

On the ‘Edge’ of Good Neighbourliness in EU Law: Lessons from Cyprus

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1 Introduction

Article 8 of the Treaty of the European Union (TEU) sets out a duty for the Union to develop a special relationship with neighbouring countries based *inter alia* on the good neighbourliness principle, on the values of the Union and characterised by close and peaceful cooperation.¹ This is proposed to be achieved through the conclusion of ‘specific agreements with the countries concerned’, possibly based on reciprocity of rights and obligations and/or joined activities.² As evidenced by the various contributions in the present volume, many questions spring to mind when reading this new provision, regarding its *raison d’être*, its scope and its implications within the framework of the EU Treaties³ and the wider good neighbourliness principle deriving from international law.⁴ The role of Member States *vis-à-vis* the Union’s neighbours has been outlined in this volume in various contexts, and the Member States’ own

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1 Article 8(1) Treaty on European Union [2010] OJ C 83/1 (TEU).

2 Article 8(2) TEU.

3 With respect in particular to Articles 2, 3(5) and 21(1) TEU and Part V Treaty on the Functioning on the European Union [2010] OJ C 83/1 (TFEU). For a legal appraisal of Article 8 TEU in EU law, see Peter Van Elsuwege and Roman Petrov, ‘Article 8 TEU: towards a new generation of agreements with the neighbouring countries of the EU?’ (2011) 36(5) EL Rev 688–703; see also Dominik Hanf, ‘The ENP in the light of the new “neighbourhood clause” (Article 8 TEU)’ in Erwan Lannon (eds), *The European Neighbourhood Policy’s Challenges* (P.I.E. Peter Lang, Brussels 2012) 109–126. For a consideration of the export of EU norms post-Lisbon through Articles 3(5), 21 and 8(1) TEU (the latter providing an ‘EU neighbourhood competence’), see Christophe Hillion, ‘Anatomy of EU norm export towards the neighbourhood’ in Roman Petrov and Peter Van Elsuwege (eds), *Legislative approximation and application of EU law in the Eastern Neighbourhood of the European Union. Towards a common regulatory space?* (Routledge, Abingdon 2014) 13–20.

4 For a very detailed and up-to-date account of the principle of good neighbourliness in the wider framework of international law and applied to the EU, see Elena Basheska, ‘The Good Neighbourliness Principle in EU Law’ (PhD Thesis, University of Groningen, 2014).

commitment towards good neighbourliness within the EU.⁵ As rightly pointed out by another contributor to this volume in the context of the EU enlargement policy, '[d]epending upon the involvement of EU Member States and the risks for the importation of regional disputes into the EU's internal structures, the requirement of good neighbourliness is either translated into an obligation of conduct or an obligation of result',⁶ thereby revealing the changing or flexible nature of good neighbourliness. To determine the scope of good neighbourliness in the EU legal order, as enshrined in particular in Article 8 TEU, and delimit any underlying commitment on the part of Member States, there is arguably a need to examine the 'micro' or individual relations a Member State maintains with its own neighbours. Such a micro-analysis of essentially bilateral relations should also permit reflections on the question of reciprocity and 'sharing of values' underlying good neighbourliness in a given relationship or set of relations.⁷ In this context, Cyprus is believed to be a unique case study, arguably standing both geographically and substantively at the 'edge' of good neighbourliness and as such, outlining the flexible nature of good neighbourliness through its atypical or 'outer' application in EU law.⁸ The micro-analysis in the case of Cyprus would focus on the '*de facto* neighbouring' relations the Republic of Cyprus maintains with the part of its own sovereign territory under Turkish military control (internal relations) and, as a result, on the rather uneasy relations Cyprus maintains with Turkey as its neighbour, at the Union's door-step and also as a candidate country currently undergoing the accession negotiation process (external relations).

This chapter therefore proposes to deepen our understanding of the good neighbourliness principle in EU law, as enshrined in Article 8 TEU and within

5 Ibid, Chapter 2.

6 Peter Van Elsuwege, 'Good Neighbourliness as a Condition for Accession to the European Union: Finding the Balance between Law and Politics' in this volume.

7 For a discussion of the values promoted by good neighbourliness in EU law and their relationship with 'fundamental values essential to international relations', see Basheska (n 4) 85–86. For an application of 'shared values' in EU enlargement and/or in ENP, see Paivi Leino and Roman Petrov, 'Between "common values" and competing universals – the promotion of the EU's common values through the ENP' (2009) 15(5) ELJ 654–671; see also Marise Cremona and Christophe Hillion, 'L'Union fait la force? Potential and limitations of the ENP as an integrated EU Foreign and Security Policy', EU Working Papers, LAW No 2006/39, 3–5, 18–22. For a detailed and recent consideration of the process of Europeanisation in the EU's Eastern Neighbourhood, including Ukraine and Russia, see generally Petrov and Van Elsuwege (n 3). For a delimitation and analysis of the role of EU core values in this process, see Dimitry Kochenov, 'The issue of values' in same volume.

8 See also Basheska (n 4) 145.

the overall fabric of the EU Treaties, from the perspective of the Member States – more specifically of a single one, Cyprus – in an attempt to identify some of the outer limits of good neighbourliness. This will be done through a review of the scope of Article 8 TEU, including from the perspective of a single Member State (2), followed by an analysis of the outward application of good neighbourliness in the context of Cyprus ‘from within’ the EU (3) and finally ‘from outside’ the EU, also from the lens of reciprocity and shared values arguably lying at the core of good neighbourliness (4). The lessons to be learnt from Cyprus will relate to the scope of good neighbourliness in the EU legal order and to the specific forms it may take when considering the troubled relations of a single Member State with its ‘neighbours’. Good neighbourliness may be more ‘demanding’ on a specific Member State in a situation internal to the EU, but there may be counterparts in this case. This chapter will also assess the extent to which uneasy bilateral relations between a Member State and a third country can be efficiently addressed through EU external relations, the form this good neighbourliness will take and the legal and political implications it may have on other EU Member States, the third country concerned and the values of the Union.

2 The Scope of Article 8 TEU from the Perspective of Member States: From Collective to Individual Considerations

Article 8 TEU is not expressly addressed to Member States, even though it is they who are primarily and directly concerned by this provision. Like the EU, Member States have neighbours. Unlike the EU, these can be located within or outside the EU (the EU only has external borders; hence external neighbours). The mere fact that a specific Treaty provision is not expressly addressed to the Member States does not mean that such a provision does not extend ‘by analogy’ to them and/or create obligations on them,⁹ especially when Union interests are at stake. In view in particular of the duties of sincere cooperation and

9 In Cases C-46/93 and C-48/93, *Brasserie du Pêcheur SA v Germany* and *R v Secretary of State for Transport, ex parte Factortame Ltd and others* [1996] ECR I-1029, paras 28–29, where the ECJ, instead of relying mainly on Article 4(3) TEU and the principle of effectiveness of EU law, linked Member State liability to the principle of non-contractual liability of the EU institutions enshrined in Article 340(2) TFEU, on the basis that the justification for such liability was to be found in the ‘general principles common to the laws of the Member States’, namely the obligation to make good damage caused by an unlawful act or omission, including by public authorities in the performance of their duties; see Paul P Craig and Gráinne de Búrca, *EU Law, Text, Cases and Materials* (5th edn OUP, NY 2011) 244.

of solidarity of the EU legal order,¹⁰ it would appear quite peculiar to argue that the EU alone is under an obligation to develop special relationships with neighbouring countries by virtue of Article 8 TEU, while Member States are not *required* to do so within the framework of the EU Treaties.¹¹ A question thus arises as to the extent and the conditions, if any, under which Member States are bound under Article 8 TEU or otherwise, to develop good relations with their own neighbours and the implications of any such obligation within the framework of the EU Treaties.¹²

As a preliminary step, the term 'neighbour' within the framework of Article 8 TEU would need to be considered and delimited in EU law, with respect not only to its external aspect but also arguably to its internal aspect and from a

10 The EU has been traditionally regarded as a regional grouping designed to promote security and stability. As was argued more recently by Williams, peace between the EU Member States has now become a question of 'democratic peace' – Andrew Williams, *The Ethos of Europe: values, law and justice in the EU* (CUP, Cambridge 2010) 22–69, 'based on reasonable interests of states and promoted through the law as a main resource for solving disputes between them'; see Basheska (n 4) 46; see also Dimitry Kochenov and Fabian Amtenbrink, 'The Active Paradigm of the Study of the EU's Place in the World: An Introduction', in Dimitry Kochenov and Fabian Amtenbrink (eds), *The EU's shaping of the international legal order* (CUP 2014, Cambridge) 1–18, 4, 5. It appears that the role of peace in the EU has changed to the extent that 'for long as democracy is maintained within the Union's membership the legal structures will operate effectively to remove any questions of territorial or economic tensions that was previously endemic in the European theatre'; see Williams, *ibid* 64. As a result, good neighbourliness in the EU appears to be based on the *principles of sincere cooperation and solidarity* rather than on territorial integrity as in public international law, thereby calling into question the salience of national borders; see Basheska (n 4) 46.

11 It is generally observed that the principle of national sovereignty in external affairs has been increasingly subject to the duty of sincere cooperation under Article 4(3) TEU, especially post Lisbon. For a review of the scope of the duty of sincere cooperation in EU external relations, see e.g. Eleftheria Neframi, 'The duty of loyalty: rethinking its scope through its application in the field of EU external relations' (2010) 47(2) CML Rev 323; see also Steven Blockmans and Ramses Wessel (eds), 'Principles and practices of EU external representation', *CLEER Working Papers* 2012/5. It is also recognised that Member State national interests are transcended through the principle of solidarity as embodied in various EU Treaty provisions. For a review of the principle of solidarity within the context of good neighbourliness in the EU, see Basheska (n 4) 65–67.

