



Concept paper

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SUMMARY

EUICR asks what effective activation of EU-derived rights can contribute to the EU's legitimacy. Its research is not limited to rights within the EU, but also encompasses its neighbourhood and the EU's global partnerships. It achieves results through a unique interdisciplinary cooperation between legal, political, and economic EU studies, with some sociological reflection in its very first event.

EUICR research uses topical fields to explore these questions: it evaluates the continuing effectiveness of free movement and anti-discrimination rights within the EU in the post-COVID crisis and the degree to which these rights are effective when extended to citizens of Northern Ireland and Ukraine as examples of (post-)conflict societies in the EU's Western and Eastern neighbourhood. It asks in how far citizens can create social rights through the instrument of the EU Citizens' Initiative, using the Universal Basic Income as an example, and how citizens' engagement with sports can or cannot be furthered through EU rights. In relation to the EU's global engagement, it investigates how the EU promotes economic rights in its free trade agreements and human rights in its relations with China. Academic results are communicated in traditional ways through events and papers, and in novel ways through art.

EUICR offers a sequence of fourteen events. Its three substantive work packages explore the relationship of the EU's legitimacy and rights of citizens in the European Union (WP2), EU-generated rights in its Western and Eastern neighbourhood (WP3) and the extent to which the EU generates or safeguards rights through its international relations globally (WP4). WP 2 and 3 share an interest in rights to move across borders and anti-discrimination rights, while WP 2 also explores social rights (Universal Basic Income) and entertainment rights (sharing sports broadcast). WP 4 considers the extension of EU rights through trade deals, its China policy and indirect spread of regulation through market-power. As a special element of dissemination, WP5 not only provides for a closing conference, but also a closing arts conference and two citizen-facing arts workshops enabling engagement with anti-discrimination law in post-colonial settings and human rights in China, relating to results of WPs 3 and 4.

1. INTRODUCTION

The EUICR project considers the degree to which rights generated by the European Union can enhance the European Union's legitimacy. The link between legitimacy and rights is investigated with a focus on citizens, encompassing citizens of and within the EU, two of its neighbouring states and some of those impacted by the EU's global partnerships. This interdisciplinary project, based on collaboration by legal scholars, political scientists, and economists, is original in taking the notion of activating rights as a starting point, as well as in the range of dimensions and its wide geographical perspective. This paper considers the common threads connecting the diverse events, working papers and potential publications which EUICR will offer until December 2024.

The connecting research question is whether and in how far EU-derived rights and their mobilisation can enhance the EU's legitimacy. EUICR analyses the potential of rights (and their activation) to reverse the decrease in the EU's legitimacy through the demise of any permissive consensus (Hurrelmann, 2007) and the increase in EU scepticism (de Vries, 2017) due to a series of crises impacting its perception: the post 2008 global economic crisis and the EU's reaction have led to a perception of the EU as a promoter of austerity, (Crespy & Menz, 2015; Crespy, 2020) with negative consequences in particular in the global south, or simultaneously as an organisation incapable of governing its currency. (Wilkinson, 2021, pp. 101, 203) The lack of common EU policy in addressing an increase in refugees in 2015 also contributed to perceiving the EU as incompetent (Falkner, 2016) or alternatively a source of perforating border protection. (Geddes, 2018; Scipioni, 2018) The EU fared a little better in its perception during the global pandemic. While initially the UK's extreme vaccine nationalism led citizens to perceive the EU as less than competent, (Dennison & Puglierin, 2021) this perception changed through the course of the pandemic: EU measures in securing vaccines underlined the relative success of the EU's global influence. (Eichengreen, 2022) The current international crisis following Russia's invasion in Ukraine again seems to highlight the relevance for the EU to increase its global influence.

EUICR stages a series of academic events enabling its collaborators to develop an original contribution to European Union studies by connecting citizens' rights activation and legitimacy. EUICR draws on and is at the same time distinguished from a wealth of literature on rights (see section 2) mobilisation of law and opportunity structures (see section 3) and on legitimation of the EU's integration project (see section 4). The three substantive working packages take a specific perspective on the connection between rights and legitimation (see section 5), resulting in sound starting points for further research (conclusion).

