



The role of European Union accession in democratisation processes.

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Foreword:

This paper presents the achievements, challenges and toolbox of the European Union in the field of democratisation. By giving an overview of the European Union's multi-faceted approach to democracy promotion, this paper puts forward the capacity of the European Union to act as a 'normative power'.

This paper forms part of DPI's commitment to democracy building and aims to support and strengthen collaboration and research on democratic advancement. The paper was prepared for the Democratic Progress Institute (DPI) with the invaluable assistance of H  l  ne Pinto.

Abbreviations:

CoE	Council of Europe
CVM	Cooperation and Verification Mechanism
EC	European Commission
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EIDHR	European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
EOM	Election Observation Missions
EP	European Parliament
EU	European Union
IPA	Instrument for Pre-accession
OPPD	Office for Promotion of Parliamentary Democracy
PHARE	Programme of Community aid to the countries of Central and Eastern Europe
SAPB	Stabilisation and Accession Process with Balkans countries
TAEIX	Technical Assistance Information Exchange Office
TEU	Treaty on the European Union
TFUE	Treaty on the Functioning of the European Union

Introduction:

This research paper aims at highlighting the role of the European Union (EU)¹ in the context of democratisation. It seeks to provide an overview of **what** the EU has achieved to enhance democracy on the continent, **how** the EU has proceeded in this regard and **which challenges** the EU has faced – and is still facing – in this area. The following will be addressed more specifically:

- The democratic improvements that stemmed from the EU in general: from EU partnership agreements with third countries, from EU pre-accession processes (both before and after being considered as a candidate country), and from EU full membership.
- The tools and mechanisms used by the EU in relation to democratisation processes, especially in its neighbourhood but not solely.
- The gaps, difficulties and challenges encountered to ensure the existence and the continuance of a pluralistic and stable democracy within the EU.

The history of EU enlargement is a history of democratisation

The EU has widely participated in the democratisation of the European continent for over half a century. Whilst the origins of the EU with the European Coal and Steel Community (ECSC) in 1951 are more economic than political, the democratic requirement of EU membership was nevertheless hinted from the beginning. At the initial goal of the EU was to create a common market and to ensure peace on the European continent. However, democracy is arguably a prerequisite for peace and stability and thereby became rapidly upheld as a value shared by all Europeans. Through its consecutive enlargements, starting in 1976, the EU as such favoured the establishment and/or the strengthening of democratic political regimes.

Through the establishment of EU accession criteria in 1993, also known as the Copenhagen criteria, the **democratic conditionality** of joining the EU officially and legally materialized. Imposing legal democratic conditionality enabled several European countries to improve

¹ Former European Communities (EC).

their political regimes towards democracy more quickly. The EU enlargement process can therefore serve as a powerful tool to ensure democratic improvements in the pre-accession period during which candidate countries are required to back up their wish to join by a series of reforms guaranteeing the stability of their governance and institutions.

Establishing and ensuring democracy in the EU is a longstanding and ongoing project. Democratic conditionality of membership implies a wide range of requirements. First and foremost, the stability of government and state institutions are a priority. The ruling party must have been elected in pluralistic and open elections: all citizens of the EU have the right to vote for the candidate of their choice according to a list of participants representing all political affiliations.

The democratic character of a political regime thus became a prerequisite to becoming a member of the EU. Democracy is an inherent and constitutive factor of the EU; and is seen by many to be its cornerstone.² Nowadays, the EU is actively pursuing this goal of democratisation in the countries at its borders and even worldwide. With many thanks to Helene Pinto for her invaluable assistance with this paper.

² Kochenov, Dimitry, 2008 EU Enlargement and the Failure of Conditionality: Pre-accession conditionality in the fields of Democracy and the Rule of Law. Available at: https://books.google.co.uk/books?id=4MMMy6BLko18C&pg=PA32&lpg=PA32&dq=Declaration+on+democracy,+April+1978,+European+Council&source=bl&ots=dy454ohZY5&sig=5NiFlhdqHOfVAtayWUuj-GFJ19I&hl=fr&sa=X&ved=0ahUKEwjN4_700-3LAhXBWBQKHSAND1gQ6AEINjAD#v=onepage&q=Declaration%20on%20democracy%2C%20April%201978%2C%20European%20Council&f=false (accessed on February 28 2016).

I. European Union accession and democratisation – An overview

If the EU has always promoted democracy, it has not always had the tools to do so. There are two significant periods in the relationship between the EU and democracy: before and after 1993. Before 1993 the EU had not established strict criteria to become a member of the EU (addressed in A). In 1993, strict criteria and procedures for membership to the EU were established at the Copenhagen Summit (addressed in B). After 1993, no admission could be envisaged without compliance with the pre-accession criteria (addressed in C) and even further monitoring mechanisms were established to assess the democratic evolution for some countries (addressed in D).

A) Enlargement for democracy – history of European integration before 1993

The two first enlargements of the EU were achieved without any legal tool to ensure the democratic character of new member states.

Despite the European Council of Copenhagen pointing out in its ‘Declaration on democracy’, in April 1978 **candidate countries were not bound by democratic conditionality.**

- **Declaration on democracy, April 1978, European Council:**³

‘respect for and maintenance of representative democracy and Human Rights in each member states are essential elements of membership’

³ European Council, 1978, Copenhagen, Session of the European Council. Available at: http://aei.pitt.edu/1440/1/Copenhagen_1978.pdf (accessed on April 1st 2016).

