

GUIDELINES FOR RESEARCH PROJECT PROPOSALS

The project should extend within the number of characters specified by the PhD courses in the PhD information sheets (Annex A of the call), and should be structured as indicated below:

1. Title of the Research Project and keywords

Treaty-making power of international organisations: The EU-Ukraine migration agreements

2. Research Area (please specify the discipline)

https://www.cun.it/uploads/storico/settori_scientifico_disciplinari_english.pdf

IUS/13 DIRITTO INTERNAZIONALE

3. General presentation of the project and state of the art

The international personality of international organisations (OI) represents a crucially important issue in international law since it defines the capacity of such entities to act autonomously on the international scene, concluding treaties, exercising rights and assuming obligations. The international personality of OI exemplifies itself through various profiles: the power to conclude international agreements, the ability to participate in international litigation, recognition by other international actors and the exercise of autonomous rights and obligations from its member states (Focarelli, 2019). The European Union (EU) represents an anomalous and particularly complex case in the landscape of international organisations. Indeed, since its establishment, the EU has developed a unique legal personality and a 'multi-faceted' capacity for external action (Keukeleire et al., 2014).

Precisely regarding this specificity of the EU, this research project aims to examine the extent to which the EU's competence to conclude international agreements with third states can be influenced by the growing need for flexibility and differentiated integration while remaining in line with the fundamental values identified in Article 2 of the Treaty on European Union (TEU). One aspect of particular interest concerns the extent to which international obligations on migration apply to the EU. This represents a significant topic for further study, considering the impact of European migration policies and the EU's competence in immigration, asylum and border control vis-à-vis Member States' interests. In particular, through the conclusion of migration agreements with Ukraine - a case whose relevance will be addressed below - the project attempts to identify the EU's capacity to act cohesively.

Today's increasingly interconnected global society requires a new capacity for analysis to ensure greater effectiveness of the initiatives implemented by the various actors in the international economy and politics. In a very short time, geopolitical conflicts and global pandemics have questioned many mechanisms and rules that make the EU an integrated and mutually supportive space, risking undermining the integration process (Adam & Tizzano, 2020). Globalisation, characterised by the emergence of regional forms of integration, increased investment and the rise of new international players, is progressively slowing down. According to some authors, the return of protectionist policies, the disruption of global supply chains and

economic sanctions have led to a new phase of 'deglobalisation' (Antràs, 2020) or 'unbundling' (Baldwin, 2006).

IO play a key role in encountering the challenges of the post-1945 International Community. These institutionalised bodies of cooperation between states with disparate interests offer the opportunity to pursue objectives that, by nature or extent, now require a joint effort. The literature has long highlighted the sui generis character of the EU, characterised by 'multi-faceted', 'multi-method' and 'multi-level' governance (Keukeleire et al., 2014).

The most apparent manifestation of international subjectivity is the ability of IOs to conclude international agreements with member and non-member states, the power of 'treaty-making' (Klabbers, J., 2009). Of particular relevance remains the case of the European Union, which was given a single legal personality through the 2007 Lisbon Treaty (Adam & Tizzano, 2020). This innovation gained the consensus of states to guarantee legal certainty and affirm the identity of the EU on the international stage.

The variety and importance of the topics in which the institutions were called upon to exercise their competencies under the founding treaties explain why a solid external projection characterised the European integration process from the outset (Adam & Tizzano, 2020). A complete exercise of these competencies did not allow the action of the institutions to concern only the 'intra-community' profiles of these matters without also involving those relating to relations with the outside world. On the other hand, the gradual consolidation of the internal market and other common policies fuelled an increasing interest of third countries in establishing direct relations with European institutions (Adam & Tizzano, 2020).

The concept of 'external action' covers the multitude of policies and actions that the EU undertakes internationally. Initially, with the 1951 European Coal and Steel Community (ECSC) Treaty, this policy was mainly related to the European Economic Community (EEC) trade relations. However, in light of the changes following the end of the Cold War, the Maastricht Treaty of 1992 significantly reformed the strategy (Kenner, J., 2011). This Treaty extended external economic relations while promoting cooperation in the political and defence spheres. Article 24 TEU, after the 1997 Treaty of Amsterdam, gave the Union the power to conclude international agreements, giving new life to the debate about the EU's legal personality. However, the rule in question could not, as it stood, give rise to unambiguous conclusions, as its wording did not make it possible to clarify the legal nature of the agreements in question: in other words, it was not clear whether they were to be considered agreements concluded by the EU in its own name, mixed agreements, or agreements belonging to the member states (EU-Turkey joint action plan, 2016). Further changes occurred in 2007 with the Lisbon Treaty, which divided the EU's external action into two main components: EU Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP)

As is well known, where the EU uses the supranational integration method for material policies, it uses the intergovernmental method for CFSP and CSDP. This dichotomy has a different impact on the EU's role on the international scene. Indeed, the integration method allows the Union to achieve significant results through qualified majority voting; conversely, the unanimity required by the intergovernmental method may limit its political influence (Pirozzi et al., 2022). It is, therefore, necessary to investigate the effects of this dichotomy on the overall coherence of the Union's external action.

