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Towards Evidence-Based Legitimacy Interventions in EU Law: Challenges and Directions for Empirical Research

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ARTICLE

ABSTRACT

As EU institutions are increasingly being asked to address societal challenges, the legitimacy need of the EU becomes more evident. With the aim of complementing the already rich literature on normative EU legitimacy and ultimately enabling evidence-based legitimation strategies, this contribution identifies and addresses gaps in empirical research on perceived EU legitimacy, which pertain to conceptualization, operationalization and explanatory factors. To that end, we first of all define perceived EU legitimacy as the perception among EU citizens that the EU's exercise of authority is appropriate. Drawing on the relational approach to legitimacy, these perceptions arise from socially held norms about how the EU should rightfully exercise authority, which are in turn influenced by the socio-political context. We then propose ways in which such a conception of legitimacy can be operationalized in empirical research. Finally, we lay the foundation for a theoretical model on the sources of EU legitimacy perceptions, arguing that such a model should consider social psychological processes related to identity and morality, because these factors influence how people process information about the EU, and are increasingly part of the environment in which norms about rightful rule arise. Once empirical research is better equipped to understand these processes underlying citizens' legitimacy perceptions of the EU, opportunities arise to develop evidence-based interventions and inform legal practices in the EU with extra-legal insights. As EU legitimation through policies, legal reform and institutional design requires knowledge of legal feasibility, social scientists and lawyers should collaborate to embed empirical insights in EU law. Bridging the norm-fact divide in this manner is both normatively desirable and empirically necessary for the EU to strengthen its legitimacy and face societal challenges.

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Climate change, the eurozone crisis, COVID-19, fair taxation in a globalizing and digitalizing world, the conflict in Ukraine and the rise of China in a new multipolar order: the EU is increasingly required to help address major societal challenges.¹ Where political solutions cannot be found, the Court of Justice of the EU (CJEU) is often legally obligated to step in and settle disputes on sensitive issues such as the environment,² migration³ and access to social security.⁴ The need to tackle such complex issues further raises the already significant legitimacy need of the EU and its legal order to existential levels, because legitimacy is essential to create ambitious policies and to secure compliance.⁵

The EU, however, struggles to acquire the legitimacy it needs. Since normative theories are hard-pressed to identify how a novel international-constitutional entity like the EU can obtain sufficient legitimacy,⁶ it is increasingly acknowledged that normative theories must be complemented with empirical insights on when and why citizens actually perceive the EU to be legitimate.⁷ By integrating normative and empirical insights, a more holistic understanding of EU legitimacy becomes possible. Subjective legitimacy beliefs of EU citizens are especially relevant now that EU issues are increasingly politicized and EU decision-making has become more contested by the general public,⁸ because legitimacy acts as a reservoir of support when people are no longer satisfied with the outcomes of the system. In turn, an integrated understanding may provide actionable, evidence-informed insights on how to make EU law more legitimate in practice.

Obviously, the persistent challenge of bridging the norm-fact divide makes it hard to combine normative and empirical insights.⁹ However, this contribution focuses on another, less discussed obstacle to integrating empirical insights into the law: the fact that there are several gaps in the empirical study of how the general public perceive EU legitimacy, which also obstruct the generation of extra-legal insights that could inform legal practices. This contribution therefore aims to identify and address these limitations within the empirical domain itself, so as to ultimately enable evidence-based EU legitimation strategies. To that end, we attempt to disentangle the multidisciplinary web of research fields related to EU legitimacy and public opinion.

We start by describing the difference between the normative and empirical approach to EU legitimacy, and by mapping existing normative strategies to EU legitimacy (Section 2). We then identify the most important gaps within the empirical approach, which concern the conceptualization, operationalization and explanation of perceived legitimacy of the EU (Section

1 L van Middelaar, *Alarums and Excursions: Improvising Politics on the European Stage* (Agenda Publishing 2019); A Renda and R Castro, 'Towards Stronger EU Governance of Health Threats After the COVID-19 Pandemic' [2020] 11 *European Journal of Risk Regulation* 273.

2 Joined Cases C293/17 and C294/17 *Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland* [2018] ECLI:EU:C:2018:882.

3 Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the European Union* [2017] ECLI:EU:C:2017:631.

4 Case C-333/13 *Elisabeta Dano v Jobcenter Leipzig* [2014] ECLI:EU:C:2014:2358.

5 MC Suchman, 'Managing Legitimacy: Strategic and Institutional Approaches' (1995) 20 *Academy of Management Review* 571; A Buchanan and RO Keohane, 'The Legitimacy of Global Governance Institutions' (2006) 20 *Ethics & International Affairs* 405; TR Tyler, *Why People Obey the Law* (Princeton University Press 2006); J Tallberg and M Zürn, 'The Legitimacy and Legitimation of International Organizations: Introduction and Framework' (2019) 14 *Review of International Organizations* 581.

6 N Bolleyer and C Reh, 'EU Legitimacy Revisited: The Normative Foundations of a Multilevel Polity' (2012) 19 *Journal of European Public Policy* 472.

7 European Commission, 'White Paper on the Future of Europe. Reflections and Scenarios for the EU27 by 2025' (Directorate General for Communication 2017). Relying solely on normative standards may even result in unsuccessful attempts to improve legitimacy. For example, boosting perceived EU legitimacy by involving stakeholders in the policymaking process rests on the (flawed) normative assumption that legitimacy can be equated to democracy. Yet empirically, this strategy has not proved to be an effective way to safeguard the legitimacy of the EU as perceived by citizens. See also C. Godet and B. Redert, 'Conflating Policy, Democracy and Legitimacy: An Illustration Through Stakeholder Involvement' in C. Lord and others (eds.), *The politics of Legitimation in the European Union: Legitimacy Recovered?* (Routledge/UACES Contemporary European Studies 2022).

8 L Hooghe and G Marks, 'A Postfunctionalist Theory of European integration: From Permissive Consensus to Constraining Dissensus' (2009) 39 *British Journal of Political Science* 1; M Zürn, M Binder and M Ecker-Ehrhardt, 'International Authority and Its Politicization' (2012) 4 *International Theory* 69.

9 I Giesen, 'The Use and Incorporation of Extralegal Insights in Legal Reasoning' (2015) 11 *Utrecht Law Review* 1.

3). In Section 4, we address each of these limitations and propose ways to move forward. While conceptualizing and measuring perceived EU legitimacy will remain a significant challenge and subject of debate, we define perceived EU legitimacy as the perception among EU citizens that the EU's exercise of authority is appropriate (Section 4.1). We then suggest actual measurement tools that can be used in quantitative surveys and experiments on citizens' perceptions of EU legitimacy (Section 4.2). Of course, these tools will need to be refined in the course of conducting these studies, but they hopefully offer a starting point for investigating the social psychological processes *behind* perceived EU legitimacy, for which we highlight several theoretical premises and pressing questions (Section 4.3). In turn, understanding such processes will then also allow us to better translate empirical insights into EU law. In Section 5, we conclude by introducing some ideas on how these insights can be linked to specific legal applications and implications.

2. THE NORMATIVE AND EMPIRICAL APPROACH TO EU LEGITIMACY

When conceptualizing legitimacy, a key distinction lies between normative and empirical approaches. Legitimacy in the normative sense refers to an authority or a system of rules that is right because it conforms to predefined, normative standards about legitimate rule. Thus, normative legitimacy is assessed by evaluating to what extent authorities meet a certain set of normative criteria that, in a specific socio-political context, are considered to justify the exercise of power.¹⁰ Multiple competing sets of normative standards for EU legitimacy have been developed. One can broadly differentiate these sets into ones that focus on input, output or throughput. While input refers to democratic participation in policymaking *by* the people and output to the policy outcomes which are generated *for* the people,¹¹ throughput refers to the quality of the process of policymaking itself.¹² The range of normative theories then operationalize input, output and throughput differently, and attach different relative weight to these factors to assess overall legitimacy, leading to different strategies to increase legitimacy.

Focusing on output, one strategy to increase EU legitimacy is to provide citizens with sufficient benefits such as security or economic resources.¹³ This strategy has been particularly relevant in the first decades of EU integration, where prosperity gradually evolved from a tool for peace to a key type of output legitimizing the EU. Approaches that stress the importance of throughput, on the other hand, have pointed to the opacity of EU decision-making, which has led to increased openness and transparency in the EU legislative and policy formation processes.¹⁴ Another common strategy, focusing on input, is to improve the active participation of citizens. Since a well-functioning democracy is often considered the ultimate normative source of legitimacy, this strategy views empowering citizens to participate in EU democracy as the most promising route to legitimacy.¹⁵ Consequently, the need to locate and fill the EU's purported 'democratic deficit' has resulted in ongoing attempts to improve EU democratic input-mechanisms.¹⁶ For example, successive Treaty amendments have consistently empowered the European Parliament, *inter alia* by greatly expanding its role as co-legislature and providing it with full budgetary powers.¹⁷ Attempts have also been made to better connect national parliaments to EU decision-making, for example by formally empowering them to assess the subsidiarity of EU legislative proposals.¹⁸

¹⁰ M Bokhorst, *Bronnen van Legitimiteit: Over de Zoektocht van de Wetgever Naar Zeggenschap en Gezag* (Boom Juridische Uitgevers 2014).