There **were neither economic criteria nor legal and political criteria to become a member of the EC/EU at that time.** The integration of Greece, Spain and Portugal to the EC/EU mostly relied on the political will of member states, notably to spread democracy in Mediterranean countries.

Initially, democracy was taken for granted in the six EC/EU founding countries: France, Germany, Italy, Belgium, the Netherlands and Luxembourg. The goal of the European cooperation was to ensure peace and economic growth on the continent. The first enlargement to Denmark, Ireland and the United-Kingdom did not raise any democratic issue because the political regimes of these countries were similar in nature to those of the founding member states.

The southern enlargement process which started with the integration of Greece in 1981 and Spain and Portugal in 1986 offered the opportunity for the EC/EU to prove its prioritisation of democratisation. By integrating three former dictatorial countries, the EU demonstrated its determination to move beyond dictatorial regimes.

In 1962, by rejecting Franco Spain's application to join, the EC/EU affirmed its attachment for democracy, rejecting the mere idea of association because of the incompatibility between the EU political regimes and that of Spain.⁴

During the years of the Colonels' military dictatorship (1967 to 1974), Greece saw the suspension of its association agreement after a coup d'état, and was forced to withdraw from the Council of Europe in 1969.⁵ The Greek case points to **a symbolic association between Europe and democracy.**⁶

⁴ Kochenov, Dimitry, 2008 EU Enlargement and the Failure of Conditionality: Pre-accession conditionality in the fields of Democracy and the Rule of Law. Available at:

https://books.google.co.uk/books?id=4MMMy6BLko18C&pg=PA32&lpg=PA32&dq=Declaration+on+democracy,+April+1978,+European+Council&source=bl&ots=dy454ohZY5&sig=5NiFIhdqHOvAtayWUuj-GFJ19I&hl=fr&sa=X&ved=0ahUKEwjN4_700-3LAhXBWBQKHSAND1gQ6AEINjAD#v=onepage&q=Declaration%20on%20democracy%2C%20April%201978%2C%20European%20Council&f=false (accessed on 28th February 2016).

⁵ Centre virtuel de la Connaissance sur l'Europe (CVCE), 2012, Withdrawal, expulsion and suspensions of a member state of the Council of Europe. Available at:

http://www.cvce.eu/content/publication/2006/1/9/f9b31f98-f1a1-407c-97ad-7e92363117fd/publishable_en.pdf (accessed on 22nd March 2016).

⁶ Karamouzi, Eirini, 2014 'The Greek Paradox' Special Report London School of Economics Ideas: The Crisis of EU Enlargement. Available at: <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR018/Karamouzi.pdf> (accessed on 22nd February 2016).

In the Greek case, directly after the 1974 revolution, the then Prime Minister Karamanlis announced his intention to seek full membership to **protect the longevity of the country's democratic institutions.**⁷

The integration of Greece can also be seen to reflect the evolution of the Community's perception of itself in the 1970s. Incrementally, the idea of inserting an explicit political dimension to European integration appeared in/stemmed from two documents - The Document on European Identity in 1973 and the Tindemans Report of 1976.⁸

Through the Mediterranean enlargement process, the EU intended to **anchor fragile democracies that had emerged from authoritarian rule within a prosperous and democratic international community.** This period is often referred to as one of turmoil, and is seen by many as a time when the EU (with the impulsion of the Council of Europe) changed from a *'club' of democracies, to a 'school' for democracy.*⁹

Even though democratisation processes were successful in newly integrated southern member states, the EC/EU realised that there existed a lack of coordination regarding the application of its democratic conditions.

B) Pre accession criteria since 1993 and the procedure of adhesion

To address the lack of procedures and coordination regarding to democratic criteria, the EU decided to legally enshrine its democratic conditionality.

Historical context of the creation of accession criteria: After the fall of the Berlin wall and the collapse of Union of Soviet Socialist Republics, the EU was under an avalanche of application requests from Northern and Eastern Europe. In response, the EU began to emphasise its attachment to democracy by incorporating it into the political component of the Copenhagen criteria.

⁷ Karamouzi, Eirini, 2014 'The Greek Paradox' Special Report London School of Economics Ideas: The Crisis of EU Enlargement. Available at: <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR018/Karamouzi.pdf> (accessed on 22nd February 2016).

⁸ Ibid.

⁹ Schneider, Catherine, 2007 'Le conseil de l'Europe, acteur de la recomposition du territoire européen', Cahiers de l'Espace Europe, CESICE, Grenoble.

- **The conditions for membership¹⁰**

1. being a state
2. being a European state
3. respecting the principles mentioned in article 6 of the Treaty on the European Union (TEU).

- **What are the EU accession criteria?¹¹**

The accession criteria are the three types of criteria (economical, political, and legal) which must be fulfilled in order to become a member of the EU. The accession criteria are often referred to as the **Copenhagen Criteria** as they were established at the European Summit in Copenhagen in 1993.

To become a member of the EU the candidate state must fulfill three criteria:

- 1. Political criteria:** stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- 2. Economic criteria:** a functioning market economy and the ability to cope with competitive pressure and market forces within the EU;
- 3. Legal criteria:** ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the '*acquis*'), and adherence to the aims of political, economic and monetary union.

