

## Summary and general conclusion

This study approached the democratic and civic deficit, which is often ascribed to the EU, from the educational perspective. That involved a double challenge, relating, on the one hand, to the concept of ‘citizenship education’ and, on the other, to that of ‘EU citizenship’.<sup>2459</sup> Both concepts are to varying degrees, the subject of controversy in scholarship, yet need to be defined in order to address the issue of ‘EU citizenship education’. From the outset, taking democracy seriously, I advocated not waiting until all the uncertainties about the two concepts have been resolved, but rather setting out immediately to examine the possible significance of adding an EU dimension to national citizenship education programmes, seen from the legal perspective.

To start with, firm anchor points had to be identified, founded on a sufficiently wide consensus among EU Member States, at either EU level itself or at the international level (the Council of Europe or the UN). Three anchor points were used: first, the concept of Education for Democratic Citizenship (EDC), interlinked with Human Rights Education (HRE), as defined in the Council of Europe Charter on EDC/HRE; second, EU citizenship as expressed in the EU Treaties; and third, the right to education in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).<sup>2460</sup> As can readily be seen, the first and the third anchor points relate to norms which are exogenic to EU law. The Council of Europe Charter on EDC/HRE was chosen as the prism through which to look at the EU dimension to be added to national citizenship education, mainly because it establishes neutral standards for citizenship education accepted by all the EU Member States in their capacity as member states of the Council of Europe.<sup>2461</sup> This Charter provides guidance for discovering the additional content needed in national citizenship education programmes for nation states which are EU Member States. The use of exogenic norms for the first and the third anchor points made it necessary to carry out an in-depth analysis of the legal status of such norms in the EU legal order. This analytical

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2459 §§ 5 6 .

2460 § 9 .

2461 § 129 .

framework underpinned the research question of this study: what are the implications for citizenship education of EU citizens of a combined reading—as to form and substance—of the provisions on Education for Democratic Citizenship in the Council of Europe Charter on EDC/HRE, on EU citizenship in the EU Treaties, and on the right to education in the ICE-SCR and CRC?<sup>2462</sup>

The answer can now be articulated in four steps.

The *first step* is taken in Part one of the study, which draws on the Council of Europe legal order. Here it is concluded that the EDC concept and principles of the Charter on EDC/HRE form a reliable and neutral anchor point. The Charter contains a commonly accepted general concept of citizenship education. It can fulfil an interpretative function as a common European standard of great weight since it rests on a wide European consensus (including all EU Member States). Therefore throughout the study ‘EDC standards’ refer to the Charter’s definition of EDC, interlinked with HRE, and its objectives and principles.<sup>2463</sup> The EDC components which specify the objectives of empowerment are essential: EDC aims to empower learners (c-1) to exercise and defend their democratic rights and responsibilities in society, (c-2) to value diversity, and (c-3) to play an active part in democratic life.<sup>2464</sup>

The *second step* is taken in Part two (Parts two, three, and four concern the EU legal order), in essence to meet the possible objection that the Charter on EDC/HRE has no binding force within the Council of Europe legal order, thus diminishing its legal significance within the EU legal order. That necessitated a close analysis of the different modes of reception of a wide variety of exogenic norms in the EU legal order. The spectrum ranged from—strongest mode as to legal effects—EU accession to conventions (mode 1), through reception via general principles of EU law (mode 2), reference to the title of exogenic instruments (mode 3), incorporation of the substance of exogenic instruments (mode 4), to—the weakest mode of normative reception—sharing inspiration and *de facto* cooperation (mode 5). Judicial interpretation complements these modes of reception (mode 6). At all times, reception must respect the autonomy of the EU legal order (red line).<sup>2465</sup> EDC standards are mostly received in modes 4 and 5. Occasionally, the title of Council of Europe instruments on EDC is

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2462 § 10.

2463 § 74.

2464 § 27.

2465 I.a. §§ 81 97 121 130.

referred to (mode 3). The EU thus acknowledges EDC standards, which are a shared priority according to the Memorandum of Understanding between the Council of Europe and the EU. When taken into account in the interpretation of EU law (mode 6), EDC standards harmoniously fit with EU primary law, as they are linked to the EU's foundational values of democracy, respect for fundamental rights and the rule of law enshrined in Article 2 TEU.<sup>2466</sup>

The *third step* is taken in Part three, which constitutes the major part of the study. A substantive analysis is carried out of the meeting points between EDC standards and EU law. The rights and obligations of EU citizens are mapped and screened for their relevance for the EU dimension of EDC in mainstream education according to four criteria: (i) do they provide additional content to national EDC, (ii) is this content significant, i.e. relating to foundational (EU primary law) values, objectives and principles, (iii) do they invite critical thinking, and (iv) do they affect the large majority of EU citizens, including static citizens?<sup>2467</sup> The effects of a combined reading of EDC standards and EU law are considerable. EU law impacts in such a decisive and specific way on the EDC components that without an EU dimension, EDC in Member States is no longer adequate.