12 The general duty of loyalty arising under Article 4(3) TEU and incumbent on the Member States constitutes 'an obligation to achieve a result to act in the Union interest [...] fulfilled through specific-result or best-effort obligations expressed through the duty of loyal cooperation', an expression of the general duty of loyalty. The nature of the 'specific obligation' will depend on the Union interest being promoted; see Neframi, *ibid* 324–325.

multi-dimensional perspective.¹³ The situation of the Member States in particular would appear both interesting and challenging, as it is arguably based on relative and dynamic considerations. Depending on a Member State's geographical location and size, its neighbours could themselves be located within the EU or outside the EU, at varying distances from the next Member State and/or neighbours, and in a nexus of interactive relationships. This situation is further complicated by the fact that neighbours can change, both within and outside the EU, including through a change to the internal structure of a neighbouring country or territory,¹⁴ with all the implications this may have on intra-state, inter-state and state-EU relations in the European periphery.¹⁵ The EU's policies towards its neighbours also play an important role in shaping the European neighbourhood and this is arguably the case for the European neighbourhood 'at large'.¹⁶ EU enlargement, for instance, not only ultimately

13 See Hillion in Petrov and Van Elsuwege (n 3) 16.

14 In view in particular of conflicts in the European region involving territory/border disputes among EU Member States, prospective EU States and/or third countries, as developed in this volume. See also Joint Communication by the European Commission and High Representative of the EU for Foreign Affairs and Security Policy, 'A new response to a changing Neighbourhood', COM(2011) 303 final, 12; Steven Blockmans and Ramses Wessel, 'The EU and peaceful settlement of disputes in its neighbourhood: the emergence of a new regional security actor?' in Antonis Antoniadis et al., *The EU and global emergencies: law and policy aspects* (Hart, Oxford 2011). Neighbouring *countries* could actually also be neighbouring *territories* with a certain degree of autonomy. For an analysis of the dispute over the Isthmus of Gibraltar between Spain and the UK as the only example of non-self-governing territory within the meaning of Article 73 UN Charter located in Europe, see Artur Khachatryan, 'Applying the Principle of Good of Neighbourliness in EU Law: The Case of Gibraltar' in this volume. For a list of border disputes between 'two internationally recognised sovereign States with an adjoining territorial or maritime border' involving EU Member States, see the House of Commons Hansard Written Answers, 13 January 2005, pt 17 available at: <<http://www.publications.parliament.uk/pa/cm200405/cmhansrd/v0050113/text/50113w17.htm>> last accessed 15 December 2014. Issues or claims of territorial sovereignty within existing EU Member States would by definition fall within the Member State's own *internal* affairs. For an overall view of all border disputes involving Member States and their relative importance in the context of EU boundary governance, see Basheska (n 4) 73–76. For the legal implications of a State secession scenario within an EU Member State, see Phoebus Athanassiou and Stéphanie Laulhé Shaelou, 'EU accession from within? An introduction' (2014) 33(1) YB EL 1.

15 See Andrew Cottey, 'Regionalism and the EU's neighbourhood policy: the limits of the possible' (2012) 12(3) Southeast European and Black Sea Studies 375–391.

16 Pertti Joenniemi, 'Turning into a sovereign actor? Probing the EU through the lens of neighbourhood' (2012) 17 Geopolitics 25–46, 44.

affects the EU's external borders by reshaping them and pushing them out,¹⁷ but it also gradually modifies the relationship between the EU, the existing Member States and/or the neighbouring countries meeting (or not) the requirements set out in Article 49 TEU.¹⁸ Accordingly, *due to* and *beyond* the EU's expanded borders, the EU is also developing interconnected 'proximity' policies¹⁹ addressing the broad European perspective in a changing or dynamic neighbourhood.²⁰ Such policies can take various forms,²¹ but all seem to promote prosperity and security in the region, including in the form

17 See Stéphanie Laulhé Shaelou, *The EU and Cyprus: principles and strategies of full integration* (Martinus Nijhoff, Leiden 2010) 51–58.

18 See Bashenska (n 4) 71–72; see also Van Elsuwege in this volume.

19 In a sign that proximity policies are *interconnected*, it is worth mentioning that the Union's relations with neighbouring countries (the European neighbouring policy in general terms), especially prior to the creation of the specific European Neighbouring Policy covering a group of countries not including all EU neighbours (ENP), were bilateral in nature (with some multilateral elements). They were used to establish an 'entry-level' playing field into the EU with possible upgrades, through association agreements for candidates or potential candidate countries (including Cyprus), as well as other Mediterranean countries signatories to the Barcelona Process, or through partnership and cooperation agreements with other countries (like Russia or Ukraine) with no or rather remote possibilities for full EU membership; see Leino and Petrov (n 7) 659. That is why, following the 2003 enlargement, the Commission initiated a new framework for relations with an 'immediate post-enlargement border with the EU'; *ibid*, 660; see also Cottey (n 15), 376–378 and Van Elsuwege in this volume. Neighbouring relations however tend to develop more rapidly than legal frameworks. The very recent signing of the Association Agreement and Deep and Comprehensive Free Trade Area between the EU and Ukraine on 27 June 2014 appears to be a very clear illustration of the complex interconnection of the EU proximity policies; see <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf> last accessed 15 December 2014. In preparation for the signing of the Agreement, the Council had on 23 June 2014 'endorsed provisional application of parts of the agreement, since ratification by all 28 EU member states is a long process', including the provisions on free trade; see <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/143309.pdf> last accessed 15 December 2014.

20 See *Joint Communication* (n 4) 4–5; see also Steven Blockmans, 'Friend or foe? Reviewing EU relations with its neighbours post Lisbon' in Panos Koutrakos (ed), 'The EU's external relations a year after Lisbon', CLEER Working Papers 2011/3, 114.

21 Now primarily enshrined in the ENP, the Union's 'umbrella' policy towards its (immediate) neighbours gradually extended to a broad range of Eastern European and Southern Mediterranean States, but not including Russia; see Communication from the Commission to the Council and the EP, 'Wider Europe-Neighbourhood: a new framework for relations with our Eastern and Southern Neighbours', COM(2003) 104; Communication from the Commission, 'ENP – Strategy Paper', COM(2004) 373.

of conditionality.²² The ‘neighbouring status’ within the framework of Article 8 TEU ought therefore to be examined in relative, dynamic and creative terms, as it appears to vary in time, space and also in substance and is not as such merely a descriptive or geographical label associated to a specific policy.²³

All the above situations should entail *prima facie* the application of the good neighbourliness principle as enshrined in Article 8 TEU, whether from an *external* perspective on EU neighbourhood relations by virtue of a rather ‘asymmetrical’ application of the principle,²⁴ or from an *internal* perspective through the alleged application of the neighbourhood clause to inter-State relations, on an equal basis. These scenarios and nexus of relations have been adequately covered elsewhere in this volume. A more speculative venture is to examine from this lens the relationship a single Member State maintains with its own neighbours, especially when such neighbours are in fact a country/territory located geographically (or otherwise) outside of the EU. If Article 8 TEU appears to address expressly the EU’s external relations with its neighbours and also the intra-EU neighbourhood relations, this provision does not seem a priori to be of immediate assistance when considering the *individual* relations a single Member State can maintain with a disputed territory or with a non-EU country. Given the fundamental nature of good neighbourliness in the EU,²⁵ however, and notwithstanding the ramifications of the principles of

22 Even if the ENP does not apply a policy of conditionality but rather one of ‘joint ownership’ of common values, the ENP remains by definition a ‘unilateral EU policy’ and neighbouring countries are formally requested to adhere to and promote the Union’s values as a result of their inclusion into the ENP. This therefore also raises the question of the existence and scope of any obligation addressed to neighbouring countries under EU law; see Leino and Petrov (n 7) 660–663.

23 See e.g. Joenniemi (n 16) 28. Article 8 TEU has been referred to as a ‘passe-partout’ clause applying to other countries than ENP partners, such as Russia, the EFTA countries and the micro-states, on the basis in particular of the Declaration on Article 8 TEU annexed to the Final Act of the IGC which adopted the Treaty of Lisbon; see Van Elsuwege and Petrov (n 3) 692. For a narrower role attributed to Article 8 TEU as a specific legal basis for the ENP, see Blockmans (n 20) 115–116.

24 Van Elsuwege and Petrov (n 3) 694–695; see also Siniša Rodin, ‘The European Union and the Western Balkans: Does the Lisbon Treaty Matter?’ in Federiga Bindi and Irina Angelescu (eds), *The Foreign Policy of the European Union: Assessing the Europe’s Role in the World* (2nd ed, Brookings Institution Press 2012) 153–171, 156.

25 If one considers in particular the location of Article 8 TEU within the fabric of the EU Treaties under Title I TEU and, as a result, its direct link with the Union’s universal values, objectives and fundamental principles, as well as the substantive nature of the provision in conjunction with the absence of procedural considerations in this Article. The exact nature and scope of the neighbourhood clause and the extent to which it can be used as

loyal cooperation and solidarity emphasising a priori the *collective* nature of Member State interests under EU law,²⁶ it would seem unwise to conclude from this preliminary finding that the good neighbourliness principle as expressed in Article 8 TEU is *irrelevant* to individual considerations of the neighbourhood relations a single Member State maintains with its neighbours.

Cyprus,²⁷ provides a good illustration of the possible outer limits of good neighbourliness through the relations it maintains with the part of its territory over which its government does not exercise effective control, as well as with Turkey.²⁸ Despite the fact that Cyprus joined the EU as one island in 2004, the territory of the Republic of Cyprus remains divided following the 1974 Turkish invasion,²⁹ resulting in the application of EU law being suspended in the areas occupied by the Turkish troops, as they fall beyond the effective control of the government of the Republic of Cyprus.³⁰ The question therefore relates to the nature of the legal regime applicable to this *de facto* situation, so as to identify the legal principles and values on which the relationship is founded and the potential role of good neighbourliness in this context. Cyprus' direct relations with Turkey also raises legal challenges as far as the principle of good

a new and/or autonomous legal basis is however debated; see Blockmans (n 20) 115–116; *contra* Hanf (n 4) 3–5, 7–8; see also Van Elsuwege and Petrov (n 3) 688, 691–692, 696–697 and Basheska (n 4) 84–86.