¹⁰ Kochenov, Dimitry, 2008 EU Enlargement and the Failure of Conditionality: Pre-accession conditionality in the fields of Democracy and the Rule of Law. Available at: https://books.google.co.uk/books?id=4MMY6BLko18C&pg=PA32&lpg=PA32&dq=Declaration+on+democracy,+April+1978,+European+Council&source=bl&ots=dy454ohZY5&sig=5NiFlhdqHOfVAtayWUuj-GFJ19I&hl=fr&sa=X&ved=0ahUKEwjN4_700-3LAhXBWBQKHSAND1gQ6AEINjAD#v=onepage&q=Declaration%20on%20democracy%2C%20April%201978%2C%20European%20Council&f=false (accessed on 28th February 2016).

¹¹ Europa, EU law and publications, EUR-Lex, Summaries of EU Legislation, Glossary of summaries, Accession criteria (Copenhagen criteria). Available at: http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html (accessed on March 9th 2016).

- **The procedure for EU membership: four steps integration process:**
 1. Application and association agreement: (see cases of Kosovo and Bosnia and Herzegovina).
 2. Candidate status: the country is recognised as a potential candidate for accession: (see cases of Albania, Montenegro, The Former Yugoslav Republic of Macedonia, Turkey, Serbia).
 3. Opening of Accession negotiations (35 chapters).
 4. Member state.

Once an accession treaty is signed, the candidate country is accorded the status of an *acceding* country. During each phase of the process, there are separate decisions by EU actors, and specific policy instruments.

This process results in on four classifications of countries:

1. Countries which are not interested in joining the EU (Norway, Switzerland, Iceland)
2. Potential candidates
3. Candidates countries
4. Member states

C) Democratisation for enlargement – history of EU integration since 1993

The first enlargement following the establishment of the Copenhagen criteria, which was the enlargement of the EU to the North did not create compliance issues with the EU's newly established democratic conditionality.

The EU's use of conditionality with regard to Human Rights and democracy increased significantly in the context of the **Central and Eastern enlargement**. In ex-communist countries, strengthening democracy was a priority in order to ensure stability throughout the continent. In order to give incentives to Eastern countries to fully devote themselves to

democratisation processes, the EU decided that the **Programme of Community aid to the countries of Central and Eastern Europe (PHARE) was provided only after countries had achieved progress in democratic transition.**¹²

- **What is the Programme of Community aid to the countries of Central and Eastern Europe (PHARE)?**¹³

PHARE: Programme of Community aid to the countries of Central and Eastern Europe.

- Initially designed to support emerging Polish and Hungarian democracies, hence the acronym PHARE: Poland and Hungary Assistance for the Restructuring of the Economy.

-EU's main financial instrument to support its Central and Eastern partner countries.

-Part of the the EU Pre-accession Strategy.

-**Goal:** Providing grant finance to prepare partner countries for the stage where they are ready to assume the obligations of membership of the European Union.

While some countries have successfully tackled democratic shortcomings in their constitutional and legal texts and have succeeded in implementing these changes, others have encountered far more difficulties:

¹² Wallace, Helen, Wallace, William and Pollack, Mark, 2015, 'Policy-making in the European Union'. Oxford: Oxford University Press. Chapter 17: Enlargement pp 498-434.

¹³ European Parliament, Briefing No 33, The PHARE Programme and the enlargement of the European Union. Available at: http://www.europarl.europa.eu/enlargement/briefings/33a1_en.htm (accessed on March 15th 2016).

- **The case of Czech democratic transition¹⁴**

The Czech Republic is generally considered to be an example of a successful transition to an EU accession state. The Czech Republic started democratic consolidation process efficiently. Thanks to the EU democratizing influence, the country has put all its efforts in making structural changes. The goal for Czech Republic was to secure its move towards EU membership.

Major changes occurred in its judicial reforms, in its fight against corruption, and in its treatment of the Roma minority.

- **Three cases in which EU suspended PHARE aid¹⁵**

-Romania: in 1990 after the government organised the violent repression of post election demonstrations.

-Yugoslavia: in 1991 after the breakout of war following the secession of Slovenia and Croatia.

-Croatia: in 1995 after the military offensive to establish government control over the Serb-held Krajina region.

These countries struggled with the implementation of EU democratisation criteria. One of the possible explanations of the difficulties encountered is that more than a *transition* can be said to have occurred for these three countries; it was rather *a transformation* towards democracy. A transition towards democracy implies the fact that either potential democratic institutions were already in place or/and that the history of the country favours the establishment of a democratic regime. In other words, a 'democratic culture' already exists in the society. The Czech Republic already experienced a democratic regime from to

¹⁴ De Ridder, Eline, 2006 The Influence of the European Union on the Democratisation Process in Central Europe – The case of the Czech Republic Available at: <http://www.jhubc.it/ecpr-istanbul/virtualpaperroom/012.pdf> (accessed on 25 February 2016).

¹⁵ Wallace, Helen, Wallace, William and Pollack, Mark, 2015, 'Policy-making in the European Union'. Oxford: Oxford University Press. Chapter 17: Enlargement pp 498-434.

1946 to 1947 with Edvard Beneš for instance. A transformation supposes more in-depth changes in the culture, the institutions and the law of a country. A long-standing and overarching process is required to reach democratic standards.

D) Safeguard clauses to place emphasis on the democratic requirement and Post-accession compliance since 2007

- **What are safeguard clauses?¹⁶**

- There are provisions which allow the EU to remedy difficulties encountered as a result of accession.

- Since the 2004 enlargement, three safeguard clauses have been established in Accession treaties:

1. General economic safeguard clause
2. Specific internal market safeguard clause
3. Specific justice and home affairs safeguard clause

A new safeguard clause was also established to place emphasis on democratic requirements: the possibility of postponing accession is now a new threat for non compliance.

