



## ARTICLES

# EXPLAINING THE EU'S LEGAL OBLIGATION FOR DEMOCRACY PROMOTION: THE CASE OF THE EU-TURKEY RELATIONSHIP

PAUL JAMES CARDWELL\*

TABLE OF CONTENTS: I. Introduction. – II. The “democracy” in EU democracy promotion. – III. The EU-Turkey relationship. – IV. Analysing democracy promotion in the EU-Turkey relationship. – IV.1. Positive/express democracy promotion. – IV.2. Negative/express democracy promotion. – IV.3. Positive/implied democracy promotion. – IV.4. Negative/implied democracy promotion. – V. Conclusion.

ABSTRACT: The EU has a Treaty-based obligation to promote democracy in the wider world, with a particular emphasis on neighbouring States. Doctrinal approaches to EU democracy promotion generally focus on a specific set of instruments, whereas the law of external relations underpins a much wider set of policies and practices relating to democracy promotion. This *Article* applies four categories of democracy promotion (on a positive/negative and express/implied axis) to a case study of the EU-Turkey relationship. The wider scope provided by this categorisation demonstrates that democracy promotion should not only be seen within the confines of “positive” measures such as enlargement conditionality but also by measures and practices which are often hidden from view. In doing so, a richer understanding of how the law of the EU's external relations informs policy and practice can be gained.

KEYWORDS: European Union – democracy promotion – Turkey – external relations – CFSP – normative power Europe.

## I. INTRODUCTION

The EU has tasked itself with promoting democracy as a “value” in all its external relationships. The TEU lists “democracy” as one of the values upon which the EU is founded

\* Professor of Law, University of Strathclyde, Glasgow, Scotland, pauljames.cardwell@strath.ac.uk. This *Article* was presented at the workshop on “Crisis of Democracy Promotion”, University of Groningen, the Netherlands, March 2016. I am grateful to Balazs Szent-Ivanyi, Zsuzsanna Vegh, Marek Neuman, Özlem Terzi, Meltem Müftüleri-Baç, Anne-Sophie Maas and the workshop participants for their comments.

and hence obliges it to uphold and promote democracy across the globe.<sup>1</sup> As such, we find an expression in the Treaty of the oft-cited characterization of the Union and its identity as a “normative power”.<sup>2</sup>

This *Article* focuses on how the legal obligation translates into the practices of EU democracy promotion. Since a doctrinal legal analysis of democracy promotion would likely only capture a select number of measures identifiable as serving this aim, casting a wider net enables legal scholarship to appreciate the diversity of instances where democracy promotion plays a role in EU external relations. The notion of democracy promotion here is therefore wider than that associated with “activities”, which has informed much recent research.<sup>3</sup> Whilst a rich body of work in political science/international relations scholarship has explored democracy promotion, particularly since the emergence of the Common Foreign and Security Policy (CFSP) in the TEU in 1992, there is a need for legal scholarship to account for this phenomenon too. This is for three reasons. First, because the nature of “democracy” promoted by the EU (even accounting for its vague parameters) is intrinsically rule-based: the rule of law and human rights protection are integral components of the values of “democracy”.<sup>4</sup> Second, that the instruments and conduct of the EU’s external relations are underpinned by legal dynamics, whether these be contractual relations with third States (including enlargement, trade or development) or the use of legal instruments as threats (such as restrictive measures (sanctions)). Third, understanding how the legal obligation of the EU is pursued, even in ways which are indirect or hidden within other aims, allows us to more fully appreciate the extent to which the EU can be characterized as a global (legal) actor and promoter of democracy.

The contribution thus is to demonstrate how the wide variety of policies and practices within the context of a bilateral relationship with a third State and legal space provide a fuller understanding of democracy promotion by the EU and its claim to norma-

<sup>1</sup> Arts 2 and 3, para. 5, TEU.

<sup>2</sup> See I. MANNERS, *Normative Power Europe: A Contradiction in Terms?*, in *Journal of Common Market Studies*, 2002, p. 235 *et seq.*; I. MANNERS, *The Normative Power of the European Union in a Globalized World*, in Z. LAIDI, *EU Foreign Policy in a Globalised World*, Abingdon: Routledge, 2008, p. 23 *et seq.*; R.A. DEL SARTO, *Normative Empire Europe: the European Union, its Borderlands, and the Arab Spring*, in *Journal of Common Market Studies*, 2016, p. 216.

<sup>3</sup> See, for example, A. WETZEL, J. ORBIE, F. BOSSUYT, *One of What Kind? Comparative Perspectives on the Substance of EU Democracy Promotion*, in *Cambridge Review of International Affairs*, 2015, p. 21 *et seq.*

<sup>4</sup> It is not always possible to distinguish “democracy” and “human rights” in EU discourse, which are often grouped together as “political reforms”. As such, although the focus of this *Article* is democracy promotion, this includes consideration of both human rights and the rule of law as a constituent element.

tivity. A four-part categorization is used, exploring positive and negative, express and implied instances of democracy promotion.<sup>5</sup>

The case study used to demonstrate the different types of democracy promotion at play is the EU-Turkey relationship. The EU-Turkey relationship is one which does not easily fit in a single frame: the EU's legal, economic and political ties with Turkey sit alongside tensions around migration, security and democratization. The period since 2005 forms the basis of the study, as this marked the point when EU enlargement negotiations with Turkey were officially opened. But although significant, the EU-Turkey relationship is not merely one based on enlargement, given Turkey's "dynamic economy, its strategic location and its important regional role",<sup>6</sup> which distinguishes it from all other (recent) candidate States.

Contemporary relations have been partly structured by the impact of the EU-Turkey migration cooperation "statement" (2016) but also heightened tensions following the attempted *coup d'état* in Turkey in July 2016. The EU institutions condemned the attempted *coup* but have expressed concern at the subsequent government crackdown on civil society and national institutions.<sup>7</sup> Nevertheless, despite the turbulence, the depth of the bilateral economic, political and cultural relationship means that there is an opportunity to explore a wide variety of democracy promotion efforts. The place of democracy promotion and whether the EU is ready to compromise on enforcing its stated values is especially pertinent in light of the strategic role played by Turkey in Europe's migration control and security agendas.

The *Article* does not suggest which of the democracy promotion categories might have the most democratising effect on Turkey, nor whether the "democracy" being promoted is an example of a changing (neo-)liberal focus within Europe.<sup>8</sup> Rather, it demonstrates that democracy promotion should not be seen within the confines of the "positive" measures such as enlargement process conditionality or specific funding instruments. In putting forward a better understanding of democracy promotion *via* a wider scope of analysis and drawing on insights from political science literature, the *Article* concludes that the EU's claim to be a normative power may still hold, even if the values associated with democracy promotion efforts may be sidelined in favour of other goals, such as migration control and security. The legal dynamics that underpin EU de-

<sup>5</sup> As developed in P.J. CARDWELL, *Mapping Out Democracy Promotion in the EU's External Relations*, in *European Foreign Affairs Review*, 2011, p. 21 *et seq.*

<sup>6</sup> Communication COM(2012) 600 final of 10 October 2012 from the Commission to the European Parliament and the Council on Enlargement strategy and main challenges 2012-2013, p. 16.

<sup>7</sup> Commission Staff Working Document SWD(2016) 366 final of 9 November 2016, *Turkey 2016 Report – Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy COM(2016) 715 final*, [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>8</sup> A. WETZEL, J. ORBIE (eds), *The Substance of EU Democracy Promotion*, Basingstoke: Palgrave, 2005.

mocracy promotion nevertheless help us to better understand both the richness of EU external relations law and policy, their operationalization and relationship with democratic values.

## II. THE “DEMOCRACY” IN EU DEMOCRACY PROMOTION

The Treaty<sup>9</sup> states that the EU is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”.<sup>9</sup> This translates to a commitment to “uphold and promote its values” in relations with the wider world.<sup>10</sup> The Treaty of Lisbon introduced Art. 21, para. 1, TEU, which stipulates that the EU’s international action, “shall be guided by the principles which have inspired its own creation, development and enlargement”. These principles include democracy, the rule of law and human rights. The Court of Justice has, in the EU’s internal legal order, ensured that these principles are a distinctive part of general EU law.<sup>11</sup> The values in the Treaty<sup>12</sup> are no longer specified as those which are common to the Member States, but rather to the EU itself as an autonomous actor.<sup>12</sup> Legal scholarship has explored what these values constitute in practical expressions of EU external relations and the institutions responsible for their promotion.<sup>13</sup>

The Treaty<sup>14</sup> calls for specific actions at the EU level to “safeguard its values”,<sup>14</sup> to “consolidate and support democracy”<sup>15</sup> and to “promote an international system based on stronger multilateral cooperation and good global governance”.<sup>16</sup> This provision lays a foundation for the export of EU norms and, with Art. 3, para. 5, TEU, a legal basis.<sup>17</sup> The Treaty makes special mention of the relationship with neighbouring countries and links with the EU’s values (rather than *shared* values with the neighbours). In this respect, the EU is charged with establishing “an area of prosperity and good neighbourli-

<sup>9</sup> Art. 2 TEU.