- 26 Article 4(3) TEU has been said to represent the interests of the Union and guarantee its autonomy, but it is first and foremost the 'expression of the collective interest of the Member States'; Neframi (n 11) 324. Furthermore, whereas the national interests of Member States may not always coincide, the principle of solidarity vows to bring them closer.
- 27 Inter-state relations between Cyprus and its neighbours within the EU, such as Greece, fall outside the scope of this chapter since they are not 'external' by definition and are covered by Article 8 TEU and/or more generally by good neighbourliness, as developed elsewhere in this volume. For the 'bon voisinage' relations between Greece and Turkey, including with respect to Cyprus, see e.g. Basheska (n 4) 128–138.
- 28 Geographically, Cyprus has other immediate neighbours located outside of the EU, none of which however holds the status of candidate country and therefore comparable to Turkey, also due to the context of the Turkish invasion of Cyprus in 1974.
- 29 The territory of the Republic of Cyprus is composed of the territory of Cyprus 'minus' the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus. The territory of the Republic is itself split because that part of it is not controlled effectively by the government of the Republic; see e.g. Kypros Chrysostomides, *The Republic of Cyprus. A study in International Law* (Martinus Nijhoff, The Hague 2000).
- 30 See generally Laulhé Shaelou (n 17); see also Stéphanie Laulhé Shaelou, 'Market Freedoms, EU fundamental rights and public order: views from Cyprus' (2011) 30(1) YB EL 298 and Nikos Skoutaris, *The Cyprus issue* (Hart, Oxford 2011).

neighbourliness in EU law is concerned, as Turkey has proved to be a difficult partner, both in its bilateral relations with Cyprus within the framework of EU and international law, but also as a candidate country for EU membership.³¹ This contribution proposes to give an overview of the relations Cyprus maintains with these two rather ‘unusual neighbours’, so as to examine to what extent these two instances of (internal/external) neighbouring relations may fall within the ambit of the neighbourhood clause and the legal implications of an alleged external application of good neighbourliness in this context.

The *atypical* or *external* application of the principle of good neighbourliness in the context of Cyprus would entail an examination of the scope of such neighbouring relations *rationae loci, materiae* and *personae*, in a nexus of multi-dimensional relations.³² The primary interest for studying the external application of good neighbourliness from such a perspective lies in the consideration of the extent to which and how EU law applies to Cyprus’ immediate ‘neighbouring’ relations. This is so, given that the application of EU law is suspended in the areas of the Republic of Cyprus in which the government does not exercise effective control, even if these areas are located within the EU’s territory,³³ whereas Turkey is a candidate country and as such, currently falls outside the EU’s territory. It is however inherent in the nature of the principle of good neighbourliness that this principle applies *beyond* the territory of the EU into the European neighbourhood, through conditionality policies in particular, hence the importance of studying its territorial, material and personal scope beyond the EU’s territory in this specific context of alleged external application.

Beyond immediate considerations related to the territorial scope of good neighbourliness in the context of Cyprus, the specific substance of the principle will be analysed to identify the material scope of good neighbourliness in the present context and establish what, in this instance, may constitute *good* neighbouring relations. Moreover, it will be necessary to determine the

31 For a detailed account of the EU-Cyprus-Turkey triangular relationship over the years, see Laulhé Shaelou (n 17) 59–70.

32 For the scope *rationae materiae, personae* and *loci* of EU law in the Member State territories, see generally Dimitry Kochenov (ed), *EU Law of the Overseas: Outermost Regions, Associated Overseas Countries and Territories, Territories Sui Generis* (Kluwer Law, The Hague 2011) and for Cyprus, see specifically Stéphanie Laulhé Shaelou, ‘The principle of territorial exclusion in the EU: Sovereign Base Areas in Cyprus – a special case of *sui generis* territories in the EU’ (153–176) and Nikos Skoutaris, ‘The status of northern Cyprus under EU law: a comparative approach to the territorial suspension of the *acquis*’ (401–416) in that volume.

33 See Preamble and Article 1(1) Protocol No 10 on Cyprus [2003] OJ L 236/955.

personal scope of application of the principle to establish the individual and/or unilateral responsibility Cyprus can derive towards its 'neighbours', as well as any obligation that may arise towards the neighbouring territory/country itself. Of particular relevance to such considerations would be the question of the existence and scope of a minimum level or 'threshold' to be satisfied by all parties involved in neighbouring relations and of its legal origins. Within this framework, particular attention will be paid to establishing the legal nature of Cyprus's 'neighbouring' relations within the realm of EU law, supported by international law so as to establish some possible outer limits for good neighbourliness.

3 The External Application of the Good Neighbourliness Principle 'from within' the EU: The Case of the Occupied Areas in Cyprus

It is important to clarify from the outset that the case of the occupied areas in Cyprus is no 'ordinary' border or territory dispute involving a Member State and/or neighbouring countries/territories,³⁴ since this territory belongs *de jure* to the Republic of Cyprus and remains therefore in essence an unresolved internal conflict.³⁵ Notwithstanding the above, the external dimension of the *de facto* division of the island, including the roots of the conflict as well as its implications on the bilateral relations Cyprus maintains with Turkey will be addressed in the next and final part of this chapter. Suffice to note here in this respect that the case of Cyprus was also instrumental in the 'crystallisation' of good neighbourliness as a condition in the EU enlargement process.³⁶ This chapter will however focus on the post-accession period and examine Cyprus's commitment as a Member State towards good neighbourliness, within the framework of the regulatory regime put in place in the EU legal order 'for the sole purpose of regulating the unprecedented situation in the EU of a Member State not exercising effective control over all its territory'.³⁷

34 See (n 14). In *Commons Hansard Written Answers* (n 14), the division of the island of Cyprus was not listed among the border disputes involving current and/or prospective EU States but was 'added' at the end of these lists by the following mention: 'In addition, Cyprus joined the EU as a divided island on 1 May 2004. The EU *acquis* is suspended in northern Cyprus which Turkey recognises as the so-called "Turkish Republic of Northern Cyprus".'

35 Laulhé Shaelou (n 17) 7–8, 325.

36 *Ibid.*, 10–12, 20–21, 41–67; see also Basheska (n 4) 128–138.

37 Laulhé Shaelou (n 30) 300.

a *Scope of Application of EU Law*

After EU accession, the situation in the occupied areas of Cyprus is deemed unique to the extent that it entails in principle the *integral* suspension of the *acquis* in a delimited territory *within* a Member State.³⁸ The accession negotiations with Cyprus were conducted by the Republic of Cyprus on behalf of the whole island. This appears to indicate that EU law was applicable in principle to the areas beyond the control of the government but was suspended there *temporarily, ab initio* and *a priori in toto*.³⁹ This was confirmed by the Court of Justice in *Apostolides v Orams*.⁴⁰ Although this case does not actually involve the Republic of Cyprus itself but merely private litigants in a dispute over property located in the occupied areas, it is interesting to return to this judgment (and to the corresponding Advocate General's Opinion)⁴¹ to consider the scope of the suspension of EU law in the occupied areas and attempt to draw conclusions with respect to neighbourliness.

In *Apostolides v Orams*, the Court was asked to clarify the scope of the suspension of the *acquis* under Protocol 10 to the 2003 Treaty of Accession, in view in particular of the Brussels Regulation⁴² and the implications of such a suspension on fundamental rights and freedoms in Cyprus. Legal actions were initially brought before the Cypriot courts by Mr Apostolides, who obtained two judgments in the Nicosia District Court against Mr and Mrs Orams, British citizens who had purchased his property in the areas not under the effective control of the Republic of Cyprus.⁴³ These judgments were then registered in, and declared enforceable by the Queen's Bench Division of the High Court of England in accordance with the Brussels Regulation.⁴⁴ The Orams brought a successful challenge against the registration and enforcement order before the High Court Judge pursuant to Article 43 of the Brussels Regulation.⁴⁵ Mr Apostolides then contested that judgment by an appeal under Article 44 of

38 For a detailed legal appraisal of the legal regime applicable to the occupied areas in Cyprus, see Laulhé Shaelou (n 17) chapters 5 and 7.

39 Laulhé Shaelou (n 30) 318.

40 Case C-420/07, *Meletis Apostolides v David Charles Orams, Linda Elizabeth Orams* [2009] I-3571 (*Apostolides*), paras 33–34; see e.g. Laulhé Shaelou (n 30) 342–356.

41 Case C-420/07, Opinion of AG Kokott delivered on 18 December 2008.

42 Council Regulation (EC) No 44/2001 on jurisdiction and enforcement of judgments in civil and commercial matters of 22 December 2000 [2001] OJ L 12/1 (*Brussels Regulation*).

43 No 9968/04, 9 November 2004 and 19 April 2005 (Nicosia District Court). These judgments were confirmed by the Supreme Court of Cyprus in *Apostolides v Orams*, No 121/2005, 21 December 2006.