2. RIGHTS

Rights are central to the work of legal scholars, though research on rights is not necessarily central to (socio) legal studies of the EU. More often than not socio-legal research on the EU focuses on human rights, synonymously referred to as fundamental rights. (Granger, 2018; Morano-Foadi & Andreadakis, 2020; Muir, 2021) Most EU-derived rights are not fundamental or human rights, though. EU economic freedoms and Treaty guarantees of citizenship are directly effective in national orders, and thus a veritable source of EU-derived rights. Further, EU secondary law generates rights, even if these directives have to be implemented in national law, which may result in citizens not perceiving their EU origin at all times.

From a merely legal perspectives, rights which cannot be enforced before courts, and directly relied upon, would seem inadequate. In contrast to what the EU's own court has famously referred to as "ordinary international treaties", (European Court of Justice, 1964) direct effect and primacy are the doctrines which allow citizens to rely on EU law before national courts. Strangely, for the EU legal order direct effect and primacy have not traditionally applied to human rights, which were first positivised in the Charter of Fundamental Rights for the European Union (CFREU)

of 2000, which only became legally binding through the Treaty of Lisbon in 2009, 52 years after the EEC's inception. The CFREU applies to actions by the EU itself and Member States' activities implementing Union law but does not transform the EU into a human rights organisation. The pre-2009 critique that constitutional patriotism based on a fundamental rights identity in nation states (Habermas, 1976; Müller, 2007) could not apply to the EU (Hilson, 2007) partially remains accurate. However, it is mitigated by the fact that the Court now recognises direct horizontal effects of some CFREU rights, notably in the fields of non-discrimination and limitations of working time. (Krause, 2021; Prechal, 2020)

The common traditions of the EU Member States suggest a distinction between economic freedoms and human rights. (Harding, 2018) Yet, direct effect and supremacy elevate economic freedoms to functional equivalents of constitutional rights, (Stein, 1981; Petersmann, 2008, pp. 776-777) a quality they share with some citizenship rights as well as rights to equal pay for women and men and annual leave, which are all anchored in the EU Treaties. The perception of economic freedoms as alien to a constitution based on human rights is rooted in the conviction that parliaments, as democratic legislators, should have the freedom to shape socio-economic orders. It is from this perspective that the ECJ's framing of economic freedoms as individually enforceable rights through supremacy and direct effect is portrayed as "over-constitutionalization", (Grimm, 2016; Höpner & Schmidt, 2022) of policy fields which some authors would rather see protected as national prerogatives. (Bolloyer & Reh, 2012; Scharpf, 2017) . Academic opinion criticising the effects of EU rights in national laws may at times reflect a fundamental neo-Marxist critique of merely state-directed human rights, which emerged contemporaneously with the capitalist organisation of markets. Through separating the private sphere, where rights are not protected, from a political sphere, where they are protected, human rights guarantees can be viewed as promoting neoliberalism. (O'Hara, et al., 2020; Whyte, 2019) While this critique is not necessarily related to EU-derived rights, it can of course be directed at the EU and its rights discourse. (Somek, 2011)

EUICR argues assumes that EU-derived rights (based on EU Treaties or EU legislation) enable direct interaction of citizens with the EU or each other. It thus relies on a positive conception of directly effective rights. Such a positive conception can be achieved if the above concerns are addressed, for example by re-conceptualising rights as counter-rights or even instruments to combat oppression (Boonen, 2019; Menke, 2020). Horizontal effects at least against the economically powerful are an essential element here. Such neo-Marxist counter approaches are not necessary to convey a positive vision of directly effective rights. This can also be achieved through recognising their trans-subjective dimensions (Teubner, 2020, p. 388), or by phrasing rights as bases for communication (Bruhn Jensen, 2021; Hoecke, 2002) or societal deliberation (Habermas, 1998). EUICR illustrates options to achieve citizens' interaction with the EU or each other through the medium of rights.