<sup>10</sup> Art. 3, para. 5, TEU.

<sup>11</sup> B. DE WITTE, *The EU and the International Legal Order: the Case of Human Rights*, in M. EVANS, P. KOUTRAKOS, *Beyond the Established Legal Orders: Policy Interconnections Between the EU and the Rest of the World*, Oxford: Hart Publishing, 2011, p. 127 *et seq.*

<sup>12</sup> P. KOUTRAKOS, *EU International Relations Law*, 2015, Oxford: Hart Publishing, p. 419.

<sup>13</sup> See, *inter alia*, A. MAGEN, *The Rule of Law and its Promotion Abroad: Three Problems of Scope*, in *Stanford Journal of International Law*, 2009, p. 51 *et seq.*; M. CREMONA, *Values in EU Foreign Policy*, in M. EVANS, P. KOUTRAKOS, *Beyond the Established Legal Orders*, cit., p. 275 *et seq.*, L. PECH, *Rule of Law as a Guiding Principle of the European Union’s External Action*, CLEER Working Papers, no. 3, 2012/3.

<sup>14</sup> Art. 21, para. 2, let. a), TEU.

<sup>15</sup> Art. 21, para. 2, let. b), TEU.

<sup>16</sup> Art. 21, para. 2, let. h), TEU.

<sup>17</sup> C. HILLION, *Anatomy of EU Norm Export Towards the Neighbourhood*, in P. VAN ELSUWEGE, R. PETROV, *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union*, Abingdon: Routledge, 2014, p. 15 *et seq.*

**Formattato:** Tipo di carattere: Non Corsivo

ness, founded on the values of the Union".<sup>18</sup> The EU's Global Strategy and other recent foreign policy documents place great emphasis on "resilience" of States and societies, particularly those in the EU neighbourhood, and make an explicit link between the promotion of democracy in third countries and maintaining democracy within the EU.<sup>19</sup>

There is thus a clear, if general, mandate to promote democracy beyond the EU's borders. "Democracy" is not defined in the Treaties, which is perhaps not surprising since the democratic nature of the EU itself is contested insofar as it is "not about overcoming its democratic nation states, but about managing democratic interdependence".<sup>20</sup> Ongoing debates within the EU about how to tackle democratic "backsliding" in Hungary and Poland reveal the thorny nature of where the limits of democracy lie, and what to do about it. When transplanted to the external sphere, the challenges of the EU as a non-State polity promoting democracy in a third State is no less difficult. As such, Kurki has characterised the EU's democracy promotion as based on a "fuzzy" framework when compared to the logics followed by the US, but also by other international or non-governmental organisations.<sup>21</sup>

The Treaty of Lisbon introduced a section entitled "Provisions on Democratic Principles". These four articles are not concerned with external democracy promotion *per se*. However, they give some insight into the values of democratic legitimacy signalled by Art. 21, para. 1, TEU. The provisions focus on Parliamentary accountability and representative democracy as the foundation of the EU's functioning.<sup>22</sup> This reminds us (and recalls the argument by Manners)<sup>23</sup> that what the EU *is* affects what it *does* externally as a normative actor.

Unlike in the academic literature, within official EU discourse, "democracy support" is generally preferred to "democracy promotion". The use of the former term gives less of an impression of a one-size-fits-all approach and recognition that the category of States where democracy is a subject of concern or discussion is very wide. As a consequence, as Pace has argued in the Mediterranean context,<sup>24</sup> this means that EU policy-

<sup>18</sup> Art. 8, para. 1, TEU. For further exploration of the nature of "good neighbourliness", see the contributions to: D. KOCHENOV, E. BASHESKA (eds), *Good Neighbourliness in the European Legal Context*, Leiden: Brill Nijhoff, 2015.

<sup>19</sup> High Representative of the Union for Foreign Affairs and Security Policy: *A Global Strategy for the European Union's Foreign and Security Policy: Shared Vision, Common Action: A Stronger Europe*, 28 June 2016, [www.europa.eu](http://www.europa.eu); *From Shared Vision to Common Action: Implementing the EU Global Strategy Year 1*, 7 June 2017, [www.europa.eu](http://www.europa.eu).

<sup>20</sup> J. NEYER, *Justice and the Right to Justification: Conceptual Reflections*, in D. KOCHENOV, G. DE BÚRCA, A. WILLIAMS (eds), *Europe's Justice Deficit?*, Oxford: Hart Publishing, 2015, p. 211 *et seq.*

<sup>21</sup> M. KURKI, *Fuzzy Liberalism and EU Democracy Promotion: Why Concepts Matter*, in A. WETZEL, J. ORBIE (eds), *The Substance of EU Democracy Promotion*, Basingstoke: Palgrave, 2005, p. 35 *et seq.*

<sup>22</sup> Art. 10, para. 1, TEU

<sup>23</sup> I. MANNERS, *Normative Power Europe: A Contradiction in Terms?*, cit.

<sup>24</sup> M. PACE, *Paradoxes and Contradictions in EU Democracy Promotion in the Mediterranean*, in *Democratization*, 2009, p. 39 *et seq.*

making suffers from incoherence in terms of objectives. In official documentation, frequent references are made to emphasising “common” and “shared” values between the EU and a third State, even in instances where the two would appear to have little in common in terms of democratic governance. Frequent reference is made to instruments of international law (especially if signed by the third State), or a pre-existing legal framework with the EU (such as the Cotonou Agreement with African, Caribbean and Pacific States) or within the State’s own region as a means of signifying what values these might be. At the same time, this vagueness represents a recognition of a differentiation of values in a process of dialogue where the EU is considering deeper cooperation with a third State. But the nature of what values are “shared” can be varied according to the EU’s own interests. As Leino has observed,<sup>25</sup> the “universal” language can be used to promote its own objectives and therefore is not something genuinely shared, but a “false universal”.

The common or shared values are thus difficult to identify in their entirety with any certainty, even if aspects of democracy can be crystallised into a core sub-set of values (as Pech has argued in the case of the rule of law).<sup>26</sup> Taken as a whole, the difficulties reflect the even more fundamental question of what *type* of democracy the EU itself embodies beyond the general principles of law identified by the Court of Justice in the absence of a definition in the Treaty. Needless to say, the under-determination of objectives has an impact on democracy promotion efforts.<sup>27</sup> The risk with a differentiated approach is that the EU’s reiteration of its strong commitment to promoting democracy includes an in-built downgrading of democracy when other interests are at stake. Common/shared values can be stressed if the aim is to demonstrate that cooperation, rather than criticism, is sought with the third State(s) in question. The way in which the obligation to promote democracy and democratic values in the wider world is thus uneven, and perhaps unavoidably so.

As the EU’s Global Strategy notes,<sup>28</sup> ensuring security, economic prosperity and stability in the Mediterranean has clear and tangible benefits for the EU. The former CFSP High Representative explicitly made this point in terms of “respecting and promoting the rule of law as well as fundamental rights and freedoms not only defines the EU but

<sup>25</sup> P. LEINO, *The Journey Towards All that is Good and Beautiful: Human Rights and ‘Common Values’ as Guiding Principles of EU Foreign Relations Law*, in M. CREMONA, B. DE WITTE (eds), *EU Foreign Relations Law; Constitutional Fundamentals*, Oxford: Hart Publishing, 2008, p. 259 *et seq.*, p. 265.

<sup>26</sup> L. PECH, *Promoting the Rule of Law Abroad: On the EU’s Limited Contribution to the Shaping of an International Understanding of the Rule of Law*, in D. KOCHENOV, F. AMTENBRINK (eds), *The European Union’s Shaping of the International Legal Order*, Cambridge: Cambridge University Press, 2013, p. 129.