¹¹ FW Scharpf, 'Economic Integration, Democracy and the Welfare State' (1997) 4 *Journal of European Public Policy* 18.

¹² VA Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"' (2013) 61 *Political Studies* 2.

¹³ EO Eriksen and JE Fossum, 'Europe in Search of Legitimacy: Strategies of Legitimation Assessed' (2004) 25 *International Political Science Review* 435.

¹⁴ A Alemanno and O Stefan, 'Openness at the Court of Justice of the European Union: Toppling a Taboo' (2014) 51 *Common Market Law Review* 97.

¹⁵ Eriksen and Fossum (n 13).

¹⁶ Although some have argued that there is no democratic deficit because core principles of democracy, such as checks and balance and voter influence, are sufficiently present in the EU, see A Moravcsik, 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union' (2002) 40 *Journal of Common Market Studies* 603.

¹⁷ Art. 294 of the Treaty on the Functioning of the European Union (TFEU).

¹⁸ Art. 3 of the Protocol to the Lisbon Treaty on the Role of National Parliaments in the European Union [2016] OJ C202/203.

Another legitimation strategy that resonates with all input, output and throughput criteria, is to develop a common understanding of what it means to be a citizen of the EU. Here the aim is to establish a ‘shared European identity’, which finds meaning in the EU as a ‘value-based community’.¹⁹ Shared attachment to values and political self-identification legitimates the EU, according to this strategy, because it is an indirect way of democracy; by defining common values and goals, decisions can be made that are endorsed by the entire community.²⁰ In other words, it is hoped that a better collective self-understanding will enable the EU to act on behalf of the entire community, in line with how it understands itself. The influence of this normative strategy might be seen in the increasing emphasis in EU law on foundational principles, especially fundamental rights.²¹

In sum, according to normative approaches to legitimacy, the EU will be more legitimate if it manages to better meet a set of certain normative standards. Empirical approaches,²² on the other hand, look at whether and why the constituency – for the EU these can be audiences such as the general public or national governments – subjectively *perceives* an authority as legitimate, not whether it should do so if it correctly applies the correct normative standards.²³

3. LIMITATIONS IN EMPIRICAL APPROACHES TO EU LEGITIMACY

Empirical approaches have clear complementary value to normative approaches, but properly integrating normative and empirical insights faces significant challenges. Some of these challenges, including the norm-fact divide, flow from the difficulty of translating and connecting empirical findings and normative claims. Yet this contribution focuses on less commonly discussed challenges that derive from within the empirical approaches themselves. For different reasons, current empirical approaches may not yet fully provide the level and type of insight required to allow for fruitful integration with normative theories. As a result, there is substantial space to further advance research on EU legitimacy *within* the empirical approach. We here identify three particular areas that could benefit from further development: the conceptualization, operationalization and explanation of perceived EU legitimacy – henceforth also referred to as ‘EU legitimacy’.

3.1. THE ISSUE OF CONCEPTUALIZATION

So far as conceptualization is concerned, various accounts on the meaning of legitimacy, and its relationship with other constructs, such as support, trust, compliance and acceptance, exist. Although scholars tend to diverge on the relationship between these constructs, most conceptualizations are grounded in Easton’s well-known theory on political support.²⁴ In this theory, the difference between support and legitimacy is reflected in the distinction between specific and diffuse support.²⁵ Support is defined as ‘an attitude by which a person orients

19 Eriksen and Fossum (n 13).

20 F Cerutti, ‘Why Political Identity and Legitimacy Matter in the EU’ in F Cerutti and S Lucarelli (eds.), *The Search for a European Identity* (Routledge 2008).

21 See in this regard for example Joined Cases C-402/05 P and C-415/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECLI:EU:C:2008:461, where it becomes clear that the CJEU views fundamental rights as the essence of the EU legal order, trumping even obligations arising under title VII of the UN Charter. One could equally view the ongoing rule of law struggle between the EU and primarily Poland and Hungary along these lines (e.g., Case C-791/19 *European Commission v Republic of Poland* [2021] ECLI:EU:C:2021:596; Case C-156/21 *Hungary v European Parliament and Council of the European Union* [2022] ECLI:EU:C:2022:97), for example with the CJEU creating scope directly under Art. 19 TEU in light of the fundamental importance of the rule of law in the EU, paving the way for later infringement actions by the Commission. See Case C-64/16 *Associação Sindical dos Juizes Portugueses v Tribunal de Contas* [2018] ECLI:EU:C:2018:117; Case C-896/19 *Republika v Il-Prim Ministru* [2021] ECLI:EU:C:2021:311.

22 Empirical approaches are sometimes known as sociological approaches. Realizing that normative legitimacy can be assessed with empirical methods, we refer to research on legitimacy *perceptions* as empirical approaches.

23 A Hurrelmann, S Schneider and J Steffek, *Legitimacy in an Age of Global Politics* (Palgrave Macmillan UK 2007); W Hinsch, ‘Justice, Legitimacy, and Constitutional Rights’ (2010) 13 *Critical Review of International Social and Political Philosophy* 39.

24 J Thomassen, R Andeweg and C van Ham, ‘Political Trust and the Decline of Legitimacy Debate: A Theoretical and Empirical Investigation into Their Interrelationship’ in S Zmerli and T van der Meer (eds.), *Handbook on Political Trust* (Edward Elgar 2017).

25 D Easton, ‘A Re-assessment of the Concept of Political Support’ (1975) 5 *British Journal of Political Science* 435.

himself to an object either favorably or unfavorably, positively or negatively'.²⁶ This broad definition is further elaborated in terms of the type and the object of support. First, there is a distinction between support for what a political object is or represents (i.e., diffuse support) and support for what a political object does or achieves (i.e., specific support). These types of support can then be directed towards different political objects: the regime, the authorities and the political community. Easton considered legitimacy and trust as expressions of *diffuse* political support for an authority. Moreover, Easton proposes that legitimacy is rooted in norms and values, while trust is rooted in perceptions of long-term utility.

Another dominant approach, which builds on Easton's theoretical framework, conceptualizes legitimacy and trust as indicators of political support.²⁷ In this view, support can have different forms which only become meaningful at the level of the political object to which support is provided. At the lowest level, support can be directed towards individual authorities, such as a specific politician. This form of support is assumed to have few implications for the stability and survival of the political regime. However, moving up in the hierarchy towards more diffuse forms of support which are geared towards political institutions, the political system, or the political community, support becomes more critical. Legitimacy and trust can thus be related to lower- and higher-level political entities, and legitimacy of the higher-level objects is, in this approach, assumed to be critical for the survival of the system.

In the literature on public opinion about the EU, the above concepts are often used interchangeably, which obscures knowledge on the sources and consequences of EU legitimacy as opposed to, for example, EU support. Conceptual clarity and a clear definition are therefore also needed to enable a proper application of empirical findings in the normative and legal domain. In addition, to our knowledge, the distinction between legitimacy and support remains a conceptual assumption that has not been examined empirically in the context of attitudes towards the EU. For example, legitimacy is often considered a more stable attitude, rooted in moral convictions about rightful rule. Support, in contrast, is believed to be dependent on more short-term considerations about outcomes.²⁸ A central question remaining for future research is whether legitimacy is indeed less volatile than support, and whether these differences can also be empirically observed.

3.2. THE ISSUE OF OPERATIONALIZATION

Closely linked to the challenge of conceptualization is the question as to how EU legitimacy should be measured in public opinion research. The majority of this research is based on mass public opinion surveys, such as the Eurobarometer, the European Values Study and the European Social Survey. As these surveys are conducted among large numbers of citizens from all EU Member States, they provide insights on public attitudes which are representative for the wider population. Their results can thus give a reliable indication of trends in the opinions of the general EU public. Yet, this widely used method also has a significant shortcoming: it relies on a limited number of standard items that might not, or not sufficiently, capture the construct of legitimacy.