EUICR research on rights is not merely related to (socio) legal studies. It builds on the political science debate initiated by the "integration through law" scholarship of the 1980s, which used direct effect and supremacy of what is today EU law as a starting point. (Cappelletti, et al., 1986 - 1992; Augenstein, 2012; Azoulai, 2016) Yet, integration through law scholarship remained focused on the relationship between states and the EU, similar to those theorising the EU as a federal entity (Buonanno & Nugent, 2021, pp. 28-38), or institutionalist analyses of litigation strategies across the EU, (Alter, 2009) which more recently provide quantitative analyses of the reference procedure from geographical (Kelemen & Pavone, 2018) or thematic (Passalacqua, 2021) perspectives. Human rights can be viewed as a moral category, partially independently from any direct effects under EU law or otherwise. Cultural politics of human rights are also viewed as one potential instrument to challenge neoliberal discourse. (Nash, 2019)

The concept of constitutional patriotism, as a category of political sociology is the starting point for theorising the EU as a rights-based cosmopolitan federation (Eriksen, 2020). This argument also links rights-based discourse to EU legitimacy, through liberating legitimation from state-centred discourses. The resulting cosmopolitan law of the peoples is meant to result in a rights-based polity beyond states and their collaborations, with the potential to extend beyond the EU through the medium of EU derived rights.

While EUICR aligns with the connection between rights and legitimacy, it adopts a more specific, concrete and citizens-based approach. In investigating activation of rights, it adds a sociological dimension to researching rights. This is a perspective also taken by the researchers in the EU SocialCit project,¹ whose research is limited to social rights in contrast to EUICR. Yet the Weberian definition of rights as power, which is then subdivided into normative, instrumental and enforcement power (Vandenbroucke, et al., 2021) offers some reference points for EUICR. As EU SocialCit, EUICR recognises that the mere existence of a right (referred to as normative resource) does not necessarily generate a useable right. EU SocialCit defines a useable right as one which create a direct relationship between citizens and administration, or which furnishes citizens with funds. Generating “individual power resources,” rights can contribute to legitimacy. However, remaining limited to individual power, rights are ultimately portrayed as intervention in societal processes, (p. 32) which after all are based on interaction.

EUICR considers a wider range of relationships created by rights, including those between citizens themselves, and citizens and the EU. Thus, rights are not necessarily viewed as an intervention, but may just as well be considered as enabling interaction or participation. It is the network of relationships between citizens, between citizens and states and EU institutions, based on activation of rights which connects rights and legitimacy.

3. MOBILISATION AND OPPORTUNITY STRUCTURE

Activation of rights, which is central to EUICR, is partially linked to litigation. Litigation offers a “perfect interdisciplinary laboratory” on the “interface between social complaints, interest groups and legal support structure” (Vauchez, 2020, p. 135). The idea of mobilising the law (Fuchs, 2021; Passalacqua, 2021) focuses on the degree to which legal procedures allow citizens to activate their rights through litigation, with particular attention to the question whether EU law constitutes “a weapon for the weak”. (Jacquot & Vitale, 2014)

EUICR research goes beyond the focus on litigation in that its exploration covers ways to activate and conceptualise rights derived from EU law including, but not limited to litigation. This links to the concept of opportunity structures, first developed in relation to how social movements influence politics, (Hilson, 2002) an idea that has recently been expanded to EU environmental law and politics. (Hilson, 2018) Anti-discrimination law, one of the EU’s flag ship policies in the field of rights policies, has been a prominent case in point for how the EU created political opportunity structures (Givens & Evans Case, 2014), which in turn led to the creation of directives, leading to national legislation and opportunities for litigation (legal opportunity structures) (Evans Case & Givens, 2010; Fuchs, 2013). Anti-discrimination law and policy is only one of the examples demonstrating how legal and political opportunity structures are linked. A systematic overview leads to the conclusion that both opportunity structures should be analysed in context in order to discern the effect of rights on democratic structures. (Conant, et al., 2018)

EUICR is not merely concerned with opportunity structures for social movements. Instead, it considers the opportunities created by EU derived rights from a citizens’ perspective in a wider

¹ European Social Citizenship, funded under the EU Commission’s Horizon 2020 Research and Innovation Programm, grant agreement no 870978, <https://www.eusocialcit.eu/>

sense. Nevertheless, the notion of opportunity structures is useful in identifying how citizens can activate rights, whether these are or are not directly effective. The extent to which relationships generated by rights can be translated into transnational (political) activation (Ross, 2021, pp. 235-236) of solidarity is another question closely related to EUICR research. Both are reflected in the research actions of EUICR as outlined below.