<sup>27</sup> M. KURKI, *Fuzzy Liberalism and EU Democracy Promotion: Why Concepts Matter*, *cit.*

<sup>28</sup> High Representative of the Union for Foreign Affairs and Security Policy, *A Global Strategy for the European Union’s Foreign and Security Policy: Shared Vision, Common Action: A Stronger Europe*, *cit.*

is also in our interest".<sup>29</sup> The EU's stated emphasis is on long-term, incremental changes rather than short-term achievements,<sup>30</sup> though this is brought into question (to take an example from the case study here) by the speed at which accession negotiations were promised in return for enhanced migration cooperation with Turkey in early 2016. It would be *naïve* to suggest that the EU engages in democracy promotion without any other interests at stake. The EU's internal considerations are inherently connected to its external engagements, and tied to the legally-based inducements it can offer.<sup>31</sup> The negotiations with Turkey over an arrangement to "reduce the illegal flow of migrants" offer specific advantages but in exchange for security assurances rather than democratic improvements.<sup>32</sup> Whilst this seems to undermine the central claims of the EU as a normative power, it highlights the need to understand where else in the EU's engagement with Turkey democracy promotion takes place, especially "under the radar" and beyond official engagements with central government, to better our understanding and evaluation.

Given the Treaty language across the EU's foreign policy discourse about the importance of democratisation and human rights, it is tempting to focus attention solely on those actions which are taken with the express/stated purpose of influencing the democratic development of third States. Political scientists have extensively theorised the ways in which norms can be transmitted from the EU to third States *via* their interactions. Manners' norm diffusion thesis recognises the different ways that norms transfer as a process including via contagion, procedural diffusion and transference.<sup>33</sup> Norms can be transferred via long-term processes of socialization (whereby the "target" State is exposed to the norms and values of the EU and eventually adopts them) or by strategic calculation by the third State in return for a particular advantage or benefit. Schimmelfennig and Sedelmeier conceptualized the transfer in the context of Central and Eastern Europe via the external incentives model (based on the logic of consequences) or the social learning model (based on the logic of appropriateness and domestically driven processes).<sup>34</sup>

<sup>29</sup> Council of the European Union, *EU Guidelines: Human Rights and International Humanitarian Law* of March 2009, [www.consilium.europa.eu](http://www.consilium.europa.eu), p. 3.

<sup>30</sup> Council Conclusions of 17 November 2009 on *Democracy Support in the EU's External Relations*, point 4.

<sup>31</sup> See for example the analysis of the security and normative considerations in visa liberalization policy in the EU's neighbourhood: L. DELCOUR, S. FERNANDES, *Visa Liberalization Processes in the EU's Eastern Neighbourhood: Understanding Policy Outcomes*, in *Cambridge Review of International Affairs*, 2016, p. 1259 *et seq.*

<sup>32</sup> Communication COM(2016) 166 of 16 March 2016 from the Commission to the European Parliament, the European Council and the Council on next operational steps in the EU-Turkey cooperation in the field of migration.

<sup>33</sup> I. MANNERS, *Normative Power Europe: A Contradiction in Terms?*, cit.

<sup>34</sup> F. SCHIMMELFENNIG, U. SEDELMEIER (eds), *The Europeanisation of Central and Eastern Europe*, Ithaca: Cornell University Press, 2005.

The analysis in this *Article* accepts that norms can transfer in different ways. The emphasis here is less how the norms are accepted or resisted by the target, but the *processes* through which they are observable. Many of the features examined can be understood in terms of a democracy promotion *strategy* on the part of the EU.<sup>35</sup> However, it is also possible that the promotion of democracy is secondary to other aims pursued by the EU, or even as a by-product. That is to say that democracy promotion need not be explicitly labelled as such but can be understood to be a reflection of how the EU presents itself to the world and engages with third States (or, for that matter, within international organisations or multilateral frameworks). In doing so, neglected or unseen aspects of the EU putting its values into action can be observed. It must also be borne in mind that democracy promotion is an integral part of EU foreign and enlargement policies, but not merely that which is the prerogative of the Council and Commission. National and sub-national actors or individuals (such as MEPs) can be engaged in EU democracy promotion too.<sup>36</sup> Nevertheless, the institutional focus of the analysis here is generally limited to the roles played by the Commission, Council or Parliament since these are institutions that, individually or collectively, represent the EU.

A four-part classification is used to shed light on the different ways in which democracy promotion occurs.<sup>37</sup> A “positive” and “express” means of democracy promotion refers to the dominant logic of an inducement to improve some aspect of the third State’s democracy. The range of inducements on offer as well as the means vary considerably but the underlying rationale is “reinforcement by reward”.<sup>38</sup> Inducements may be couched in general terms and not “concrete” but rather steps towards reaching a particular benefit, though the promotion of democracy as the means to the end will be explicit. Though the inducement is usually offered to the government of the third State, this might not always be the case: direct funding to non-governmental organisations (NGOs) by the EU is an example of positive democracy promotion as a means to achieve better democratic participation. Although many instances of positive democracy promotion could be seen through the prism of conditionality, the scope of the category is wider since it is not necessarily the case that the inducement is *directly* tied to democratic progress only by the government.

“Negative” and “express” democracy promotion appears to be a contradiction in terms, since the nature of “promotion” suggests a positive or “giving” action. But in ef-

<sup>35</sup> R. YOUNGS, *Democracy Promotion: The Case of European Union Strategy*, Brussels: Centre for European Policy Studies, 2001.

<sup>36</sup> N. GORDON, S. PARDO, *Normative Power Europe and the Power of the Local*, in *Journal of Common Market Studies*, 2015, p. 416 *et seq.*

<sup>37</sup> P.J. CARDWELL, *Mapping Out Democracy Promotion in the EU’s External Relations*, *cit.*

<sup>38</sup> F. SCHIMMELFENNIG, S. ENGERT, H. KNOBEL, *Costs, Commitment and Compliance. The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey*, in *Journal of Common Market Studies*, 2003, p. 496.



fect it operates within the same logic as positive, express democracy promotion. That is to say that unless the third State improves or rectifies a situation of concern, then a benefit or potential benefit will be withdrawn, or the EU will seek to invoke punitive measures such as sanctions. The threat of doing so is an integral part of “negative” democracy promotion. One of the main differences with positive, express democracy promotion is that the focus is far more on the governmental organs of a third State than other, non-State actors.

The analysis here accounts for instances of EU activity which can be understood as democracy promotion, but without explicit reference to doing so. The analysis therefore avoids the distinction of “hard” and “soft” democracy promotion<sup>39</sup> or one that regards law as being only prescriptive or one-dimensional. The wide conceptualisation of democracy promotion therefore includes “implied” means by which the EU attempts to engage in democracy in a positive or negative way. “Positive” and “implied” democracy promotion refers to instances where the EU is projecting a vision of democracy and/or democratic values in its external relations towards a third country, even though these are not expressly stated as an aim. This might involve in the sharing of or exposure to EU values, such as invitations to join EU-led civil society networks, joint parliamentary assemblies or “twinning” projects; all of which are founded on the values of democratic participation and representation and are integral to the rule of law.

The final category, “negative” and “implied” democracy promotion, is the most difficult to identify in terms of its contents, since it refers to instances without express reference to promoting democracy by withdrawing something, downgrading relations or even the threat of punitive measures. Nevertheless, the case is made here that negative implied democracy promotion is not only possible but already present. For example, the EU might imply to a third State that relations suffer because of a lack of democratic progress and that they could be improved by following the example of a neighbouring State who improved their levels of democracy (either generally or in specific areas). This is particularly evident within the EU's neighbouring geographic regions of the Mediterranean and Eastern Europe.

The argument is made in this *Article* that all four categories of democracy promotion are visible in the EU's relationship with Turkey, and taken together, all enrich our understanding of contemporary democracy promotion. For the reasons explained in the following section, the relationship with Turkey is notable for its depth and longevity amongst all the EU's links with third States. Before exploring each category in detail, the context and content of the relationship needs further exploration.

<sup>39</sup> T. RISSE, N. BABAYAN, *Democracy Promotion and the Challenges of Illiberal Regional Powers*, in *Democratization*, 2015, p. 382.

