

# Introduction

## 1 *Why a study on this subject?*

This study deals with the education of pupils as EU citizens in schools. 'Schools' are defined as institutions delivering primary and secondary education, by contrast with higher education institutions.<sup>4</sup>

The introduction first outlines two contrasting observations and the problem which gave rise to the idea for this study. It then points to the challenges inherent in formulating an adequate response and proposes three anchor points to that effect. Finally, it formulates the questions which this study aims to answer, explains the method used, and the general objectives pursued throughout.

## *Contrasting observations*

### 2 *High importance of the EU*

The starting point is a puzzling contrast between two observations: the high importance of the EU in public life and the low importance of EU learning in many schools.

Europeanisation has multiple aspects and is difficult to quantify, yet its existence cannot be denied.<sup>5</sup> The paradigm of the 19<sup>th</sup> century nation state, perceived as being exclusively sovereign within its territory, has shifted.<sup>6</sup>

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4 See Charter on EDC/HRE, para 2(c) on formal education; and text to n 1041 for a definition of formal learning (in schools). Definition of 'higher education institutions' in Regulation 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions 1719/2006, 1720/2006 and 1298/2008 [2013] OJ L347/50 (Erasmus+ Regulation 1288/2013), Art 2 (14); Commission Proposal for a Regulation of the European Parliament and of the Council establishing 'Erasmus': the Union programme for education, training, youth and sport and repealing Regulation (EU) No 1288/2013, COM(2018) 367 final, Art 2.

5 Formulated alternatively as 'The EU impinges directly on national policy-making': B Kohler-Koch and B Rittberger, 'The "Governance Turn" in EU studies' (2005) 44 JCMS 27, 35.

6 F Ost and M van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit* (Facultés universitaires Saint-Louis 2002); HCH Hofmann, GC Rowe and AH Türk, *Administrative law and policy of the European Union* (Oxford University

Nations have gradually opened their borders. In the initial phase, they accepted the exercise of powers by the authorities of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC, vertical opening of borders). In the second phase, they started recognising the decisions of other Member States (horizontal opening of borders). In the third phase, nation states have become integrated in networks.<sup>7</sup> As a result, EU measures now affect the everyday life of citizens in many respects. EU action is not limited to the internal market, but includes policy areas such as the environment, public health, or consumer protection. With the development of an area of freedom, security and justice, the EU reaches into ever more fields traditionally seen as a matter of national sovereignty, such as criminal law, immigration, asylum, security and defence policy.<sup>8</sup> In response to refugee crises, the EU adopts quotas,<sup>9</sup> and in the face of global financial crises, the EU asks for sacrifices, taking from some and giving to others. EU measures in the context of economic and monetary union (adopted in accordance with the ordinary legislative procedure) aim to enhance the coordination and surveillance of budgetary discipline and to reinforce economic governance of the Eurozone.<sup>10</sup> Newspapers report on a daily basis on the implications of EU membership ('EU

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Press 2011) 5; K Nicolaïdis, 'European Democracy and Its Crisis' (2013) 51 *JCMS* 351, 366: European peoples have progressively left the shores of state sovereignty.

- 7 Hofmann, Rowe and Türk, *Administrative law and policy of the European Union* 5–11, with ECSC and EEC case law (first shift), Case 120/78 *Rewe-Zentral (Cassis de Dijon)* ECLI:EU:C:1979:42 and the subsequent line of case law (second), and integrated administration (third). See in general, legal pluralism, Ost and van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit*; M Delmas-Marty, *Ordering Pluralism. A Conceptual Framework for Understanding the Transnational Legal World* (Hart 2009); M Avbelj and J Komárek, *Constitutional Pluralism in the European Union and Beyond* (Hart 2012).
- 8 Evolution in several fields, see P Craig and G de Búrca, *EU Law: Text, Cases, and Materials* (6th edn, Oxford University Press 2015); A Rosas and L Armati, *EU Constitutional Law: An Introduction* (Hart 2018) i.a. 12; K Lenaerts, 'L'apport de la Cour de justice à la construction européenne' (2017) 25 *Journal de droit européen* 134 (impact of EU law on several delicate issues during the last 30 years).
- 9 Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L248/80; Joined Cases C-643/15 and C-647/15 *Slovakia and Hungary v Council* ECLI:EU:C:2017:631.
- 10 Regulations in 'six pack' in 2011 (OJ [2011] L306); 'two pack' in 2013 (OJ [2011] L140). See i.a. Art 136 TFEU.

cautious with German dieselplan' or 'France gets three months to tweak budget') and speculate on the implications of Brexit.<sup>11</sup>

A substantive part of public power—legislative, executive as well as judicial—is exercised jointly by the EU and its Member States. Europeanisation of national law takes many different forms.<sup>12</sup>

By signing the Treaties, Member States agreed to limit their sovereign rights and created a common legal order which became an integral part of their domestic legal orders. The principle of the primacy of Union law, inherent in the specific nature of the EU<sup>13</sup> and a crucial corollary to the equality of Member States, is stated in a declaration annexed to the Lisbon Treaty.<sup>14</sup> The European Court of Justice (ECJ) has confirmed that 'it follows from well-established case-law that rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of European Union law'.<sup>15</sup> National courts and administrations have an obligation to interpret national law in conformity with Union law and a duty to set aside conflicting national rules. In this context, national legislation voted within national parliaments—and even constitutional law—may become inapplicable. Every Member State body must ensure the full effectiveness in the national legal order of rights derived from Union law.<sup>16</sup> The unlawful consequences of a breach of Union law must be nullified, e.g. unlawful taxes must be refunded. National democracies adopting legislation on the basis of majority voting have to take into account, and

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11 <[www.euobserver.com/economic/126720](http://www.euobserver.com/economic/126720)>; <[www.euobserver.com/environment/138681](http://www.euobserver.com/environment/138681)>; or 'L'Italie prépare l'affrontement avec l'Europe. La coalition populiste annoncera à la rentrée des mesures qui inquiètent déjà Bruxelles et les marchés' (<[www.lemonde.fr/europe/article/2018/08/07/l-italie-prepare-l-affrontement-avec-l-europe\\_5340043\\_3214](http://www.lemonde.fr/europe/article/2018/08/07/l-italie-prepare-l-affrontement-avec-l-europe_5340043_3214)>).

12 See, i.a., F Snyder (ed) *The Europeanisation of Law: The Legal Effects of European Integration* (Hart 2000); N Jääskinen, 'Europeanisation of National Law: A Legal-theoretical Analysis' (2015) 40 *ELRev* 667. Further in Part three.

13 Case 6/64 *Costa v ENEL* ECLI:EU:C:1964:66; Case 11-70 *Internationale Handelsgesellschaft* ECLI:EU:C:1970:114.

14 Declaration No 17 concerning primacy [2010] OJ C83/344.

15 Case C-416/10 *Križan* ECLI:EU:C:2013:8, para 70 (the competent national authorities involved in the construction of a landfill site could not refuse public access to an urban planning document pursuant to European environmental provisions). See earlier: Case 106/77 *Simmenthal II* ECLI:EU:C:1978:49, paras 22–24; Case C-213/89 *Factortame I* ECLI:EU:C:1990:257, paras 14–15; Case C-409/06 *Winner Wetten* ECLI:EU:C:2010:503, para 61.

16 Art 4(3) TEU on sincere cooperation. See i.a. Case C-432/05 *Unibet* ECLI:EU:C:2007:163, para 38; Case C-404/13 *ClientEarth* ECLI:EU:C:2014:2382, para 52. Also Case C-282/10 *Dominguez* ECLI:EU:C:2012:33, paras 30–3.

give precedence to, rules adopted at the EU level on the basis of majority voting in accordance with the relevant Treaty procedures. A European directive adopted in accordance with the ordinary legislative procedure must be implemented by all Member States even if it would not have obtained the necessary majority in the national parliament.

Although estimating percentages is hard to do, national legislation often stems from EU law.<sup>17</sup> Moreover, beyond quantitative estimates, ‘the law’ in Member States has become a mixture of EU law and national law. EU law influences legal thinking and judicial interpretation of legislation in the Member States.<sup>18</sup>

Another aspect of the Europeanisation of law is that to a large extent the Member States take up the executive function for the EU.<sup>19</sup> EU law, including EU administrative law, has been described as an incoming tide, flowing into the estuaries and up the rivers, its waves relentless and impossible to hold back.<sup>20</sup>

Extensive legal review and remedies guarantee the correct application of this joint exercise of public power. Compliance by a Member State with

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17 In 1988, Delors claimed that in 10 years, the EC would be the source of 80% of Member States’ legislation (especially economic, may be even fiscal and social). Actual numbers, ranging from 1 to 80%, should be looked at with great care. See for the Netherlands, M Bovens and K Yesilkagit, ‘The EU as lawmaker: the impact of EU directives on national regulation in the Netherlands’ (2010) 88 *Public Administration* 57. For other Member States, see AE Töller, ‘Concepts of Causality in Quantitative Approaches to Europeanization’ in C Radaelli and T Exadactylos (eds), *Establishing Causality in Europeanization Research* (Palgrave Macmillan 2012): studies showed rather low shares of Europeanised national legislation (15% for the UK, 14% for Denmark, 10% for Austria, 3 to 27% for France, 1 to 24% for Finland, yet 39% for Germany). The author concludes that these figures tell us little about the impact of EU-policy-making, i.a. because of differences in policy fields (the famous Delors 80% could be reality in agriculture, environment or financial market regulations). See also WC Muller and others, ‘Legal Europeanization: comparative perspectives’ (2010) 88 *Public Administration* 75.

18 Jääskinen, ‘Europeanisation of National Law: A Legal-theoretical Analysis’, distinguishing ‘law’ as legal order, legal system, jurisprudence or legal culture.

19 Hofmann, Rowe and Türk, *Administrative law and policy of the European Union*.

20 D Curtin, *Executive Power of the European Union. Law, Practices, and the Living Constitution* (Oxford University Press 2009) 278, referring to Lord Denning in *Bulmer v Bollinger* [1974] Ch 401 (418F): ‘But when we come to matters with a European element, the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back. Parliament has decreed that the Treaty is henceforward to be part of our law. It is equal in force to any statute.’