The problem of unanimity when signing international treaties has two aspects. First, the opposition of one state can block all the others. Secondly, a downward compromise undermining the act's scope is the only way to achieve unanimity. In this respect, it is helpful to dwell on the legislative evolution in this area, while the TEC provided in Art. 300 TEC for the capacity to conclude international agreements; the original version of the TEU contained no such provision. In 1997, the Treaty of Amsterdam provided for the possibility of the EU concluding international agreements with one or more third States or IOs on matters falling under the second and third pillars (Art. 24 TEU, applicable, by the reference made by Art. 38 TEU, also to the third pillar). Finally, the Lisbon Treaty recognises the EU's capacity to conclude agreements with third states and IOs. However, the EU's external competence is not unlimited in scope: this is because it is subject to the principle of attributed competence (Art. 5 TEU) (CJEU, Opinion 2/94 of March 1996, EC accession to the ECHR); in fact, the EU's international law subjectivity coexists with that of the Member States. Therefore, the subject of agreements concluded by the EU poses two distinct problems: 1. identifying the areas in which the EU has competence; 2. the nature of these competencies, exclusive or shared (Mignolli, A., 2002).

These competencies are currently defined in Articles 3(2) TFEU and 216 TFEU. In particular, the Treaties provide for two types of external competencies: (a) regulatory external competencies and (b) parallel external competencies. The former are those specifically mentioned in the Treaties, such as agreements on the common commercial policy (former Article 207 TFEU) and association agreements (Article 217 TFEU). In contrast, parallel external competencies were specified by the 1971 AETR judgment. This ruling established that the EU may enter into international agreements in all areas in which it has the power to adopt internal acts. When the relevant area falls within the regulatory perimeter of Art. 3 TFEU, the Union has exclusive competence to conclude any agreements; in contrast, Art. 4 identifies cases of shared competence (Delreux, T., 2009). However, as far as CFSP-ESDP is concerned, no such classification applies. Examples of the complexity of this framework are Decision (EU) 2017/1247 and Decision (EU) 2017/1248 on the conclusion, on behalf of the European Union, of the 2014 Association Agreement with Ukraine. Among the wide range of areas covered, the sensitive issue of migration is illustrative. Recently regulated by Council Implementing Decision (EU) 2022/382 of 4 March 2022, the Union has ascertained the existence of a mass influx of refugees from Ukraine, as provided for such cases in Article 5 of Directive 2001/55/EC, and introduced a new temporary protection mechanism. According to that decision, "Member State which has a more favourable national regime than that provided for in Directive 2001/55/EC should be able to continue to apply it", thus setting a new standard in immigration matters. It should nevertheless be emphasised that the EU has, in the field of immigration, a shared competence to develop a common policy. In other words, it possesses a supportive, complementary and coordinating competence in this field that does not have a preventive effect on the competence of the Member States, as the Union has no normative competence over the criteria and modalities of integration of legally resident third-country nationals (Neframi, E., 2011).

The Association Agreement with Ukraine promotes rapprochement between the parties, strengthens political dialogue and cooperation, and respects democratic principles, the rule of law, human

rights and fundamental freedoms. The parties strengthen dialogue and cooperation on migration, asylum and border management, fight organised crime and money laundering, and promote people-to-people contacts. The agreement includes the intention to introduce visa-free travel to the Union for Ukrainian citizens, provided the conditions for well-managed and secure mobility are in place (Association Agreement between Ukraine and the European Union, 2014).

It should also be emphasised that the Union pursues the controversial policy of conditionality as a distinctive element of its ability to conclude international agreements.

Articles 21 and 22 in Title V set the general principles and objectives. Article 21(1) lists the principles and objectives of the Union's external action: democracy, rule of law, human rights, dignity, equality, solidarity, and respect for the principles of the United Nations Charter. The objectives include safeguarding the fundamental values and interests of the Union, security, independence, integrity of the Union, consolidation of the rule of law and principles of international law. A further aim is the preservation of the Union itself. Article 205 TFEU, introducing Title V TFEU, states that the EU's external action shall be based on the principles and pursue the objectives outlined in Article 21 TEU.

About agreements, the Union's posture, initially characterised by an approach of ideological neutrality, has now shifted towards a policy of conditionality. The turning point is the Human Rights Resolution, adopted by the Luxembourg European Council in November 1991, which sets the guiding parameters for external action with third states (Lang et al., 2017).