The items typically used in these mass surveys assess, for example, beliefs on whether EU membership is a good or a bad thing, beliefs on whether one's country benefitted from EU membership or levels of trust in EU institutions. According to more recent work, such items only measure one dimension of EU legitimacy, and not the whole construct.²⁹ In this recent work, the authors conceive of legitimacy as a multidimensional belief system that consists of an essential dimension of moral convictions and an optional dimension of beliefs about utility ('self-interest calculations'). They see the dimension of utility as complementary to moral convictions as, in its core, legitimacy is about norms and values. The authors find that items measuring support (i.e., items on the evaluation and perceived benefits of EU membership) only assess the dimension of utility but fail to capture the value dimension, which is a crucially distinctive aspect of legitimacy. The trust items, on the other hand, were found to possibly

²⁶ Ibid 436.

²⁷ P Norris, *Critical Citizens: Global Support for Democratic Government* (Oxford University Press 1999).

²⁸ Tallberg and Zürn (n 5); L Dellmuth and B Schlipphak, 'Legitimacy Beliefs Towards Global Governance Institutions: A Research Agenda' (2020) 27 *Journal of European Public Policy* 931.

²⁹ Dellmuth and Schlipphak (n 28).

contain beliefs on whether the EU conforms to one's own moral principles. The authors therefore conclude that these might be useful to measure legitimacy and provide a starting point for more research into the operationalization of perceived EU legitimacy.

Thus, existing items from large public opinion surveys may not adequately measure people's legitimacy perceptions of the EU. This methodological issue bears the risk that conclusions about legitimacy are inferred from items that actually measure other attitudes, which may be irrelevant or only partially relevant to people's legitimacy perceptions. It is therefore not only necessary to first create consensus on a working definition of perceived EU legitimacy, but also to subsequently develop a more complete set of items to operationalize and effectively measure the whole construct of EU legitimacy.

3.3. THE ISSUE OF EXPLANATION

A third question that requires more investigation is how and why people arrive at legitimacy judgments concerning the EU. So far, public opinion research has identified three classes of explanations of EU attitudes: utilitarian considerations, identity processes and cues or heuristics.³⁰ These factors are thought to work in concert to shape public attitudes towards the EU.³¹ Although, as discussed above, these studies often use outcome measures that arguably do not capture EU legitimacy, they have provided vital insights into the formation of people's supportive and sceptical attitudes towards the EU. We briefly discuss the three classes of explanations here.

The utilitarian approach holds that citizens make a cost-benefit analysis of their country's membership of the EU, which subsequently determines whether they support or reject membership. Evidence for this approach comes from work looking at indicators on the national and individual level. On the national level, studies have found that perceived national economic benefits on the one hand, and perceived threat to national interests on the other hand predict support for the EU.³² On the individual level, support has been shown to be affected by socio-economic status, assuming that individuals with a higher socio-economic status perceive individual economic advantages of the EU, for example through trade liberalization and free movement of workers, while individuals with a lower socio-economic status mainly perceive disadvantages.³³

The identity approach addresses the effects of identity on EU support. This approach contends that attitudes towards the EU are influenced by feelings of national and European identity. People who hold exclusive national identities are found to be less likely to support the EU,³⁴

³⁰ SB Hobolt and CE de Vries, 'Public Support for European Integration' (2016) 19 *Annual Review of Political Science* 413.

³¹ M Maier, S Adam and J Maier, 'The Impact of Identity and Economic Cues on Citizens' EU Support: An Experimental Study on the Effects of Party Communication in the Run-Up to the 2009 European Parliament Elections' (2012) 13 *European Union Politics* 580; M van Klingeren, HG Boomgaarden and CH de Vreese, 'Going Soft or Staying Soft: Have Identity Factors Become More Important Than Economic Rationale When Explaining Euroscepticism?' (2013) 35 *Journal of European Integration* 689; A Ejrnæs and MD Jensen, 'Divided but United: Explaining Nested Public Support for European Integration' (2019) 42 *West European Politics* 1390.

³² S Carey and M Lebo, 'In Europe, but not Europeans: The Impact of National Identity on Public Support for the European Union' (2000) 29th Joint Sessions of the European Consortium for Political Research 6; T Christin and AH Trechsel, 'Joining the EU? Explaining Public Opinion in Switzerland' (2002) 3 *European Union Politics* 415; J van Spanje and C de Vreese, 'So What's Wrong with the EU? Motivations Underlying the Eurosceptic Vote in the 2009 European Elections' (2011) 12 *European Union Politics* 405.

³³ M Gabel, 'Public Support for European Integration: An Empirical Test of Five Theories' (1998) 60 *Journal of Politics* 333; LM McLaren, 'Opposition to European Integration and Fear of Loss of National Identity: Debunking a Basic Assumption Regarding Hostility to the Integration Project' (2004) 43 *European Journal of Political Research* 895; A. Hakhverdian and others, 'Euroscepticism and Education: A Longitudinal Study of 12 EU Member States, 1973–2010' (2013) 14 *European Union Politics* 522.

³⁴ Carey and Lebo (n 32); L Hooghe and G Marks, 'Does Identity or Economic Rationality Drive Public Opinion on European Integration?' (2004) 37 *Political Science and Politics* 415; L Hooghe and G Marks, 'Calculation, Community and Cues: Public Opinion on European Integration' (2005) 6 *European Union Politics* 419; LM McLaren, 'Explaining Mass-Level Euroscepticism: Identity, Interests, and Institutional Distrust' (2007) 42 *Acta Politica* 233; M Lubbers, 'Regarding the Dutch "Nee" to the European Constitution: A Test of the Identity, Utilitarian and Political Approaches to Voting "No"' (2008) 9 *European Union Politics* 59; N Conti, D di Mauro and V. Memoli, 'The European Union under Threat of a Trend Toward National Sovereignty' (2018) 14 *Journal of Contemporary European Research* 231; NJ Clark and R Rohrschneider, 'The Relationship Between National Identity and European Union Evaluations, 1993–2017' (2019) 20 *European Union Politics* 384; A Cislak and others, 'Brexit and Poles: Collective Narcissism is Associated with Support for Leaving the European Union' (2020) 15 *Social Psychological Bulletin* 1.

while a sense of European identity or attachment to the EU has been shown to predict higher support for European integration.³⁵ The identity approach also includes findings that support for EU membership seems to be undermined by fear of immigrants and hostility towards other cultures.³⁶

Finally, the heuristic or cue-taking approach is based on the idea that the EU is too complex or remote for people to understand and evaluate in a deliberate way. Instead, most people therefore rely on informational shortcuts to form their attitudes. This becomes especially likely when they have low levels of political knowledge.³⁷ For example, whether national parties cue the EU as a risk or opportunity for the national economy or identity in their campaigns has been shown to affect people's support for the EU.³⁸ Cues may also take the form of satisfaction with national institutions, which converts as a mental shortcut to levels of satisfaction with the EU.³⁹ Other examples of heuristics are attitudes on globalization and supranational governance.⁴⁰

Despite the valuable insights of these studies, at least two pressing questions remain. First, whether these findings also translate to sources of *legitimacy*, or only relate to the constructs measured, such as support for EU membership or perceived benefits of the EU. In other words, is the construct of legitimacy, if properly defined and operationalized, also determined by cost-benefit analysis, identity and heuristics? Second, the items and methods used so far cannot answer the additional question of how these, and maybe other factors, *interact* in predicting EU legitimacy, and with which causal mechanisms. To put it briefly: through which processes and under which circumstances do predictors become relevant for legitimacy? To name some examples, does a potential effect of income on EU legitimacy depend on the region where people come from? Or could an effect of national identity on EU legitimacy be explained through fear of migrants? These are the moderating and mediating mechanisms we need to understand, and which can be identified by complementing mass public opinion surveys with experiments and laboratory studies.

Consequently, what is still missing at the empirical level is a comprehensive and specific theoretical model on the sources of EU legitimacy perceptions, which accounts for the social psychological dynamics between person and environment. Developing better insights into these processes would therefore increase our understanding of legitimacy. However, it would also create opportunities for effective interventions and allow for a better translation of empirical findings into the normative field, including the creation of evidence-based EU law.

4. WAYS FORWARD IN RESEARCH ON PERCEIVED EU LEGITIMACY

Whereas the remainder of this contribution cannot and does not seek to solve each of the issues identified above, it does aim to elucidate several of them and propose some directions for future research.

³⁵ Conti, Di Mauro and Memoli (n 34); D Sindic and others, 'Leave or Remain? European Identification, Legitimacy of European Integration, and Political Attitudes Towards the EU' (2019) 29 *Journal of Community and Applied Social Psychology* 32.