### III. THE EU-TURKEY RELATIONSHIP

The EU-Turkey relationship is complex, deep and often under close scrutiny. It is above all longstanding: the EEC-Turkey customs agreement (1963) was among the first of its kind and represented an institutionalisation of the relationship long before others with non-EEC States. Turkey has been a key focus of the development of European foreign policy, dating back to European Political Cooperation (EPC) in the 1970s.<sup>40</sup> Contacts between the EU institutions are therefore not at the embryonic stage. Rather, institutional contacts are deep: Turkey is covered by “internal” EU policy (as part of a Customs Union) and external relations via enlargement, neighbourhood policies and the Common Foreign and Security Policy (CFSP). For the latter, it is both an insider (as it is offered the opportunity to participate in CFSP activities and align with Declarations) and an outsider.

Turkey is a longstanding member of European-focussed organisations including the Council of Europe (since 1949), NATO (since 1952), the Organisation for Economic Cooperation and Development (OECD) (since 1961), and the Conference (later the Organization) on Security and Cooperation in Europe (CSCE/OSCE) (since 1975). But realising Turkey's ambition to join the EU has been a very slow process with relatively few “milestones”. It is the only candidate where European leaders have been ambivalent or even openly hostile to membership,<sup>41</sup> by questioning whether it “belongs” in Europe.<sup>42</sup> This is bound up in broader questions of Islam's place in Europe<sup>43</sup> and populist shifts in some Member States which have brought Turkish (potential) membership to the fore.<sup>44</sup>

Turkey applied for membership in 1987 but the Commission's 1989 opinion cited macro-economic instabilities and continuing human rights violations after the 1980 military coup as reasons why Turkey should not yet join. Turkey entered a Customs Union with the EU in 1995, but was not granted candidate status until the 1999 Helsinki Council. Other countries in Central and Eastern Europe and the Mediterranean have leap-frogged Turkey and acceded after much shorter periods, before accession negotiations

<sup>40</sup> M.E. SMITH, *Europe's Foreign and Security Policy*, Cambridge: Cambridge University Press, 2004, pp. 109-110.

<sup>41</sup> These arguments have been made throughout Turkey's candidacy, but appear most often when a new stage in the process is on the horizon. Most notably in recent years, President Sarkozy of France, who with German Chancellor Merkel blocked the opening of “chapters” in the accession process in 2011. He later declared that Turkey is not eligible to join because it is “in Asia Minor, not Europe”, M.B., P.P., *Sarkozy: La Turquie dans l'UE? "Une erreur monumentale"*, 2 December 2015, [www.europe1.fr](http://www.europe1.fr).

<sup>42</sup> M. MÜFTÜLER BAÇ, *Turkey's Political Reforms and the Impact of the European Union*, in *South European Society and Politics*, 2005, p. 18.

<sup>43</sup> E. HUGHES, *Turkey's Accession to the European Union*, Abingdon: Routledge, 2011, p. 165.

<sup>44</sup> For example, in the UK's EU referendum in June 2016, the official Leave campaign claimed that “Turkey is joining the EU” and that free movement rights would be extended to 76 million Turks. The lack of progress in the enlargement negotiations, making membership only a distant prospect, was not highlighted.

eventually started in 2005. The accession process has not moved at a regular pace and for several years had seen scant progress. The ability of the EU to engage in rule transfer on political reforms was thus diminished.<sup>45</sup> EU-Turkey relations suddenly became more intense, and intensely scrutinised, in early 2016 as a result of increasing numbers of individuals attempting to reach Greece *via* the Turkish coast. The statement concluded between the EU and Turkey on migration cooperation in March 2016 came with a promise of opening enlargement *acquis* chapters and reversing the stagnated pace of accession.

The focus on migration cooperation did not however herald a shift in gear in accession negotiations. The attempted *coup d'état* in July 2016 and subsequent crackdown by the Turkish government on journalists, academics and civil society have led to increasing calls (including by the European Parliament) to suspend accession negotiations.<sup>46</sup> Turkish leaders have been more ambivalent about whether to continue to pursue EU membership as a goal. Although the official position is that Turkey and the EU remain committed to the process, there seems little likelihood that accession negotiations will pick up pace in the short to medium term. Nevertheless, the numerous and wide-ranging engagement activities (some of which are explored below) continue. Examining long-term democracy promotion remains a worthwhile endeavour and the actions of the central government need not mean that EU activities are futile.

Under the political dominance of President Recep Tayyip Erdoğan and the Adalet ve Kalkınma Partisi (AKP) party since 2002, relations with the EU and its Member States have varied considerably, from high points of international cooperation activities and occasional steps forward towards accession, to low points including very public disagreements, as demonstrated by an unprecedented diplomatic spat with Germany and the Netherlands in March 2017.<sup>47</sup> Erdoğan has broken with past leaders in being more forthright about a more prominent role for Islam in Turkish society and critical of European countries' treatment of Muslim minorities.<sup>48</sup> As a result of European ambivalence to membership and its growing economic strength, Turkey's own foreign policy has appeared to focus greater attention on its region, and further afield.<sup>49</sup> Başer has charac-

<sup>45</sup> M. MÜFTÜLER BAÇ, *The European Union and Turkey: Transforming the European Periphery into European Borderlands*, 2016, EUI Working Paper RSCAS, no. 12, 2016, p. 4.

<sup>46</sup> European Parliament Resolution 2016/2993 (RSP) of 24 November 2016 on EU-Turkey relations.

<sup>47</sup> In advance of a referendum on changes to the Turkish constitution, Germany and the Netherlands refused to permit Turkish Ministers to address pro-government rallies in their countries. President Erdoğan lambasted the governments, accusing them of Nazi-like behaviour.

<sup>48</sup> E. KIRDIŞ, *Immoderation: Comparing the Christian Right in the US and Pro-Islamic Movement-Parties in Turkey*, in *Democratization*, 2016, p. 430.

<sup>49</sup> D. GÜNAV, *Europeanization of State Capacity and Foreign Policy: Turkey in the Middle East*, in *Mediterranean Politics*, 2014, p. 220 *et seq.*; H. TARIK OĞUZLU, *Turkish Foreign Policy at the Nexus of Changing International and Regional Dynamics*, in *Turkish Studies*, 2016, p. 59.

terised this shift as representing “a more active and ambitious” foreign policy,<sup>50</sup> though others have claimed that the shift can be explained in terms of “historically changing strategies of social reproduction of the Ottoman and Turkish States in response to changing domestic and international environments”.<sup>51</sup> In any event, the emphasis on a regional focus marks the emergence of Turkey itself as a normative foreign policy actor in its region, which makes Turkey and the EU potential competitors in the promotion of norms.<sup>52</sup>

Enlargement is not therefore the only prism through which to see EU-Turkey relations. Similarly, democracy promotion is only one aspect of the relationship, sitting alongside an increasing focus on the role of Turkey in the migration “crisis” and particularly those fleeing neighbouring Syria. This makes the implied categories of democracy promotion potentially richer in content. Yet, of all the challenges, Turkish democracy has been a major sticking point. Turkey is ranked lower than all Member States and other candidates in international democracy indexes. For example, it sits at number 97 of 167 in the world and part of the “hybrid regimes” of category according to the Economist Intelligence Unit.<sup>53</sup> Fuat Keyman and Gümüştü have characterised Turkey’s current position as being at the crossroads between democratic consolidation or erosion.<sup>54</sup> Nevertheless, in the context of the Mediterranean, Turkey is ranked higher than most other States (except Israel and Tunisia) and has itself been involved in democracy promotion in the region following the Arab Spring<sup>55</sup> as a means of seeking a role as a regional actor.<sup>56</sup> Gunay finds that Turkey’s ties to the EU and candidate status allowed it to have greater influence over other Mediterranean States.<sup>57</sup>

The case study of Turkey thus allows a rich exploration of the different types of democracy promotion employed by the EU over a significant time period. The uniqueness of the EU-Turkey relationship in terms of its longevity, depth and multiple framings mean that this exploration should not be regarded as how democracy promotion operates with other countries near to and far from the EU. It is also important to avoid Euro-

<sup>50</sup> E.T. BAŞER, *Shift-of-Axis in Turkish Foreign Policy*, in *Turkish Studies*, 2015, p. 305.

<sup>51</sup> C. HOFFMAN, C. CEMGİL, *The (Un)Making of the Pax Turca in the Middle East: Understanding the Social-historical Roots of Foreign Policy*, in *Cambridge Review of International Affairs*, 2016, p. 1280.