More specifically, the policy of conditionality is derived from the combination of interpretative clauses included in the international agreements of the EC (before) and the EU (today), which make the granting and maintaining aid conditional on respect for human rights and democratic principles. This system allows the EU concerted interference in the internal affairs of the offending state. In other words, the protection of human rights constitutes the legal asset whose protection is the counterpart of development aid (Common Approach on the use of political clauses, approved in 2009 by COREPER).

4. Research Objectives

This research project aims to examine how the growing need for flexibility and differentiated integration can influence the Union's competence to conclude international agreements with third states while remaining in line with the fundamental values identified in Article 2 of the Treaty on European Union (TEU).

5. Methodology and Expected Results

The research will be conducted according to qualitative methodological criteria, which are particularly useful for gaining insights into the functioning of legal systems (Webley, 2010) and considering social contexts and the complexity of natural social phenomena.

In particular, as a method of data collection, one benefits from the opportunities provided by document analysis, a systematic procedure of reviewing or evaluating documents, which requires data to be examined and interpreted in order to derive meaning, gain understanding and develop empirical knowledge

(Corbin & Strauss, 2008; see also Rapley, 2007). Content analysis allows the researcher to take a theoretical stance that frames the development of their research criteria and inferences made from the texts (Krippendorff, 2003); to analyse the texts within their social, cultural, economic and political contexts (Short 1995); and to consider the latent features of the texts and any missing parts (Elo et al., 2014). The analytical procedure involves the retrieval, selection, evaluation (the attribution of meaning) and synthesis of data contained in documents. Among the documents to be examined for this project, the following are of particular importance: European migration laws; the founding treaties of the EU; national laws on migration and the right of free movement; and soft law documents related to the subjects mentioned above, using EUR-Lex as a search engine.

Another method envisaged for achieving the intended objectives is the constant comparative method (Glaser & Strauss, 1967), thanks to which it is possible to retrace the steps that have marked the conclusion of international agreements by international organisations and third states.

The expected result is to observe which agreements signed with Ukraine have involved the EU as a unified, supranational actor and which, on the other hand, due to the asymmetrical preferences of the member states, depart from the intended goals of coherence and unity.

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Description of the research in the three-year period (feasibility)

This research project aims to examine *how the EU's competence to conclude international agreements with third states can be influenced by the increasing demands for flexibility and differentiated integration while remaining in line with the core values identified in Article 2 of the TEU*. Thus, the relationship between centripetal forces leading to further and accelerated integration among some EU members (differentiated integration), centrifugal forces leading to fragmentation among members (differentiated disintegration), and cooperation between member states and third countries (external

differentiation) will be observed (Pirozzi et al.; M., 2022). To this end, the Association Agreement concluded with Ukraine in 2014 is an ideal sample for further investigation, especially about managing migratory flows, particularly regarding the principle of attribution (Art. 5 TEU).

In general, the European Union has progressively adopted various regulatory frameworks to regulate migration flows through resettlement programmes and policies to attract highly skilled workers, students, researchers and seasonal workers. Regarding migration flows related to asylum applications, the EU has established common minimum standards for the processing of such applications (Regulation (EU) No. 604/2013; Directive 2013/32/EU: Common procedures for granting and withdrawing international protection; Directive 2013/33/EU on standards for the reception of applicants for international protection).

The new Pact on Migration and Asylum has also set itself the goal of easing the burden on the EU countries where most migrants arrive, providing a fairer and more efficient framework for registering and processing asylum applications and helping to reduce secondary movements. However, the onus will be on Member States, regions and local authorities, in cooperation with relevant associations and authorities in the countries of origin, to foster the integration of legally present foreign nationals, even if, as mentioned, migration policies in Ukraine demonstrate characteristics of uniqueness.

Firstly, the debate on the legal personality of international organisations, especially the EU's ability to conclude international agreements, the most evident manifestation of its international personality (Crane, A., 2019), will be explored through an in-depth study of the relevant literature and data collection.

Subsequently, we will examine the evolution of the anomalous case of the European Union and its external action, the dissimilarity of which still leads to different management of material policies. As mentioned, where economic relations find perfect effectiveness in the method of integration, cooperation between member states in CFSP and CSDP follows 'specific rules and procedures' (Article 24 TEU), with pre-eminence of bodies of an intergovernmental nature.

In conclusion, the data collected and an accurate snapshot of the state of the Art will allow us to understand the extent to which international migration obligations apply (or do not) to the EU.

Per i Dottorati che prevedono una Call a tema per i progetti, naturalmente il titolo dovrà essere strettamente attinente al tema.

As far as PhD implying a Call focused on a specific issue, the title is expected to be closely connected to the topic.