44 Orders made by Master Eyre, 21 October 2005.

45 *Orams v Apostolides* (QB) [2007] 1 WLR 241.

the Brussels Regulation before the Court of Appeal of England and Wales,⁴⁶ which initiated a preliminary reference procedure seeking interpretation of the Brussels Regulation in the light of Protocol 10.⁴⁷

The Brussels Regulation is an instrument of secondary legislation which promotes the fundamental freedoms and the mutual recognition of judgments throughout the EU.⁴⁸ As such, any exception to it should be interpreted *literally* and *strictly*, even if contained in an instrument of primary legislation.⁴⁹ It is unavoidable that Protocol 10 has a restrictive impact on the *territorial* scope of application of the Brussels Regulation *within* the occupied areas.⁵⁰ However, this is impossible if the application of the Brussels Regulation is sought by a court situated in the government-controlled area of the Republic of Cyprus, even when the action relates to property located in the non-government controlled area.⁵¹ The Court rightly confirmed that the objective of Protocol 10 is *literally* the suspension of the *acquis* in the territory not under the effective control of the Republic and not *in relation to* that area.⁵² Anything to the contrary would have been found 'beyond what is absolutely necessary' under the given circumstances.⁵³ In particular, there has never been an intention to exclude fully the application of provisions of EU law to the areas under the 'control' of the Turkish Cypriot community.⁵⁴ In fact, Turkish Cypriots residing in these areas have been found on several occasions 'to derive individual rights under EU law' from the protection afforded by fundamental human rights

46 *Apostolides v Orams*, Appeal A2/2006/2114, CA hearing 18–19 June 2007.

47 Order No 2153/2007 in the CA, 19 June 2007; the reference was made on 13 September 2007, *Meletis Apostolides v David Charles Orams, Linda Elizabeth Orams* [2007] OJ C 297/20. For a detailed account of the facts and of the procedural history, see Laulhé Shaelou (n 30) 340–344.

48 See Article 81 TFEU. See generally Ulrich Magnus and Peter Mankowski (eds), *Brussels I Regulation* (2nd edn, Sellier, Munich 2012); see also Wendy Kennett, *The enforcement of judgments in Europe* (OUP, Oxford 2000).

49 *Apostolides* (n 40) para 35; see also AG Kokott's *Opinion* (n 41), pt 36. These two instruments merely appear to have different scopes, *lex generalis* for the former and *lex specialis* for the latter and as a result, operate in different legal spheres; see Laulhé Shaelou (n 30) 345.

50 See AG Kokott's *Opinion* (n 41) pts 25–31; Laulhé Shaelou (n 30) 345.

51 See AG Kokott's *Opinion*, *ibid*, pt 32; see also *Apostolides* (n 40) para. 38.

52 See *Apostolides* (n 40) para. 37; Laulhé Shaelou (n 30) 346.

53 See AG Kokott's *Opinion* (n 41) pts 35–38; see also *Apostolides* (n 40) para. 35.

54 See in particular Articles 2 (for the application of EU law to the Green Line) and 3 Protocol 10 (for measures promoting the economic development of the non-government controlled areas of the Republic of Cyprus); see AG Kokott's *Opinion* (n 41) pt 40; Laulhé Shaelou (n 30) 346.

under EU law and international law,⁵⁵ and through the relative promotion of free movement through the Green Line.⁵⁶ It follows from the above that the non-government controlled areas of the Republic of Cyprus can fall within the material and personal scope of EU law, at least when fundamental individual rights are at stake, and the scope of application of EU law in relation to these areas of Cyprus is variable.⁵⁷

In the post-Lisbon era, with the EU's fundamental values codified in the Treaties,⁵⁸ it would appear reasonable to assume that the values 'on which the Union is founded'⁵⁹ would also apply in relation to and/or in the non-government controlled areas of the Republic of Cyprus, within the limits of the suspension of the *acquis* in these areas (as interpreted by the ECJ) and of the eventual withdrawal of such a suspension pursuant to Protocol 10.⁶⁰ This should without any doubt include good neighbourliness as a principle arising

55 ECtHR, *Aziz v Cyprus* [2005] 41 EHRR 11; see Laulhé Shaelou (n 30) 328–333; see also Laulhé Shaelou (n 17) 199–200. The European Commission provides on its website that '[...] the suspension [of the *acquis* in the northern part of the island] does not affect the personal rights of Turkish Cypriots as EU citizens'; see <http://ec.europa.eu/cyprus/turkish_cypriots/index_en.htm> last accessed 15 December 2014.

56 Ibid. See also the Preamble of Protocol 10.

57 Laulhé Shaelou (n 30) 327; see also Laulhé Shaelou (n 17) 200, 207, 228–230 and Frank Hoffmeister, *Legal aspects of the Cyprus Problem. Annan Plan and EU accession* (Martinus Nijhoff, Leiden 2006) 208–211.

58 Article 2 TEU and more generally Title I TEU.

59 The scope of fundamental values and principles and their enforcement within the EU legal order arguably remain a key challenge for the European integration process and are currently the focus of intense intellectual debate and/or policymaking effort, in view in particular of recent 'value crises' in some Member States. See Carlos Closa et al., 'Reinforcing Rule of Law oversight in the European Union' EUI Working Papers RSCAS 2014/25 for an exemplary attempt to approach the issue of Rule of Law oversight in the EU and suggest ways to address it through means of legal and policy analysis; see also Armin Von Bogdandy and Michael Ioannidis, 'Systemic deficiency in the rule of law: what it is, what has been done, what can be done' (2014) 51 CML Rev 59. For detailed analyses of recent crises in EU law, see Augustín José Menéndez, 'The existential crisis of the European Union' (2013) 14(5) German Law Journal 453–526 and Jan-Werner Müller, 'Safeguarding democracy inside the EU. Brussels and the future of the liberal order' (Transatlantic Academy Paper Series, Washington DC 2013). It should also be noted that the European Commission presented in March 2014 a framework to safeguard the Rule of Law in the EU; see <http://ec.europa.eu/justice/effective-justice/files/com_2014_158_en.pdf> last accessed 15 December 2014.

60 Article 1(2) Protocol 10. For an argumentation supporting the view that there has already been a *partial* and *factual* withdrawal of the suspension of the *acquis*, see Laulhé Shaelou (n 17) 230–233; see also Hoffmeister (n 57) 216.

implicitly from Articles 3(5)⁶¹ and 4(3) TEU⁶² and explicitly from Article 8 TEU, to the extent that this provision promotes the values of the Union and 'close and peaceful relations based on cooperation' as characteristics of good neighbourliness. It might appear difficult – and contrary to EU law – to impose an obligation of good neighbourliness directly on Cyprus in the handling of its internal affairs.⁶³ It is, however, inherent in Cyprus's commitments as a Member State that the 'spirit' of close cooperation should prevail in all its actions, especially when such actions fall within the broad scope of EU law. This leaves open the question of the nature and scope of the spirit of close cooperation in this context.

■ Please check the edit made in section numbering.

b *Nature and Scope of Close Cooperation: A Unilateral 'Duty' on Cyprus?*

Although there is no express reference to close cooperation in Protocol 10 – *a fortiori* even less so in the form of a duty – it is argued that the various instruments composing the legal regime established under Protocol 10 are characterised by a strong spirit of close cooperation originating from the case law of the ECJ.

The High Contracting Parties' 'strong support' for the UN peace talks and for a comprehensive settlement of the Cyprus problem expressed in the Preamble of Protocol 10, in accordance with the relevant UN Security Council Resolutions should be noted as a preliminary observation.⁶⁴ The Preamble also expresses the desire that Cyprus's EU accession should 'benefit all Cypriot citizens and promote civil peace and reconciliation'.⁶⁵ This seems to indicate the establishment of a strong link between international and EU law in the promotion of fundamental values such as peace, prosperity and stability,⁶⁶ and also arguably good neighbourliness in this context.⁶⁷ Good neighbourliness in international

61 As far as it refers to the promotion in the wider world of values and interests with respect to the principles of the UN Charter.

62 See part 2 above.

63 See in particular Articles 4(1) to (2) and 5 TEU. For a review of the potential limitations provided by Article 4(2) TEU in the context of recent crises in certain Member States, see Closa et al. (n 59) 8.

64 Preamble, Protocol 10, first recital.

65 Ibid, seventh recital.

66 See Laulhé Shaelou (n 17) 9, 31 (n 131), 50, 69–70, 199 (n 918).

67 Basheska writes: 'The need for respect for the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus and for finding a legal solution to the problem was repeatedly stressed by actors in the international community. Such an approach is at the heart of the good neighbourliness principle based on UN principles and maintained through the right and duties of states as established in international law'; see Basheska (n 4) 87–88 (footnote omitted).

law is based on the principle of sovereign equality of States,⁶⁸ which would not be applicable *per se* to the situation of the occupied areas, to the extent that there are no internationally recognised authorities there.⁶⁹ It is, however, clear that the actions of the government of the Republic of Cyprus are and must be in accordance with the relevant instruments of international law promoting peace and good neighbourliness,⁷⁰ including within its own sovereign territory,⁷¹ as Cyprus must fulfil in good faith its obligations arising under the UN Charter.⁷² This would not, however, necessarily translate into any duty, let alone any equivalent obligation, under EU law.⁷³

Turning to the question of duty in the EU legal order, it is important to note that the original role of Protocol 10 was to shield the Republic of Cyprus from liability in the areas beyond the effective control of its government, but only to the extent that this was rendered necessary by the *de facto* partition of the island. The rationale for this was the fact that the Republic could not guarantee the implementation and the enforcement of EU rules in the occupied areas, in breach of its commitments under the 2003 Treaty of Accession.⁷⁴ As previously examined, however, with respect to the scope of application of EU law there

68 Ibid, 7, 11–13.

69 As per UNSCR 541(1982) available at: <<http://unscr.com/en/resolutions/541>> last accessed 11 August 2014. See Lauthé Shaelou (n 17) 38, 47, 187, 317–319; see also Stefan Talmon, 'The Cyprus Question before the ECJ' (2001) 12 EJIL 727.

70 Confidence building measures are a good example of the promotion of such fundamental values; see Lauthé Shaelou (n 17) 226–230. In the renewed 2014 framework for talks between the leaders of the two communities under the auspices of the UN Secretary General's Good Offices mission, there is an express commitment to 'efforts to implement confidence building measures that will provide dynamic impetus to the prospect for a unified Cyprus'; see para. 7, Joint Statement on Cyprus talks by the leaders of the two communities available at: <<http://famagusta-gazette.com/joint-statement-on-cyprus-talks-full-text-p22275-69.htm>> last accessed 15 December 2014.