¹⁶ European Commission, Press Release Database, Press Release details, frequently asked questions about the safeguard clauses included in the Treaty of Accession of Bulgaria and Romania. Available at: http://europa.eu/rapid/press-release_MEMO-05-396_en.htm?locale=en (accessed on March 31st 2016).

- **'Super-safeguard clauses':¹⁷ The cases of Romania and Bulgaria**

-Exclusively in the treaty governing Romania's and Bulgaria's accession to the EU

-In addition to the classical safeguard clauses, it is a clause which may postpone the accession of any or both countries by one year if there are 'serious shortcomings' in the fulfilment of the country's obligations to the EU (Official Journal 2005 Article 39).

-The Commission is empowered to sanction non-compliance and lack of sufficient progress.

The EU has also decided **to extend conditionality both beyond the signing of accession treaties and the accession itself**. As such, it has put in place **post-accession compliance** to ensure that democratic progress is pursued even after accession. In this respect, an unprecedented instrument was created in December 2006, the Cooperation and Verification Mechanism.

¹⁷ Bulmer, Simon and Lequesne, Christian, 2013 'The member states of the European Union', Oxford University Press, Second edition p.240.

- **What is the Cooperation and Verification Mechanism (CVM)?¹⁸**

-An unprecedented mechanism which allows the European Commission to monitor reforms on a specific country judicial system and measures against corruption and organised crime.

-The CVM fixed six benchmarks for assessing progress. Every year, reports which contain a detailed evaluation of progress and concrete recommendations for further reforms have been published.

-The CVM demonstrates an EU commitment to emphasize the obligations of membership while enjoying the benefits.

- **The Cases of Romania and Bulgaria and the CVM:¹⁹**

Both Bulgaria and Romania were submitted to monitoring procedures:

- The CVM was included in their accession treaties.
- Almost a decade after accession, Romania and Bulgaria continue to be subject to the CVM.
- On January 2016, the 15th set of CVM reports was published and highlighted the growing gap between the two countries. The efforts to implement substantial reforms in Romania have started to bear fruit. South of the border, Bulgaria is reported to have yet translate reforms into tangible progress.²⁰
- The CVM is also now being used as a reference **to decide whether Bulgaria and Romania are ready to enter into the Schengen area.**²¹

¹⁸ European Commission, CVM, Mechanism for cooperation and verification for Bulgaria and Romania. Available at : <http://ec.europa.eu/cvm/> (accessed on 20th March 2016).

¹⁹ Bulmer, Simon and Lequesne, Christian, 2013 'The member states of the European Union', Oxford University Press, Second edition p.240.

²⁰ Gateva Eli, 2016 'On different tracks : Bulgaria and Romania under the Cooperation and Verification Mechanism', London School of Economics Research on South Eastern Europe. Available at : <http://blogs.lse.ac.uk/lsee/2016/03/02/on-different-tracks-bulgaria-and-romania-under-the-cooperation-and-verification-mechanism/> (accessed on 2nd April 2016).

²¹ Nita, Nelu and Lupascu Adrian, 2014 'Romania and the prospects of accession to the Schengen area', Acta Universitatis Georges Bacovia, Juridica – Volume 3 pp81-123. Available at: http://www.ugb.ro/Juridica/Issue_no5.pdf (accessed on 1st April 2016).

II. Democracy promotion by the European Union: tools and mechanisms to support democratisation

This second chapter will demonstrate the ways in which the EU endeavours to spread, strengthen and support democracy in the continent and worldwide. In order to achieve this ambitious goal, the EU has at its disposal a **real toolbox to promote and implement democratic reforms**.

“It almost appears that the mission to establish and ensure democracy in the world is the raison d’être of the EU’s foreign policy.”²²

EU’s commitment to democracy promotion is a **key objective of all EU policies**: *‘the EU is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin **all aspects of the internal and external policies** of the EU’.*²³

Through financial support, technical and legal assistance, the EU is engaged in the spreading of democracy in neighbouring countries, in candidate countries (addressed in A), and also worldwide (addressed in B). This is in accordance with the EU’s legal basis for democracy support, and is in keeping with its ability to sanction member or candidate states for non compliance or serious breach of the Union’s political principles (addressed in C). However, the efficiency of sanction for serious breaches of the Union’s political principles can be questioned (addressed in D). The EU also works in synergy with the Council of Europe in the area of democratic progress, through providing legal support to reform the law in a more democratic way (addressed in E).

²² Cardwell, Paul-James, 2011, ‘Mapping Out Democracy promotion in the EU’s External Relations’ European Foreign Affairs Review 16 p.23.

²³ EU Strategic framework and Action Plan on Human Rights and Democracy, 2012. Available at : http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf (accessed on March 14th 2016).

A) The EU promotes democracy in its neighbourhood

The EU places significant emphasis on promoting democracy especially at its external borders. The Union has outlined new strategies toward democratisation processes in its neighbourhood. Following the ‘**Arab Spring**’ events of 2011, the EU updated its European Neighbourhood Policy (ENP) to adopt a ‘more for more’ approach, with support being linked to democratic transition and ‘deep democracy’.²⁴ Incentives, including deeper economic integration, greater financial assistance, enhanced mobility of people, and access to the EU’s internal market, are offered to those countries willing to undertake political reforms. Therefore, EU’s direct geographical neighbourhood benefit the most from EU’s financial assistance. This emphasis on stabilisation of EU’s direct neighbourhood is provided by the **Stabilisation and Association process with Balkan countries (SAPB)**.