As to the first criterion (i), rights of EU citizens provide *additional* content to national EDC. Educational substance is added to the EDC components of knowledge, skills and understanding, attitudes and behaviour (b), and to the three empowerment aims (c-1–3). All the rights and obligations flowing from the TEU, TFEU and CFR add to EDC component (c-1) on exercising and defending democratic rights and responsibilities in society. The EU dimension of EDC should empower learners to exercise and respect these rights and responsibilities. Viewed through the lenses of EDC standards, EU citizens' rights are not limited to the classic citizenship rights listed in Articles 20–24 TFEU (conferred in the Maastricht Treaty) and the non-discrimination rights linked to free movement (Article 18 TFEU).<sup>2468</sup> EU citizens' rights are widened to include the political participation rights based on Title II TEU (conferred in the Lisbon Treaty, Articles 9–11; also 14(3) TEU).<sup>2469</sup> EU citizens are, moreover, holders of rights and bearers of obligations generated by EU law in various policy areas.<sup>2470</sup>

2466 I.a. §§ 22 115 116 118 124 125 145 .

2467 §§ 151 157 .

2468 §§ 186 215 .

2469 §§ 216 236 .

2470 § 238 .

Through the principle of direct effect, a whole series of Treaty provisions directly confer rights to citizens, independently from national law. Most EU rights, however, are contained in EU legal instruments not enjoying direct effect, but invokable as a standard for consistent interpretation of national law based on the primacy of EU law. Learning about EU rights and obligations in an area without internal frontiers inevitably adds content to EDC component (c-2) to empower citizens to value diversity, including respect for the fundamental rights of every individual. A number of EU rights directly concern EDC component (c-3) empowering citizens to play an active part in democratic life. The—often forgotten—EU citizenship right to participate in the democratic life of the Union (Article 10(3) TEU) relates to representative and participatory democracy and is expressed in specific rights, such as the right to vote for the European Parliament, to submit an ECI, to petition the European Parliament, or to apply to the Ombudsman.

As to the second criterion for relevance for mainstream education (ii), EU rights and obligations add *significant content* to national EDC to the extent that they relate to foundational values, objectives and principles laid down in EU primary law, the DNA of the system. The principle of conferral is frequently shown to be central to the EU dimension at school.<sup>2471</sup>

The third criterion, *inviting critical thinking* (iii), was not hard to fulfil. The case teaching method is particularly appropriate in this respect. The proposed learning method, based on the two pillars of EU primary law and case teaching, helps to convey the EU dimension of EDC in an objective, critical and pluralistic manner, with no aim of indoctrination, as required by the ECtHR.<sup>2472</sup> Several stories are used to illustrate how active citizens have defended their EU rights or been required to respect their EU obligations, providing food for debate. Case teaching can, furthermore, be seen as good practice for educating citizens to respect the values in Article 2 TEU and the CFR, values to be fostered as part of ‘citizenship competence’ within the meaning of the 2018 Council Recommendation on key competences for lifelong learning and the basis for a growing EU identity.

Finally, much of the proposed content for the EU dimension *affects the large majority of EU citizens, including static citizens* (fourth criterion, iv). The mobile /static citizens dichotomy does not correspond to reality. Free movement rights are relevant for the majority of EU citizens in multiple ways: all EU citizens enjoy these rights and can exercise them in various

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2471 I.a. §§ 172 209 .

2472 § 163 .