71 As per UNSCR 353(1974) available at <<http://unscr.com/en/resolutions/353>> and 367(1975) available at: <<http://unscr.com/en/resolutions/doc/367>> last accessed 15 December 2014.

72 Article 2 UN Charter, as complemented by the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter, UNGA Res 2625 (XXV) (24 October 1970).

73 It goes beyond the scope of this chapter to discuss the legal nature of international law instruments in general or those related to Cyprus in the EU legal order. Suffice it to note here that AG Kokott in her Opinion in the *Apostolides* case (paras 45 and 48) classified the UNSCR as predominantly political and as such, not entailing any obligation under EU law 'to refrain from recognising judgments of Greek Cypriot courts which relate to claims to ownership of land in the Turkish Cypriot area' due to lack of legal certainty.

74 Lauthé Shaelou (n 17) 196.

and the failure thereto, this 'exclusion of liability clause' was to be interpreted strictly and could under no circumstances exempt the Republic of Cyprus fully from its obligations arising under EU law, and in particular from Article 4(3) TEU.⁷⁵ Looking at the secondary legislative instruments on the development of free movement across the Green Line and economic development in the occupied areas, they appear to outline 'the importance of *coordination* between the two sides in this special regime'.⁷⁶ This interpretation of the legal regime established in Protocol 10 is arguably rooted in the case law of the ECJ, the *Anastasiou* saga.

The *Anastasiou* saga involved free movement of goods claims brought by a Cypriot trader in the UK against the background of Cyprus's association with the EU and subsequently of Cyprus's accession to the EU. These claims were referred to the ECJ by various English courts at different levels in the judicial system between 1992 and 2001.⁷⁷ They related to the application of various provisions of the then EC law, including under the EC–Cyprus Association Agreement and related instruments, to the trade in the UK of goods originating from the areas not under the effective control of the government of the Republic of Cyprus. In *Anastasiou I*,⁷⁸ the Court ruled that 'the need for uniformity in Community policy and practice', based on the 'principle of mutual reliance and cooperation between the competent authorities', required that the relevant provisions of EC law be interpreted strictly and with exclusive reference to the competent authorities of the Republic of Cyprus when exports to the Community were involved.⁷⁹ This ruling was confirmed in *Anastasiou II*⁸⁰

75 This is confirmed by the ninth recital of the Preamble to Protocol 10 and more precisely by Article 3(2) Protocol 10 with respect to the measures to be created under Article 3(1) Protocol to support the economic development in the occupied areas which 'shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus'; *ibid* 283.

76 Lahlé Shaelou (n 17) 284, *emphasis added*.

77 For a full and comprehensive legal analysis of the *Anastasiou* saga, *see e.g.* Stéphanie Lahlé Shaelou, 'The ECJ and the *Anastasiou* saga: principles of Europeanisation through economic governance' (2007) 18(3) *EBL Rev* 619–640; *see also* Lahlé Shaelou (n 17) 32–40, 70–84.

78 Case C-432/92, *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and others* [1994] *ECR* I-3087 (*Anastasiou I*).

79 *Anastasiou I*, paras 38 and 54; *see* Lahlé Shaelou (n 30) 308–13.

80 Case C-219/98, *R v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and others* [2000] *ECR* I-5241 (*Anastasiou II*). *See* Lahlé Shaelou (n 30) 313–5.

(to the extent that the latter case was distinguished from the former) and was further developed in *Anastasiou III*.⁸¹

Anastasiou II occurred in the context of the ‘triangular trading relationship between the EU, Cyprus as a candidate country, and Turkey as an associated country’.⁸² As a result of the judgment of the Court in *Anastasiou I*, Turkish Cypriot goods were first exported to Turkey for certification before being ‘re-exported’ to the EU ‘outside of the scope of the EU–Cyprus Association and *prima facie* within the scope of the EU–Turkey Association Agreement’.⁸³ The Court ruled that in the absence of proper certification, Turkish Cypriot goods had to be treated as goods originating from a third country subject to import duties if imported into the EU, including through Turkey. The principles established in *Anastasiou I* remained, however, largely untouched since the Court in *Anastasiou II* focused mainly on the technical requirements arising from the non-privileged treatment of these goods (physically located outside of the EU),⁸⁴ and of their importation into the EU.⁸⁵

In a refinement of *Anastasiou II*, the Court in *Anastasiou III* looked this time at the issue of certification of goods in the internal market, both from the point of view of the origin of the goods *and* of the authorities competent to issue such certificates to introduce these goods into circulation in the EU. It ruled this time that ‘the phytosanitary certificate required in order to bring those plants into the Community must [...] be issued in their country of origin *by, or under the supervision of, the competent authorities* of that country’,⁸⁶ thereby closing the door to ‘indirect trade’ through Turkey and confirming the principle of the ‘direct trade’ of Turkish Cypriot goods in the EU through the government controlled area of the Republic of Cyprus.⁸⁷ The Court referred to the ‘exclusive competence’ of the country of origin to issue the requested certificates and to the ‘legitimacy’ of the authorities legally authorised

81 Case C–140/02, *R v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others* [2003] ECR I–10635 (*Anastasiou III*).

82 See Laulhé Shaelou (n 30) 313.

83 Ibid.

84 In *Anastasiou II*, ‘the Court merely considered that the certificates were issued by the competent authorities in the importing State and did not look for the legitimate issuing authority in the State of origin of the goods’; see Laulhé Shaelou (n 30) 315.

85 Ibid 313–314. The Court also focused on the cooperation between the importing State and the State of origin when a third country is involved within the framework of the applicable instruments of EU law, of relevance to the last part of this chapter, see (n 122).

86 *Anastasiou III*, para. 75 (emphasis added); see Laulhé Shaelou (n 30) 316 and (n 95).

87 Laulhé Shaelou (n 30) 315–316.

to carry out this task in accordance with *Anastasiou I*.⁸⁸ It has been argued that with *Anastasiou III*, 'the principle of mutual reliance and cooperation referred to in *Anastasiou I* in the context of association becomes applicable to *intra*-State trade relations in the context of accession, in addition to its usual application to *inter*-State trade relations within the EU'.⁸⁹ In what can be seen as a direct application of the case law of the Court, Article 4(5) of the Green Line Regulation⁹⁰ dealing with the treatment of goods coming from the non-controlled area of the Republic of Cyprus to the area controlled by the government⁹¹ provides that such goods 'shall be accompanied by a document issued by the Turkish Cypriot Chamber of Commerce, duly authorised by the European Commission in agreement with the government of the Republic of Cyprus'. By virtue of this provision, the European Commission issued a Decision addressed to the Republic of Cyprus confirming the above.⁹² Upon receipt of such goods with the relevant certification, the competent authorities of the Republic of Cyprus were then required to check the authenticity of the document received from the Turkish Cypriot Chamber of Commerce and whether it corresponds with the consignment.⁹³ Provided that this is the case and the goods are 'destined for consumption in the Republic of Cyprus', the Republic of Cyprus shall not treat the goods as 'imported'⁹⁴ and such goods shall have the status of 'Community goods'.⁹⁵

Lessons Learnt

It has been argued that the Green Line Regulation 'not only refers to the primary responsibility of the Republic of Cyprus in *intra*-[S]tate trade but also promotes co-operation between trade authorities/bodies in Cyprus as a result

88 Ibid 317.

89 Ibid.

90 Council Regulation (EC) No 866/2004 on a regime under Article 2 Protocol 10 of the Act of Accession (Green Line Regulation) [2004] OJ L 161/128.

91 Such goods must be 'wholly obtained' or 'have undergone their last, substantial, economically justified processing or working in an undertaking equipped for that purpose in the areas not under the effective control of the Government of the Republic of Cyprus'; see Article 4(1) Green Line Regulation.

92 Commission Decision (EC) No 604/2004 [2004] OJ L 272/12.

93 Article 4(6) Green Line Regulation. For the legal status of the Turkish Cypriot Chamber of Commerce, see Laulhé Shaelou (n 17) 296–297, 311, 319 and 327.

94 Article 4(7) Green Line Regulation.

95 Provided they comply with the requirements laid down in Article 4(1) to (10) Green Line Regulation; see Article 4(11) Green Line Regulation.

of national regulatory governance'.⁹⁶ The spirit of close cooperation⁹⁷ appears to be inherent in all instruments of secondary legislation forming, together with Protocol 10, the regulatory regime addressing the *de facto* partition of the island, extending to and including a future comprehensive settlement leading to the full integration of the Turkish Cypriot community into the EU.⁹⁸ By analogy with Article 8(1) TEU, close cooperation is of essence in this instance of *de facto* division of an EU Member State and offers, as some have argued with respect to Article 8(1) TEU, a 'pragmatic solution' to a 'politically sensitive area' or problem.⁹⁹ In the context of Cyprus, close cooperation appears as a strong – albeit not unlimited¹⁰⁰ – unilateral commitment on the part of the Republic, whose prime objective is the avoidance of the legitimisation and/or recognition of the 'authorities' on the other side and includes – if and when necessary – elements of the *ad hoc* integration of the Turkish Cypriot community into the EU pending a political solution. The idea of 'progressive integration' can also be found in Article 8(1) TEU, even if it should in principle fall short of full integration.¹⁰¹ In the case of Cyprus, the outcome ought to be different since the occupied areas are and remain a constituent part of the sovereign territory of the Republic of Cyprus and as such of the EU territory, and are committed to full EU integration, albeit deferred. Moreover, any instance of 'far reaching integration' through good neighbourliness should be based on reciprocity,

96 Laulhé Shaelou (n 17) 318.

97 For a more formal and explicit expression of the duty of close cooperation and of good neighbourliness in Cyprus, see Protocol 3 on the Sovereign Base Areas in Cyprus [2003] OJ L 236/940, addressing the bilateral relations between the Republic of Cyprus and the UK in the form of 'closer cooperation'; see Laulhé Shaelou (2010) 158–171. On 15 January 2014, the two governments signed an 'arrangement' giving 'increased flexibility to develop private property' within the SBAs in Cyprus, which they deemed to form an 'excellent example' of their good cooperation; see <<https://www.gov.uk/government/news/uk-cyprus-joint-communique>> last accessed 15 December 2014.