EU law is ensured through actions brought by the Commission,<sup>21</sup> by citizens<sup>22</sup> or by other Member States<sup>23</sup>. National courts have the task of implementing EU law in their capacity as the ‘ordinary’ courts within the EU legal order and have to ensure an effective remedy when rights and freedoms guaranteed by EU law are infringed (Article 47 Charter of Fundamental Rights of the European Union, hereafter CFR).<sup>24</sup> National judges have sent more than 10 000 references for preliminary rulings to the ECJ, asking for its help in the interpretation of EU law.<sup>25</sup> In *Wightman*, the ECJ noted that any withdrawal of a Member State from the EU ‘is liable to have a considerable impact on the rights of all Union citizens’.<sup>26</sup>

This, then, is the first observation: the EU has become an important reality, a fact of life and law, with considerable impact on the society in which citizens live. This first observation is in stark contrast to the second observation, which follows now.

### 3 *Low importance of EU learning in many schools*

Have education systems adapted to the paradigm shift? Can national education systems embrace these developments flexibly and prepare young people for citizenship in the European system of multilevel governance? In her study of the field of education, Keating observes: ‘Member States tend to reframe the notion of European citizenship to reflect the national model of citizenship and the histories, traditions, and socio-political priori-

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21 Arts 258–260 TFEU, possibly leading to financial penalties being imposed on the defendant Member State. See Case C-304/02 *Commission v France* ECLI:EU:C:2005:444: France failing i.a. to carry out checks of fishing activities in accordance with Community provisions, was ordered to pay a lump sum of 20 million euros for past non-compliance and 57 million euros for each period of six months of future non-compliance; Case C-533/11 *Commission v Belgium* ECLI:EU:C:2013:659: Belgium failing i.a. to implement correctly Directive 91/271/EEC on urban waste-water treatment, was ordered to pay a lump sum of 10 million euros for past non-compliance and a penalty payment of 859 000 euros for each future six-month period of delay.

22 See §§ 242 243 . Citizens in national courts can rely on the direct effect of EU provisions when these are clear, precise and unconditional, or can claim damages against the defaulting Member State (private enforcement).

23 Art 259 TFEU and, e.g., Case C-591/17 *Austria v Germany* ECLI:EU:C:2019:504.

24 *Opinion 1/09* ECLI:EU:C:2011:123, para 80.

25 Court of Justice of the European Union, Annual Report 2017, Judicial activity, p 125 (10 149 new references for a preliminary ruling between 1952 and 2017).

26 Case C-621/18 *Wightman and Others* ECLI:EU:C:2018:999, para 64.

ties of the nation-state.<sup>27</sup> Yet, the nation states as ‘Masters of the Treaty’ have chosen to transfer competences to the Union in respect of objectives which they consider they can achieve better together. It would be logical to explain this choice, the motives underpinning it, and its far-reaching consequences, to the young citizens at school. A significant percentage of national legislation may stem from EU directives. But what percentage of 18 years-olds has been taught what an EU directive is? Quite a degree of inertia characterises education systems operating within the old paradigm.

Based on successive surveys and analyses, it is fair to observe that learning about the EU in schools is fragmented.<sup>28</sup>

The 2013 *ICF GHK report ‘Learning Europe at school’* concludes that Member States differ widely as to the aspects of the EU they expect to be taught in schools.<sup>29</sup> The European citizenship dimension, in particular, is rarely clearly defined. The EU curriculum is very fragmented in most countries, with little evidence of progressive building on basic facts towards complex understanding, and with little consistency and complementarity at different levels and in different subjects.<sup>30</sup> No clear picture is created of the EU as an entity. The functioning of EU institutions is neglected as a subject, compared to European history or geography. There is great disparity in teacher training about the EU, with limited evidence of EU study in initial teacher training programmes. Much depends on the teachers’ motivation or personal convictions. In many school books, there is relatively little coverage of EU issues.

The results of the 2009 *International Civic and Citizenship Education Study*<sup>31</sup>, which mainly tested 14 years-old pupils, are described by the Commission as follows:

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- 27 A Keating, ‘Educating Europe’s citizens: moving from national to post-national models of educating for European citizenship’ (2009) 13 *Citizenship Studies* 135, 147.
- 28 See further Part four (§ 311 ).
- 29 Commission, *Learning Europe at School* (DG for Education, Youth, Sport and Culture, ICF GHK, 2013).
- 30 ‘Curriculum’ can be defined as ‘a plan for learning in the form of the description of learning outcomes, of learning content and of learning processes for a specified period of study’. See CoE Reference Framework of Competences for Democratic Culture, Vol 3: Guidance for implementation (2018) 13.
- 31 The 2009 International Civic and Citizenship Education Study (ICCS) assessed lower-secondary students (8th grade) with regard to inter alia civic knowledge, identity, attitudes, engagement, participation. See D Kerr and others, *ICCS 2009 European Report: Civic knowledge, attitudes and engagement among lower-secondary*

The European module data show that knowledge about the European Union is relatively good in EU countries ..., but there is still a clear need for improvement. In all participating EU countries more than 95% of pupils knew that their country was an EU Member State. Over 90% of pupils knew the flag of the European Union (...).<sup>32</sup>

Given the extensive impact of the exercise of EU public power on citizens' daily life, I wonder whether being able to recognise the flag of the EU should be deemed a sufficient learning outcome.<sup>33</sup> The 2016 International Civic and Citizenship Education Study, too, reports that the opportunities to learn about Europe vary substantially across Europe. Pupils mostly have the opportunity to learn about European history, but far less opportunity to study European political and economic integration or European political and social issues.<sup>34</sup>

*Eurydice*, a network consisting of 42 national units in 38 States—including all EU Member States—providing information and analyses of European education systems and policies,<sup>35</sup> concluded in 2012 that the European dimension is well represented in citizenship curricula.<sup>36</sup> Upon a closer look, however, significant disparities appeared in the quality and

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*students in 24 European countries* (International Association for the Evaluation of Educational Achievement IEA, 2010).

- 32 Commission Staff working document 'Progress towards the common European objectives in education and training- Indicators and benchmarks 2010/2011', 105–109. 'European pupils score high in civic knowledge', titled the Commission in a 2010 press release, but continued: 'The study found large differences in pupils' levels of civic knowledge' <europa.eu/rapid/press-release\_MEMO-10-599\_en.htm>.
- 33 Former webpage <iccs.iea.nl/index.php?id=52> accessed 6 September 2017.
- 34 B Losito and others, *Young People's Perceptions of Europe in a Time of Change: IEA International Civic and Citizenship Education Study- 2016 European Report* (2017), 14–15 (reported learning opportunities about Europe at school, to a large or a moderate extent: on average 50% of the pupils).
- 35 Next to the EU Member States, also Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Serbia, Switzerland and Turkey. The coordinating unit in EACEA (Education, Audiovisual and Culture Executive Agency) supports the Commission in cooperative work the CoE and UNESCO.
- 36 Commission/EACEA/Eurydice, *Citizenship Education in Europe* (2012) 97. Earlier: Commission/EACEA/Eurydice, *Citizenship Education at School in Europe* (2005).

extent of the EU dimension of citizenship education in schools.<sup>37</sup> Eurydice reported in 2017 that '[a]s many as eight EU member states do not have an international dimension in the curriculum of secondary education' and that in most countries the citizenship education curriculum for vocational training does not mention the EU at all.<sup>38</sup>

Thus, while optional or extra-curricular activities may offer more opportunities for EU learning, surveys and authors report on patchy rules concerning the curricula of formal education.<sup>39</sup> They point, moreover, to a compliance gap, there being disparities between the intended curriculum and the implemented curriculum.<sup>40</sup> The inadequacies in EU learning may be the result of many factors: poorly-defined EU learning content, insufficient training of teachers on EU matters, non-mandatory EU learning, a lack of assessment, or tenacious convictions that the EU as a subject is too sensitive, too complex, or not essential in an overburdened curriculum. Education is often underpinned by an economic rationale, the need to prepare students for the job market, not for citizenship. Furthermore, sociological realities play a role: the autonomy of philosophical-ideological school platforms and of schools (private and public institutions), and the

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- 37 Commission/EACEA/Eurydice, *Citizenship Education in Europe* (2012) 17 ff; for diversity in approaches and themes, see figure p 30; see also p 32 (in Germany, themes related to the European dimension were no longer included in the upper secondary level curriculum). Eurydice's concept of citizenship education in text to n 902.
- 38 Commission/EACEA/Eurydice, *Citizenship Education at School in Europe* (2017) 67 (based on questionnaires answered by national units, who used official recommendations, regulations as well as national strategies or action plans as primary information sources). See also *ibid*, pp 29, 58, 65; Commission/EACEA/Eurydice, *Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education: Overview of education policy developments in Europe following the Paris Declaration of 17 March 2015* (2016); European Parliament Resolution of 12 April 2016 on Learning EU at school [2018] OJ C58/57, recitals J-L. On problematic EU learning, further § 312 and text to n 1039 ff.
- 39 Many laudable initiatives organised *ad hoc* in or outside schools: Europe Days, 9 May actions, Spring Day in Europe, European Youth Parliament, Parlamentarium, EPAS, eTwinning, Your Europe Your Say, Back to School, guest speakers, special debates, conferences, competitions, exhibitions, chat sessions. See further text to n 1039 ff, § 152. Concept of formal education in text to n 1040.
- 40 C Bírzea, 'EDC policies in Europe - a synthesis' in *All-European Study on Education for Democratic Citizenship Policies* (CoE 2005) 29. See also n 243.



freedom of teachers.<sup>41</sup> A worrying impression is that it is not only the teachers (trainers) themselves who may lack essential knowledge about the EU, but also the trainers of the trainers. Even scholars in the field of citizenship education sometimes fail to clearly distinguish between the EU and the Council of Europe<sup>42</sup>, or between EU citizens and immigrants.<sup>43</sup>

In short, a huge number of pupils leave school at age 18 with impressive knowledge about science or literature, but in relative ignorance of the EU. The high importance of the EU contrasts with the low importance attached to EU learning in many schools.

These two observations are related to a wider problem.