forms and degrees of intensity. Living in an area without internal frontiers, citizens should moreover be aware of the implications of the mobility rules.<sup>2473</sup> EU law impacts on the daily life of EU citizens, including those who stay within the boundaries of their own Member State. To sum up, rights which static citizens derive from EU law include the right to vote for the European Parliament; the right to petition the European Parliament, to apply to the European Ombudsman, and to communicate in a Treaty language; the rights in participatory democracy, such as the ECI; all rights based on the direct effect and/or primacy of EU law (consistent interpretation of national law), combined with the right to effective judicial protection; fundamental rights when situations fall within the scope of EU law (even at home); rights related to the free movement of goods and services in the internal market (at home); rights based on the implementation of EU directives in national law (interpretation of national law in accordance with directives; autonomous EU concepts); rights in the area of freedom, security and justice; rights resulting from EU harmonisation (e.g. with regard to health, safety, food control, etc.); equality rights (non-discrimination on various grounds); working-time rights; privacy rights; consumer rights, such as protection against unfair terms in consumer contracts and rights with regard to the sale of consumer goods; rights in the digital single market; environmental rights, etc.<sup>2474</sup> A range of EU obligations correspond to these rights. In addition to the rights of static citizens, the increasingly important EU dimension of democratic life within the Member States was emphasised. In order to meaningfully exercise their national political participation rights—and to strengthen democratic legitimacy—static citizens need an awareness of the EU dimension of national politics and its effect on their daily lives. To the extent that Member States are actors in EU governance and that the EU exercises public power, the quality of democracy at EU level is contingent on the quality of democracy at national level, which is in turn contingent on EDC and its EU dimension. The EU is ‘work in progress’ for all EU citizens, including the static ones. The EU dimension of EDC starts from the state of play in EU law and prepares the way for the next logical step by enabling citizens to participate in the best possible way. Bringing EU citizens on board in practice, beyond the rhetoric of democracy, calls for the education of Member State nationals in their capacity as EU citizens, empowering them for action at various levels.

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2473 § 196 .

2474 I.a. §§ 254 255 258 260 262 .

To conclude, on the basis of EU law the third step identified substantial content for the EU dimension of EDC in mainstream education satisfying the four criteria (i)-(iv). The rights which citizens (in various capacities) derive from EU law are not thin, pale, or uncertain.<sup>2475</sup> They are broader and more significant than is often perceived in political or social science. The perception indeed persists that EU citizenship is in essence something of relevance only for mobile citizens, relating to the equality of treatment of citizens who move to another Member State.<sup>2476</sup> However, when one looks at EU law as a whole, the full significance of EU citizenship for nationals of Member States emerges. The question as to whether EU citizenship is sufficiently mature to justify the adaptation of citizenship education can be turned around: how mature is national citizenship education without an EU dimension, given the present state of EU law and its impact? EU law has become an essential part of the national legal orders and has led to additional rights and obligations for EU citizens. EDC must keep pace with EU law. In EU Member States quality education is no longer conceivable without an EU dimension.

Content for the EU dimension in education should, of course, not be limited to rights and obligations. Yet they may form the core of the EU dimension to EDC, as EU rights and obligations impact on all three empowerment aims of EDC and require additional knowledge, skills and attitudes. Moreover, rights and obligations provide a secure starting point from which the perspective can be widened and deepened to reflect on foundational values, objectives and principles of the EU reaching into cognitive and affective-behavioural domains.

The *fourth and final step*, in Part four, answers the question as to who has the competence to provide for the EU dimension to be added to national citizenship education. The EU enjoys conferred competence to support and supplement Member State action providing an EU dimension in national citizenship education programmes.<sup>2477</sup> This conclusion is reached through an analysis of the main terms used in the legal basis in Article 165 TFEU, i.e. quality education, the European dimension in education, and the participation of young people in democratic life in Europe. The central competence-conferring notion of quality education is properly understood by reference to the international right to education in the ICESCR and CRC (the third anchor point). Quality education comprises education

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2475 Text to n 1017.

2476 Text to n 1809.

2477 § 282 .

directed to the preparation of learners for effective participation and responsible life in a free society and to strengthening respect for human rights, and must thus include education for human rights and democracy.<sup>2478</sup> This corresponds to EDC/HRE standards in the Charter on EDC/HRE. Furthermore, the EU dimension of EDC is included in the specific competence-conferring indent ‘developing the European dimension in education’ and finds further support in the indent ‘encouraging the participation of young people in democratic life in Europe’.<sup>2479</sup>

The EU however only has supporting competence allowing it to adopt incentive measures, which have legislative status, or Council recommendations.<sup>2480</sup> There cannot be any preemption of Member State competence. The Member States remain the principal bearers of competence in education and the EU must fully respect the responsibility of Member States for content of teaching. The analysis combines a reading of the competence conferred on the Union with the autonomy of the Member States by concluding that the EU can promote key competences and learning outcomes for school curricula, and encourage Member States to adopt them, while the Member States remain free to take their own decisions on learning content and learning processes.<sup>2481</sup> This combined reading gives full effect to both the competence conferred on the EU and the constitutional protection of the Member States for their educational autonomy. The study has thus nuanced the widespread idea that the EU lacks relevant competence in citizenship education.<sup>2482</sup>

It has furthermore been argued that EU action to support the EU dimension of EDC respects the conditions of subsidiarity and proportionality: Member States are not sufficiently achieving the objectives of the EU dimension in EDC (evidence of absent or fragmented EU learning in reports) and EU action has clear benefits. Yet, in the exercise of its competence, the EU should not go further than necessary. Specific suggestions made are the establishment of a Reference Framework on Education for Democratic Citizenship and its EU Dimension, and the creation of an EU Agency for Education for Democratic Citizenship, clearly respecting the Member States’ competence in education.