³⁶ LM McLaren, 'Public Support for the European Union: Cost/Benefit Analysis or Perceived Cultural Threat?' (2002) 64 *The Journal of Politics* 551; Hooghe and Marks, 'Does Identity or Economic Rationality' (n 34); CH de Vreese and HG Boomgaarden, 'Projecting EU Referendums: Fear of Immigration and Support for European Integration' (2005) 6 *European Union Politics* 59; Lubbers (n 34); V Swami and others, 'To Brexit or not to Brexit: The Roles of Islamophobia, Conspiracist Beliefs, and Integrated Threat in Voting Intentions for the United Kingdom European Union Membership Referendum' (2018) 109 *British Journal of Psychology* 156.

³⁷ JA Karp, SA Banducci and S Bowler, 'To Know It Is to Love It? Satisfaction with Democracy in the European Union' (2003) 36 *Comparative Political Studies* 271; K Armingeon and B Ceka, 'The Loss of Trust in the European Union During the Great Recession Since 2007: The Role of Heuristics from the National Political System' (2004) 15 *European Union Politics* 82; M Lubbers and P Scheepers, 'Explanations of Political Euro-scepticism at the Individual, Regional and National Levels' (2007) 9 *European Societies* 643.

³⁸ SB Hobolt and S Brouard, 'Contesting the European Union? Why the Dutch and the French Rejected the European Constitution' (2011) 64 *Political Research Quarterly* 309; Maier, Adam and Maier (n 31).

³⁹ M Ares, B Ceka and H Kriesi, 'Diffuse Support for the European Union: Spillover Effects of the Politicization of the European Integration Process at the Domestic Level' (2017) 24 *Journal of European Public Policy* 1091; McLaren (n 36).

⁴⁰ Conti, Di Mauro and Memoli (n 34); L Peitz, K Dhont and B Seyd, 'The Psychology of Supranationalism: Its Ideological Correlates and Implications for EU Attitudes and Post-Brexit Preferences' (2018) 39 *Political Psychology* 1305.

4.1. ADDRESSING CONCEPTUALIZATION

Although legitimacy will undoubtedly remain an essentially contested concept, because there are different angles from which to approach legitimacy, a shift to a relational or dialogic approach, which unites these angles, is already emerging. We have argued that normative perspectives on EU legitimacy should be integrated with an empirical perspective that considers people's objective legitimacy judgments, because the legitimacy of even the most normatively acceptable institution will be compromised when its constituency does not approve of its authority.⁴¹ Yet, an empirical approach cannot entirely ignore existing normative standards of legitimacy either, as these can influence people's perceptions of legitimacy.⁴² The relational approach should therefore also be applied to the conceptualization of EU legitimacy.

The relational or dialogic approach to legitimacy essentially entails that legitimacy defines a relationship between an object of legitimacy and an audience of that object.⁴³ This relationship is characterized by three elements: expectations, assent and conformity. More specifically, it is based on certain expectations. When the object of legitimacy conforms to these expectations, and the audience assents positively to the relationship, legitimacy is established.⁴⁴ As such, legitimacy results from an interactive process between rulers and subjects.⁴⁵ In the field of international organizations, legitimacy has been defined as 'the result of an interactive process that relies both on the bottom-up attribution of legitimacy to international institutions by social constituencies *and* on legitimacy claims made by political elites'.⁴⁶ Legitimacy therefore emerges when rulers and subjects have a shared understanding about the norms that define the appropriate exercise of power, when rulers conform to these norms and when subjects recognize that rulers conform to these norms.

When studying legitimacy, researchers can take the object, the audience or the environment in which expectations occur as unit of analysis.⁴⁷ Our definition of perceived EU legitimacy focuses on the audience, that is, the EU's public or constituency. Legitimacy then becomes the *perception among EU citizens that the EU's exercise of authority is appropriate*. Yet, while employing this definition, one should bear in mind that subjective legitimacy perceptions among the audience are only one element in the dynamic, relational concept that is legitimacy, and that these perceptions can also be influenced by existing normative standards.⁴⁸

4.2. ADDRESSING OPERATIONALIZATION

Given the conceptual ambiguity, it obviously remains complex to measure perceived EU legitimacy empirically. Since it is defined as a subjective perception in citizens' minds, it should first and foremost be measured as such, and not by looking at the EU's conformity to normative principles of legitimacy. It would, however, be possible to investigate which expectations citizens hold about how the EU should govern them and subsequently measure whether they believe the EU conforms to these expectations. The first step to better understanding and measuring EU legitimacy perceptions may thus be to study how people construct meanings about what the EU is and ought to do, and to investigate their expectations regarding EU governance.

The standard items in current public opinion surveys are not adequate for this purpose. A somewhat relevant question in the Standard Eurobarometer is 'What does the EU mean to you personally?'. From a list of 15 predefined items, participants can select multiple answers that apply to them. Table 1 lists these items in the order of those most often selected to least often selected by participants in the 2022 Standard Eurobarometer.⁴⁹ Although this question

⁴¹ D Beetham, *The Legitimation of Power* (Humanities Press International 1991).

⁴² Tallberg and Zürn (n 5).

⁴³ EW Schoon, 'Operationalizing Legitimacy' (2022) 87 *American Sociological Review* 478.

⁴⁴ *Ibid.*

⁴⁵ A Hurrelmann, S Schneider and J. Steffek, *Legitimacy in an Age of Global Politics* (Palgrave 2007).

⁴⁶ J Gronau and H Schmidtke, 'The quest for legitimacy in world politics – international institutions' legitimation strategies' (2016) 42 *Review of International Studies* 535, 537.

⁴⁷ Schoon (n 43).

⁴⁸ Tallberg and Zürn (n 5).

⁴⁹ European Commission, Brussels (2023). Eurobarometer 97.5 (2022). GESIS, Cologne. ZA7902 Data file Version 1.0.0. <https://doi.org/10.4232/1.14010>.

gives some insight into the first associations which people have when they think of the EU, the formulation of the question is ambiguous. For example, when participants select ‘democracy’, does that mean that they believe the EU is sufficiently democratic or that they believe that the EU should be more democratic? Even though the first may be more likely, this does not reveal any useful information about participants’ norms, thus making it more difficult to infer conclusions about legitimacy. In other words, even though the EU may be perceived as democratic, this does not imply that the EU is also perceived as legitimate, because the appraisal of legitimacy cannot be directly inferred from the judgment that the EU means democracy. Responses to this item thus yield limited insight into how citizens make sense of what the EU should be or do, and any claims concerning legitimacy based on such responses may therefore rest on thin ice.

RANK	ITEM	NUMBER OF TIMES SELECTED
1	Freedom to travel, study and work anywhere in the EU	18,960
2	Peace	11,005
3	Euro	10,513
4	Stronger say in the world	9,237
5	Democracy	9,191
6	Quality of life of future generations	8,805
7	Economic prosperity	8,530
8	Cultural diversity	8,146
9	Bureaucracy	7,080
10	Waste of money	6,200
11	Not enough control at external borders	6,176
12	Social protection	5,689
13	Loss of our cultural identity	5,307
14	More crime	3,749
15	Unemployment	2,506

Table 1 Number of times that participants ($n = 37,223$) from the 2022 Standard Eurobarometer selected predefined answers to the question what the EU means to them personally (multiple answers possible).

The best way to trace citizens’ norms and expectations about the EU’s authority may be through qualitative research. Qualitative methods include in-depth interviews, textual analysis, focus group discussions or field observations, with the aim of gaining richer insights into how people give meaning to the world. In contrast to the abovementioned Eurobarometer item, qualitative research does not depend on predefined answers, which enables researchers to find relevant factors that otherwise may be overlooked. Focus groups in particular have been suggested as a good practice to examine the meaning of the EU for citizens, because the group setting enables the researcher to closely study discourses and shared normative considerations.⁵⁰ One of the few qualitative studies on citizens’ understandings of EU legitimacy has shown that these understandings are not uniform, and that they are influenced by discourses on nationhood.⁵¹ Thus, to gain richer insights into expectations regarding the EU among different groups of people, these findings should be extended with more qualitative research.

However, for the purpose of more systematically understanding and quantifying the relationship between citizens’ perceptions of EU legitimacy and its potential sources or consequences, better tools to integrate legitimacy into quantitative research designs should be developed as well. Directly asking people whether they think the EU is legitimate may generate unreliable responses because it could be the case that people do not know what legitimacy means, or have such different ideas of the concept that it becomes ambiguous as to what precisely one is measuring. Therefore, proxies or outcomes of legitimacy might be used to better measure

⁵⁰ J Melman, ‘The Public and EU Legitimacy: A Framework for Understanding the Meaning of Public Opinion for European Integration’ in C Lord and others (eds.), *The Politics of Legitimation in the European Union: Legitimacy Recovered?* (Routledge/UACES Contemporary European Studies 2022).