<sup>52</sup> E. PARLAR DAL, *Assessing Turkey’s “Normative” Power in the Middle East and North Africa Region*, in *Turkish Studies*, 2013, p. 709 *et seq.*

<sup>53</sup> Economist Intelligence Unit, *Revenge of the “Deplorables”*, in *The Economist*, 31 March 2017, [www.eiuperspectives.economist.com](http://www.eiuperspectives.economist.com).

<sup>54</sup> E. FUAT KEYMAN, Ş. GÜMÜŞTÜ, *Democracy, Identity and Foreign Policy in Turkey*, Basingstoke: Palgrave, 2014.

<sup>55</sup> Z. ÖNİŞ, *Turkey and the Arab Revolutions*, in *Mediterranean Politics*, 2014, p. 203 *et seq.*

<sup>56</sup> B. AYATA, *Turkish Foreign Policy in a Changing Arab World*, in *Journal of European Integration*, 2015, p. 95 *et seq.*

<sup>57</sup> D. GÜNAY, *Europeanization of State Capacity and Foreign Policy: Turkey in the Middle East*, *cit.*, p. 231.

centric assumptions that changes in Turkey are necessarily and solely prompted by efforts by the EU. In particular, the advantages on offer as part of the enlargement process may be given as a result of other factors. The strategic role of Turkey in preventing migration flows to Europe and the granting of aid packages to do so is one prominent example, and one where the EU risks putting in danger its claim to be a normative power insofar as the questionable interpretation of international refugee law applies.<sup>58</sup> As Tarik Oğuzlu has noted,

“[t]he Europeans assume that in return for EU's financial aid to Turkey to help lessen Turkey's burden, opening some chapters in accession negotiations, and provision of visa-free travel to Turkish citizens in the Schengen area in late 2016, Turkey will likely cooperate with the EU in finding a remedy to the Syrian refugee crisis within Turkey's territory”.<sup>59</sup>

Furthermore, that any moves towards “Europeanisation” (including what we might see as consolidating democracy) may not only be accounted for by EU conditionality and incentive-based models, but domestic drivers of change, including from business groups, NGOs and civil society.<sup>60</sup> It is important not to see democracy promotion merely through the relationship between the national government and the EU institutions, or the rhetoric of political leaders. Rather, as some of the instances examined below demonstrate, the “bottom up” approach which engages entities other than the central government with the EU show on the one hand the wide scope of democracy promotion and the importance of focusing on democratisation as a long-term process.

#### IV. ANALYSING DEMOCRACY PROMOTION IN THE EU-TURKEY RELATIONSHIP

The categorisation of democracy promotion with third States was introduced in section II above. The following sections illustrate examples of democracy promotion across the positive/negative and express/implied categories in the case of the EU-Turkey relationship.

<sup>58</sup> I. MANNERS, *Normative Power Europe Reconsidered*, in *Journal of European Public Policy*, 2006, p. 194.

<sup>59</sup> H. TARIK OĞUZLU, *Turkish Foreign Policy at the Nexus of Changing International and Regional Dynamics*, cit., p. 64.

<sup>60</sup> M. MÜFTÜLER BAÇ, *Turkey's Political Reforms and the Impact of the European Union*, cit.; G. YILMAZ, *EU Conditionality Is Not the Only Game in Town! Domestic Drivers of Turkey's Europeanization*, in *Turkish Studies*, 2014, p. 303 et seq.

#### IV.1. POSITIVE/EXPRESS DEMOCRACY PROMOTION

This dimension to the EU's democracy promotion is the most readily identifiable. This category covers self-standing or over-arching measures designed to increase, in some way, democracy and democratic development in Turkey.

The enlargement process is the prime example in this category. Enlargement is a legal process according to which, as Art. 49 TEU makes clear, begins with the application of a "European State" to become a member. The process of joining is, however, owned and managed by the EU institutions which ultimately assess whether the State is ready to join. Enlargement is included in this category because it is the most obvious way in which a specific advantage (full EU membership) can reward democratic progress (though for European States only). Nevertheless, as a wide-ranging and multifaceted process, aspects of the enlargement process can also be understood as fitting into other categories too. It is therefore important to distinguish the elements which are positive/express here. Further, as Turkey is not (yet) a Member State, the emphasis here is on enlargement as a *process* rather than a *fait accompli*. A linear account of enlargement alone is unlikely to account for domestic change in Turkey over the longer term, especially since the length of time which has passed since Turkey's original application to join.<sup>61</sup>

At the most general level, each of the significant milestones of the enlargement process (accepting an application for membership, recognising a country as a candidate and beginning the formal process of negotiation) rests on an evaluation of the level of democracy in a third State. The requirement of a democratic system of government as a prerequisite to even consider an application for EU membership was established long-before the EU developed specific approaches to democracy promotion. In 1978, the European Council specified that representative democracy is an "essential element" for membership and was tested first in the accession negotiations of Greece, Spain and Portugal.<sup>62</sup> The Copenhagen Criteria (1993) set out the democratic credentials for future Member States more comprehensively.

The recognition of Turkey's EU candidature in 1999 immediately spurred a period of democratic reforms and constitutional amendments between 1999 and 2002.<sup>63</sup> Two concrete examples are provided by the abolition of the death penalty, which is considered by the EU to be an essential element of a fully democratic State, and the provision of cultural rights (in broadcasting and education) for the Kurdish minority. Both are di-

<sup>61</sup> N. TOCCI, *Europeanization in Turkey: Trigger or Anchor for Reform?*, in *South European Society and Politics*, 2005, p. 73 *et seq.*

<sup>62</sup> N. GHAZARYAN, *The European Neighbourhood Policy and the Democratic Values of the EU*, Oxford: Hart Publishing, 2014, p. 118.

<sup>63</sup> E. ÖZBUDUN, *Democratization Reforms in Turkey, 1993–2004*, in *Turkish Studies*, 2007, p. 179 *et seq.*; G. GÜNLÜK-ŞENESEN, H. KIRIK, *The AKP Era: Democratization or Resecuritization?*, in *Research and Policy on Turkey*, 2016, p. 75 *et seq.*

rectly linked to progress in the enlargement process and were achieved *via* a legislative package in 2002, as a direct result of the 1999 recognition of candidate status.<sup>64</sup> Much of the literature on the EU and Turkey published in the mid-2000s focussed on the path Turkey seemed to be taking towards EU membership, however differentiated from other candidates past and present.<sup>65</sup> Yet for Turkey, the evolution has been from one where fulfilling the entry criteria would result in membership, to one where even fulfilling all the criteria does not if the EU does not have the capacity to “absorb” the new Member State.<sup>66</sup>

Democratisation is not a tick box operation, and the EU institutions and Member States were criticised for not ensuring the consolidation of democracy in Romania and Bulgaria before their accession.<sup>67</sup> The steps of the enlargement process that, at this stage, can be measured by the opening and closing of more than 30 chapters of the *acquis* therefore illustrate the “positive” incentive on offer. Legal scholars have criticised the shortcomings of conditionality as failing to embed democracy fully before EU membership.<sup>68</sup> But there is little doubt within the enlargement process of the central place of democratic development as a key factor. This is particularly the case for Turkey: the Commission's 2015 annual report on Turkey's progress in the enlargement process devotes 20 of the 88 pages to political reforms, compared to only five for economic reforms, before even the specific *acquis* are considered. Within the latter, several can be seen as fitting with the positive/express category. In particular, chapter 23 on the judiciary and fundamental rights states that, “[a] proper functioning judicial system and effective fight against corruption are of paramount importance, as is the respect for fundamental rights in law and in practice” and goes on to list Turkey's successes and failures in this respect.<sup>69</sup> In the opening paragraphs, the Commission comments that:

“Opening benchmarks for Chapters 23 [judiciary and fundamental rights] and 24 [justice, freedom and security] on the rule of law still need to be defined so as to provide Turkey with a roadmap for reforms in this essential area. Turkey can accelerate the pace of negotiations by advancing in the fulfilment of the benchmarks, meeting the requirements

<sup>64</sup> F. SCHIMMELFENNIG, S. ENGERT, H. KNOBEL, *Costs, Commitment and Compliance. The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey*, cit., p. 508.

<sup>65</sup> For example, H. ARIKAN, *Turkey and the EU*, Aldershot: Ashgate, 2003.

<sup>66</sup> A.R. USUL, *Is There Any Hope of the Revival of EU-Turkey Relations in the “New Era”?*, in *Turkish Studies*, 2014, p. 289.