- **What is the Stabilisation and Accession Process with Balkans countries?**

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- The SAPB is a mechanism created for countries which are not yet recognised as candidates, but considered *potential* candidates for EU membership.
 - The SAPB is meant to help neighboring countries build their capacity to adopt and implement EU law.
 - The goal of this process is also to improve the democratic character of their political regimes
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Currently, Albania, Bosnia and Herzegovina and Kosovo are potential candidates and benefit from this process. These countries also benefit from the IPA and from an ever-closer partnership with the EU which offers them assistance for reconstruction, development and stabilisation and also economic assistance.

The Balkans and Turkey also benefit from the **pre-accession fellowship programme**. This programme refers to the possibility for civil servants to work in the European

²⁴ European Commission, 2011, A New Response to a Changing Neighbourhood A review of European Neighbourhood Policy. Joint Communication by the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission.

Parliament for a limited time and thus get acquainted with its functioning at political and administrative levels.²⁵

- **Financial, technical and legal assistance for accession of neighbouring countries: The Instrument for Pre-accession (IPA) and the Technical Assistance Information Exchange Office (TAIEX)**

The EU has also engaged itself to provide economic support for economic and democratic transition in post cold war countries. The EU uses two tools to provide assistance to neighbouring countries.

*The Instrument for Pre-accession*²⁶

The EU supports reforms in neighboring countries through financial and technical support. This assistance is given by the IPA fund, which builds up the capacities of the countries throughout the accession process, resulting in progressive, positive developments in the region. One component of the IPA is for instance ‘transition Assistance and Institution Building’. For the period from 2007 to 2013, the IPA had a budget of some € 11.5 billion; its successor, IPA II, will build on the results already achieved by dedicating € 11.7 billion for the period from 2014 to 2020.

*The Technical Assistance Information Exchange Office (TAIEX)*²⁷

TAIEX supports public administrations with regard to the approximation, application and enforcement of EU legislation as well as facilitating the sharing of EU best practices. Through this instrument, the Commission provides practical advice to strengthen and enhance democratic practices in its direct neighborhood. For instance, TAIEX assistance can be offered to civil servants, representatives, and judiciary authorities. In the framework of expert missions, European expert(s) are come on the ground and provide in-depth advice on the transposition, implementation or enforcement of a specific part of EU legislation.

²⁵ European Parliament, Pre-Accession Actions, About the Pre-Accession Actions Unit. Available at: <https://eppaac.wordpress.com/about-paac/> (accessed on April 1st 2016).

²⁶ European Commission, Neighbourhood-Enlargement, Instrument for Pre-accession assistance (IPA). Available at: http://ec.europa.eu/enlargement/instruments/overview/index_en.htm (last accessed on March 20th 2016).

²⁷ European Commission, Neighbourhood – Enlargement, Funding and technical assistance, TAIEX. Available at : http://ec.europa.eu/enlargement/tenders/taix/index_en.htm (accessed on March 24th 2016).

B) The EU promotes democracy worldwide through its institutions

EU's aspirations to promote democracy go beyond the European continent and is achieved through the European Parliament (EP) and the European Commission (EC) which both have tools to support democratisation processes:

- **The European Parliament**

The EP also plays a core role in promoting democracy in the name of the EU. It is continuously engaged in **election observation missions (EOM)**, working to strengthen the legitimacy of national electoral processes and to increase public confidence in the protection of elections and human rights. In the current legislative term, Parliament has so far sent delegations to observe elections in²⁸:

- Ukraine (presidential, parliamentary and local)
- Egypt (presidential)
- Tunisia (presidential and parliamentary)
- Moldova (parliamentary)
- Tajikistan (parliamentary)
- Nigeria (presidential)
- Sri Lanka (parliamentary)
- Kyrgyzstan (parliamentary)
- Haiti (general)
- Tanzania (general)
- Myanmar (general).

²⁸ European Parliament, Fact sheets on the European Union, the EU's external relations, promoting democracy and observing elections. Available at: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_6.4.2.html (accessed on March 15th 2016).

New and emerging democracies are backed by the **Office for Promotion of Parliamentary Democracy** (OPPD), the goal of which is to cooperate with non-European parliaments to strengthen institutional capacity. Civil servants from non-European parliaments have the opportunity to discover the functioning of the EP thanks to the OPPD.

To insure that EP's parliament support actions are coherent, a new **Directorate for Democracy Support** was established.

- **The European Commission**

The European Commission acts through the **European Instrument for Democracy and Human Rights**. This instrument supports many local and regional NGOs. Globally, its financial support amounts to €1.3 billion between 2014 and 2020.²⁹

The Successes of the European Instrument for Democracy and Human Rights (EIDHR): ³⁰

Legislative changes:

- In Moldova: a revised electoral legislation in Moldova.
- Ratification and implementation of the Rome Statute of the International Criminal Court in Chile.

Electoral changes:

- In the Philippines: enhance information, media monitoring and the transparency of elections.
 - Strengthened parliaments and political parties, notably in Yemen and Tajikistan.
 - In Azerbaijan, Ghana, Kyrgyzstan and Bolivia: increased the participation of under-represented groups (women, youth and indigenous communities) in decision-making and/or political life in general.
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²⁹ Cardwell, Paul-James, 2011, 'Mapping Out Democracy promotion in the EU's External Relations' European Foreign Affairs Review 16 p.33.

³⁰ European Commission: EuropAid: EIDHR: Democracy. At: <http://www.eidhr.eu/highlights/democracy> (accessed on March 14th 2016).