4 LEGITIMACY AND LEGITIMATION OF THE EU

The EU's recurring polycrisis have resulted in a wave of research on how to address the resulting problems, (Caporaso, 2018; De La Porte & Heins, 2016; Dines, et al., 2018; Erne, 2019; Fabbrini, 2015) highlighting the needs for institutional reform, as well as for the EU to engage in new areas of policy, potentially with new competences, or using novel governance methods. These debates have a clear focus on the EU's legitimacy, and inspired research projects on legitimation. (Lord, et al., 2022)

Discourses on legitimacy, or justification, of the EU project move in several dimensions. (Kutter, 2020, pp. 7-20; Schmidt, 2020, pp. 6-14, 25-55) The more traditional approach considers how the EU's exercise of power is legitimised institutionally. This is the location of the debate on the EU's democratic legitimacy (or deficit), and the discourse on how the EU is best justified as either an intergovernmental collaboration of Member States or a unique supranational collaboration. If the focus remains on the institutional conditions of legitimacy, the traditional distinction between input legitimacy (through electing politicians) and output legitimacy (through providing effective governance) is complemented by throughput legitimacy, focusing on the process of governing. These legitimacy debates only related to rights as far as their effective implementation may be an element of effective governance. Similarly, the discussion of the EU's accountability and transparency, which is also underpinning the rule of law debate,² are only of limited relevance to legitimacy through rights. That is not to deny that effective systems for enforcing and activating rights are partially reliant on a functioning judicial system.

Combining legal and sociological concepts, the classical Weberian ideas on legitimation of power and authority are fundamentally relational. (Saurugger, 2020, p. 142) Thus, while the legal-formal legitimation is important, there is also a sociological element to legitimation: power and rule can be viewed as legitimate if accepted. Thus, what is referred to as the empiricist understanding of legitimacy (Kutter, 2020, p. 20), culminating in a narrative, discursive or constructivist approach to legitimation, can be traced to classic sociological theory as well. De Wilde (2021) convincingly suggests that a variety of literatures address the problem of discursive justification through unconnected, yet similar approaches: narrative, framing and values are used in similar ways. Narratives are conceived to convey a purpose for the EU and thus a sense of substantive legitimacy. Framing analysis investigates the use of justificatory sense-making while debating the EU in public spheres. Literature on values in EU governance analyses which values inform EU policy. In the RECONNECT-EUROPE project, the extensive analysis of narratives of integration (Blokker, 2021) results in devising new justificatory discourses for European integration, aiming at a citizens' Europe (Blokker, et al., 2022). The RECONNECT approach shares its orientation on citizens with EUICR.

However, EUICR is distinguished both from the systemic/ institutional and discursive approaches to legitimacy in that it investigates the practical legitimation via processes through which citizens can activate EU derived rights. This relates to processes of citizens' interaction with each other and the EU, as well as to substantive gains of citizens through effectively implemented rights.

² The literature on the EU's rule of law crisis is too voluminous for a single reference. Recent debates are summarised in the outputs of the RECONNECT project, for example (<https://reconnect-europe.eu/publications/>)

Implementation, enforcement, or activation of rights may derive from the direct effect and primacy of EU law, and indeed judicial enforcement, but can also emerge from other processes. Overall, legitimation through rights combines output legitimacy through substantive gains with legitimacy through engagement, a category which is loosely related to discourse, narrative, and framing, but not congruent with it.

5. THREE SPECIFIC APPROACHES TO CONNECTING RIGHTS AND LEGITIMATION

As mentioned, EUICR investigates rights in the European Union, in the EU's Western and Eastern neighbourhood, and in the EU's global activities. This allows us to consider directly effective rights next to those based on international treaties without direct effect, and partially also the cultural politics of rights. Each of these perspectives requires a specific approach, generating specific research questions.

a) Rights in the Union

The research conducted in work package 2 is related to connecting citizens in (but not necessarily of) the Union (Shaw, 2020) with each other and the Union itself through rights, and a consideration on how this fails or succeeds in generating legitimation.