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- 41 Various factors described, i.a., in Kerr and others (n 31); H Walkenhorst, 'Problems of Political Education in a Multi-level Polity: explaining Non-teaching of European Union Issues in German Secondary Schooling' (2006) 14 *Journal of Contemporary European Studies* 353, 354: 'The European Union initiative "European Dimension in Education", designed to raise pupils' awareness and knowledge of European integration issues, is highly contested and has not always found its way into the school curricula of the Member States.' See further challenges documented in § 66.
- 42 Unclear, e.g. E Féron, 'Citizenship Education in France' in VB Georgi (ed), *The Making of Citizens in Europe: New Perspectives on Citizenship Education* (Schriftenreihe Band 666, Bundeszentrale für politische Bildung 2008) 108, citing the ECHR as a founding text in courses on European citizenship and on European integration, with no mention of the EU Treaties. European citizenship is not founded on the ECHR (this convention is also valid for Turkish or Azerbaijan citizens). In the EU, the ECHR is at present an indirect source of general principles of law (Art 6(3) TEU, before accession to the ECHR).
- 43 Unclear questions asked to pupils in ICCS 2016 (how strongly do you agree: 'Immigrants should have the same rights that everyone else in the country has'): see Losito and others, *Young People's Perceptions of Europe in a Time of Change: IEA International Civic and Citizenship Education Study- 2016 European Report* 24, 27 (e.g. on the immigration of people from other EU Member States). See also D Sampermans and others, *ICCS 2016 Rapport Vlaanderen, Een onderzoek naar burgerschapseducatie in Vlaanderen. Eindrapport november 2017* (KU Leuven, Centrum voor Politicologie, 2017) 165 ('Politieke tolerantie is het geven van gelijke rechten aan alle groepen die deel uitmaken van de maatschappij, zodat iedereen op gelijke wijze zijn belangen kan verdedigen. Zonder deze gelijke rechten kan er van een volwaardige democratie geen sprake zijn').

*The gap between the EU and its citizens*

4 *Problem of democratic and civic deficit*

The legitimacy of the EU is questioned. The gap between the EU and its citizens is often referred to as the 'democratic deficit'.<sup>44</sup> The disconnect between the EU and its citizens can also be described by the concept of the 'civic deficit', highlighting other aspects than the 'democratic deficit'.<sup>45</sup> The EU civic deficit, the unacceptable distance between the EU and its citi-

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- 44 Vast literature on democratic deficit and (social) legitimacy. See, i.a., AK Kiernan, 'Citizenship—the real democratic deficit of the European union? 1' (1997) 1 *Citizenship Studies* 323; C Blumann, 'Citoyenneté européenne et déficit démocratique' in C Philip and P Soldatos (eds), *La citoyenneté européenne* (Collection études européennes, Chaire Jean Monnet, 2000); C Philip and P Soldatos (eds), *La citoyenneté européenne* (Collection études européennes, Chaire Jean Monnet, 2000) (democracy, transparency and communication deficit); A Verhoeven, *The European Union in Search of a Democratic and Constitutional Theory* (European Monographs 38, Kluwer Law International 2002) 60; G Majone, *Dilemmas of European integration: the ambiguities and pitfalls of integration by stealth* (Oxford University Press 2005); S Smismans, *Law, Legitimacy, and European Governance: Functional Participation in Social Regulation* (Oxford Studies in European Law, Oxford University Press 2004); A Follesdal and S Hix, 'Why there is a democratic deficit in the EU: A response to Majone and Moravcsik' (2006) 44 *JCMS* 533; P Craig, 'Integration, Democracy and Legitimacy' in P Craig and G de Búrca (eds), *The evolution of EU law* (Oxford University Press 2011); Curtin, *Executive Power of the European Union. Law, Practices, and the Living Constitution*, 283 ff; P Norris, *Democratic Deficit: Critical Citizens Revisited* (Cambridge University Press 2011); J Habermas, 'The Crisis of the European Union in the Light of a Constitutionalization of International Law' (2012) 23 *European Journal Of International Law* 335, 345; JHH Weiler, 'In the Face of Crisis: Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration' (2012) 34 *Journal of European Integration* 825.
- 45 Concepts of democratic and civic deficit overlap to some extent, e.g. with regard to 'distance' and 'transparency and complexity' issues as described by Craig, 'Integration, Democracy and Legitimacy' 13 and 30, but they emphasise different aspects. An extreme hypothesis to illustrate the difference: enlightened despotism, by definition suffering from a major democratic deficit, may only result in a minor civic deficit if a much-loved king or queen achieves popular outcomes and most people feel connected to the governing system and accept it. I make this point not to downplay the importance of democracy, but to clarify concepts. Recital F in European Parliament Resolution of 12 April 2016 on Learning EU at school [2018] OJ C58/57 refers to the democratic deficit.

zens,<sup>46</sup> has cognitive, affective and behavioural dimensions.<sup>47</sup> Fragmented learning about the EU in schools is relevant to the civic deficit (at least) in its cognitive dimension. Studies invariably reveal a lack of knowledge about the EU. A 2018 Eurobarometer survey found that 59 per cent of Europeans feel that they understand how the EU works (subjective knowledge), yet only 18 per cent answered questions on the EU correctly (objective knowledge).<sup>48</sup> Poor understanding easily turns into ambivalence, irritation about 'Brussels' or hostility. Negative referendum results and low turn-out rates at the European Parliament elections are significant.<sup>49</sup> A positive signal is that the increased turnout at the 2019 European Parliament elections was driven by greater participation by young people.<sup>50</sup> However, older people (over 55 years old) continued to constitute the main voter

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- 46 The term 'civic deficit' was probably first used in a Report of the Australian Civics Expert Group, *Whereas the people: Civics and Citizenship Education* (Canberra 1994). See Dutch Ministry of Education Culture and Science, *Citizenship – made in Europe: living together starts at school* (2004) 11; V Pérez-Díaz, 'The European Civic Deficit' (2004) <[www.essayandscience.com/article/24/the-european-civic-deficit/](http://www.essayandscience.com/article/24/the-european-civic-deficit/)> ; L McNabb, 'Civic Outreach Programs: Common Models, Shared Challenges, and Strategic Recommendations' (2013) 90 *Denver University Law Review* 871, 872, 876 (on deficits in civic literacy and participation); M Chou and others, *Young people, citizenship and political participation: combatting civic deficit* (Rowman & Littlefield 2017). On the elite vs public divide, see T Raines, M Goodwin and D Cutts, *The Future of Europe: Comparing Public and Elite Attitudes* (Research Paper, Europe Programme, Chatham House, The Royal Institute of International Affairs, 2017).
- 47 On the affective crisis of European citizenship, see i.a. JHH Weiler, 'To be a European Citizen – Eros and Civilization' (1997) 4 *Journal of European Public Policy* 495. On dimensions of active citizenship: E Cresson, *Learning for active citizenship: a significant challenge in building a Europe of knowledge. Foreword* (1998); M Nussbaum, *Political Emotions: Why Love Matters for Justice* (Harvard University Press 2015).
- 48 Standard Eurobarometer 89, *Public Opinion in the European Union* (June 2018), 132: 18% of respondents were wrong with regard to 3 true/false statements (the euro area currently consists of 19 Member States; the Members of the EP are directly elected by the citizens of each Member State; Switzerland is a Member State of the EU). See Standard Eurobarometer 91, 'European citizenship' (August 2019): 57% of Europeans feel they know their rights as EU citizens, yet 68% would like to know more. See also n 1637.
- 49 Negative referenda outcomes (as in Denmark in 1992, France in 2005, Ireland in 2001 and 2008, the Netherlands in 2005) illustrate hesitation or opposition towards the EU on issues which are essentially a matter of national politics: J Habermas, *Zur Verfassung Europas. Ein Essay* (Suhkamp 2011) 118.
- 50 Global turnout at EP elections: 42,61% (2014) and 50,62% (2019). Young voters' turnout: 27,8 % of 18–24 year-olds (2014), 42% in 2019.

population and some socio-demographic groups were poorly represented. About 49 per cent of the EU citizens did not vote.<sup>51</sup> The EU still has to strengthen its social legitimacy, i.e. the subjective acceptance by the public of the political system. Social legitimacy is based on deep common interests and feelings of loyalty.<sup>52</sup> Yet, a sense of alienation vis-à-vis the EU as a level of governance can be observed. The Brexit vote convincingly illustrates the structural consequences to which the gap with the citizens may lead, both for the Member State (UK) and for the whole of the EU. The causes of the Leave vote are complex and cannot simply be attributed to the failure to learn about the EU at school. However, it is thought-provoking that in the 2012 Eurydice study on ‘citizenship education themes, as recommended in national curricula’, some columns for the UK (though not for Scotland) were left empty, namely those relating to European identity and belonging, and European history, culture and literature.<sup>53</sup> In 2014, England made the study of ‘Fundamental British Values’ compulsory in schools.<sup>54</sup>

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51 See Eurobarometer Survey 91.5 of the European Parliament, The 2019 post-electoral survey: Have European elections entered a new dimension? (September 2019), 22–23.

52 Concept and problem of social legitimacy in: S O’Leary, *The Evolving Concept of Community Citizenship: From the Free Movement of Persons to Union Citizenship* (European Monographs 13, Kluwer 1996) 312; Curtin, *Executive Power of the European Union. Law, Practices, and the Living Constitution* 284; Weiler, ‘In the Face of Crisis: Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration’, 826; G Davies, ‘Social Legitimacy and Purposive Power: The End, the Means and the Consent of the People’ in D Kochenov, G de Búrca and A Williams (eds), *Europe’s Justice Deficit?* (Hart 2015) 261.

53 Commission/EACEA/Eurydice, *Citizenship Education in Europe* (2012), 30 (not recommended in any level in national curricula). See also J Arthur and D Wright, *Teaching Citizenship in the Secondary School* (David Fulton 2001), only referring to some EU websites. Further B Hoskins, ‘Brexit and its implications for Citizenship Education across Europe’ 2 August 2016 <ec.europa.eu/epale/en/blog/brexit-and-its-implications-citizenship-education-across-europe>. For empirical studies on impact of citizenship education, see n 108. In the Brexit referendum 71 % of the 18–25 age group voted Remain, yet, apparently, only 30% of young people actually voted (YouGov opinion poll). See further J Curtice, ‘Why Leave Won the UK’s EU Referendum’ (2017) 55 JCMS 19; L Gormley, ‘Brexit - Never Mind the Whys and Wherefores? Fog in the Channel, Continent Cut Off!’ (2017) 40 Fordham International Law Journal 1175; J Snell, ‘European Union and National Referendums: Need for Change after the Brexit Vote?’ (2017) 28 European Business Law Review 767.