C) Legal basis for democracy support and democratic compliance

- **Several clauses on the Treaties affirm the EU's attachment to democracy:**

- Article 21 of the Lisbon Treaty:

'The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to *consolidate and support democracy*, the rule of law, human rights and the principles of international law.'³¹

- Article 2 of the Treaty on the European Union (TUE):

The EU's founding values are '*human dignity, freedom, democracy, equality, rule of law and respect for human rights including the rights of persons belonging to minorities*'.³²

- Article 21 of the TEU and Article 205 TFUE also refer to democracy.³³

- **The two major changes introduced by the Treaty of Amsterdam:**

-The **first reference to liberal democratic values**. This reference is now in Article 2 of the Treaty on the European Union (TUE)

-The possibility of **suspension of the voting right** of a member states through Article 7 TUE.

Article 7 TUE allows member states to sanction 'serious and persistent breaches' of the liberal democratic values in **Article 2 TUE** by suspending certain treaty rights of the offending member state, including its voting right.

³¹ Treaty of Lisbon, Article 12, 2007 Official Journal of the European Union. Available at : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT> (accessed on April 1st 2016).

³² Consolidated versions of the Treaty on the European Union, Article 2, 2012 Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> (accessed on April 1st 2016).

³³ European Parliament, Fact sheets on the European Union, the EU's external relations, Promoting democracy and observing elections. Available at: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_6.4.2.html (accessed on 15th March 2016).

Since the 2001 Treaty of Nice, the Treaty on European Union also makes provision, as a preventive measure, for the possibility of **appropriate recommendations being addressed to any Member State** when there is a clear risk of a serious breach by that Member State of the principles stated in article 6 TUE.

D) An analysis of the questionable efficiency of EU tools to insure democracy compliance:

Despite positive aims, the efficiency of EU's legal tools to impede undemocratic behaviour is questionable. Condemning a member state and withdrawing its right to vote has **never happened because a majority is needed in the Council and the EP** to determine the democratic backsliding of a member state. An agreement needs to be reached between member states in order to use Article 7.

Hungary, and more recently Poland's attitudes are two interesting instances of the reversibility of democratic achievements within the EU; as explained in the case studies below.

- **The case of Hungary as a post accession democratic step back³⁴**

The case of Hungary as a post accession democratic backslider:

Since April 2010, Hungary has been largely seen to deviate from democratic principles. After the super majority won in the Hungarian parliament, Prime Minister Viktor Orbán changed the constitution in a way that was seen to seriously compromised its liberal democratic nature. Orbán initiated a series of measures to consolidate its own power at the expense of the power of the Constitutional Court, thereby threatening the independence of the judiciary. These constitutional changes took effect on first January 2012. Media freedom and pluralism were also targeted by Orbán. These steps are seen to have compromised the democratic progress achieved by Hungary in its pre-accession period and the stability of the democratic system is being reduced. While the EU considers these actions to be undemocratic and has condemned these changes, only warnings have expressed. **The EU's intervention was limited and Hungary has never had a suspension of its voting right.**

³⁴ Traynor, Ian, 2014 'Budapest autumn: hollowing out democracy on the edge of Europe'. The Guardian. Available at: <http://www.theguardian.com/world/2014/oct/29/budapest-viktor-orban-democracy-edge-hungary> (accessed on 26 February 2016).

- **The case of Poland as a post accession democratic step back** ^{35 36 37}

The new Polish right-wing party leader Jaroslaw Kaczynski was elected in 2015 and is seen to have continued to breach democratic liberal principles, which some see as inspired by the actions of Victor Orbán. Kaczynski's Law and Justice Party won both the presidential elections in May and parliamentary elections in October 2015.

Kaczynski is seen to be compromising Poland's democratic progresses achieved during the Pre Accession period. On December 23th 2015, a controversial new bill aimed at paralysing the Constitutional Tribunal was approved. As a consequence, the ability for the top legislative court to check on new laws no longer exists. Constitutional checks and balances have been dismantled as the right wing party now controls executive offices and both houses.

Fundamental freedoms and liberties are also seen to be threatened by the actions of Poland's government. Restrictions on freedom of expression in particular within the media continue to be observed.

Several human rights groups, including Amnesty International and the Helsinki Foundation for Human Rights, said the new legislation "compromises civil rights and liberties."

In this specific case, the 'Commission is scheduled to examine possible sanctions but it is unlikely to take any, **in part because Hungary and other governments sympathetic to Poland would veto them** and also because they would serve only to deepen Warsaw's hostility to the European Union. The EC has launched an **inquiry into the rule of law in Poland for the first time in history questioning democratic standards in a EU member state; reviewing the democratic character of a member state remains unprecedented.**

The Venice commission constitutional experts warned in a draft report that changes to Poland's Supreme Court jeopardize the rule of law, democracy and human rights. They announced on February 29th 2016 that they will overlook a new piece of legislation which authorizes police surveillance of correspondence. The CoE has already issued warnings to Poland about its media law following new powers of the government to appoint heads of state television and Radio. In this regard the CoE can be seen to influence the inquiry into the rule of law in Poland of the European Commission.

³⁵ Rakin, Jennifer, 2016 'Poland's changes to court system 'endanger democracy'. The Guardian Available at: <http://www.theguardian.com/world/2016/feb/29/polands-changes-to-court-system-risking-democracy> (accessed on 2 March 2016).