Classical approaches on free movement remain relevant here, as becoming a citizen of somewhere from nowhere through free movement rights potentially generates identification with the Union, which again can have legitimating consequences. Studying the partial demise of free movement rights in the pandemic, (Carrera & Luk, 2020; Coutts, 2020; 2022; Thym & Bornemann, 2020) the work package starts off with a legal focus on legitimacy, combining the study of free movement rights, (Bauböck, 2019; Kostakopoulou, 2008; Shaw, 2019) with practice based notions mirroring sociological approaches to legitimacy (Gerard & Mickler, 2021). This facilitates a broad and multi-disciplinary approach addressing citizen rights.

The work package then turns to an area where the EU has so far failed to generate effective citizens' engagement in that it reflects on the failed citizens' initiative aiming at a unconditional basic income (<https://eci-ubi.eu/>), an issue which should have become more current following pandemic-induced losses of income. (Chrisp & Wispelaere, 2022) That initiatives had to grapple both with exacting requirements of launching a citizens' initiative, (Weisskircher, 2020) arguably the lack of European public spheres (Reidy & Suiter, 2015) and the limited EU competences in true social policy. (Falkner, 2016; Garben, 2018)

The work package then turns to the option of citizens engaging in non-verbal and cross-cultural communication through consuming sports events and challenges the limitations of such engagement through directly effective EU competition law, thus questioning the negative effects of business rights. (Budzinski, et al., 2019; Butler & Massey, 2019)

Returning to the interaction of legal rights and social policy requirements, the work package analyses the effectiveness of EU anti-discrimination rights in relation to preventing stratification of exclusion, theorising the extent to which anti-discrimination rights are (Bell, 2002) or are not (Schiek, 2016) usefully conceptualised as a subcategory of social policy. This section also seeks to explore the question how anti-discrimination law and policy can potentially modify social policy measures aiming to alleviate the socio-economic fallout of crises in such ways that inequalities corresponding to the cleavages addressed by anti-discrimination law are not enhanced.

b) The EU neighbourhood and citizens' right

The EU's rights policy in its external relations does not always create justiciable rights, but instead initiates policy discourses which may eventually lead to legislation, though the main effects may be in the domain of raising consciousness for rights. We explore the EU's new Western

neighbourhood (UK and specifically Northern Ireland), and it is not so new Eastern neighbourhood (Ukraine).

In relation to Northern Ireland, the loss of EU citizenship rights through “Brexit” is only partially compensated by the Withdrawal Agreement (Protocol on Ireland /Northern Ireland (Schiek, 2018)), and even less by the Trade and Cooperation Agreement, resulting in enhanced and unremedied divisions between different groups of the population. (Driscoll, 2019; Murphy, 2021) Given Northern Ireland’s history of conflict and the manner in which Brexit has unsettled communal relations, the diverse application of EU citizens’ rights in Northern Ireland may lead to political problems and communal tensions with implications for the EU’s legitimacy in a contested region on Europe’s periphery

Ukraine had a wavering relationship with the EU. An initially pro-European orientation immediately after the “Orange Revolution,” has been replaced by a more moderate orientation. (Flenley & Mannin, 2018) The Association Agreement with the EU, branded a deep and comprehensive free trade agreement, has been one step towards Europeanisation, (Petrov, 2018; Van der Loo, 2016) while developments around the Crimean region and the Donetsk area imply a partial (re)orientation towards Russia as an Eastern neighbour and former colonial power. (Stryjek, 2020) The invasion of Russia in Ukraine has, among others, triggered an application for EU membership for the first time. Thus, the association agreement becomes a pre-accession agreement.

The Working Package organises two events with multiple speakers, one on the realities of rights to move across borders under the Withdrawal Agreement, Future Partnership Agreement and a Pre-Accession Agreement in a region mired in war. The second one returns to anti-discrimination rights, which should be of particular importance in both Northern Ireland and Ukraine, as two regions mired by ethnic conflict, even though Northern Ireland is at times referred to as a post-conflict society. The extent to which those rights can be enhanced through agreements under traditional international law which lack direct effect and primacy but introduce processes monitoring progressive approximation (in the case of Ukraine (Fedorovych, 2017)) and ensuring retaining past standards (in the case of Northern Ireland) is a core area of investigation, complemented by policy analysis. Both events and potentially resulting papers explore the extent to which rights of person movement and anti-discrimination rights are guaranteed in such ways that citizens in Ukraine and Northern Ireland can rely on them before national courts, as well as gaining support in enforcing those rights by other institutions within their region or the EU. This is a socio-legal and political question requiring a careful analysis of the Protocol Ireland/Northern Ireland and the Future Partnership Agreement between the UK and the EU, and the Association Agreement with Ukraine as well as the evaluation of practical experiences in both areas.