54 See n 1180 and text.

One of the basic challenges to be resolved by the EU is how to bridge the gap with its citizens. This study will approach the problem of the democratic and civic deficit from the educational perspective by studying EU citizenship education.<sup>55</sup>

The term 'EU citizenship education' brings with it a two-fold challenge. The two subjects which this study aims to link—namely, EU citizenship and citizenship education—are to a certain extent each contentious in their own right.

*The two-fold challenge for 'EU citizenship education'*

*5 Which citizenship education?*

The first challenge is to find a neutral and commonly accepted concept of citizenship education. On the Beaufort scale, the winds in the field of citizenship education range from calm indifference, via light breeze, to strong gale, and storms causing structural damage. In the past, totalitarian regimes such as nazism or communism have demonstrated the potentially devastating effects of citizenship education. Today, 'citizenship education' is also provided by the Taliban (to boys only) and in Turkey (by loyal professors only). The fear of social engineering, of a religious or ideological nature, leads some to reject the need for citizenship education of any kind: neither states nor schools have to 'educate' citizens. Osler, an authoritative scholar on citizenship education, observes: 'Citizenship is a contested subject and it is therefore not surprising that education for citizenship in schools often tends to provoke heated debate and controversy'.<sup>56</sup> Talking about citizenship education is like opening Pandora's box.<sup>57</sup> A huge variety

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55 Calls for research on this topic, in Walkenhorst, 'Problems of Political Education in a Multi-level Polity: explaining Non-teaching of European Union Issues in German Secondary Schooling' 354 (the democratic deficit is generally seen as an institutional-structural problem; '[a]stonishingly, few EU scholars have approached the issue of the democratic deficit from an educational perspective'); see also Commission/EACEA/Eurydice, *Citizenship Education at School in Europe* (2005) 62; S Philippou, A Keating and D Hinderliter Ortloff, 'Citizenship education curricula: comparing the multiple meanings of supra-national citizenship in Europe and beyond' (2009) 42 *Journal of curriculum studies* 291, 296.

56 A Osler and H Starkey, 'Education for democratic citizenship: a review of research, policy and practice 1995–2005' (2006) 21 *Research Papers in Education* 433, 435, see also 455.

57 T Olgers, 'Escaping the Box of Pandora, in K O'Shea, EDC policies and regulatory frameworks' (Strasbourg, 6-7 December 2001).

of definitions, approaches, objectives, sceptical and even hostile reactions emerge. Sensitive questions often remain unspoken, e.g. how competent are teachers, or, do pupils think sufficiently critically? To avoid propaganda and the indoctrination of future voters, ‘politics’ is not considered to be an appropriate curriculum subject.<sup>58</sup> Although curriculum guidelines often include citizenship education, there is reticence about it in practice, as teachers want to avoid accusations of hidden agendas or the inappropriate influencing of young minds in schools. A recurring problem is that Member States fail to move beyond mere rhetoric on citizenship education. Citizenship education goals are set, but surveys and scholars point to an implementation gap.<sup>59</sup> Everyone is in favour of citizenship education (who would advocate having uneducated citizens?). How the abstract ideal is to be translated into reality, however, is open to discussion. In its 2017 report, Eurydice draws attention to the fluidity of citizenship education.<sup>60</sup>

Both ‘citizenship’ and ‘education’ are debatable concepts in themselves. Combining them in ‘citizenship education’ intensifies the debate. Brubaker is realistic: ‘Citizenship and nationhood are intensely contested issues in European politics... They are likely to remain so for the foreseeable future’.<sup>61</sup> The same can be expected to hold true for citizenship education. Shaw describes citizenship as ‘an open-textured concept’, with a host of meanings, susceptible to interpretation and even ideological manipulation, with no consensus even as to the methods for approaching it.<sup>62</sup> Citizenship education can be accused of the same ‘muddiness’ as citizenship. It

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58 Even the study of constitutional law at universities had to fight for acceptance. See L Heuschling, ‘Wissenschaft vom Verfassungsrecht: Frankreich’ in A von Bogdandy, P Cruz Villalón and PM Huber (eds), *Handbuch Ius Publicum Europaeum*, vol II Offene Staatlichkeit- Wissenschaft vom Verfassungsrecht (CF Müller Verlag 2007).

59 Bîrzéa, ‘EDC policies in Europe - a synthesis’ 29; Commission/EACEA/Eurydice, *Citizenship Education at School in Europe* (2017) 19–21.

60 Commission/EACEA/Eurydice, *Citizenship Education at School in Europe* (2017) 19–21; variations in organisation and content, i.a. p 43, 45. See also Commission/EACEA/Eurydice, *Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education: Overview of education policy developments in Europe following the Paris Declaration of 17 March 2015* (2016).

61 R Brubaker, *Citizenship and nationhood in France and Germany* (3rd edn, Harvard University Press 1996) 189.

62 J Shaw, ‘The many pasts and futures of citizenship in the European Union’ (1997) 22 *ELRev* 554, 558. See also B Hoskins and others, *Contextual Analysis Report: Participatory Citizenship in the European Union (Report 1)* (2012) 9–12: countries have developed different citizenship models (liberal, communitarian, civic republic-

is not only citizenship which is a highly-charged concept: education in general is contentious, with all that implies for our children: 'What children should learn at school and how the learning process should be organized is the source of never-ending challenge and change.'<sup>63</sup> It is true that citizenship and education are the subject of rational reflection in political and social sciences, in philosophy or legal theory, yet, it must be recognised, both subjects reach into deeper layers of feelings, beliefs and values. Sir Bernard Crick, on whose recommendation citizenship was introduced into the English National Curriculum,<sup>64</sup> states that citizenship education is important, 'yet, it is also full of complications, conflicts and irrationalities'.<sup>65</sup> There are countless theories of education, and the diverging viewpoints of governments, parents, children, schools, and other stakeholders, have to be reconciled. In the case of citizenship education in particular, obstacles and inherent tensions are part of the game, and they are not infrequently accompanied by terms such as suspicion, perennial debate, painful, or malaise.<sup>66</sup>

How then can some common ground be found on the issue of citizenship education? In the Member States, citizenship education is defined and approached in many different ways because it is closely related to the historical, political and cultural traditions of the nation states concerned.<sup>67</sup> Even the terminology used to designate citizenship and citizenship educa-

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can, critical) based on civic traditions, societal problems, or the political leaning of governing parties.

63 K Tomaševski, *Human rights obligations: making education available, accessible, acceptable and adaptable* (Right to Education Primers No 3, 2001).

64 Advisory Group on Citizenship, *Education for citizenship and the teaching of democracy in schools: the Crick Report* (Qualifications and Curriculum Authority, 1998). See also n 594.

65 Foreword to D Heater, *Citizenship: the civic ideal in world history, politics and education* (3rd edn, Longman 2004) xi.

66 O Ichilov (ed), *Citizenship and Citizenship Education in a Changing World* (Woburn Press 1998); J Arthur, I Davies and C Hahn (eds), *The SAGE Handbook of Education for Citizenship and Democracy* (Sage 2008), Introduction by editors, see p 8; M Sundstrom and C Fernandez, 'Citizenship education and diversity in liberal societies: Theory and policy in a comparative perspective' (2013) 8 *Education, Citizenship and Social Justice* 103.

67 T Grammes, 'Different Cultures in Education for Democracy and Citizenship' (2012) 11 *Journal of Social Science Education* 3; J Ainley, W Schulz and T Friedman (eds), *ICCS 2009 Encyclopedia: Approaches to civic and citizenship education around the world* (International Association for the Evaluation of Educational Achievement IEA 2013) 20; Commission/EACEA/Eurydice, *Promoting citizenship and the common values of freedom, tolerance and non-discrimination*

tion varies.<sup>68</sup> Merely choosing one of the national models for citizenship education as a template for examining the situation of the EU citizen, would not be satisfactory. Scholarly writing on citizenship education does not offer a solution either. Definitions of the terms used in citizenship education are the subject of ‘ongoing and vigorous academic dialogue’.<sup>69</sup>

## 6 Which EU citizenship?

The second challenge inherent in the concept of ‘EU citizenship education’ is the need to find a basic consensual view on the EU and EU citizenship before linking it with education.<sup>70</sup> The EU is not only complex, but it is, to say the least, the object of diverging visions and opinions. As it weathers the storms of financial and economic crises, migration, or Brexit, the EU finds itself contested in its fundamentals by some, in its nuances by others.<sup>71</sup> In its proposals for the EU27 by 2025, the Commission has set out five scenarios reflecting radically different visions of the EU.<sup>72</sup> The fragility

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through education: Overview of education policy developments in Europe following the Paris Declaration of 17 March 2015 (2016), see annex with references to various national programs and websites.