<sup>67</sup> A.B. SPENDZHAROVA, M.A. VACHUDOVA, *Catching Up? Consolidating Liberal Democracy in Bulgaria and Romania after EU Accession*, in *West European Politics*, 2012, p. 39 *et seq.*

<sup>68</sup> D. KOCHENOV, *EU Enlargement and the Failure of Conditionality*, The Hague: Kluwer, 2008.

<sup>69</sup> Commission Staff Working Document SWD(2015) 216 final of 10 November 2015, *Turkey 2015 Report – Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2015 Communication on EU Enlargement Policy COM(2015) 611 final*, www.ec.europa.eu, p. 55.

of the negotiating framework and by respecting its contractual obligations towards the EU".<sup>70</sup>

Previous reports have made comments on similar lines. Whilst the Commission might be accused of singling out Turkey by "over attentiveness",<sup>71</sup> the explicit linking of progress with pace of reforms makes the positive/express categorisation of this type of democracy promotion clear.

Although the enlargement process provides the foundation for the contemporary EU-Turkey relationship, other instances of positive/express democracy promotion are present too. Turkey is one of only a handful of countries in which more than 25 projects have been run under the European Instrument for Democracy and Human Rights (EIDHR) programme (Nepal, Russia, Venezuela and States in the Western Balkans are others) which effectively allows the EU to engage in positive, express democracy promotion in a third State *without* the permission of the host government.<sup>72</sup> Lavenex and Schimmelfennig have termed this bottom-up approach "linkage" which facilitates contact beyond the level of central government departments.<sup>73</sup> The ongoing civil society dialogue between Turkey and the EU awarded grants to 199 projects between 2006-2009 and is co-funded by the EU and Turkey.<sup>74</sup> Whilst the legal basis is separate to the enlargement process, the dialogue offers an insight for the EU institutions which in turn informs the Commission's reports on Turkey's readiness for membership.<sup>75</sup> The EU deals directly with NGOs as "human rights defenders" by issuing grants for projects on developing civil society, often with a technical (and thus less ostensibly political) focus. The EU has adopted a "local strategy" on Turkey which points to areas where Turkish democracy and the protection of human rights is believed to be lacking.<sup>76</sup> As these two examples demonstrate that positive/express democracy promotion instruments are fully in evidence here, the analysis now turns to express measures which are negative, rather than positive.

<sup>70</sup> *Ibid.*, p. 4.

<sup>71</sup> C. BALKIR, M. AKNUR, *Different Trajectories yet the Same Substance: Croatia and Turkey*, in A. WETZEL, J. ORBIE (eds), *The Substance of EU Democracy Promotion*, Basingstoke: Palgrave, 2015, p. 85 *et seq.*

<sup>72</sup> R. YOUNGS, *Democracy Promotion: The Case of European Union Strategy*, cit., p. 31.

<sup>73</sup> S. LAVENEX, F. SCHIMMELFENNIG, *EU Democracy Promotion in the Neighbourhood: From Leverage to Governance?*, in *Democratization*, 2011, p. 885 *et seq.*

<sup>74</sup> C. BALKIR, M. AKNUR, *Different Trajectories yet the Same Substance: Croatia and Turkey*, cit., p. 103.

<sup>75</sup> Communication (COM)2016 166, cit., p. 13.

<sup>76</sup> European Union local strategy in Turkey to support and defend Human Rights Defenders (HRDs), *European Union Local Strategy to Support and Defend Human Rights Defenders in Turkey*, 2015, [www.avrupa.info.tr](http://www.avrupa.info.tr).



## IV.2. NEGATIVE/EXPRESS DEMOCRACY PROMOTION

A promotion measure which is negatively expressed generally refers to the means the EU has at its disposal which can be engaged to withdraw a benefit it offers to a third State, in order to prompt rectification of an issue of concern. In a sense, these are the “stick” counterparts to the “carrots” in the previous section within the enlargement process. It is expressed in the Commission's reports on Turkey that progress in the enlargement process, towards the end goal of becoming a Member State, cannot be achieved without democratic improvement. As such, positive and negative efforts form a “push-pull” effect, which is also subject to changes over time, especially in the drawn-out case of Turkish membership.<sup>77</sup>

The enlargement process thus incorporates negative/express democracy promotion. Official criticism of Turkey by the EU institutions or Member States is often explicitly linked to a stalling of the enlargement process (and a reminder of the economic benefits of EU membership). Examples of this include aspects of the local strategy on human rights and democracy and negative judgments of the European Court of Human Rights against Turkey<sup>78</sup> which then feed into the Commission's evaluation of progress and, in turn, the Council's decision to open chapters for negotiations.<sup>79</sup> Perceived backsliding on democratic progress, such as floating the return of the death penalty by the government, is generally followed by a warning from the EU institutions that this would prevent or disrupt negotiations.<sup>80</sup>

Usually, the means by which this type of democracy promotion is visible is in the EU's international agreements with third countries. Since the growth in external agreements during the 1990s, the EU has insisted on incorporating democracy and human rights clauses as essential elements in its agreements with third States.<sup>81</sup> The clauses are typically worded to cover “substantial violations” for which procedures of “special

<sup>77</sup> M. MÜFTÜLER BAÇ, *The Never-Ending Story: Turkey and the European Union*, in *Middle East Studies*, 1998, p. 255; A.R. USUL, *Is There any Hope of the Revival of EU-Turkey Relations in the “New Era”?*, cit.

<sup>78</sup> The European Convention on the Protection of Human Rights and Fundamental Freedoms is not an EU instrument but all candidates are expected to be signatories. Turkey ratified the Convention in 1953, but has been one of the countries found most regularly to have breached its rights by the European Court of Human Rights. The Turkish government issued a derogation from the Convention in July 2016 following the attempted *coup d'état*. See further, B. BAĞLAYAN, *Turkey Declares State of Emergency and Derogates from ECHR After Failed Coup d'État*, in *Leiden Law Blog*, 8 August 2016, [leidenlawblog.nl](http://leidenlawblog.nl).

<sup>79</sup> M. MÜFTÜLER BAÇ, *The European Union and Turkey: Transforming the European Periphery into European Borderlands*, cit., pp. 5-6.

<sup>80</sup> S. ERKUŞ, *EU Remains Against Death Penalty in Turkey*, in *Hurriyet Daily News*, 16 February 2015, [www.hurriyetdailynews.com](http://www.hurriyetdailynews.com).

<sup>81</sup> The wording is generally as follows: “Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, as well as for the principle of the rule of law, underpins the internal and international policies of the Parties and constitutes an essential element of this Agreement”.

urgency" may be engaged including the suspension of the agreement. These clauses are heralded as a key factor in the practical application of normative power EU. In reality, activation is rare and the Commission admits that "dialogue and persuasion" and "positive action" is preferred to "penalties".<sup>82</sup>

The Association Agreement between the EU and Turkey (Ankara Agreement) does not include a human rights clause. Whilst this may not have been surprising at the initial entry into force of the agreement in 1964, the Association Council decision of 1995 establishing a customs union did not do so either.<sup>83</sup> Although the issue was "hotly debated"<sup>84</sup> such clauses only became the norm in the period *after* 1995<sup>85</sup> and were not without legal controversy, as Portugal unsuccessfully challenged the inclusion of human rights clauses in agreements in the Court of Justice.<sup>86</sup> However, Turkey is part of the Euro-Mediterranean Partnership (MEDA) programme which includes a human rights clause as an essential element.<sup>87</sup> Since Turkey is unusual amongst the EuroMed partners as the only one involved in an enlargement process,<sup>88</sup> there was no need for a specific EuroMed Association Agreement as with the other partners.

Turkey has not been the target of any restrictive measures (sanctions) by the EU, which since the entry into force of the Treaty of Lisbon have become ever more prevalent as a feature of EU external relations.<sup>89</sup> As a third State, there is nothing that would

<sup>82</sup> European Commission, *The European Union: Furthering Democracy and Human Rights Across the Globe*, Luxembourg: Office for Official Publications of the European Communities, 2007, [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>83</sup> EC-Turkey Association Council Decision 1/95 of 22 December 1995 on implementing the final phase of the Customs Union.

<sup>84</sup> European Parliament, Directorate-General for External Policies of the Union, *Human Rights and Democracy Clauses in the EU's International Agreements*, September 2005, [www.europarl.europa.eu](http://www.europarl.europa.eu), p. 6.