⁵¹ E Frazer and V van Ingelgom, ‘Representation and Legitimation’ in S Duchesne and others (eds.), *Citizens’ Reactions to European Integration Compared: Overlooking Europe* (Palgrave Macmillan 2013); Melman (n 50).

perceived EU legitimacy. Although, as we have discussed, this entails the risk of studying factors that may be irrelevant to legitimacy or only give a partial view, the benefit of such an approach is that it enables more complex, quantitative study designs in the form of surveys or experiments. In addition to combining qualitative and quantitative research methods, a concrete suggestion would therefore be to make sure that any item directly assessing legitimacy is at least complemented by several of the items discussed below.

The closest indicator of legitimacy may be trust, because trust captures the normative dimension of legitimacy.⁵² If a person believes that an authority is legitimate, i.e., is acting appropriately, this belief is reflected in their confidence that the authority will do what is right.⁵³ Trust can have different meanings, just as legitimacy can, but here we refer to the concept of political or institutional trust (i.e., ‘trust in the EU as a political system’), rather than interpersonal trust (i.e., ‘trust in other people’). Trust can be directed towards the EU in general or towards EU institutions. Yet, patterns of trust in the different institutions are very similar,⁵⁴ which implies that it does not matter for the purpose of measuring legitimacy whether citizens are asked about their confidence in the EU in general or in specific EU institutions. In addition to trust, the felt duty or obligation to obey is an outcome of legitimacy that is commonly used in research on the perceived legitimacy of legal authorities.⁵⁵ This item captures the behavioural intention to obey an authority or its rules. As voluntary compliance is considered to be the natural consequence of legitimacy, measuring people’s intentions to obey may be a good indicator of legitimacy. An example statement that researchers could use to measure legitimacy through felt duty to obey is ‘It is important to accept decisions made by the EU, even if you think they are wrong’.⁵⁶ Finally, citizens’ perceptions that the EU’s authority is exercised appropriately could be measured by observing the degree to which citizens believe that the EU has the right to make decisions to influence their lives, and that the EU acts in line with their own feelings of right and wrong.⁵⁷ These positive evaluations would reflect acceptance of the EU’s authority and a sense of moral alignment with the EU, which could also indicate the presence of legitimacy.

4.3. ADDRESSING EXPLANATION

Once legitimacy is better conceptualized and operationalized, advances can be made in the development of theory about the sources of EU legitimacy perceptions. A specified theoretical model which accounts for the social psychological dynamics between person and environment can then be built by cumulatively integrating existing insights with new empirical evidence. In this section, we aim to provide a starting point for such a model.

Drawing on the relational approach, perceived legitimacy arises from people’s norms about how the EU should govern and the extent to which the EU lives up to these expectations. More specifically, rather than the objective congruence between EU features and certain sets of norms on appropriate rule, legitimacy perceptions develop from subjective assessments of congruency, for which information is filtered through cognitive processes.⁵⁸ Cognitive processes, such as prior information stored in mental schemata or other heuristics, influence the information that people use to evaluate the EU and the way in which that information is processed.

Furthermore, citizens’ norms of appropriate rule are relatively stable, but are not fixed. That is, certain norms are widely shared (e.g., ‘leaders should be democratically elected’), but norms or the way in which they are given meaning may differ across times, places and (groups of) people. It is therefore important to consider the broader socio-political context in which norms

⁵² Dellmuth and Schlipphak (n 28).

⁵³ R Trinkner and TR Tyler, ‘Legal Socialization: Coercion Versus Consent in an Era of Mistrust’ (2016) 12 Annual Review of Law and Social Science 417.

⁵⁴ L Berg, ‘Citizens’ Trust in the EU as a Political System’ in A Bakardjieva and others (eds.), *Trust in the European Union in Challenging Times: Interdisciplinary European studies* (Palgrave Macmillan 2019).

⁵⁵ For example J Jackson and others, ‘Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions’ (2012) 52 British Journal of Criminology 1051.

⁵⁶ Adapted from Jackson and others (n 55).

⁵⁷ H Mazepus, ‘What Makes Authorities Legitimate in the Eyes of Citizens? An Investigation of Perceived Legitimacy in Different Political Regimes’ (PhD thesis, Leiden University 2014).

⁵⁸ T Lenz and LA Viola, ‘Legitimacy and Institutional Change in International Organisations: A Cognitive Approach’ (2017) 43 Review of International Studies 939.

exist. For example, in times of threat, people may predominantly expect the EU to offer safety against a common enemy, such as COVID-19 or Russia.⁵⁹ Furthermore, while self-interest calculations about the perceived economic costs and benefits may be less relevant for EU legitimacy appraisals than deeper rooted values and norms,⁶⁰ the content of those values and norms can still be related to perceived benefits. As an illustration of this, for some people, the EU may simply represent an international organization that serves to promote economic cooperation between states, and any act that goes beyond that goal is felt as an intrusion on national sovereignty, even though those competences are legitimate from a normative, legal perspective. The belief that the EU should simply produce beneficial outcomes may be especially felt by people who are occupied by economic concerns.⁶¹ For those people, values like democracy or the rule of law may not mean as much as values like economic prosperity and job opportunities.

This also means that, although the norms of the public may diverge from the norms that are endorsed and pursued by the EU itself, EU norms can still affect how people construct the meaning of legitimate EU governance. That is, individuals' beliefs are influenced by the socio-political context in which they arise, and the EU's attempts to justify its authority are part of this context as well. As authorities seek to justify their exercise of power, and opponents seek to denounce these justifications, audiences' perceptions of legitimacy are partly formed by these legitimization and delegitimation attempts, which can be institutional or discursive.⁶² Institutional practices include the introduction of, or changes to, policies, procedures or rules. An example is the reform of the Economic and Monetary Union after the financial crisis.⁶³ Discursive practices, on the other hand, involve public communication. The justificatory content in legitimating discourse can be focused on referring to 1) the authority of tradition, custom and law; 2) moral values; 3) goals, outcomes and benefits; and 4) narratives or stories.⁶⁴

Finally, we want to highlight that, in a theoretical model on the sources of legitimacy perceptions of the EU, processes related to identity and morality must be considered. This is for two reasons. First, identity and morality influence how people process information. There is ample social psychological research showing that the selection and processing of information occurs through the lens of pre-existing group memberships, ideologies and values.⁶⁵ For example, when people feel threatened in their identity, information-processing and decision-making processes become more rigid (e.g., people rely more on prior beliefs and are less open to new information).⁶⁶ So, the cognitive filter through which people evaluate incoming information about the EU and assess this information against their normative standards about rightful rule is coloured by their identities and moral values.

Second, identity and morality have become a salient part of the environment in which norms about what the EU should be and do arise. Over past years, the public debate on the EU and European integration has been increasingly characterized by appeals to identity and values by both pro-EU actors and Eurosceptics. To illustrate, the Commission Presidents have in their State of the Union addresses to the European Parliament been increasingly referring to moral

⁵⁹ TA Graf, 'Unity in the Face of Threat? Exploring the Empirical Relationship Between Strategic Threat Perceptions and Public Support for a Common European Army in Germany' (2020) 29 *European Security* 55.

⁶⁰ Buchanan and Keohane (n 5); Tallberg and Zürn (n 5).

⁶¹ For example, an interview study showed that working class people mainly refer to economic and financial problems when they are asked to talk about the European Union, and these concerns were also linked to migration, F Haegel, 'National Frames: Reactions to a Multi-level World' in S Duchesne and others (eds.), *Citizens' Reactions to European Integration Compared: Overlooking Europe* (Palgrave Macmillan 2013).

⁶² Tallberg and Zürn (n 5).

⁶³ P Lausberg, 'Post-crisis Legitimacy in the EU's Economic and Monetary Union: The Cases of European Fiscal Policy Coordination and Banking Supervision' in C. Lord and others (eds.), *The Politics of Legitimation in the European Union: Legitimacy Recovered?* (Routledge/UACES Contemporary European Studies 2022).

⁶⁴ T van Leeuwen, 'Legitimation in Discourse and Communication' (2007) 1 *Discourse & Communication* 91.

⁶⁵ See for example YJ Xiao, G Coppin and JJ van Bavel, 'Perceiving the World Through Group-Colored Glasses: A Perceptual Model of Intergroup Relations' (2006) 27 *Psychological Inquiry* 255; W Hart and others, 'Feeling Validated Versus Being Correct: A Meta-analysis of Selective Exposure to Information' (2009) 135 *Psychological Bulletin* 555; C. Kovacheff and others, 'The Problem with Morality: Impeding Progress and Increasing Divides' (2018) 12 *Social Issues and Policy Review* 218.