- 68 Examples in n 480. Overview of terms in Bírzea, ‘EDC policies in Europe - a synthesis’, appendix I-II; as well as examples in Hoskins and others, *Contextual Analysis Report: Participatory Citizenship in the European Union (Report 1)* 18–21; and CoE, Government Replies to the Questionnaire, in 2016 Report on the State of citizenship and Human Rights Education in Europe. See also H Becker, ‘Politische Bildung in Europa’ Bundeszentrale für politische Bildung (2012) <[www.bpb.de/apuz/148214/politische-bildung-in-europa?p=all](http://www.bpb.de/apuz/148214/politische-bildung-in-europa?p=all)> : ‘Wer in der höchst diversen Szene politischer Jugend-, Erwachsenen- und Schulbildung schon in Deutschland heftig um Begriffe als Stellvertreter für Konzepte streitet, dem erscheinen die nationalen Ausprägungen und unterschiedlichen Begrifflichkeiten quer durch Europa erst recht unbezähmbar’.
- 69 W Schulz and others, *IEA International Civic and Citizenship Education Study 2016: Assessment Framework* (2016) 15.
- 70 Education in itself is a difficult topic in the EU context. See J Pertek, ‘L’éducation et la Communauté: une relation mouvementée et incertaine’ [2005] *Law & European affairs* 7.
- 71 Z Bañkowski and E Christodoulidis, ‘The European Union as an Essentially Contested Project’ (1998) 4 *ELJ* 341; L van Middelaar, *De passage naar Europa. Geschiedenis van een begin* (Historische uitgeverij 2009) 11–12: it is ‘extremely tricky’ to answer the question as to whether Europe exists as a political entity.
- 72 Commission White paper of 1 March 2017 on the future of Europe COM(2017) 2025 final; C Calliess, ‘Bausteine einer erneuerten Europäischen Union- Auf der Suche nach dem europäischen Weg: Überlegungen im Lichte des Weißbuchs der Europäischen Kommission zur Zukunft Europas’ (2018) 20 *Neue Zeitschrift für Verwaltungsrecht* 1.



of EU citizenship is apparent in civil and political society, where Eurosceptic views contrast with the ambitions of Eurofederalists for deeper integration.<sup>73</sup> In scholarly writing, conflicting ideas on the EU result from attempts to fit the EU as a political system into concepts traditionally used in political science. Demos or no demos, democracy or demoi-cracy, international, supra-national or trans-national organisation, ...: many opinions are canvassed.<sup>74</sup> Semantic debates appear to be about more than just semantics. Terms matter.<sup>75</sup> Choosing to label the EU as a constitutional order, a polity, a multilevel system of governance, an international organisation, intergovernmental cooperation by sovereign Member States, or an internal market, produces different answers to the question as to whether, in a given form, the EU should be linked with citizenship education. Citizenship education would appear to be the natural companion of a constitutional model but might seem superfluous in the context of intergovernmental cooperation or an internal market. In a pluralistic society the diversity of views about the EU is normal and healthy. However, what should schoolchildren be taught? Should the EU as a subject be excluded from the school curriculum because it is too controversial for citizenship education?<sup>76</sup> An author published by the German *Bundeszentrale für politische Bildung* writes:

Trotz der überragenden Bedeutung der EU für praktisch alle Politikbereiche lassen sich die einschlägigen Bücher an einer Hand abzählen. Ein akzeptiertes Konzept zur Beschäftigung mit Europa in der [Politische Bildung] ist bislang nicht in Sicht.<sup>77</sup>

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73 See Eurobarometers, newspapers, think tanks, Bratislava meeting after Brexit.

74 See i.a. nn 1036 and 1702 and text.

75 L Azoulai and E Jaeger, 'Review: The Passage to Europe (van Middelaar)' (2014) 51 CMLRev 311, 311 (European integration, European project, European construction... terms carry important assumptions about the way we understand the EU).

76 JM Halstead and MA Pike, *Citizenship and Moral Education: Values in Action* (Routledge 2006) (controversial subjects in the classroom: death penalty, fox hunting, the EU, gay marriage). Cf AEC Struthers, 'Human Rights: A Topic Too Controversial for Mainstream Education?' (2016) 16 Human Rights Law Review 131.

77 R Müller, 'Politische Bildung (und Europa)' Bundeszentrale für politische Bildung (2016) <[www.bpb.de/nachschlagen/lexika/177197/politische-bildung-und-europa](http://www.bpb.de/nachschlagen/lexika/177197/politische-bildung-und-europa)> : 'In spite of the overriding importance of the EU in practically all areas of politics, relevant textbooks can be counted on the fingers of one hand. An accepted model for studying Europe in politics classes is not yet in sight.'

Is it wise to wait until the waters calm and clear EU certainties appear? The answer this study advocates is: no, on the contrary. A society claiming to be democratic is supposed to make sure its citizens are on board.

With potentially high waves in the sea of citizenship education and strong winds forecast around EU citizenship, firm anchor points are needed.

### *Three anchor points*

#### *7 First anchor point: Education for Democratic Citizenship (EDC) of the Council of Europe Charter on EDC/HRE*

The first anchor point is the concept of Education for Democratic Citizenship (EDC), with associated principles, as defined in the 2010 Charter on Education for Democratic Citizenship and Human Rights Education (hereafter Charter on EDC/HRE), recommended by the Council of Europe. It responds to the first challenge of finding a neutral and commonly accepted concept of citizenship education. Paragraph 2(b) contains the following definition:

‘Education for democratic citizenship’ means education, training, awareness raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower them to exercise and defend their democratic rights and responsibilities in society, to value diversity and to play an active part in democratic life, with a view to the promotion and protection of democracy and the rule of law.<sup>78</sup>

Hereafter, capital letters will be used for ‘Education for Democratic Citizenship’ (EDC) to refer specifically to this Council of Europe concept. Otherwise ‘education for democratic citizenship’ or ‘citizenship education’ will be the generic terms.<sup>79</sup>

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78 CoE Recommendation CM/Rec(2010)7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (11 May 2010). While the TFEU differentiates between ‘education’ (Art 165) and ‘vocational training’ (Art 166), in the EDC context, the concept of ‘education’ includes vocational training. ‘Education’ in the EDC concept is like the concept of ‘lifelong learning’ as defined in the Erasmus+ Regulation 1288/2013 (Art 2(1)).

79 For Eurydice’s definition of citizenship education, see text to n 902; see also definition in text to n 99.

### 8 *Second anchor point: EU citizenship of the EU Treaties*

The second anchor point is the concept of EU citizenship and associated rights, as set out in the EU Treaties and the Charter of Fundamental Rights of the European Union (CFR), which constitute EU primary law.<sup>80</sup> Referring to the EU and EU citizenship as described in EU primary law is a response to the second challenge, that is, the need to start from a basic consensual view. The 1992 Maastricht Treaty established the legal concept of ‘citizenship of the Union’ (hereafter EU citizenship). EU citizenship is defined in Articles 9 TEU and 20(1) TFEU:

Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Since the adoption of the 1992 Maastricht Treaty and the 2009 Lisbon Treaty, the rights of EU citizens are set out in Title II ‘Provisions on democratic principles’ of the TEU (Articles 9–11 TEU) and in Part Two ‘Non-discrimination and citizenship of the Union’ of the TFEU (Articles 20–24 TFEU).

### 9 *Third anchor point: the right to education of the ICESCR and the Convention on the Rights of the Child (CRC)*

The third anchor point is the right to education as defined in the 1966 International Covenant on Economic, Social and Cultural rights (ICESCR) and the 1989 Convention on the Rights of the Child (CRC), which are binding international agreements ratified by all EU Member States. This will help to respond to the challenge of linking citizenship education and EU citizenship. Pursuant to Article 13(1) ICESCR:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, toler-

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80 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C202/1; Charter of Fundamental Rights of the European Union [2016] OJ C202/389 (proclaimed at Strasbourg on 12 December 2007 by the European Parliament, the Council and the Commission [2007] OJ C303/1).

ance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.<sup>81</sup>

These educational aims are considered to be compulsory ('shall be directed to'). Article 13(1) ICESCR develops the aims for education set out in Article 26(2) of the Universal Declaration of Human Rights (UDHR) and is comparable to Article 29(1) CRC.<sup>82</sup>

### *Research questions, method and objectives*

#### *10 Implications of a joint assessment of the anchor points for citizenship education of EU citizens*

Starting from the three anchor points (the Council of Europe Charter on EDC/HRE, the EU Treaties on EU citizenship, and the right to education in international agreements), the central question examined in the study is: 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 ICESCR and CRC? As to the substance, the three anchor points are directly relevant for citizenship education in the EU. As to the form, however, they are based on normative instruments of varying legal force: a Council of Europe recommendation, EU primary law and interna-

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81 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 A/RES/2200 (XXI), entered into force 3 January 1976) 993 UNTS3 (emphasis added).

82 Art 29(1) CRC: 'States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment'.

tional agreements binding for Member States. This raises various questions.

What are the legal status and effects of these anchor points within the legal orders of the Member States and within the EU legal order, separately and taken together? How should the three anchor points be combined in a legal analysis as to *form* (sources of variable normativity) and as to *substance* (combining the components)? How do EDC and the right to education apply to nationals of Member States *in their capacity as EU citizens*? The EU, in which Member State nationals live, is a relatively young construction compared with nation states, whose structures enjoy deeply embedded authority. In the face of the above mentioned ‘two-fold challenge’ (diverging opinions on citizenship education and on EU citizenship), the aim is to use sources of law as a secure starting point. A central concern of this study is to identify suitable teaching content for the EU dimension in education. What are the implications of a combined reading of the Charter on EDC/HRE, EU law, and the right to education for what EU citizens should learn about the EU at school? Finally, the issue of competence to act in the field of citizenship education will be addressed. Does the EU have the legal competence to promote education for democratic citizenship for EU citizens? On a combined reading of the instruments mentioned above, to what extent do EU citizens have a right to EU citizenship education and do Member States have a corresponding obligation to provide it? How do human rights affect the exercise of competences by actors in the education field? The importance of these questions is clear if compared with the traditional view that education is the state’s duty and prerogative. A member of the DARE network—Democracy and Human Rights Education in Europe—testifies: ‘I do not know how often I have heard this killer phrase: “Your work is incredibly important, but education is subject to national policies”’.<sup>83</sup> How far does the discretion enjoyed by Member States with regard to the education of their citizens extend? Does citizenship education depend on the political views of the government which happens to be in power at any given time? Can Member States freely decide to include an EU dimension in the citizenship education which they provide for their nationals, or is their autonomy with regard to education policy con-

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83 <dare-network.eu/>; Georg Pirker, *Arbeitskreis deutscher Bildungsstätten* in former webpage <dare-network.blogspot.com/2009/06/reflection-on-hearingexchange-of-views> accessed 16 October 2018. See also the recurring argument of Member State autonomy in education in debates before adoption of European Parliament Resolution of 12 April 2016 on Learning EU at school [2018] OJ C58/57.

strained by rights and obligations? Identifying rights and obligations could help to transform the rhetoric on citizenship education into actual implementation. Hence the need to examine the legal framework which Member States must take into account when designing their policies on citizenship education. Understanding the legal status and effects as to form and substance of the provisions on EDC, EU citizenship, and the right to education—especially when read together—will shed light on national educational autonomy.

### 11 Global structure

In order to answer the questions raised, the study is structured in four Parts, reflecting four consecutive steps.

*Part one* analyses the Charter on EDC/HRE as to form and substance within the Council of Europe legal order (first anchor point). It is argued that the recommendation of the Committee of Ministers on the EDC/HRE Charter has a high degree of normativity and produces legal effects for the EU Member States *as* member states of the Council of Europe. EDC standards reflect a European consensus, including with regard to the concept of EDC itself.