<sup>85</sup> Communication COM(1995) 216 final of 23 May 1995 from the Commission on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries.

<sup>86</sup> Court of Justice, judgment of 3 December 1996, case C-268/94, *Portugal v. Council of the European Union*.

<sup>87</sup> Regulation (EC) 1488/96 of the Council of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, Art. 3: "[t]his Regulation is based on respect for democratic principles and the rule of law and also for human rights and fundamental freedoms, which constitute an essential element thereof, the violation of which element will justify the adoption of appropriate measures".

<sup>88</sup> The Partnership was relaunched as the Union for the Mediterranean in 2008, and States including Albania, Bosnia-Herzegovina and Montenegro were also included in the framework.

<sup>89</sup> P.J. CARDWELL, *The Legalisation of European Union Foreign Policy and the Use of Sanctions*, in *Cambridge Yearbook of European Legal Studies*, 2015, p. 287; C. PORTELA, *How the EU Learned to Love Sanctions*, in M. LEONARD (ed.), *Connectivity Wars: Why Migration, Finance and Trade are the Geoeconomic Battlegrounds of the Future*, London: European Council on Foreign Relations, 2016, p. 36 *et seq.*

prevent the imposition of sanctions by the EU if circumstances dictated, but there would need to be a serious deterioration in the democracy or human rights situation. The first step would likely be a halt to the enlargement negotiations. To date, this has not occurred. Whilst the EU has been critical of “backsliding”<sup>90</sup> in Turkish democracy for several years, this criticism has not prevented the EU and its Member States seeking enhanced migration cooperation (which eventually took the form of a “statement”)<sup>91</sup> with Turkey since early 2016. This demonstrates that whilst the EU institutions might engage in criticism and impose restrictive measures on third States, the political realities mean that a highly differentiated approach is followed. In summary, negative/express democracy promotion is therefore primarily evident in the EU-Turkey relationship within the context of the enlargement process.

#### IV.3. POSITIVE/IMPLIED DEMOCRACY PROMOTION

In this category, democracy promotion which is less tied to specific instruments to reach a certain goal, can be seen through the more gradual projection of values towards a third State. As an example of the EU's normative power at work, we expect to see here a sharing of values but without express demands.

Hence, a dividing line can be drawn between the express demands on Turkey *via* the enlargement process (positive/express), and the more gradual process of Europeanisation *via* multi-level engagement with Turkey.<sup>92</sup> Europeanisation is not a singular concept, and given its malleability, particular readings could apply to other categories under examination in this *Article*. The particular reading of Europeanisation as understood here is, “the emergence of new rules, norms, practices, and structures of meaning to which member states are exposed and which they have to incorporate into their domestic rule structures”.<sup>93</sup> This type of Europeanisation emerged as a characterisation of

<sup>90</sup> M. MÜFTÜLER BAÇ, *The European Union and Turkey: Transforming the European Periphery into European Borderlands*, cit., p. 7.

<sup>91</sup> The “statement” is not referred to as an “agreement” since the EU's competences to make agreements were not used. Following a challenge to the legality of the statement in the General Court brought by several Pakistani and Afghan nationals, the Court found that the “statement” is not an agreement and therefore the judicial review procedure under Art. 263 could not be used. Furthermore, the view of the Court is that the statement was not made by the Council of the EU, but rather the Member States (in spite of it being termed the “EU-Turkey statement”). General Court, orders of 28 February 2017, cases T-192/16, T-193/16 and T-257/16, *NF, NG and NM v. European Council*.

<sup>92</sup> F. SCHIMMELFENNIG, S. ENGERT, H. KNOBEL, *Costs, Commitment and Compliance. The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey*, cit.; F. SCHIMMELFENNIG, U. SEDELMEIER (eds), *The Europeanisation of Central and Eastern Europe*, cit.

<sup>93</sup> T.A. BÖRZEL, *Europeanisation Meets Turkey: A Case Sui Generis?*, in Ç. NAS, Y. ÖZER (eds), *Turkey and the European Union: Processes of Europeanisation*, Abingdon: Routledge, 2016, p. 9 *et seq.*, p. 218; T.A. BÖRZEL, D. SOYALTIN, G. YILMAZ, *Same Same or Different? Accession Europeanization in Central and Eastern Europe and Turkey Compared*, in A. TEKIN, A. GÜNAY (eds), *The Europeanization of Turkey*, Abingdon: Routledge, 2015, p. 218.

what happens to actors (including Member States) within the EU, but has since been developed into a means of understanding what happens beyond the EU's borders.<sup>94</sup> It is sometimes understood as a "bottom up" approach,<sup>95</sup> which makes its characteristics appropriate to be included in the positive/implied category. Whilst this might be seen as little different to the instruments detailed in the positive/express category above, instances in this implied category work in a different, more subtle way. Although the examples cited within this category are also covered by the enlargement process, since they are all commented upon in the enlargement reports, the claim here is that they would be likely to exist anyway because of the nature of Turkey as a large, neighbouring State with whom the EU will obviously (need to) engage with.

Many of the instances included here also apply to other neighbourhood States in Eastern Europe and to a more limited extent, in the Mediterranean. Europeanisation is expressed through the providing of domestic incentives and a "sensitizing" of exposure to EU values to domestic actors. In practice, positive/implied democracy promotion engages both governmental, public organisations and NGO/civil society bodies though often in different ways. The common thread running through the numerous instances of the involvement and inclusion of the EU in Turkish civil society, directly with Parliamentary groups, NGOs and institutions contributes to projecting a vision of liberal democracy by exposure. This also includes the place of minorities<sup>96</sup> and women<sup>97</sup> in society, and well as more institutional-level initiatives, such as the inclusion of Turkey in the European Network of Ombudsmen.<sup>98</sup> Therefore, this category captures ongoing processes which are often missed by the focus on Turkey's "macro-political deficiencies" in meeting the Copenhagen criteria for enlargement.<sup>99</sup>

Two further examples (governmental and non-governmental) are as follows. First, Turkey and other candidate/neighbouring States are invited to align with CFSP Declarations. Declarations are not legally enforceable, and the third States have no input into their content, but aligning States confirm that they will adjust national policies to con-

<sup>94</sup> F. SCHIMMELFENNIG, U. SEDELMEIER (eds), *The Europeanisation of Central and Eastern Europe*, cit.

<sup>95</sup> S. JACQUOT, C. WOLL, *Usage of European integration: Europeanisation from a Sociological Perspective*, in *European Integration Online Papers*, 2003, eiop.or.

<sup>96</sup> G. YILMAZ, *From EU Conditionality to Domestic Choice for Change: Exploring Europeanisation of Minority Rights in Turkey*, in Ç. NAS, Y. ÖZER (eds), *Turkey and the European Union*, cit., p. 119 *et seq.*

<sup>97</sup> S.U. ÇUBUKÇU, *Contribution to the Europeanisation Process: Demands for Democracy of Second Wave Feminism in Turkey*, in Ç. NAS, Y. ÖZER (eds), *Turkey and the European Union*, cit., p. 141 *et seq.*

<sup>98</sup> P. KUBICEK, *The European Union and Grassroots Democratization in Turkey*, in *Turkish Studies*, 2005, p. 363; Commission Staff Working Document SWD(2013) 417 final of 16 October 2013, *Turkey 2013 Progress Report – Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on Enlargement Strategy and Main Challenges 2013-2014 COM(2013) 700 final*, eur-lex.europa.eu, p. 10.

<sup>99</sup> T. DIEZ, A. AGNANTOPOULOS, A. KALIBER, *Turkey, Europeanisation and Civil Society*, in *South European Society and Politics*, 2005, p. 7.

firm with the text. The Declarations are usually critical of third States, with the most frequent points of contention relating to democracy, the rule of law or human rights (such as unfair/illegitimate elections, treatment of minorities or use of the death penalty).<sup>100</sup> Turkey has aligned itself with approximately 60 percent of Declarations since 2005, though the annual rate has ranged between 40 and 80 percent. Whilst this practice is also commented on in the enlargement reports (as evidence of the required adaptation of national foreign policy to the CFSP), this process is also an example of sensitising the third countries to values that the EU seeks to promote. Whilst many of the Declarations seem anodyne, alignment might be domestically controversial in terms of the subject matter. For instance, for Declarations marking International Day against Homophobia, Turkey has sometimes aligned but more frequently has not. Thus, though the text of Declaration might be very generally worded, the very process of inviting Turkey and others to align is an implied promotion of what the EU considers to be part of "its" democratic values, whether or not the third State aligns. The content is thus anything but anodyne for the third country in question in terms of how it wants to project itself to the wider world: expressing shared values with the EU or making a strategic calculation to do so.