c) Global dimensions of EU rights policies

The EU’s external policies at a global scale would, at first glance, seem particularly non-conducive to establishing rights which citizens can effectively activate. While the association agreements in the EU’s neighbourhood are at least occasionally interpreted as generating directly enforceable rights, (Petrov, 2021) such interpretation appears less immediate in global EU politics.

The EU’s promotion of human rights in its global partnerships and policies, captured by characterising the EU as a ‘normative power’; (Manners, 2002; Whitman, 2011) could also be characterised as a form of cultural politics of human rights (Nash, 2019). One of the questions addressed in WP 4 is whether such cultural politics can generate legitimacy through allowing citizens to activate rights in ways other than through legal enforcement. A second way in which rights could be perceived as impacting globally is the process through which EU legislation aiming at regulating the internal market may be externalised through voluntary adoption of those standards by third countries in order to facilitate access to the EU market. (Bradford, 2020; Lavenex, et al., 2017) The so-called Brussels-effect (Bradford, 2020) relates to the reflection of EU market power, as opposed to its normative power. It reflects the EU’ economic power to set standards through

regulatory legislation, while that legislation also creates rights for citizens in the EU. If any rights are created outside the EU this would be a mere reflection of market power yet opens the opportunity to theorise new ways of rights diffusion. In the 1990 and 2000s, these developments took place against the background of a liberal international order which broadly paralleled the EU's own objectives and strategies. Since the 2010s, however, this liberal international order has been challenged by the growth of populism, the rise of authoritarian great powers and the weakening of the institutions of global governance. In this challenging environment for citizens' rights globally research on the question in how far the legitimacy of the EU's external relations, including through free trade agreements depends on creating citizens' rights (Petersmann, 2018) attains new currency.

Work package four first addresses the potential of rights diffusion through the EU's market power and geographical autonomy, before delving into the indirect generation of citizens' rights in its international trade agreements, and the difficulties of its human rights policy in relation to China. (Cotter, 2021)

6. CONCLUSION AND OUTLOOK: EUICR'S POTENTIAL CONTRIBUTION

EUICR offers contributions to academic debates, offers perspectives to develop future interdisciplinary research of academics involved from UCC and those contributing to the action, and engages with policy makers.

The organisation of interdisciplinary exchange in internal, regional, and global perspective aims at developing new perspectives on European Union studies by exploring the connection between legitimacy and enacting citizens' empirically and deriving normative perspectives from a critical standpoint. The contribution to European Studies lies in reviving the question of the relevance of law for European integration with a focus on rights not so much on their legalistic dimension, but instead of their relevance for societies in the EU and beyond. This sociological conception of rights allows linking European studies from legal, political, and economic perspectives. It also has the potential to develop a new dimension of legitimacy studies within European Studies.

The generation of a sequence of academic events is only the starting point for devising more specific research collaborations within and beyond UCC combining socio-legal, political science and economic approaches. EUICR's unique perspective on integration through rights as a strategy of legitimation has the potential to connect to thematic strands presently promoted within UCC (Collective Social Futures, Future Humanities) as well as to conceptualise funded research projects in the fields of (free) movement rights for citizens, anti-discrimination law and policy in conflicted societies, grass-roots democratic processes such as citizens' initiatives in relation to social rights in particular, and the expansion of the EU's values globally through the medium of rights. EUICR's location on the Western fringes of the European Union provides an inspiring intellectual background for developing these new perspectives.

Beyond offering perspectives to develop future research, EUICR also engages with policy makers and civil society regionally and transnationally. This is achieved by offering a series of events based on interdisciplinary research aiming to analyse the connection between the EU's legitimacy and citizens' rights activation in the new circumstantial crises in which the EU is involved.

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