In *Part two*, EDC standards meet EU law. In an analysis as to *form*, I explain the normative reception of the EDC standards of the Council of Europe (fragmented, but convincing) in the EU legal order and demonstrate that the Charter on EDC/HRE should be taken into account in the interpretation of EU law on citizenship, democracy and education, while respecting EU autonomy.

Based on the foundations of Parts one and two, *Part three* provides an analysis as to *substance* focusing on EU citizenship (second anchor point). It is argued that national EDC in the Member States—in an adaptation perspective—should include an EU dimension consistent with EU law. The result of a combined reading of EU law and EDC standards is the recognition of an EU dimension to the various components of EDC relevant to mainstream education.

*Part four* examines the competence of the EU and of the Member States to bring this EU dimension into the national EDC curriculum and takes a human rights-based approach to education, considering *inter alia* the right to education (third anchor point) and its effects on the concept of quality education. It is posited that the EU can adopt incentive measures and recommendations to encourage EDC and its EU dimension.

## 12 A legal analysis

Analysis of legal sources will be the main method used to answer the research questions. Legal sources were consulted until 15 October 2019.<sup>84</sup>

Part one examines the normative framework on EDC in the Council of Europe legal order, including in relation to the ECHR and the case law of the European Court of Human Rights (ECtHR). The other Parts are based on an analysis of EU primary, secondary and case law, complemented by academic legal writing. The novel aspect of this study is that the three anchor points are not only read individually, but also in combination with one another. This enhances their significance.

Member State law occasionally supplements the analysis, but no exhaustive comparative study is made. Empirical material on the state of citizenship education in Member States is borrowed from reports on citizenship education, i.a. of actors in the Council of Europe (review cycles of the Charter on EDC/HRE), Eurydice, the International Civic and Citizenship Education Study, and by academic writers.

## 13 The value of law for citizenship education

This study will clarify the legal foundations for learning about the EU at school. An examination of the law helps to understand *why* it is important to learn about the EU at school, *what* pupils should be taught, *how* they should be taught, and *who* is legally competent to ensure that study of the EU is part of the curriculum.

Legal analysis contributes to the field of citizenship education in various ways. In conferences on citizenship education, I am frequently the only lawyer among the participants. Participants are government officials and policy makers, representatives of NGOs and youth organisations, educators and trainers of trainers, activists, and experts from multiple disciplines. The legal approach is often considered to be reductive.<sup>85</sup> Indeed, society is much richer than its written law alone. That said, the law has much to offer the field of citizenship education. While the law cannot impose 'truths' on pupils, it cannot, either, be neglected. As Ronald Dworkin and other legal theorists have argued, law is more than the technical rule in a given legal text. Law includes the objectives of the rule (*ratio legis*), the policies, and the underlying principles.<sup>86</sup> In a constant search for justice and

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84 Links to websites were checked in July 2019.

85 See, e.g., RFCDC 2018, text to nn 303-304; also text to n 906.

86 R Dworkin, *Law's Empire* (Harvard University Press 1987); R Dworkin, *A matter of principle* (repr. edn, Clarendon 1992). Cp H Hart, *The Concept of Law* (2nd edn,

integrity, law cannot be separated from values and the underlying morality.<sup>87</sup> This is valid for EU law, with EU primary law embracing values, objectives and principles.<sup>88</sup> The application of the law often implies balancing those values, objectives and principles, and therefore requires critical thinking, which is especially pertinent to citizenship education. Admittedly, the analysis risks becoming ‘embroiled in the conjunctions of law, morality and education’.<sup>89</sup> Yet working with the law is fertile ground for the field of citizenship education as it is a source simultaneously of objective support and challenge. It awakens the curiosity of all those concerned: the lawyer, the citizenship educator, and the pupil. For the lawyer, it may lead to the challenge of bridging the gap between, on the one hand, legal norms often considered to be self-evident because they are firmly established in primary law, and, on the other hand, legal culture or practice in contexts in which the norms in question are unfamiliar or even entirely unknown to the citizen. EU law is not an exception; it is even a very good example. The citizenship educator is challenged to go beyond communicating information about institutions and the pupil is invited to reflect and think critically, not just to absorb knowledge. EU law triggers several democratic citizenship competences (as defined further).<sup>90</sup>

The value of law for citizenship education is multifaceted. Law affects citizenship education from a number of different angles. It determines the legal competence of public authorities to set the school curriculum and sets limits to that competence, inter alia requiring respect for the constitution and for fundamental rights, such as freedom of education. In providing citizenship education, the right *to* education must be respected (compulsory aims of education) as well as rights *in* education (such as respect

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Oxford University Press 1994); H Kelsen, *Pure Theory of Law* (Knight tr, 2nd edn, University of California Press 1967).

87 See also Jääskinen, ‘Europeanisation of National Law: A Legal-theoretical Analysis’, 669: ‘legal order means a momentary and concrete order of legal norms, and combines the propositional and the concrete, whereas the legal system, that is, an order consisting of the conceptual and axiological elements of law, is both propositional and abstract’.

88 E.g. Arts 2- 6 TEU, Arts 18–19 TFEU.

89 M Minow, ‘What the rule of law should mean in civics education: from the "Following Orders" defence to the classroom’ (2006) 35 *Journal of Moral Education* 137.

90 CoE Reference Framework of Competences for Democratic Culture, Vol 1: Context, concepts and model (2018); Council Recommendation of 22 May 2018 on key competences for lifelong learning [2018] OJ C189/1.



for human dignity or freedom of expression).<sup>91</sup> Law governs the relationship between the actors in the field (schools, teachers, pupils, parents, churches, NGOs, ...). Citizenship education is also said to strengthen rights *through* education, because education unlocks the door to the exercise of rights (e.g. citizenship rights, various human rights).<sup>92</sup> Furthermore, law underpins the need for citizenship education in relation to basic legal principles, such as the rule of law, democracy and fundamental rights. Law provides substance for citizenship education.<sup>93</sup> A connection traditionally made is that between citizenship education and constitutions (learning about constitutional values, the political system of the state, the institutions).<sup>94</sup> The principle that education must be linked to the constitution has been confirmed by thinkers throughout history. Aristotle strongly encouraged the education of citizens in the spirit of their constitution: 'There is no profit in the best of laws ... if the citizens themselves have not been attuned, by the force of habit and the influence of teaching, to the right constitutional temper'.<sup>95</sup> Condorcet (a philosopher at the time of the French revolution who devoted much thought to how to educate the newly born 'citoyen') affirmed:

une constitution vraiment libre, où toutes les classes de la société jouissent des mêmes droits, ne peut subsister si l'ignorance d'une partie des citoyens ne leur permet pas d'en connaître la nature et les limites, les oblige de prononcer sur ce qu'ils ne connaissent pas, de choisir quand ils ne peuvent juger; une telle constitution se détruirait d'elle-même après quelques orages, et dégènerait en une de ces formes de gou-

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91 See i.a. § 179 and n 592 (human rights education should underpin citizenship education).

92 See n 2167.

93 On the importance of law in general within citizenship education, H Oberreuter, 'Rechtserziehung' in W Sander (ed), *Handbuch politische Bildung* (Reihe Politik und Bildung 32, 3rd edn, Wochenschau 2005). The author considers the law to be more than the technical rule: 326 ('Recht erschöpft sich nicht in Rechtsnormen'); 329 ('Recht ist kein Instrument der Herrschenden'), 328 ('Politik ist dem Grundgesetz unterworfen'), 332 ('Rechtserziehung ist Wertevermittlung'). See further n 579, n 592, and n 1071.

94 On the link between citizenship education and constitutions, further i.a. § 89 (n 670), § 165.

95 R Curren, 'A neo-Aristotelian account of education, justice, and the human good' (2013) 11 *Theory and Research in Education* 231.

vernement qui ne peuvent conserver la paix au milieu d'un peuple ignorant et corrompu.<sup>96</sup>

A constitution is incomplete without corresponding citizenship education.<sup>97</sup> Civics is defined by experts as 'the didactic transmission of factual information about constitutions and institutions'.<sup>98</sup> Yet, citizenship education is more than that definition of civics. Citizenship education refers to 'the knowledge, understanding, skills and dispositions that are connected with public life'.<sup>99</sup> Citizenship education potentially covers all aspects of society, from learning about traffic rules, to how to draw up a contract, but also—with some courage—discussing the Islamic headscarf or burqa. The

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96 Condorcet, *Cinq mémoires sur l'instruction publique* (digital JM Tremblay edn, 1791), Premier Mémoire, IV : 'a constitution based on true freedom, where all social classes enjoy the same rights, cannot survive if the lack of education of some citizens does not enable them to understand its nature and limits, obliges them to express a view on things of which they are ignorant, to choose when they cannot judge; such a constitution would destroy itself after a few storms and degenerate into one of those forms of government which cannot preserve peace in the midst of an uneducated and corrupted people.' Condorcet was one of the most important educational philosophers of the French revolution, influential in the 19<sup>th</sup> and 20<sup>th</sup> century.

97 See also Talleyrand-Périgord, Rapport sur l'Instruction Publique, fait au nom du Comité de Constitution à l'Assemblée Nationale, les 10, 11 et 19 Septembre 1791 : 'Les pouvoirs publics sont organisés: la liberté, l'égalité existent sous la garde toute-puissante des Lois; la propriété a retrouvé ses véritables bases; et pourtant la Constitution pourroit sembler incomplète, si l'on n'y attachoit enfin, comme partie conservatrice et vivifiante, L'INSTRUCTION PUBLIQUE' (...) Enfin, et pour tout dire, la constitution existeroit-elle véritablement, si elle n'existoit que dans notre code; si de-là elle ne jettoit ses racines dans l'âme de tous les Citoyens; si elle n'y imprimoit à jamais de nouveaux sentimens, de nouvelles moeurs, de nouvelles habitudes?'; 'L'Instruction, considérée dans ses rapports avec l'avantage de la Société, exige, comme principe fondamental, qu'il soit enseigné à tous les hommes: 1<sup>o</sup>. A connoître la Constitution de cette Société; 2<sup>o</sup>. A la défendre; 3<sup>o</sup>. A la perfectionner; 4<sup>o</sup>. Et, avant tout, à se pénétrer des principes de la morale qui est antérieure à toute Constitution, et qui, plus qu'elle encore, est la sauve-garde et la caution du bonheur public.' See also: 'En attachant l'Instruction publique à la constitution, nous l'avons considérée dans sa source, dans son objet, dans ses rapports, dans son organisation, dans ses moyens'.