³⁶ Sobczyk, Martin, 2016, 'Poland faces increasing pressure over law governing High Court' The Wall Street Journal. Available at: <http://www.wsj.com/articles/poland-faces-increasing-pressure-over-controversial-changes-1456751710> (accessed on 2 March 2016).

In light of these two cases, being a member of the EU does not seem to always impede the breach of democratic standards which are nonetheless undisputable conditions to becoming part of the EU. These two instances also reveal the **permissive attitude** of the EU towards its member states whereas it is far more severe during pre-accession processes.

EU's legal framework, with **the Article 7 shows that it is not efficient to sanction violations of the most basic rules of democracy for member states**. Some feel that the EU needs to be more equipped to keep its democratic foundations and if necessary, to interfere internally, even before envisaging interfering in its neighbourhood.

E) The role of the Council of Europe and the Venice Commission

- **What is the Council of Europe?**³⁸

The Council of Europe (CoE) is an **international organisation** which aims at promoting Human Rights, Democracy and Rule of Law. It has been created in 1949, in Strasbourg.

The CoE is not an EU institution. It is composed of 47 member states from across Europe and beyond. The Council of Europe must not be confused with the Council of the EU and the European Council which are European Institutions respectively representing the Ministers of the 28 Member states of the EU and the 28 Heads of States and Governments of the EU.

The CoE is at the origin of the drafting of **the European Convention of Human Rights**, in 1950 and of the creation of the European Court of Human Rights.

The CoE is composed of a Committee of ministers and a Parliamentary Assembly.

All Council of Europe member states are party to the European Convention of Human Rights.

³⁷ The New York Times Editorial Board, 2016 'Poland deviates from democracy'. The New York Times. Available at: http://www.nytimes.com/2016/01/13/opinion/poland-deviates-from-democracy.html?_r=0 (accessed on 26 February 2016).

³⁸ Council of Europe, CoE en Bref. Available at: <http://www.coe.int/en/web/about-us/who-we-are> (accessed on March 22nd 2016).

- **The natural proximity between the European Union and the Council of Europe:**

The CoE and the EU share the same values: In this respect, they have been referred to as **‘two natural born twins.’**³⁹ It is not surprising that the applicant countries saw the CoE as **‘an anti chamber’** on the way to their accession to the EU.⁴⁰

Although being a member of the Council of Europe is **not a prerequisite to becoming a member of the EU**, all EU member states are members of the Council of Europe. Furthermore, the Council of Europe is a first good step to implementing a series of measures to improve democracy, rule of law and Human Rights. Historically, the CoE provided the first lessons to in democracy to candidates for the EU accession. It has contributed to this shift of the EU as a *‘Club old democracy’* to the EU as a *‘school for democracies’*⁴¹. This explains the numerous references to this organisation which can be found in almost all pre-accession documents.⁴²

- **The controversial question of the adhesion of the EU to the European Convention of Human Rights**

The lines between the EU and the European Convention on Human Rights (ECHR) are also fairly blurred. While any country applying to become a new member of the EU must satisfy the requirements of Article 49 of the TEU, which includes *‘respect for human rights’* and that the ECHR is the reference in terms of protection of Human Rights in the EU, confusion

³⁹ Kochenov, Dimitry, 2008 EU Enlargement and the Failure of Conditionality: Pre-accession conditionality in the fields of Democracy and the Rule of Law. Available at: https://books.google.co.uk/books?id=4MMY6BLko18C&pg=PA32&lpg=PA32&dq=Declaration+on+democracy,+April+1978,+European+Council&source=bl&ots=dy454ohZY5&sig=5NiFlhdqHOfVAtayWUuj-GFJ19I&hl=fr&sa=X&ved=0ahUKEwjN4_700-3LAhXBWBQKHSAND1gQ6AEINjAD#v=onepage&q=Declaration%20on%20democracy%2C%20April%201978%2C%20European%20Council&f=false (accessed on 28th February 2016). p.311.

⁴⁰ Ibid.

⁴¹ Schneider, Catherine, 2007 ‘Le conseil de l’Europe, acteur de la recomposition du territoire européen’, Cahiers de l’Espace Europe, CESICE, Grenoble.

⁴² Kochenov, Dimitry, 2008 EU Enlargement and the Failure of Conditionality: Pre-accession conditionality in the fields of Democracy and the Rule of Law. Available at: https://books.google.co.uk/books?id=4MMY6BLko18C&pg=PA32&lpg=PA32&dq=Declaration+on+democracy,+April+1978,+European+Council&source=bl&ots=dy454ohZY5&sig=5NiFlhdqHOfVAtayWUuj-GFJ19I&hl=fr&sa=X&ved=0ahUKEwjN4_700-3LAhXBWBQKHSAND1gQ6AEINjAD#v=onepage&q=Declaration%20on%20democracy%2C%20April%201978%2C%20European%20Council&f=false accessed on 28th February 2016). p.311.

remains in some areas. Being a signatory to the ECHR is not mentioned in the Copenhagen criteria for instance.

For the moment this is not a problem as all EU member states have signed up to the European Court of Human Rights (ECtHR). Whilst the twenty-eight member states have signed the ECHR, the EU is not a signatory to the ECHR. There is an ongoing burning debate concerning the EU's potential accession to the ECHR. A potential concurrence between the ECtHR of Strasbourg and the European Court of Justice (ECJ) of Luxembourg is one many underlying factors blocking this step forward.

The ECtHR case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in the EU. The European Convention of Human Rights contributes to the democratisation processes not only for EU member states but also for its forty-seven members beyond European membership.