98 The terms of which will be determined pursuant to Article 4 Protocol 10.

99 Van Elsuwege and Petrov (n 3) 695.

100 For an example of a proposal for secondary legislation prepared by the European Commission but opposed in its current form by Cyprus in the Council, to the extent that the proposal is not based on the principle of mutual recognition and close cooperation as expressed in instruments of EU law deriving from Protocol 10 and may, as a result, lead to the 'upgrading' or recognition of the 'authorities' in the occupied areas, see Proposal for a Council Regulation on special conditions for trade with those areas not under the effective control of the government of the Republic of Cyprus COM(2004) 466 final ('direct trade proposal'); see Laulhé Shaelou (n 17) 81, 197, 279–281, 304, 313–320.

101 Van Elsuwege and Petrov (n 3) refer to 'far-reaching integration' based upon the export of the *acquis* to non-EU Member States, presenting an alternative to full EU membership, 695.

which cannot really apply to Cyprus within its own sovereign territory. In this context, however, good neighbourliness can be said to reinforce the general commitment incumbent on Cyprus as a Member State to act in the spirit of close cooperation to benefit 'all Cypriot citizens and promote civil peace and reconciliation'.¹⁰² This appears to constitute a minimum threshold, even if it falls short of imposing any formal unilateral duty on Cyprus with respect to its own internal affairs.

Nevertheless, as demonstrated by the above analysis, there appears to be a 'higher' (specially framed and country-specific) threshold under EU law which would need to be satisfied on the part of Cyprus for actions falling within the material and/or personal scope of EU law (customs union, CCP and internal market in particular),¹⁰³ as may be required at the EU level and/or derive from instruments of EU law. It generally transpires from the ECJ's case law that the rules of the internal market are deemed applicable to intra-State and to inter-State relations.¹⁰⁴ In the case of Cyprus, however, this is not a case of the straightforward application of the rules of the internal market in its territory, but a differentiated one due to the *de facto* division of the island. Accordingly, as a 'counterpart' to this higher commitment incumbent on Cyprus deriving from the application of the internal market rules in this special setting, with an unusual bearing on internal affairs, its willingness to consent to the various instruments of EU law pertaining to this special regime is sought at all times, within the framework of Protocol 10 as *lex specialis*.¹⁰⁵ This appears to be the case even for instruments which would not normally require unanimity and/or the express consent of the Republic of Cyprus, as they have an exclusive competence of the EU, such as the CCP or the Customs Union, legal basis.¹⁰⁶

102 Preamble, Protocol 10.

103 For the application of these EU objectives/policies to the occupied areas of Cyprus, see Laulhé Shaelou (n 17) 288–304.

104 For the free movement of goods, see Case C–293/02, *Jersey Produce Marketing Organisation Ltd v State of Jersey and others* [2005] ECR I–9543.

105 On the basis of Articles 1(2) and 2(1) Protocol 10 (and 4 upon a settlement), all requiring unanimity in the Council to adopt measures under Protocol 10. The extent to which Article 3(1) Protocol 10 promoting measures of economic development in the occupied areas of Cyprus constitutes an autonomous legal basis subject to the same procedural rules is more uncertain (with no such express references being made therein); see Laulhé Shaelou (n 17) 282–283.

106 See in this respect the divergence among the EU institutions over the proper legal basis relating to the (still pending) direct trade proposal (n 100). The European Commission had initially proposed the then Article 133 EC (now 207 TFEU (CCP)), whereas the Council, subsequently backed by the European Parliament, insisted on Protocol 10 as the proper

This special regime also arguably requires the general support of other Member States in accordance with the duty of loyal cooperation in the EU. In this context, therefore, it is believed that the above scenario involving a *specific* and *unilateral* commitment by a single Member State towards close cooperation is yet another manifestation of good neighbourliness *within* the EU. The next and final part of this chapter will examine another set of neighbouring relations, this time involving bilateral relations between two States and EU external relations though its enlargement policy.

4 The Outer Application of the Principle of Good Neighbourliness 'from outside' the EU: The Case of Turkey

When a dispute involves two States, one of which is a Member State of the EU and the other a third country associated to the EU (a 'vertical dispute'),¹⁰⁷ there can be a natural – albeit probably immature and certainly unequal and insufficient – tendency primarily to observe the conditions imposed on the 'outsider' in the dispute from the EU perspective, through the EU conditionality policy in particular.¹⁰⁸ It has been argued that in vertical disputes, 'Member States can either act on their own behalf with respect to their bilateral disputes with candidate countries or on the behalf of the Union regarding 'EU-wide issues'.¹⁰⁹ This would appear to give a lot of leeway to Member States, including during the enlargement process, with the inherent risk that 'instead of being used as an instrument to contribute to the settlement of international disputes 'in a spirit of good neighbourliness and bearing in mind the overall EU interests', the conditionality principle in such cases serves the national interests and political considerations of individual Member States'.¹¹⁰ It is quite clear

legal basis for such an instrument. See Laulhé Shaelou (n 17) 280–281; see also Working Document of the European Parliament, Committee on International Trade, Rapporteur Niccolo Rinaldi, 13 March 2014 available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-530.081+01+DOC+PDF+Vo//EN>> last accessed 15 December 2014.

107 Rodin (n 24) 153–171, 156; see also Basheska (n 4) 121–122.

108 This is partly due to reliance on the – flawed, as has been demonstrated recently, see (n 59) – assumption that 'within' the Union, all Member States 'fundamentally and unavoidably adhere to the values' of the Union, as enshrined in Article 2 TEU. The 'problem' *must* therefore come from outside the Union [...]; see Kochenov in Petrov and Van Elsuwege (n 3) 48.

109 Rodin (n 24) 156, as cited in Basheska (n 4) 121.

110 Basheska (n 4) 122 (footnote omitted); see also the notion of 'creeping nationalisation of enlargement' by Christophe Hillion, 'EU enlargement' in Paul P Craig and Gráinne

that good neighbourly relations, including with Cyprus, form an essential part of the accession process for Turkey.¹¹¹ This condition has been ably explored and developed in previous writing on the topic¹¹² as well as in other contributions in this volume.¹¹³ What is less clear, however, are the current (post-Lisbon) implications of such conditionality on the EU-Cyprus-Turkey relations, to identify the meaning and scope of good neighbourliness for *all* parties involved, and the future prospects of such relations. The fourth and final part of this chapter will attempt briefly to shed some light on these questions.

Turning first to the nature and scope of good neighbourliness for Turkey, the foundations of Turkey's obligation towards Cyprus can be established quite clearly both in international law and in EU law (in the context of the EU external relations). In international law, Turkey's obligations towards Cyprus with respect to the protection of human rights have been made clear by the Strasbourg Court. Such obligations extend to State liability and compensation for violation of property rights ongoing since the Turkish invasion of the island in 1974.¹¹⁴ This was confirmed by the Strasbourg Court only very recently in a landmark decision.¹¹⁵ Despite the fact that this case law is based primarily on

de Búrca, *The evolution of EU law* (2nd edn, OUP, NY 2011) 210: some Member States might 'hijack' the enlargement process to settle/promote bilateral relations in their favour.

- 111 This is reiterated regularly in the context of accession negotiations, as a constituent element of the EU-Turkey relations but also in the 'normalisation of relations between Turkey and all Member States', with express reference to Cyprus; for a latest example, see the EU-Turkey Association Council, 52nd meeting, 23 June 2014 available at: <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/143331.pdf> last accessed 15 December 2014.
- 112 For a review of the *bon voisinage* clause as applied in the context of the EU-Turkey-Cyprus relations, see Laulhé Shaelou (n 17) 20, 59–60, 67 (fns 294–296 and 301–302 for further literature on the topic). See also Hillion (n 110).
- 113 See Peter Van Elsuwege, 'Good Neighbourliness as a Condition for Accession to the European Union: Finding the Balance between Law and Politics' in this volume; see also Basheska (n 4) 128–138.
- 114 *Cyprus v Turkey* (No 25781/94, 10 May 2001, ECtHR) where Turkey was found responsible for grave violations of fundamental human rights in Cyprus, *inter alia* under Article 1 Protocol 1 ECHR (denial of access, control, use and enjoyment of Greek Cypriot property as well as of any compensation for the interference with property rights of Greek-Cypriot owners).
- 115 *Cyprus v Turkey* (No 25781/94, just satisfaction, 12 May 2014, ECtHR) where the Court ruled (by a majority of the Grand Chamber) that 'the passage of time since the delivery of the principal judgment on 10 May 2001 did not preclude it from examining the Cypriot Government's just satisfaction claims'; see <<http://hudoc.echr.coe.int/sites/eng/pages/>

the ECHR and does not refer to or rely on the good neighbourliness principle as embodied in instruments of international law, there is no doubt that violations of several fundamental principles of the Declaration on Friendly Relations can be identified indirectly through this case law.¹¹⁶ This last remark also applies to the more detailed principles embodied in Article 2 of the UN Charter, which have been found to form the main legal basis of good neighbourliness in international law.¹¹⁷ They include the duty to fulfil in good faith the obligations assumed in accordance with the Charter, the obligation to peacefully settle international disputes and the duty to refrain in international State relations from the threat or use of force against the territorial integrity or political independence of any State.¹¹⁸ Turkey therefore also appears to be in breach of these more detailed principles and of the duties, positively or negatively framed, deriving therefrom, to the point that *good* neighbourliness between the two countries has been and is still regularly at stake.¹¹⁹ There has

search.aspx?i=001-144151#{'itemid':["001-144151"]}> last accessed 15 December 2014. The Cypriot government had only submitted just satisfaction claims for the violations committed by Turkey against two specific groups of people: the missing persons and the enclaved Greek-Cypriot residents of the Karpas peninsula; just satisfaction with a view to compensate the Cypriot State was not sought; see Sébastien Platon, 'Quand les racines internationales de la Cour Européenne des Droits de l'Homme lui donne des ailes: la consécration du droit à indemnisation dans les affaires étatiques' (2014) RDLF, No 17. The Grand Chamber of the Court reminded Turkey of its obligation to comply with the principal judgment in the inter-State case, irrespective of the case law of the same Court whereby claims presented by individuals for the violation of their property rights have now been rejected for non-exhaustion of domestic remedies (*Demopoulos and Others v Turkey*, Application No 46113/92 (admissibility), 5 March 2010; see Laulhé Shaelou (n 30) 333–340.