98 I Davies, 'Political Literacy' in J Arthur, I Davies and C Hahn (eds), *The SAGE Handbook of Education for Citizenship and Democracy* (Sage) 382.

99 J Arthur, I Davies and C Hahn, 'Introduction' in J Arthur, I Davies and C Hahn (eds), *The SAGE Handbook of Education for Citizenship and Democracy* (Sage 2008) 9; see also nn 902- 904.

law can give guidance in discussions and controversies.<sup>100</sup> Constitutions, and the law in general, may provide objective support for teachers and pupils in what are sometimes sensitive fields. Yet, caution is needed. The legal approach must remain dynamic and open. It should invite critical thinking, which is an essential component of citizenship education as well.

In short, law contributes to the rationale for citizenship education, to the means, the methods, the substance, and the limits.<sup>101</sup> The objective of this study is, therefore, not only to clarify the EU legal framework providing the basis for establishing effective measures for citizenship education for EU citizens. It will also consider the extent to which EU law provides the rationale, the method, the substance and the limits to citizenship education. To my knowledge, this has not been analysed before in a systematic way. The legal analysis will show that there is a normative basis (both formal and substantive) justifying the inclusion of an EU dimension in EDC. Considering citizenship education from the vantage point of EU law will be enriching in multiple ways.

#### 14 *Law in the context of various epistemological approaches*

While law can make a valuable contribution to citizenship education, citizenship education cannot be studied in isolation by sole reference to the law. This study conjoins EU law with insights gained from other disciplines. I will sometimes refer to their contributions as *context* for the law, widening the field, giving depth to it, broadening the scope for critical reflection. Various other disciplines may shed light on the extent to which EU citizenship education can provide a solution to bridging the gap between the EU and its citizens.

The literature on citizenship education is substantial. In many Member States, citizenship education is a new field of academic study, yet in some Member States—such as France and Germany—it is founded on an established tradition.<sup>102</sup> Though individual country studies or comparative stud-

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100 E.g. the proportionality principle as a tool in solving problems (text and n 1265). Law provides core content to be respected in citizenship education, see i.a. §§ 258 259 326 . Affective (irrational) dimensions of citizenship may need some legal constraints, see i.a. Nussbaum (nn 579-580).

101 Methods and substance of citizenship education cannot not always be distinguished, see S Reinhardt, *Teaching Civics: A Manual for Secondary Education Teachers* (Barbara Budrich 2015).

102 For France, see n 492 ff; for Germany n 497 ff. Arthur, Davies and Hahn, 'Introduction' (p 3–4: citizenship education has 'relative immaturity as an academic field' but insights from established disciplines such as political or social studies enhance understanding in the field).

ies are often cross-disciplinary,<sup>103</sup> differentiating epistemological approaches helps to master the wealth of literature. Studies in *history* examine the phenomenon of citizenship education throughout different historical periods, in peaceful and in disturbed times, and point to its effects, auspicious as well as devastating.<sup>104</sup> History provides evidence of the powerful role of citizenship education in the formation of nation states and the creation of national identities during the 19<sup>th</sup> century.<sup>105</sup> The teaching of history (or of the state's interpretation of history) is an important form of citizenship education.<sup>106</sup> The effects of citizenship education on society

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- 103 D Kerr, S McCarthy and A Smith, 'Citizenship Education in England, Ireland and Northern Ireland' (2002) 37 *European Journal of Education* 179; K Haav, 'Civic Education in Estonia: Democratic or Authoritarian' (2008) 7 *Journal of Social Science Education* 121; J Krek and MK Sebart, 'Citizenship Education in Slovenia after the Formation of the Independent State' (2008) 9 *Journal of Social Science Education* 66; D Kavadias and B Dehertogh, *Scholen en Burgerchapseducatie : de totstandkoming van de vraag tot ondersteuning binnen scholen* (Koning Boudewijnstichting 2010); M Sandström Kjellin and others, 'Pupils' voices about citizenship education: comparative case studies in Finland, Sweden and England' (2010) 33 *European Journal of Teacher Education* 201; L Johnson and P Morris, 'Critical citizenship education in England and France: a comparative analysis' (2012) 48 *Comparative Education* 283; Sandström Kjellin and others, 'Pupils' voices about citizenship education: comparative case studies in Finland, Sweden and England'; M Jeliaskova and T Zimenkova, 'Beyond description: Civic and political education in Europe - dialogue and comparison' (2017) 16 *Journal of Social Science Education* 2.
- 104 Citizenship education was practiced in Ancient Greece and Rome; it was studied intensely in the Enlightenment (e.g. by Montesquieu and enlightened monarchs) and during the age of revolutions to form 'le citoyen' in the spirit of 'liberté, égalité, fraternité' (Condorcet, Talleyrand, Lepelletier); it was effective in nation-building during the 19<sup>th</sup> century, it was devastating in its use by totalitarian regimes and seen as one of the causes leading to World Wars. See D Heater, 'The history of citizenship education: a comparative outline' (2002) 55 *Parliamentary Affairs* (UK) 457; P Riesenberg, *A History of Citizenship: Sparta to Washington* (Anvil Series, Krieger 2002); D Heater, *A history of education for citizenship* (Routledge Falmer 2004); D Heater, *Citizenship: the Civic Ideal in World History, Politics and Education* (3rd edn, Manchester University Press 2004). Further on Montesquieu, Condorcet and Talleyrand, text to nn 96, 492, 1160, 1217-1220.
- 105 Brubaker, *Citizenship and nationhood in France and Germany*; BRO Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (revised edn, Verso 2006).
- 106 On the impact of history education in schools, K Tomaševski, *Human rights in education as prerequisite for human rights education* (Right to Education Primers

(‘socialisation’) are researched in *sociology*.<sup>107</sup> *Empirical political science* analyses the effectiveness of citizenship education by the various actors in society and seeks to provide evidence of its concrete impact (to a greater or lesser degree).<sup>108</sup> *Normative political science, philosophy* (political and social),

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No 4, Novum Grafiska 2001) 19; G Clemmitshaw, ‘Citizenship without history? Knowledge, skills and values in citizenship education’ (2008) 3 *Ethics and Education* 135; K Korostelina, ‘History Education and Social Identity’ (2008) 8 *Identity* 25; A Osler, ‘Patriotism, multiculturalism and belonging: political discourse and the teaching of history’ (2009) 61 *Educational Review* 85; KV Korostelina and S Lässig (eds), *History education and post-conflict reconciliation: reconsidering joint textbook projects* (Routledge 2013); M Lücke and others (eds), *CHANGE – Handbook for History Learning and Human Rights Education* (Wochenschau Verlag 2016). See also n 278, n 2441.

- 107 Sociological approach, i.a., in DH Kamens, ‘Education and Democracy: A Comparative Institutional Analysis’ (1988) 61 *Sociology of Education* 114; J Brine, ‘Educational and Vocational Policy and Construction of the European Union’ (1995) 5 *International Studies in Sociology of Education* 145; RG Niemi and MA Hepburn, ‘The Rebirth of Political Socialization’ (1995) 24 *Perspectives on Political Science* 7; RG Sultana, ‘A Uniting Europe, a Dividing Education? Euro-centrism and the Curriculum’ (1995) 5 *International Studies in Sociology of Education* 115; G Delanty, ‘Citizenship as a learning process: disciplinary citizenship versus cultural citizenship’ (2003) 22 *International Journal of Lifelong Education* 597; MT Hallinan (ed) *Handbook of the sociology of education* (Springer 2006); A Keating, ‘Developing a European dimension to the sociology of education’ (2006) 27 *British Journal of Sociology of Education* 269; R Hedtke, T Zimenkova and T Hippe, ‘A Trinity of Transformation, Europeanisation, and Democratisation? Current Research on Citizenship Education in Europe’ (2007) 6 *Journal of Social Science Education* 5; S Philippou, ‘Policy, curriculum and the struggle for change in Cyprus: the case of the European dimension in education’ (2007) 17 *International Studies in Sociology of Education* 249; T Zimenkova and R Hedtke, ‘The Talk-and-Action Approach to Citizenship Education. An Outline of a Methodology of Critical Studies in Citizenship Education’ (2008) 7 *Journal of Social Science Education* 5; RM Brooks and JAK Holford, ‘Citizenship, learning and education: themes and issues’ (2009) 13 *Citizenship Studies* 85; K Dunn, ‘Left-Right identification and education in Europe: A contingent relationship’ (2011) 9 *Comparative European Politics* 292; F Borroni, ‘The relationship between education and levels of trust and tolerance in Europe’ (2012) 63 *British Journal of Sociology* 146; D Tröhler, ‘La construction de la société et les conceptions sur l’éducation. Visions comparées en Allemagne, en France et aux États-Unis dans les années 1900’ [2013] *Education et sociétés* 35; E Arbués, ‘Civic Education in Europe: Pedagogic Challenge versus Social Reality’ (2014) 4 *Sociology Mind* 226.
- 108 Empirical approach, i.a., in N Emler and E Frazer, ‘Politics: the education effect’ (1999) 25 *Oxford Review Of Education* 251; CL Hahn, ‘Citizenship Education: an empirical study of policy, practices and outcomes’ (1999) 25 *Oxford Review Of Education* 231; J Torney-Purta and others, *Citizenship and education in*

and *ethics* reflect on citizenship education in the light of its relationship to freedom, justice, equality, democracy, etc., and uncover its normative assumptions.<sup>109</sup> The need, aims and methods of citizenship education are studied further in *social sciences*, in *educational sciences* in particular. *Didacti-*