- **What is the Venice Commission?**⁴³

The Venice Commission is the **European Commission for democracy through law of the Council of Europe**. The role of the Venice Commission is to **provide legal advice to its member states** and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law. It gives more than 500 opinions on more than 50 countries and 80 studies.

Venice commission experts have helped to:

- draft democratic constitutions
- advise civil servants, parliamentarians and other prominent figures in democratic and legal matters and transition processes

In this respect, the Council of Europe is seen a cornerstone for democratisation and preparation of accession to the EU.

⁴³ Council of Europe, Human rights and Rule of law, Venice Commission. Available at: http://www.venice.coe.int/WebForms/pages/?p=01_activities&lang=EN (last accessed March 25 2016).

- **The Council of Europe and The Venice Commission promote democracy worldwide**

Together with the Venice Commission, the Council of Europe also promotes democracy beyond Europe. Two tools are used in this respect:

The status of observer state of the Council of Europe:

The status of observer state contributes to enhance democratisation processes in Europe, as it was established for non-European democracies willing to contribute to enhancing democratic transitions in Europe.

The partnership for democracy: ⁴⁴

What is the Partnership for Democracy?

- The partnership is a status offered by the Council of Europe for Institutional cooperation with parliaments of non-member states in neighboring regions wishing to be supported by the Parliamentary Assembly in their democratic transitions and to participate in the political debate on common challenges.
- It offers the opportunity to benefit from the expertise of the Venice commission for legislative and constitutional matters.
- Morocco, Kyrgyzstan and the Palestinian Legislative Council have been accorded 'partner for democracy' status.
- Algeria, Kazakhstan, Morocco, Tunisia and the Palestinian Legislative Council have already had the opportunity to work with the Assembly.

Through activities in all areas of its responsibility in countries in the Maghreb, Central Asia and Latin America, the Venice Commission has confirmed its reputation as an

⁴⁴ Council of Europe, Parliamentary Assembly, Committee on Political Affairs and Democracy, Report Doc.11913, 2009, Establishment of a 'Partner for democracy status with the Parliamentary Assembly. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12191&lang=en> (last accessed on March 22 2016).

independent, impartial, competent and reliable partner of the authorities in the countries concerned and the various international organisations active in those regions.

Conclusion:

The EU has become an International actor promoting democracy on its soil, in its regional neighbourhood and even worldwide. Its democratic commitment is in accordance with its funding principles. The EU has successfully managed to wield great influence and to allow democratic transformation in the Balkans for instance. In this regard, the EU can be seen as a 'facilitator of democracy.'⁴⁵

Whether by integrating weak and unstable political regimes in the 1980s to strengthen democratisation process, by creating pre-accession criteria and a specific procedure of accession in 1993 to create incentives to comply with democratic criteria, or more recently by conceiving post-accession democratic compliance in exchange for safeguard clauses, the EU makes many efforts to promote democracy on European soil.

Thanks to its toolbox of legal and financial instruments, together with the Council of Europe, the EU places great emphasis on the promotion of democratisation processes, even beyond its own borders.

Democratisation is a key aspect of accession process to the EU. The history of the EU construction was achieved along the idea that European citizens share the same ideals and vision of their common future; thereby the EU has proved its ability to jump to the historic opportunity for building a larger democratic family of European nations.

Despite the criticism about the current 'democratic deficit'⁴⁶ in the EU, the Union has over the years managed to largely ensure democracy across the continent. The promotion of

⁴⁵ Wetzel, Anne and Orbie Jan, 2015 'The substance of EU democracy promotion: concepts and cases' Palgrave Macmillan.

⁴⁶ Cardwell, Paul-James, 2011, 'Mapping Out Democracy promotion in the EU's External Relations' European Foreign Affairs Review 16 p.22.

requirement for democracy is no longer restricted to decisions about accession and the conduct of accession negotiations. It now involves ‘the management of relations with would-be members to assist and assess their preparedness for membership, starting a long time before accession negotiations.’⁴⁷

Indeed, the EU’s commitment to praise and ensure democracy on the continent is achieved by both the EU’s enlargement policy and the EU’s neighbouring policy. It is worth pointing out that enlargement policy is not only about accession; it is also about managing difficulties with countries that are not ready to join. Democratic efforts do not necessarily lead to effective accession, but democratisation is a longstanding and continuing process.

The EU in itself is also moving towards more democratic institutions; the empowerment of the European Parliament and the creation of European Citizen Initiatives are new channels to spread democracy within EU institutional framework.

In its task as a ‘democratiser’, the EU also improves the respect for Human rights and Fundamental freedoms as *‘Human rights and democracy are inextricably connected. Only in a democracy can individuals fully exercise their human rights; only when human rights are respected can democracy flourish.’*⁴⁸

Despite progress, one must keep in mind that ensuring the efficiency of democratic processes in the EU is an **ongoing challenge**. Democracy is never fully achieved and should never be taken for granted. In this sense, it is important for the EU to focus on potential democratic backslidings among its member states. As recent breaches of liberal democratic practises in Hungary, Poland and Romania have confirmed, democracy needs to be repeatedly reaffirmed to be maintained throughout the EU.

⁴⁷ Wallace, Helen, Wallace, William and Pollack, Mark, 2015, ‘Policy-making in the European Union’. Oxford: Oxford University Press. Chapter 17: Enlargement pp 498-434.

⁴⁸ European Council conclusions on Democracy Support in the EU’s External Relations, 2974th External Relations Council meeting, Brussels, 17 November 2009. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/111250.pdf (accessed on March 14th 2016).

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