116 Of the duty to respect *inter alia* the personality of other States, the inviolability of the territorial integrity and political independence of States and/or to comply fully and in good faith with State international obligations and live in peace with each other; see *Basheska* (n 4) 11 for a complete list of such duties.

117 *Ibid* 20.

118 For a detailed analysis of each of these principles and of the rights and duties on states deriving therefrom, see *Basheska* (n 4) 20–34.

119 There are many examples of regular political tensions between Turkey and Cyprus, including in the recently renewed Cyprus talks; Cyprus's EU Council Presidency in the latter half of 2012; hydrocarbons in Cyprus and the multiple violations of Cyprus's territorial waters and airspace related to hydrocarbon exploration; see <<http://www.euronews.com/tag/turkey-cyprus-relation/>> last accessed 15 December 2014. In Turkey's 2013 Progress Report, the Commission called on Turkey to 'stop blocking the accession of Member States to international organisations and mechanisms' and reiterated the rights of EU Member States to enter into bilateral agreements and 'to explore and exploit their

been, however, no dispute brought before any international court of law based directly on the violation of good neighbourliness principles by Turkey towards Cyprus. The Luxembourg Court is no exception, in line with its jurisdiction over matters of EU law¹²⁰ and its approach to international law.¹²¹ The ECJ, indeed, has never dealt directly with the Turkey–Cyprus relations, despite being invited to do so on several occasions,¹²² hence the need to turn to the legal and political framework established at the EU level to address the EU–Cyprus–Turkey relations.

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- natural resources'; see <http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf> 3 and 17, last accessed 15 December 2014.
- 120 In the light in particular of Article 344 TFEU (exclusive jurisdiction of the Court) and Article 273 TFEU ('optional' jurisdiction of the Court) for bilateral disputes involving EU Member States falling within the scope of EU law or outside it, respectively. A bilateral dispute involving an EU Member State and a candidate country would fall *prima facie* outside the scope of EU law and be settled in accordance to the principles of international law, see *Basheska* (n 4) 76–77.
- 121 In view of the Court's 'robustly dualist' reasoning in the *Kadi* cases where it refused to allow a UN Security Council resolution to enjoy primacy over EU law and proceeded with a full and rigorous judicial review of the lawfulness of all EU acts in question, including those designed to implement UN Security Council resolutions (Joined Cases C–402/05P and C–415/05P, *Kadi and Al Barakat v Council and Commission* [2008] ECR I–6351 and Joined Cases C–584/10 P, C–593/10 P and C–595/10 P, *Commission, Council, UK v Yassin Abdullah Kadi*, 18 July 2013); see Gráinne de Búrca, 'The European Court of Justice and the International Legal Order after *Kadi*' (2010) 51(1) *Harvard Int'l L.J.* 1–49, 23.
- 122 Within the framework of the Association Agreements between the EU and Cyprus and the EU and Turkey, the Court had ruled on the cooperation between the importing State and the State of origin – involving in that case the importation to EU Member States of Turkish Cypriot goods through Turkey – that it is not for Member States to 'impose further conditions on the importer who has resorted to such a procedure', as this would imply the 'taking into consideration of the reasons for which the requested certificate has not been issued by the country of origin'; *Anastasiou II*, paras 40–42; see (n 84); see also Laulhé Shaelou (n 17) 35 and Panos Koutrakos, 'Legal issues of EC–Cyprus trade relations' (2003) 52 *ICLQ* 489–498. After Cyprus's EU accession, the Court's analysis in the *Apostolides* case was limited to 'civil and commercial matters' within the scope of the *Brussels Regulation* (n 42): 'In the case in the main proceedings, the action is between individuals, and its object is to obtain damages for unlawfully taking possession of land, the delivery up of that land, its restoration to its original state and the cessation of any other unlawful intervention. That action is brought not against conduct or procedures which involve an exercise of public powers by one of the parties to the case, but against acts carried out by individuals', para 45. There was in any case no mention of Turkey in the judgment, other than the fact that only Turkey recognises the so-called 'TRNC', para. 19; see also AG Kokott's Opinion in this case, para 45, as commented on in (n 73).

In EU law Turkey's obligations towards Cyprus are largely framed within the context of enlargement policy and therefore also directly involve the EU. From quite early on in the process, efforts to resolve the Cyprus problem would 'form part of the enhanced political dialogue' between the EU and Turkey¹²³ and it was clear that the absence of a settlement could become a serious obstacle on Turkey's road to the EU.¹²⁴ The Negotiating Framework with Turkey¹²⁵ lays down in Section 6 the *guiding principles* to measure the accession negotiations with Turkey, with reference in particular to the following *requirements*: (i) the Copenhagen criteria; (ii) 'Turkey's unequivocal commitment to good neighbourly relations and its undertaking to resolve any outstanding border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the [UN] Charter, having recourse, if necessary, to the [ICJ]'; (iii) Turkey's continued support for efforts to achieve a comprehensive settlement of the Cyprus problem, including through the 'normalisation of bilateral relations between Turkey and all EU Member States, including the Republic of Cyprus'; and (iv) 'the fulfilment of Turkey's obligations under the Association Agreement and its Additional Protocol extending the Agreement to all new EU Member States, in particular those pertaining to the EU–Turkey customs union, as well as the implementation of the Accession Partnership, as regularly revised'.¹²⁶ Good neighbourliness therefore appears as an *autonomous requirement* for Turkey, separate from the Copenhagen criteria which Turkey was found to meet 'sufficiently' for accession negotiations to be opened,¹²⁷ from bilateral relations between Turkey and *all* EU Member States, including Cyprus, and from the fulfilment of technical obligations by Turkey under the Association Agreement and its Additional Protocol. Apart from the rights and obligations deriving from the Association Agreement and other related legal instruments, the remainder of the requirements set out in Section 6 of the Negotiating Framework do not however seem to attract 'strict' liability for Turkey. This appears to be verified in Section 5 of the Negotiating Framework,

123 Commission's 2003 Progress Report on Turkey available at: <http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf>; see also Commission's 2007 Progress Report on Turkey available at <http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf> both last accessed 15 December 2014.

124 See Christophe Hillion (ed), *EU Enlargement, a legal approach* (Hart, Oxford 2004) 19; see also Laulhé Shaelou (n 17) 61.

125 Available at: <http://ec.europa.eu/enlargement/pdf/turkey/st20002_05_tr_framedoc_en.pdf> (*Negotiating Framework*) last accessed 15 December 2014; see Laulhé Shaelou (n 17) 44, 62, 65–67.

126 *Negotiating Framework*, *ibid*.

127 *Ibid*, Section 4.

which provides that only a 'serious and persistent breach *in* Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded'¹²⁸ could trigger a suspension of the negotiations and the formulation of 'conditions' for their eventual resumption. Even if one considers that good neighbourliness ought to be included in the principles and values on which the Union is founded (as argued above),¹²⁹ the express reference to a breach of such principles and values *in* Turkey rather than *by* Turkey would appear to exclude *prima facie* such breach in the context of Turkey's external relations, including *a priori* neighbouring relations with EU Member States.

Turkey's only specific obligations towards EU Member States would therefore appear to derive from the Association Agreement and its Additional Protocol, which Turkey ought to have extended to all new EU Member States as a result of the 2004 enlargement but failed to with regard to Cyprus.¹³⁰ The EU addressed the legal implications of Turkey's attitude in a 'counter-declaration' adopted by the Council.¹³¹ This is a political declaration which nevertheless included a 'revision clause', whereby the Council reiterated that Turkey's failure to implement its obligations in full would affect the 'overall progress in the negotiations'.¹³² As a result, the requirement regarding the normalisation of Turkey's bilateral relations with Cyprus was expressly referred to for the first time in the legally binding Accession Partnership.¹³³ Almost ten years later, however, Turkey has still not complied in full with its obligations of 'non-discriminatory

128 Ibid, emphasis added.

129 The choice of terms in relation to the Negotiating Framework (principles, requirements, rules) is quite interesting, as none of them appears to indicate the existence of *values* underlying the EU's relations with Turkey. Values as enshrined in Article 2 TEU should indeed be distinguished from all of the above; *see* in this respect Kochenov in Petrov and Van Elsuwege (n 3) 52–54 and 60.

130 Following the signature of the Additional Protocol with the ten new Member States on 30 June 2005, Turkey issued a unilateral statement on 29 July 2005 confirming that 'the signature, ratification and implementation of this Protocol neither amount to any form of recognition of the Republic of Cyprus referred to in the Protocol'; *see* Lahlé Shaelou (n 17) 65. Turkey claims that it will not move to the full and non-discriminatory implementation of the Additional Protocol towards Cyprus until and unless the EU allows for direct trade with the occupied areas.

131 Declaration by the EC and its Member States on Turkey Doc 12541/05 (Press 243) (*Declaration*); *see* Lahlé Shaelou (n 17) 65–66.

132 *Declaration*, *ibid*, para 3.