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- twenty-eight countries: Civic knowledge and engagement at age fourteen* (IEA 2001); SE Finkel, 'Can democracy be taught?' (2003) 14 *Journal of Democracy* 137; RG Niemi and M Sanders, 'Assessing Student Performance in Civics: The NAEP 1998 Civics Assessment' (2004) 32 *Theory & Research in Social Education* 326; B Hoskins, B D'Hombres and J Campbell, 'Does Formal Education Have an Impact on Active Citizenship Behaviour?' (2008) 7 *EERJ* 386; E Quintelier, 'The effect of schools on political participation: A multilevel logistic analysis' (2008) 25 *Research Papers in Education* 137–154; E Claes, 'Schools and Citizenship Education. A Comparative Investigation of Socialization Effects of Citizenship Education on Adolescents' (PhD in Social Science KULeuven, Faculteit Sociale Wetenschappen 2010); M Hooghe and others, *Jongeren, politiek en burgerschap : politieke socialisatie bij Belgische jongeren* (Acco 2012); A Keating, T Benton and D Kerr, 'Evaluating the impact of citizenship education in schools: What Works and What are we Measuring?' in M Print and D Lange (eds), *Schools, Curriculum and Civic Education for Building Democratic Citizens* (Series Civic and Political Education 2, Sense 2012); J Lauglo, 'Do more knowledgeable adolescents have more rationally based civic attitudes? Analysis of 38 countries' (2013) 33 *Educational Psychology* 262; AM Martens and J Gainous, 'Civic Education and Democratic Capacity: How Do Teachers Teach and What Works?' (2013) 94 *Social Science Quarterly* 956; S Verhaegen, M Hooghe and C Meeusen, 'Opportunities to learn about Europe at school. A comparative analysis among European adolescents in 21 European member states' (2013) 45 *Journal of Curriculum Studies* 838; RL Claassen and JQ Monson, 'Does Civic Education Matter? The Power of Long-Term Observation and the Experimental Method' (2015) 11 *Journal of Political Science Education* 404; E Claes and M Hooghe, 'The Effect of Political Science Education on Political Trust and Interest: Results from a 5-year Panel Study' (2017) 13 *Journal of Political Science Education* 33; JF Ziemes, K Hahn-Laudenberg and HJ Abs, 'From Connectedness and Learning to European and National Identity: Results from Fourteen European Countries' (2019) 18 *Journal of Social Science Education* (3: European Citizenship Education: Business as Usual or Time for Change?) 5.
- 109 E Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford University Press 1997); A Lockyer, B Crick and J Annette, *Education for Democratic Citizenship: Issues of Theory and Practice* (Ashgate 2003); E Callan, 'Citizenship and Education' (2004) 7 *Annual Review of Political Science* 71; C Lohrenscheit, 'Dialogue and Dignity - Linking Human Rights Education with Paulo Freire's "Education for Liberation"' (2006) 5 *Journal of Social Science Education* 126; T McCowan, 'Approaching the political in citizenship education: The perspectives of Paulo Freire and Bernard Crick' (2006) 6 *Educate* 57; A Scherb, *Der Bürger in der Streitbaren Demokratie: Über die normativen Grundlagen Politischer Bildung* (Springer Verlag 2008). See also nn 565-594.

*cal sciences* examine appropriate methods for the classroom, including ways to stimulate critical thinking.<sup>110</sup> Combining insights gained from other disciplines with EU law, I will propose an innovative learning method for EU citizenship education in schools in Chapter five.

### 15 *Bridging EU law and citizenship education*

Both EU law and the science of citizenship education are in flux. This study cannot comprehensively analyse all theories or issues in both fields, nor aim to give definitive answers. The objective is, rather, to link the fields and to raise awareness in each field of the other field of study. Too often, legal approaches to EU citizenship disregard the educational dimension and approaches to citizenship education lack the EU dimension. My ambition is to demonstrate, on the one hand, that in order to render EU citizenship more democratic, the development of an educational dimension is necessary, and that, on the other hand, in order to render citizenship education more adequate and acceptable in European society, an EU dimension needs to be interwoven into its component parts. In other words, it will be argued that the EU dimension must necessarily be part of the ongoing debates on citizenship education, and, conversely, that the educational dimension should be part of the thinking on EU citizenship.

I hope to convince EU law experts and constitutionalists in the Member States of the educational implications of the general principles they deal with on a daily basis. The principle of non-discrimination on grounds of nationality, for instance, is taught at universities all over the EU (and is a cornerstone of EU construction) but is not necessarily matched by culture and actual practice. While law has much to offer citizenship education, citizenship education also has something to offer law. Looking through the prism of EDC will enrich the legal approach to EU citizenship and shed light on it. Considering EU citizenship from the perspective of education for democratic citizenship and the right to education contributes to the originality of the study.

I also hope to convince citizenship education experts and curriculum designers of the EU implications of the educational principles *they* deal with on a daily basis. Educational aims in the EU Member States can only

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110 W Sander (ed) *Handbuch politische Bildung* (Reihe Politik und Bildung 32, Bundeszentrale für politische Bildung 2005), see in particular W Sander on 'Politikdidaktik' as a science (21–35) and authors on 'Methoden und Medien politischer Bildung' (487–619); Reinhardt, *Teaching Civics: A Manual for Secondary Education Teachers*.

be achieved by including the EU dimension. The EU-driven by EU law—has evolved in a way which requires academic study of citizenship education to keep pace. Citizenship education should be systematically adapted to assure consistency with EU law (alignment). The empowerment of EU citizens fails when based on outdated content.

16 *Education: The Necessary Utopia—empowering EU citizens*

In 1996, Delors described education as ‘the Necessary Utopia’.<sup>111</sup> That is even more true of citizenship education: it is necessary *and* utopian. At times, the ‘two-fold challenge’ of linking two uncertain subjects (citizenship education and EU citizenship) has given me a feeling of ‘mission impossible’. However, the path forward must be waymarked. The normative assumption underlying this study is that if we are to take the values of democracy, the rule of law and respect for fundamental rights seriously, citizenship education becomes extremely important. Quality education is needed to strengthen values of human dignity, freedom, equality and solidarity, which belong to the core values underlying national constitutions, the EU Treaties, and the CFR. Two aphorisms come to mind: ‘today’s education is tomorrow’s society’<sup>112</sup> and ‘we are not born as a citizen, we are educated to be a citizen’<sup>113</sup>. Admittedly, citizenship education is closely connected to politics and power, and therefore a delicate enterprise.<sup>114</sup> Yet, the benefits of citizenship education largely outweigh the potential risks—

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- 111 J Delors, ‘Education: The Necessary Utopia’ in *Learning: the Treasure Within, Report to Unesco of the International Commission on Education for the Twenty-first Century* (Unesco 1996). See also E Callan, ‘A Note on Patriotism and Utopianism: Response to Schrag’ (1999) 18 *Studies in philosophy and education* 197; H Starkey, ‘Human rights, cosmopolitanism and utopias: implications for citizenship education’ (2012) 42 *Cambridge Journal of Education* 21.
- 112 Cited by Mr Tibor Navracsics, EU Commissioner for Education, Culture, Youth and Sport, in CoE, *Learning to live together: Council of Europe Report on the state of citizenship and human rights education in Europe* (in accordance with the objectives and principles of the Council of Europe Charter on Education for Democratic Citizenship and Human Rights, 2017) 39.
- 113 Often repeated aphorism, see i.a. R Maxwell ‘Citizens Are Made, Not Born: How Teachers Can Foster Democracy’, in *Citizens in the Making* (2017 ASCD); Dutch Education minister A Slob, ‘Citizenship to have key role in Dutch schools: ‘children are not born democratic’, in <[www.dutchnews.nl/news/2018/06/citizenship-to-have-key-role-in-dutch-schools-children-are-not-born-democratic/](http://www.dutchnews.nl/news/2018/06/citizenship-to-have-key-role-in-dutch-schools-children-are-not-born-democratic/)>.
- 114 A Osler and YW Leung, ‘Human rights education, politics and power’ (2011) 6 *Education, Citizenship and Social Justice* 199.



risks which can, moreover, be contained.<sup>115</sup> The objective is to empower EU citizens, an empowerment advocated by many actors.<sup>116</sup> In the search for democracy in Europe, Calliess and Hartmann ask the central question: How does the public sphere develop in a transnational context?<sup>117</sup> This study will contribute part of the answer by highlighting the educational substratum of the public sphere. The EU dimension cannot be left out of citizenship education, because the EU exercises important parts of public authority. There is no other choice for EU Member States but to find ways of dealing with citizenship education to the best of their abilities and including an EU dimension in it. Given the ‘two-fold challenge’, criticism of this study is unavoidable and will be taken into account in all openness.<sup>118</sup>

I will use continuous numbering for the paragraphs and chapters.

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115 See, i.a., human rights *in* education and multiple guidelines (§ 179 ).

116 Scholars, institutions, politicians, NGOs, ... see further Part one, i.a. n 562; also M Dougan, N Nic Shuibhne and E Spaventa (eds), *Empowerment and disempowerment of the European citizen* (Hart 2012); G Smith, ‘The European Citizens’ Initiative: A New Institution for Empowering Europe’s Citizens?’ in M Dougan, N Nic Shuibhne and E Spaventa (eds), *Empowerment and Disempowerment of the European Citizen* (Hart 2012); A Somek, ‘The Individualisation of Liberty: Europe’s Move from Emancipation to Empowerment’ (2013) 4 *Transnational Legal Theory* 258; C Calliess and M Hartmann, *Zur Demokratie in Europa: Unionsbürgerschaft und europäische Öffentlichkeit* (Mohr Siebeck 2014); D Sarmiento and E Sharpston, ‘European Citizenship and Its New Union: Time to Move on?’ in D Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017) 226 (‘only with the support of empowered citizens will the European Union have a real future’); and European Parliament Resolution of 18 May 2010 on ‘An EU Strategy for Youth – Investing and Empowering’ [2011] OJ C161E/21; Commission Citizenship Report ‘Strengthening Citizens’ Rights in a Union of Democratic Change, EU Citizenship Report 2017’ COM(2017) 030 final/2; Commission Communication ‘A Modern Budget for a Union that Protects, Empowers and Defends- The Multiannual Financial Framework for 2021-2027’ COM(2018) 321 final.

117 Calliess and Hartmann, *Zur Demokratie in Europa: Unionsbürgerschaft und europäische Öffentlichkeit* 150: ‘Wie entstehen Öffentlichkeiten in der transnationalen Konstellation?’.

118 Reactions to <[www.kuleuven.be/wieiswie/en/person/00007631](http://www.kuleuven.be/wieiswie/en/person/00007631)>.