⁶⁶ FR de Wit, D Scheepers and KA Jehn, 'Cardiovascular Reactivity and Resistance to Opposing Viewpoints During Intragroup Conflict' (2012) 49 *Psychophysiology* 1691.

values as a way to self-legitimize, parallel to the legal evolution towards the focus on values.⁶⁷ An analysis of the discourse in the speeches from the two previous Commission Presidents has already revealed a shift towards a moral values legitimation strategy as opposed to an output legitimation strategy. While the speeches of President Barroso predominantly invoked economic values, emphasizing the economic benefits that the EU offers to citizens, President Juncker's speeches increasingly referred to ethical and social values.⁶⁸ His later speeches presented the EU as a 'Union of values' and explicitly mentioned symbols of a common European identity, such as common historical experiences. President Von der Leyen continued this trend, stressing a common group identity and common moral values in her 2021 speech (e.g., referring to 'a strong soul in everything we do' and 'a Union grounded in values') and her 2022 speech ('Team Europe', 'Our Union', 'great European values'). She argued, for example, that 'trust in these common values brought our founders together, after World War Two', that 'these values come from the cultural, religious and humanist heritage of Europe', and that 'they are part of our soul, part of what defines us today'.⁶⁹ Clearly these references mean to justify the EU beyond the grounds of utilitarianism.

At the same time, opponents of European integration have been employing a Eurosceptic discourse that pits a common European identity and EU values against national identities and values. By contesting the legitimacy of the EU, more specifically the EU's institutional and constitutional design, acts of delegitimation occur as a counter argument in response to legitimation attempts from European actors, as well as to fill the lack of justification that is provided by those actors.⁷⁰ This side of the debate is characterized by a discourse of crisis and threat, where the EU is presented as a threat to national sovereignty and identity.⁷¹ For example, the absolute obligation, in principle, to follow the rulings of the CJEU over judgments from 'good old English courts' or the sovereign will of Parliament, was a prominent topic in the Brexit campaign and one of the factors that mobilized citizens in the referendum to vote against EU membership.⁷² Other recent examples in France, Poland, Hungary and Italy also concern national politicians who present the EU as an obstacle to their countries' sovereign authority and values.⁷³ Furthermore, national news outlets tend to use nationally oriented narratives which frame the EU as irreconcilably conflicting with national identity.⁷⁴

Considering these developments, as well as social psychological research on the effects of identity and morality on information-processing, we believe that identity and morality are highly relevant when developing a model on the sources of people's perceptions of EU legitimacy. The interaction between individual factors and characteristics of the socio-political context must therefore be placed at the heart of research, because understanding these processes is necessary for knowing which actions should be undertaken to ensure that the EU is really perceived as more legitimate in practice. Once such processes are well understood, the normative and legal domain can build on these empirical insights. By combining empirical

⁶⁷ S Weatherill, 'What Are the EU's Values?' in S. Weatherill, *Law and Values in the European Union* (Oxford University Press 2016).

⁶⁸ P Pansardi and F Battezzorze, 'The Discursive Legitimation Strategies of the President of the Commission: A Qualitative Content Analysis of the State of the Union Addresses (SOTEU)' (2018) 40 *Journal of European Integration* 853; P Pansardi and F Battezzorze, 'Which Legitimacy for the European Union? An Analysis of the President of the Commission's State of the Union Addresses (SOTEU)' (2018) *Reconciling Economic and Social Europe* (European Research Council).

⁶⁹ U Von der Leyen, 'Strengthening the Soul of our Union' (State of the Union Address 2021).

⁷⁰ P de Wilde and HJ Trenz, 'Denouncing European Integration: Euroscepticism as Polity Contestation' (2012) 15 *European Journal of Social Theory* 537.

⁷¹ B Farrand and H Farrand Carrapico, "'People Like That Cannot Be Trusted": Populist and Technocratic Political Styles, Legitimacy, and Distrust in the Context of Brexit Negotiations' (2021) 17 *Journal of Contemporary European Research* 148.

⁷² See also the UK plans to remove the jurisdiction of the CJEU over the Northern Ireland Protocol (Bill proposed on 13 June 2022) for further evidence of how emotional this is for the British, or at least for a significant subsection of them.

⁷³ For example, former European Commissioner, Michel Barnier, proposed a French referendum on a 'constitutional shield to disregard European law and rulings in order to regain our freedom of maneuver and interpretation', see P Dallison and E Braun, 'Barnier the Brexiteer? French Candidate Gets Tough with EU on Campaign Trail' *Politico* (9 September 2021). Poland's Prime Minister, Mateusz Morawiecki, argued in a statement to the European Parliament on 19 October 2021, that the national constitution, not EU law, sits at the top of the legal hierarchy.

⁷⁴ AA Clement, 'Reporting on the "Ever Closer Union": Narrative Framing in National News Medias and Resistance to EU Integration' (2015) 6 *Eastern Journal of European Studies* 123.

insights with existing insights from legal practices, new legal knowledge can then be generated to create the legitimacy the EU needs. First, however, the processes behind the perceived legitimacy of the EU among citizens must be elucidated. For this, we propose four key directions on the basis of four guiding questions.

First, what is the nature of the threat people experience from the EU and how does that relate to their national and EU identities? In other words, what exactly do people perceive as threatening? Inspired by the psychological drivers of Brexit, most studies so far have focused on the perceived economic and identity threat from European and non-European immigrants.⁷⁵ But which (other) concerns do people have regarding European integration? And how do these affect legitimacy? More sophisticated methods than the current ones must be used to study these questions, as research has, for example, shown that people, especially when highly educated, are reluctant to explicitly express their negative views on immigrants from within the EU.⁷⁶ This indicates that research on the role of threat in legitimacy could advance by making use of implicit markers of threat, which are commonly used in social psychological experiments.⁷⁷

Second, and related to the previous question, which narrative has a stronger influence on legitimacy perceptions among EU citizens: the ‘European identity’ or the ‘threat to national identity’ narrative? Negative communication has been shown to have stronger effects on citizens’ legitimacy perceptions of international organizations than positive communication.⁷⁸ Yet positive self-legitimation from organizations may neutralize the negative effects of these delegitimizing efforts.⁷⁹ If it is true that many people are ambivalent or even indifferent about what the EU ought to be and how it ought to act,⁸⁰ discursive practices at the national level may have a profound impact on citizens’ perceptions of EU legitimacy, because when people have limited knowledge about something, their judgements rely on what information is available or emotionally-laden.⁸¹ A question that needs to be answered on this matter is thus, bearing in mind that a threat narrative may trigger serious identity concerns and nationalist sentiments,⁸² is the Eurosceptic voice stronger than the voice expressed by the pro-European discourse, and if so, why and due to which processes? And what happens when the perceived threat does not come from the EU, but from something even ‘bigger’? If faced with a strong threat from outside the EU (e.g., the climate crisis or Russia), will people perceive cooperation within the EU to be more legitimate, or will they instead turn inwards to seek protection from the nation state?

Third, does the EU truly embody common values or do some ‘common values’ clash with peoples’ personal or national values? People and groups endorse different values and these differences may even be traced back to fundamental different moral concerns.⁸³ Although the EU is often stated to be founded on a set of common values, and although this may be a legal fact, the empirical reality may be different. For example, a by now impressive body of research has found that political liberals tend to rely on different moral values from political

⁷⁵ See for example AI Macdougall, AR Feddes and B Doosje, “‘They’ve Put Nothing in the Pot!’: Brexit and the Key Psychological Motivations Behind Voting “Remain” and “Leave”” (2020) 41 *Political Psychology* 979; R Konings, D de Coninck and L d’Haenens, ‘The Role of European and National Identity and Threat Perceptions in Attitudes Towards Immigrants’ (2022) *Journal of Contemporary European Studies* 1.

⁷⁶ MJ Creighton, É Fahey and F McGinnity, ‘Immigration, Identity, and Anonymity: Intentionally Masked Intolerance in Ireland’ (2022) 56 *International Migration Review* 881.

⁷⁷ See for example research on physiological threat indicators, D Scheepers and N Ellemers, ‘Stress and the Stability of Social Systems: A Review of Neurophysiological Research’ (2018) 29 *European Review of Social Psychology* 340.

⁷⁸ L Dellmuth and J Tallberg, ‘Elite Communication and the Popular Legitimacy of International Organizations’ (2021) 51 *British Journal of Political Science* 1292.

⁷⁹ F Ghassim, ‘The Effects of (De)Legitimation on Citizens’ Legitimacy Beliefs About Global Governance: An International Survey Experiment’ in M Bexell, K Jönsson and A Uhlin (eds.), *Legitimation and Delegitimation in Global Governance: Practices, Justifications, and Audiences* (Oxford University Press 2022).