133 Council Decision (EC) No 235/2001 of 8 March 2001 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey [2001] OJ L 85/13, as amended; *see* Lahlé Shaelou (n 17) 66.

implementation of the Additional Protocol to the Association Agreement' and, in particular, has failed to remove 'all restrictions on vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus'.¹³⁴ Due to the lack of progress in this respect, the EU has since 2006 maintained measures freezing negotiations on eight chapters relevant to Turkey's restrictions regarding the Republic of Cyprus,¹³⁵ with the result that accession negotiations with Turkey have come to a standstill.¹³⁶ In the meantime, the EU has 'urged Turkey to avoid any kind of threat or action directed against a Member State, or source of friction or actions, which could damage good neighbourly relations and the peaceful settlement of disputes'.¹³⁷

Lessons Learnt

The absence of 'normal' bilateral relations between Turkey and the Republic of Cyprus over the years has meant that neighbourly relations between these two countries are not based on reciprocity and are addressed primarily in the context of EU-Turkey relations (and not as a 'vertical dispute'). Even if the non-recognition by Turkey of the Republic of Cyprus did not prevent the start of the accession negotiations as it was not a pre-condition to their commencement,¹³⁸ it has become increasingly important in the context of the accession negotiations, to the point that it provoked their 're-framing'.¹³⁹ It also provided EU Member States, including Cyprus, with an *added* opportunity to use their right to hold up Turkey's progress towards accession during the benchmarking

134 Commission's 2013 Progress Report on Turkey (n 119) 4. For a legal analysis of the non-implementation by Turkey of the provisions of the EU-Turkey customs union and the free movement of goods, see Laulhé Shaelou (n 17) 63–64.

135 GAERC Conclusions, 11 December 2006, endorsed by the European Council on 14/15 December 2006. Negotiations will not be opened for eight chapters and no chapter will be provisionally closed 'until the Commission confirms that Turkey has fully implemented the Additional Protocol to the Association Agreement'; see Laulhé Shaelou (n 17) 66.

136 After almost ten years of accession negotiations, only thirteen chapters have been opened for negotiations and one provisionally closed; see Turkey's 2013 Progress Report (n 119) 4. The Commission notes that '[w]ork has been interrupted over the years on a number of negotiating chapters due to lack of consensus amongst Member States'; *ibid.* In particular, no chapters were opened between mid-2010 to June 2013, where the Council agreed to open the chapter on regional policy; *ibid.*

137 Turkey's 2013 Progress Report (n 119) 4; see also European Council conclusions, 23–24 October 2014, <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/145397.pdf>, 15.

138 See Laulhé Shaelou (n 17) 66.

139 The fulfilment by Turkey of its obligations under the Additional Protocol has become a 'routine' requirement in the context of the accession negotiations; *ibid.* 68.

process included in the accession negotiations.¹⁴⁰ This last remark raises the question of whether, in view of Article 4(3) TEU and/or in the spirit of 8(1) TEU, Cyprus should *unilaterally* block the provisional opening or closing of negotiation chapters, as it has already done with respect to the opening of six other chapters.¹⁴¹ Arguably, the right to delay a candidate country's like Turkey's accession process is a *collective* prerogative of the Member States, the *individual use* of which could appear *prima facie* contrary to the spirit of good neighbourliness promoted by Article 8(1) TEU (and expressly referred to in the Negotiating Framework for Turkey). While the unanimity requirement provides the opportunity for a single Member State to disapprove of benchmarks and/or of their evaluation (by exercising its 'veto'), it is reasonable to expect that the grounds for such disapproval should be 'related to compliance with accession criteria'.¹⁴² For Cyprus, the lack of reciprocity in neighbouring relations with Turkey has proved to have a direct impact on Turkey's fulfilment of its legal obligations under the Association Agreement and could as such provide a *legitimate* opportunity to exercise this right *individually*.

This last remark appears to raise the ultimate question of the future prospects of the EU–Turkey relations and in particular, of the impact of such relations in the broad framework of the EU Treaties, with reference in particular to the values of the Union and to the principle of effectiveness of EU law. Beyond the discussions related to the lack of progress of the accession negotiations and to the future of Turkey within the EU,¹⁴³ the suitability of Article 49 TEU as the legal basis for the EU–Turkey relations has been questioned variously and in different quarters.¹⁴⁴ The hypothetical or actual advantage of using Article 8(2) TEU to

140 In line with the conditionality generally introduced in accession negotiations, Section 21 of the Negotiating Framework for Turkey provides for unanimity of the Council for the provisional closure and, where appropriate, opening of each negotiating chapter; see Laulhé Shaelou (n 17) 67–68.

141 See <<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcaff/1567/156711.htm#note423>> last accessed 15 December 2014. It should be noted that France is also blocking the opening of negotiations on five further chapters which are regarded as 'not relevant' if Turkey is not to join the EU one day; *ibid*.

142 Hillion (n 110) 202–203.

143 With reference in particular to the fact that the accession negotiations with Turkey are an 'open-ended process, the outcome of which cannot be guaranteed beforehand' and to the Union's absorption capacity; see Section 2 of the Negotiating Framework; *ibid* 203–205.

144 Hillion (n 110) criticised the way Member States have 'tempered' the fundamentals of integration with 'domestic concerns' in the Negotiating Framework with Turkey, which envisages the creation of permanent safeguard clauses in the Accession Treaty, potentially falling short of full membership, 211 and 215; see also Christophe Hillion, 'Negotiating

frame Turkey's future relations with the EU (in conjunction with Article 216 or 217 TFEU, if Article 8 TEU is found not to constitute an autonomous material legal basis for the procedure along with Article 218 TFEU),¹⁴⁵ would be the continued promotion of the Union's value in more flexible terms, while at the same time avoiding 'false hopes' of accession and remaining binding on the Member States.¹⁴⁶ However, this would represent a 'downgrading' of Turkey's relations with the Union, arguably to gain flexibility within the conditionality; whereas on the other hand, the Union's values would remain unchanged. In this respect, it has been argued that Article 8 TEU 'impedes the Union from entering into special relationship with neighbouring countries refusing to commit themselves to the values of the Union. The same would be the case for countries actively obstructing such a commitment. Finally, the limitation would arguably also apply in an unsatisfactory situation where no signs of improvement are shown over time'.¹⁴⁷ Turkey is supposed to have passed that 'entry point' a decade ago but has not subsequently maintained momentum. Under Article 8 TEU, it would appear that the point of entry characterising good neighbourliness in the EU legal order also constitutes the foundation against which all neighbouring countries are evaluated, be they associated to the Union or not, and below which none should fall at any time. Moving the legal basis from Article 49 TEU to Article 8 TEU would have the benefit of providing Turkey with an impetus for a 'fresh' interpretation of the Union's values, potentially beneficial to all parties. This would greatly depend, however, on whether a political decision on the 'renewed' conclusion of the EU–Turkey relations is ultimately achieved, as well as on Turkey's own interpretation of this relationship and values, while other countries such as Ukraine move rapidly towards EU membership.

5 Conclusion

This chapter has tried to identify and explain first the relevance and then the importance of the good neighbourliness principle in the context of the relations a single Member State can maintain with its neighbours, both from within and outside the EU, no matter how troubled and atypical such relations may be. Through the examination of scenarios found 'on the edge' of the principle, this

Turkey's membership to the EU. Can the Member States do as they please?' (2007) 3 *EuConst* 269–284.

145 See (n 25); see also Hillion (n 110) 215.

146 Van Elsuwege and Petrov (n 3) 697.

147 Hanf (n 3) 7.

chapter has shown that good neighbourliness lies at the foundations of the process of European integration and constitutes in all cases a commitment to be met by all, simultaneously delimiting the process's outer application. In particular, it appears that troubled neighbouring bilateral relations can be addressed within the broad framework of EU external relations based on mandatory considerations of good neighbourliness,¹⁴⁸ irrespective of whether the neighbouring country/territory is a direct neighbour of the Union itself.¹⁴⁹ It also appears that the lack of reciprocity in neighbouring bilateral relations, whether intentional (in the case of Turkey) or not (in the case of the *de facto* division of the territory of the Republic of Cyprus) appears to enhance the role of the Union in the good neighbourliness process. This does not, however, appear to relieve the Member State and/or the third country concerned from their own commitment to good neighbourliness. Nevertheless, the nature and scope of the commitment may not be what was originally expected, as developed in this chapter. The example of Turkey in particular shows that it is the extent of the neighbouring country's commitment towards good neighbourliness which *should* determine the outcome of its relations with the EU. Otherwise, the relationship between the EU and the third country concerned risks being exposed to serious problems in the event of a *fundamental* shift in the associated country's attitude towards the EU, including with respect to a value, trust or a constitutional crisis in that third country, such as has already occurred within the EU.¹⁵⁰ It would therefore appear that the underlying question with respect to good neighbourliness relates to the role which Union values play in the European integration process, even from the outside, and the extent to which such values can be enforced through their outer application. As correctly noted by Hillion, '[i]n the neighbourhood, respect for the values of the Union becomes the aim of, rather than the pre-condition for EU engagement',¹⁵¹ thus identifying the need for greater intellectual effort and policymaking in this field.

148 The EU appears to be bound ('shall be bound') to develop good relations with its neighbours by virtue of Article 8(1) TEU; see Hillion in Petrov and Van Elsuwege (n 3) 16–17.

149 It is clear that the *de facto* division of the island of Cyprus does not entail the consideration of the occupied areas as a 'neighbour' of the Republic of Cyprus or of the Union, as developed in this chapter. It should be noted, however, that the European Commission's aid programme for the Turkish Cypriot community falls under DG Enlargement, as there is clearly no better place to house it, thereby reinforcing this chapter's conclusions; see <http://ec.europa.eu/enlargement/tenders/aid-programme-tcc/index_en.htm> last accessed 15 December 2014.

150 See (n 59).

151 Hillion (n 3) 20.