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2478 §§ 288 291 294 .

2479 § 298 .

2480 § 314 .

2481 § 317 .

2482 Text to n 83.

For their part, Member States must respect general EU law when they exercise their competence in education. That applies in particular where Member States are obliged to respect binding EU legislative acts containing incentives for educational actors other than themselves, such as funding or quality labels to be awarded to schools or learners.<sup>2483</sup> Member States must also have regard to obligations corresponding to the international right to education in binding agreements and to commitments made on EDC standards in the Council of Europe, all of which constrain their margin of appreciation.

Based on the conclusions reached in the four steps of this study, I propose this preamble to an EU legislative act on EDC and its EU dimension as a comprehensive answer to the research question:

*Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 165 and 166 TFEU thereof,*

*(...)*

- (1) Whereas a European consensus exists on the need, the concept and principles of education for democratic citizenship and human rights, as expressed in the Council of Europe Charter on Education for Democratic Citizenship (EDC) and Human Rights Education (HRE).*
- (2) Whereas EDC standards of the Council of Europe are not EU law and—as to their form—only have indirect effects in the EU legal order via partial normative reception and via an interpretation of EU law taking EDC standards into account while respecting the autonomy of the EU.*
- (3) Whereas EU law provides relevant content for the EU dimension to be incorporated into national EDC in mainstream education (hereafter ‘the EU dimension of EDC’).*
- (4) Whereas the content of the EU dimension of EDC is additional to national EDC; is significant, i.e. relating to foundational values, objectives and principles of the EU (based on EU primary law); invites critical thinking; and affects the large majority of EU citizens, including ‘static’ citizens.*
- (5) Whereas the EU dimension of EDC empowers EU citizens to exercise and respect the rights and obligations provided for under the Treaties and the Charter of Fundamental Rights of the EU, empowers to value diversity and to play an active part in democratic life at EU and at Member State level.*
- (6) Whereas competence has been conferred on the EU to support and supplement Member State action in order to contribute to the development of quality education, to the European dimension in education and to encour-*

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2483 § 315 .



aging young people to participate in democratic life in Europe, and to do so by providing incentives and making recommendations (Article 165 TFEU).

- (7) Whereas quality education comprises education directed to the preparation of the learner for effective participation and responsible life in a free society, and to strengthening respect for human rights and fundamental freedoms, as stated in the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and therefore includes education for democratic citizenship and human rights.
- (8) Whereas the Member States are invited to take more action to provide such education, including its EU dimension.
- (9) Whereas quantitative and qualitative indicators reveal that Member States do not sufficiently achieve the objective of quality education including an EU dimension in education for democratic citizenship; whereas EU action to support the EU dimension has added value compared to the fragmented action at national, regional, local or school level (respect for the principles of subsidiarity and proportionality).
- (10) Whereas defining learning outcomes for the EU dimension in EDC does not disproportionately interfere with freedom rights in education to the extent that they are necessary in a democratic society and genuinely meet objectives of general interest recognised by the Union and the need to protect the rights and freedoms of others.

EU citizenship is evolving.<sup>2484</sup> The 1992 Maastricht Treaty inserted EU citizenship into the Treaty and connected it to a limited list of citizenship rights. The 2009 Lisbon Treaty connected EU citizenship to the provisions on democratic principles in Title II TEU. Ten years later, the time has come to connect EU citizenship and democratic principles with EDC standards in mainstream education. Incorporating an EU dimension in EDC empowers citizens in their double role as national citizens and EU citizens and contributes to the dual democratic legitimacy of the Union, thus enhancing its social legitimacy. With a view to consolidating a Union based on the values of Article 2 TEU, going beyond a merely economic rationale, the European public sphere needs an educational substratum.<sup>2485</sup>

2484 S O'Leary, *The Evolving Concept of Community Citizenship: From the Free Movement of Persons to Union Citizenship* (European Monographs 13, Kluwer 1996).

2485 Central question 'Wie entstehen Öffentlichkeiten in der transnationalen Konstellation?' in C Calliess and M Hartmann, *Zur Demokratie in Europa: Unionsbürgerschaft und europäische Öffentlichkeit* (Mohr Siebeck 2014) 150. See n 117.