⁸⁰ S Duchesne and others, *Citizens’ Reactions to European Integration Compared: Overlooking Europe* (Palgrave Macmillan 2013).

⁸¹ T Gilovich, D Griffin and D Kahneman, *Heuristics and Biases: The Psychology of Intuitive Judgment* (Cambridge University Press 2002).

⁸² This can for example be seen in the rejection of the Constitutional Treaty as a consequence of framing in political campaigns, Hobolt and Brouard (n 38).

⁸³ J Graham and others, ‘Moral Foundations Theory: The Pragmatic Validity of Moral Pluralism’ in P Devine and A Plant (eds.), *Advances in Experimental Social Psychology* (Vol. 47, Burlington Academic Press 2013).

conservatives.⁸⁴ This could mean that not everyone may feel represented by the EU's values, either because the moral values inherent in EU law do not align with some people's values, or because they are not perceived so to align, which may in turn have consequences for perceived EU legitimacy.

Finally, and related to the previous question, could emphasizing a common identity and common values as a legitimation strategy also backfire and create resistance, for instance where people do not experience a sense of shared identity and values? In such a case, a strong focus on shared values may even cause people to feel the EU wants to impose its values on them. This may yield the opposite of the intended effect, as a perceived value conflict reduces rather than increases experienced common ground.⁸⁵ In addition, when people have the feeling that a common identity, which does not allow sufficient room for subgroup identities, is forced upon them, they tend to experience subgroup identity threat and show resistance against the common identity.⁸⁶ So-called 'dual identities', which maintain rather than weaken subgroup identities, are therefore more effective in creating positive attitudes towards superordinate group membership.⁸⁷ In other words, the strategy of strengthening legitimacy through the promotion of a common identity with shared values may not only be ineffective, but may actually generate backlash. It would be interesting to investigate under which circumstances this would be the case, and which other strategies might then be more effective, such as pitting values against other values, shifting the focus (back) to common economic interests, or stressing carefully designed 'dual identifications' where the distinctive identity features and instrumental interests of Member States are balanced with overarching EU identity features and instrumental interests.⁸⁸

5. CONCLUSION AND IMPLICATIONS FOR EU LAW

As already noted two decades ago, 'if Europe has a future, it must be something that Europeans believe in, not something the legitimacy of which is assigned merely by treaties and courts of law'.⁸⁹ Indeed, following this argument, we have argued that a full picture of EU legitimacy not only requires the justifiability of EU authority on objective normative grounds, but also a bottom-up attribution of legitimacy by the public. Such an integrated take on legitimacy may lead to more effective and resilient interventions and is normatively desirable as well.⁹⁰

The specific aim of this contribution was to identify and address the gaps within the empirical study of perceived EU legitimacy, so as to enable an integrated understanding of EU legitimacy. We are not the first to raise some of these issues, but we hope that by bringing them together and disentangling the literature on normative EU legitimacy, public attitudes towards the EU and the perceived legitimacy of international organizations, will advance empirical research on EU legitimacy. To that end, we identified four guiding questions for future empirical research, particularly in the field of social psychology. These questions concern the nature of threat experiences and how these relate to national and EU identities; the strength of the common EU identity and threat to national identity narratives and their impact on legitimacy; the alignment or conflict between EU values and citizens' personal or national values; and the potential backfiring effect of a common EU identity strategy.

⁸⁴ J Graham, J Haidt and BA Nosek, 'Liberals and Conservatives Rely on Different Sets of Moral Foundations' (2009) 96 *Journal of Personality and Social Psychology* 1029.

⁸⁵ M Kouzakova and others, 'The Implications of Value Conflict: How Disagreement on Values Affects Self-Involvement and Perceived Common Ground' (2012) 38 *Personality and Social Psychology Bulletin* 798.

⁸⁶ MJ Hornsey and M.A. Hogg, 'Assimilation and Diversity: An Integrative Model of Subgroup Relations' (2000) 4 *Personality and Social Psychology Review* 143.

⁸⁷ JF Dovidio, SL Gaertner and T Saguy, 'Commonality and the Complexity of "We": Social Attitudes and Social Change' (2009) 13 *Personality and Social Psychological Review* 3.

⁸⁸ M Kouzakova and others, 'At the Heart of a Conflict: Cardiovascular and Self-Regulation Responses to Value Versus Resource Conflicts' (2014) 5 *Social Psychological and Personality Science* 35.

⁸⁹ I Ward, 'Beyond Constitutionalism: The Search for a European Political Imagination' (2001) 7 *European Law Journal* 24, 25.

⁹⁰ First, unless it is normatively acceptable to ignore the public's needs and wishes for European integration, EU law should at least try in some measure to actively improve perceived EU legitimacy if it wants to reach normative legitimacy as well. Second, if public perceived legitimacy is required for the effectiveness of EU law, a principle which is frequently used in the reasoning of the CJEU, then EU law must take account of the factors increasing and undermining perceived legitimacy.

In this final part of the contribution, we want to tentatively go one step further. For whilst social psychology may be very good at explaining the processes behind the formation of legitimacy perceptions, actually improving legitimacy requires normative choices and legal and political action. Insights into these empirical questions are thus a first necessary step to explore the potential of discursive and institutional efforts to safeguard and improve EU legitimacy, but effective and feasible legitimacy interventions must also fit with the legal and constitutional realities of the EU and its Member States. After all, the EU heavily relies on law and legal rules for its functioning. Many of the potential actions that the EU might take to increase legitimacy, therefore, will have to use some form of legal instrument, be it in the form of treaty change, secondary legislation, case law or soft law. Furthermore, any effort to improve EU legitimacy must fit within the unique legal and constitutional framework of the EU, as well as with the limits imposed by the 27 national constitutional systems on which the EU legal order rests. For example, such actions must respect the principle of conferral, as well as other core constitutional principles such as autonomy, supremacy, non-discrimination and institutional balance. To make matters more explicit, the following examples demonstrate how empirical insights connect to legal and constitutional questions. It is important to note that these examples are based on theoretical hypotheses, not on empirical assertions which should be the focus of future empirical research, and therefore these examples only serve as an illustration.

Answers to the first two questions posed in Section 4.3 could, for example, inform the legal debate on the operationalization of Article 4(2) of the Treaty on European Union (TEU). This provision protects *inter alia* the 'national identities' of Member States as 'inherent in their fundamental structures, political and constitutional'. The CJEU has interpreted this provision rather restrictively, in part to protect the supremacy and effectiveness of EU law.⁹¹ Member States may not use their own constitutional identity, as defined by themselves or their own courts, to ignore EU law when it does not suit them. The recent rule of law saga in Poland and Hungary demonstrates the threat to the effectiveness and uniformity of regional law where Member States would be able to simply deny the supremacy of EU law when it suits them by relying on their own constitution.⁹² Therefore, even though several national apex courts have used or claimed the power to limit the reach or validity of EU law, using core national constitutional principles such as democracy and sovereignty, the CJEU has thus far limited Article 4(2) TEU to a clause which can justify certain limited and proportionate restrictions on EU rights, such as the right to use one's own name or the right to market violent games, in much the same way as the treaty restrictions on free movement such as Article 36 of the Treaty on the Functioning of the European Union (TFEU) can.⁹³ As such, in its current conception, Article 4(2) TEU only offers very limited protection to national identities. This means that, to protect legal supremacy, the psychological reassurance that might be offered by Article 4(2) TEU to avoid feelings of national identity threat and to safeguard perceived legitimacy may remain underused. Consequently, it becomes necessary to explore how Article 4(2) TEU may be used to create better and more effective protection of national identities. Crucially, for that purpose, such protection and recognition of national identities may not require sweeping or absolute limits to EU law. More limited and symbolic protection, giving Member States or national courts a larger role in formulating their own identity under EU law, may already be enough to decrease the perceived threat from EU integration to national identities and values.⁹⁴ The legal challenge then becomes to provide sufficient legal space to Member States and national courts to protect such elements of national (constitutional) uniqueness, without opening up the floodgates and undermining supremacy and the EU legal order as a whole. This remains a legal puzzle, but

⁹¹ See for example Case C-438/14, *Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe* [2016] ECLI:EU:C:2016:40 or Case C-673/16, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* [2018] ECLI:EU:C:2018:385.

⁹² The *Xero Flor* judgment, declaring an ECtHR judgment 'non-existent', demonstrates the risk this has for regional law in general. See *Xero Flor w Polsce sp. z o.o. v Poland* (Polish Constitutional Tribunal Case K 3/21) App no 4907/18 (ECtHR 7 May 2021).