Second, at the non-governmental level, Noutcheva has highlighted Europeanisation as societal mobilisation and empowerment, as an alternative to élite empowerment.<sup>101</sup> This relies on accounting for both the EU's structural power and actorness, which permits understanding the role of the EU (across its institutions) as a diffuser of ideas. She makes the distinction between material assistance (which was covered in the positive/express category above) and the "ideational backing of protest events triggered by government policies that fall short of democratic norms".<sup>102</sup> In practice, the EU's press releases on events and officials' meetings with representatives of social movements risks destabilising relations with the government (which has certainly been the case with Turkey) but is a means of positively implying certain democratic values including plurality of political processes, rights of minorities etc. With these examples in mind, positive/implied democracy promotion here is expressed partly, though not exclusively, through the enlargement process but also through the frameworks for relations with neighbouring States.

<sup>100</sup> P.J. CARDWELL, *Values in the European Union's Foreign Policy: An Analysis and Assessment of CFSP Declarations*, in *European Foreign Affairs Review*, 2016, p. 601 *et seq.*

<sup>101</sup> G. NOUTCHEVA, *Societal Empowerment and Europeanization*, in *Journal of Common Market Studies*, 2016, p. 691 *et seq.*

<sup>102</sup> *Ibid.*, p. 5. [\[se il contributo nella nota precedente inizia a p. 691, come può questa nota far riferimento a quello stesso contributo a p. 5?\]](#)

#### IV.4. NEGATIVE/IMPLIED DEMOCRACY PROMOTION

The final category of EU democracy promotion is the least readily identifiable since it involves looking beyond the actual or potential use of negative means, to instances where the negative dimension to democracy promotion is *indirectly* used. Covered here are instances where the EU has attempted to export its model of democracy or values, but in a way which is both masked by other aims and which purports to take away some perceived benefit to the third State. In a sense, the behaviour of the EU could be characterised as being “passive aggressive”.<sup>103</sup> In other words, democracy promotion is present as an aim but hidden from view which makes it difficult to readily regard it as a singular “strategy” on the part of the EU.

As previously noted, it could be said that the existence of the human rights suspension clauses could fit within this category, since the EU institutions admit that these would only be triggered as a very last resort. The presence of these clauses function more as a threat for potential use. However, this category is much more open-textured. The negative/IMPLIED category points to instances where the target country in question is alerted to the fact that the EU is pursuing deeper cooperation (with the assumption of certain advantages to be gained by that country) with other, usually neighbouring, countries. The negative aspect is therefore that there is something in terms of its level of democracy which is preventing it from receiving such advantages that the EU is prepared to give. The IMPLIED aspect is that it may not be done using express words. In some cases, the EU has used CFSP Declarations against countries which imply that negative effects of a poor relationship with the EU (because of a lack of democracy) prevent that country from enjoying the type of relationship or benefits the EU has to offer. Belarus is a clear example where this approach has been followed.

With Turkey, the EU does not generally engage in the open criticism of the country beyond official documentation such as the enlargement reports. As such, the clearest example here is the pursuit of enlargement negotiations with other States, which applied after Turkey but joined before it and from a lower level of economic development (of which Bulgaria, Romania and Croatia stand out as examples). Of course, since this is IMPLIED then the reason may only be partly related to democracy, especially in the case of Turkey, the lack of progress towards full recognition of the government of Cyprus is a noted sticking point. But in response to Turkish complaints that it has been treated less favourably than other candidates, official speeches and documents from the EU institutions imply that the sticking points are not merely formal ones which can be resolved in a straightforward fashion.

With this in mind, this category can therefore include instances where there is no specific “box” to be ticked, and thus can be distinguished from, in particular, the nega-

<sup>103</sup> I am grateful to Zsuzsanna Végh for pointing out this characterisation.

tive/express category. To give a practical example, on lesbian, gay, bisexual, and transgender (LGBT) rights, the EU's comments on Turkey are less on the formal nature of legal protection for minorities, but the lack of an "atmosphere of tolerance" around the enforcement and recognition of rights.<sup>104</sup> Therefore, the implication is that this slows the enlargement process without being framed explicitly as such (if it was, this would move into the negative/express category). But because it is *not* explicit, this practice speaks to the wider Turkey-specific issue of being seen as a European country capable of closer relations. The implication is that this enforcement of rights is expected of a European country, despite the continued lack of such enforcement in countries in Central and Eastern Europe.

## V. CONCLUSION

This *Article* has sought to demonstrate, *via* the case study of Turkey, that the putting into practice of the Treaty obligation to promote democracy should not be viewed in a narrow way, with only mechanisms specifically flagged as "democracy promotion" tools as the only ones which "count". Rather, there are a host of means by which the EU attempts to promote or support democracy in third countries and not all of them follow a singular, defined strategy. Some of these means are specific to the EU as a particular kind of international, non-State actor. Needless to say, all are likely to have varying levels of success and the EU cannot and should not be understood as an organisation whose *raison d'être* is promoting democracy, despite what the Treaty text might indicate.

The nature of democracy promotion by the EU is frequently criticised for its vagueness and incoherence. But the nature of the EU as a unique, supranational entity means that such analysis risks falling into the trap of treating it as we would a nation State. Leaving aside the difficulties involved in forming a coherent vision of what kind of democracy should be promoted, it is possible to see that the fusion and interchangeability of the language of human rights and the respect for the rule of law within the EU's conception of democracy is a reflection of the EU's own legal order. Furthermore, the ways in which the positive and negative measures are used are fundamentally legal in character, even if their deployment is often constrained by political considerations.

The case study of Turkey demonstrates what the EU does towards a neighbouring country where the enlargement process is a significant but not the only frame for the relationship, in express, implied, positive and negative terms. As a neighbourhood and potential EU Member State, Turkey's situation and relationship is not fully replicated by any other State in the neighbourhood or beyond. The EU's engagement with Turkey can be exhibit features of democracy promotion across all four categories. The instances

<sup>104</sup> Commission, *Turkey: 2015 Report*, cit., pp. 67-68.

and weightings of positive/negative and express/implied democracy promotion are varied. Turkey's economic strength and importance to the EU for tackling, in particular, challenges in migration exert a strong influence on the desire and ability of the EU to engage in the types of democracy promotion that might be found towards other States. And yet, the declining prospects of Turkish EU membership, increased fractiousness at the official government level and prioritisation of migration/security-focussed goals within the relationship exert strong effects on how democracy promotion is operationalized. Part of this is the role the EU plays in fulfilling the other goals of the Treaty, including the security and well-being of its citizens, which has resulted in using measures which should (according to the EU's own discourse) be tied more closely to democratic progress, such as visa liberalization. The pursuit of migration control and security has taken headline precedence over the promotion of democracy, and used as a catalyst to promise Turkey greater progress along the path of enlargement.

However, what the analysis here has shown is that the multitude of ways and means that the EU has at its disposal to (attempt to) promote democracy in a third country offers an opportunity to understand the EU as a multifaceted international actor. Much democracy promotion is *not* subject to the potentially rapidly changing state of relations between the highest levels of government in Turkey and the EU institutions. The wider scope of analysis of democracy promotion demonstrates that this does not fatally undermine the characterisation of the EU as a normative power since the less visible, implied democracy promotion aspects remain, even when attention is focussed on the "headline" issues.

The uniqueness of the EU's relationship with Turkey means that the instances of democracy promotion in all four of the categories are unlikely to be fully replicated in any other relationship. Herein lies the limitation to the case study used here. Nevertheless, it is instructive in terms of the EU's other relationships and particularly those around the neighbourhood in the Mediterranean and Eastern Europe. Since Turkey is the only country with an enlargement perspective, however distant, then if the EU is not successful in promoting values in the country then it would seem to undermine any chances to do so with other States. Rather, the danger is that the Turkish case shows the democracy promotion efforts to be hollow and easily waived, thus undermining the EU's credibility in the region, at home and as a global actor. However, the particular nature of the EU as a non-State actor means that the aspects of democracy promotion which are less immediately visible, and particularly those which are implied rather than express, need to be taken seriously in evaluating what kind of an actor the EU is, and whether it meets its Treaty goals.