners: the fact that ultimately no transnational legal instrument was created, but the an EGTC, must always draw on domestic law of one of the partners involved, leads to a predominance of the historically well established context over the relatively new cross-border dimension. The same conclusion – however with a different argumentative direction – could be drawn from a sociological point of view: in this case the argument would be, that both the legal and organizational culture and the group-membership of a newly created cross-border EGTC are ultimately just not compatible with the political and administrative cultures of the formally competent institutional actors in the partner countries; existing networks and identities of actors, so far perceived as functional, would be challenged by an vulnerable to formal institutional solutions based on a (heavy) legal form such as the EGCT.

However, drawing on the above presented model of territorial institutionalism, the probably most convincing explanation for the still rather low degree of application of the EGTC-instrument so far can be based on the argument, that the EGTC is finally conceived for the ambition of integrated joint transnational cross-border

action, implying an inherent transfer of domestic implementing functions to a cross-border „supra-local/supra-regional“ level but which in most cross-border realities is simply not given yet. Or in the words of the garbage-can model, developed in organizational theory (Cohen/March/Olson 1972): it constitutes a solution that – at least with regards to the practical needs of most local and regional actors – is, at least from the point of territorial cross-border added-value, still searching for its justification/problem.

IV. Outlook

Cross-border territories are interfaces between different political administrative as well as cultural systems. To what extent the encounter between different structures, procedures, values, task-distributions etc. leads to blockades or productive solutions is essentially shaped by both the willingness and capability of the territorial actors to turn given cross-border constellations into a territorial innovation path, based on the multiple opportunities mutual learning and understanding can offer. Such innovation being sustainable requires a learning approach to take place both at the inter-personal and the inter-institutional level. Relating to the prospects of development of cross-border cooperation in Europe – both in science and practice – the concept of the network as a basic normative thought-model for both characterizing and structuring territorial governance is increasingly applied. This in turn cannot be disconnected from the real world (pre)conditions of the actors involved. The present analysis of the EGTC illustrates how cross-border areas and the functionality of the cooperation approaches taking place within them, not only depend on the passive toleration, but on the active promotion by the participating territorial, institutional and cultural patterns of the respective domestic context. The perspective of cross-border institutional-building, however, cannot be restricted to the question on how a given legal instrument such as the EGTC can be applied, but refers ultimately to the much wider questions of the possibilities and limits of a future flexibilization of the very legal, administrative and political framework of the actors involved.

A pragmatic step into this direction could consist in the provision of better opportunities within the national law, allowing for more flexibilization for the joint implementation of similar tasks with partners from the neighboring state in policy-areas with proven cross-border relevance (e.g. cross-border transport, education and training, supply and disposal management, labour market and economic development, environmental protection and security, social security and health care, etc.). This, however, requires the political willingness to horizontally transfer implementing powers from a domestic context onto new supra-municipal/regional cross-border structures – thus making active use of the EGTC by local and regional stakeholders in relevant thematic fields. For the participating Member States and their sub-national divisions, this means in turn, that in all those areas of law in which the European lawmaker – mostly because of equity interest of the Member States – so far was not allowed to harmonize, it could be tested to what extent a non-existing harmonization at European level could be traced by horizontal approaches of bi-lateral cooperation, based and protected by specific bilateral agreements between the neighboring states in

question. Of course not all thematic laws in mobility-relevant areas such as tax, labor, social or business law can be adapted to all different territorial specifics of border areas (such a global approach would be conflicting with the basic Constitutional principle of equal treatment of citizens). However, it could be conceivable, at least at the regulatory level of secondary rules, to insert cross-border opening / experimental clauses based on de minimis rules, to allow at least for certain well assessed and justified exemptions within the cross-border territories of Europe. Also, it seems expedient to further analyze what potential the EU's principle of "mutual recognition" may voluntarily include for the cross-border context in the area of inter-administrative cooperation (Beck 2015). In this regard, the concept of the so-called 'shared services' (Tomkinson 2007) in the context of cross-border cooperation should be taken up more intensively, since this (especially in times of financial scarcity) is particularly suitable to give appropriate incentives and thus permanently viable prospects for the future of cross-border cooperation from a local and citizens point of view.

Finally, it seems sensible in the context of regulatory ex ante impact assessments to better examine the ex ante impacts of future initiatives both of the European and national legislator, on the territory of the respective neighbouring countries. As for the case of the supposedly "subsidiarity-friendly" Directives, the implementation of European law by the Member States often strengthens rather than aligns technical differences on either sides of the border. This can help to shape approaches of transnational institution-building in the future, thereby improving also the usability of existing legal instruments such as the EGTC, and promoting a notion of "territorial institutional choice" which is both linked to and inspired by new, need-oriented levels of functional and thematic cross-border cooperation approaches.

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