⁹³ See especially Polish Constitutional Tribunal, Poland's EU Membership Case K 18/04, and the German Constitutional Court in its Lisbon judgment 2 BvE 2/08 and its Final Judgment on Quantitative Easing (PSPP) 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15, 2 BvR 980/15. For the much less far-reaching interoperation of the CJEU, see for instance Case C-208/09 *Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien* [2010] ECLI:EU:C:2010:806.

⁹⁴ The treaty exception for *snus* (snuff or dipping tobacco) in Sweden here provides an example of a small limitation of EU law which may have a positive effect on legitimacy.

one that is less intractable than seeing Article 4(2) TEU as a proxy for supremacy or hierarchy of either the EU or the national legal order. Such a puzzle may, for example, also be addressed by including a procedural mechanism where national courts and the CJEU engage in a dialogue on the formulation of national identities, or where the CJEU cedes a limited capacity to national courts in certain well-defined areas to offer a certain level of protection to national identity.⁹⁵

Empirical insights into the other two questions may also raise important legal questions. For example, if individuals with a more conservative moral blend find it morally problematic to treat other EU citizens as equal to their own fellow national citizens, what does that imply for the moral inclusiveness of the right to equal treatment? EU citizens have a right to reside in other Member States and to be treated equally as nationals from those Member States.⁹⁶ Where certain conditions are met, they and their family members may even have a permanent right to reside and a right to complete equal treatment, including full access to social security, schooling, housing, healthcare and other benefits. Moreover, even where EU citizens no longer meet the requirements for lawful residence, for example because they no longer have sufficient means, EU law can severely limit the right of Member States to expel EU citizens from their territory.⁹⁷ This may be perceived as a legal system in which care for and equal treatment of fellow EU citizens is given priority over protecting 'own' citizens and the national social security system, which might be morally problematic to some people. If this is the case, the counter-effects of EU citizenship, established in Article 20 TFEU, become apparent. Whereas this provision was originally intended as a symbolic measure to enhance public legitimacy through the construction of a European identity,⁹⁸ it may turn out to undermine EU legitimacy when citizens do not feel sufficiently connected to other EU citizens and perceive equal treatment and social rights in the EU as a violation of their moral standards. Such an observation could therefore strengthen the case for more restricting judgments, such as *Förster*, *McCarthy*, *Dano* or *Alimanovic*, as opposed to more aspirational judgments, such as *Zambrano*, *Carpenter*, *Baumbast* or *TopFit*.⁹⁹ However, empirical research may also demonstrate that most citizens embrace solidarity with other EU citizens as an important value, and morally reject limitations to equal treatment, which would raise the question whether the balance in CJEU judgments could be readjusted towards more protection of social rights.

More generally, it could be fruitful to investigate the moral inclusivity and legitimacy of EU values, especially as these values are being increasingly legally operationalized by the CJEU.¹⁰⁰ Partially in defence to attacks on EU values such as the rule of law, but also as part of a broader turn towards a 'Union of Values' to legitimate the EU, the CJEU is giving the values in Article 2 TEU and other fundamental principles, including the Charter of Fundamental Rights, increasing

⁹⁵ Cf. in this context the deference to internal organization in Case C-51/15 *Remondis GmbH & Co. KG Region Nord v Region Hannover* [2016] ECLI:EU:C:2016:985 or the organization of the military in Case C-742/19 *B. K. v Republika Slovenija (Ministrstvo za obrambo)* [2021] ECLI:EU:C:2021:597 and Case C-186/01, *Alexander Dory v Bundesrepublik Deutschland* [2003] ECLI:EU:C:2003:146. The ultimate foundation for this capacity of national courts may then remain disputed, as long as the scope of this authority is not.

⁹⁶ See Arts. 20 and 21 TFEU as well as Directive 2004/38 on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member State OJ [2004] L 158/77.

⁹⁷ See recently for example Case C-718/19 *Ordre des barreaux francophones et germanophone and Others v Conseil des ministres* [2020] ECLI:EU:C:2021:505 and Case C-719/19 *FS v Staatssecretaris van Justitie en Veiligheid* [2021] ECLI:EU:C:2021:506.

⁹⁸ R Bellamy, 'Evaluating Union Citizenship: Belonging, Rights and Participation Within the EU' (2008) 12 *Citizenship Studies* 597.

⁹⁹ Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi* [2011] ECLI:EU:C:2011:124, Case C-60/00 *Mary Carpenter v Secretary of State for the Home Department* [2002] ECLI:EU:C:2002:434, Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECLI:EU:C:2002:493, Case C-22/18 *TopFit e.V. and Daniele Biffi v Deutscher Leichtathletikverband E.v.* [2019] ECLI:EU:C:2019:497, Case C-158/07 *Jacqueline Förster v Hoofddirectie van de Informatie Beheer Groep* [2008] ECLI:EU:C:2008:630, Case C-434/09 *Shirley McCarthy v Secretary of State from the Home Department* [2011] ECLI:EU:C:2011:277, Case C-333/13 *Elisabeth Dano and Florin Dano v Jobcenter Leipzig* [2014] ECLI:EU:C:2014:2358, Case C-67/14 *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others* [2015] ECLI:EU:C:2015:597.

¹⁰⁰ See especially Case C-64/16 *Associação Sindical dos Juizes Portugueses v Tribunal de Contas* [2018] ECLI:EU:C:2018:117, C-896/19 *Republika v Il-Prim Ministru* ECLI:EU:C:2021:311, Case C-791/19 *European Commission v Republic of Poland* [2021] ECLI:EU:C:2021:596; and L.D. Spieker, 'Breathing Life Into the Union's Common Values: On the Judicial Application of Article 2 TEU in the EU Value Crisis' (2019) 20 *German Law Journal* 1182; J Wouters, 'Revisiting Art. 2 TEU: A True Union of Values?' (2020) 5 *European Papers* 255; W Schroeder, 'The Rule of Law as a Value in the Sense of Article 2 TEU: What Does It Mean and Imply?' in A von Bogdandy and others (eds.), *Defending Checks and Balances in EU Member States* (Springer 2021).

legal weight.¹⁰¹ The assumption is that stressing and defending these values will increase the legitimacy of the EU. Yet it would be wise to empirically test this assumption. If some of the EU values might actually threaten some groups of EU citizens, and reduce EU legitimacy, this leads to the complex but vital legal question as to whether foundational EU values can be interpreted or complemented in a way that gives more space for moral diversity but also remains normatively and legally acceptable.

A final example in this regard concerns the strengthened protection of minority rights by the CJEU, most notably in *Coman*, by requiring the mutual recognition of same sex marriages, at least for the purposes of residence.¹⁰² EU law provides strong normative protection for equal treatment of minorities and the protection of minorities is one area where, as has been abundantly proved by history, one should not easily surrender to majority sentiments. Yet at the same time, this focus may appear moral to some people but alienate others, potentially affecting perceived legitimacy of the EU. This would then raise the question whether a more morally inclusive approach could be found in EU law, an approach that does not violate the essential normative commitment to minority rights yet designs and justifies their protection in a more inclusive manner. The question of whether one *should* then also include more conservative values in EU law of course remains a normative one for the EU legislature, the CJEU and the EU voters. More generally, this relates to the question of how EU law should deal with value pluralism and the norm conflicts it creates. Clearly, as the above two examples on equal treatment and minority rights illustrate, divergence in deeply rooted moral values may be prevalent in a pluralistic society such as the EU. This therefore necessitates a reconsideration of how disagreement over these values can be solved by EU law, without undermining the effectiveness and coherence of the EU legal order.

In conclusion, although flexibility through substantive changes to rules and policies is an accepted practice in the EU, especially in times of crisis,¹⁰³ pursuing the path of legal and institutional reform raises questions of legal feasibility to be addressed by lawyers. Therefore, a collaboration between social scientists and lawyers is needed to embrace the challenge of bridging the fact-value gap, and to make the EU more legitimate for all its citizens, including the apparently growing number of citizens who now feel threatened by EU integration, in their personal and/or group values, and are increasingly making this known at the ballot boxes and elsewhere.

COMPETING INTERESTS

The authors have no competing interests to declare.

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¹⁰¹ Cf. also the discussion in Section 4.3 above highlighting how Commission Presidents Juncker and Von der Leyen increasingly turned to a narrative of values in their speeches.

¹⁰² Case C-673/16, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* [2018] ECLI:EU:C:2018:385.

¹⁰³ J Bois and J Piquer, 'A Two-Way Street: Flexible and Rigid Legitimation Across Actors and Policies in the EU' in C Lord and others (eds.), *The Politics of Legitimation in the European Union: Legitimacy Recovered?* (Routledge/UACES Contemporary European Studies 2022).

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