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Towards a New Generation of Safeguard Clauses:
Making Conditionality Stick after Accession

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Introduction

As the EU moves toward further enlargement, integrating new member states while safeguarding the Union's value-based order remains a critical challenge. Past accessions have shown that while enlargement strengthens the EU's economic and geopolitical standing, it also carries certain risks, including the possibility of democratic backsliding among new members. In 2026, these risks have become particularly salient, as all current candidate countries continue to struggle – albeit to varying degrees – with systemic deficiencies. Doubts have therefore emerged as to whether the Union can even afford to enlarge without first establishing fully effective mechanisms to deter and sanction backsliding among existing member states. Recognising the dangers of keeping enlargement on hold pending the Union's internal reforms, the Staged Accession Model proposed, in 2023, "a silver bullet" in the form of *enhanced post-accession safeguard clauses*.[1] While discussions about safeguards have intensified since then – even dominating the 2025 EU Enlargement Forum[2] – there still remains a lack of clarity as to how they should be adapted to the specificities of the current enlargement context. In response to growing demand, this paper analyses their operational mechanics in depth and, drawing on past practice, proposes improvements to their design and application, with particular emphasis on safeguarding the rule of law after accession. In doing so, it argues that a new generation of safeguard clauses could and should serve as an important means of ensuring that newcomers are welcomed without undue delay, yet effectively kept in check even when the pre-accession conditionality is gone.

1 The original Model was published in 2021. Only with its second iteration, in the form of Template 2.0 for Staged Accession in the EU, the introduction of safeguard clauses.
Milena Mihajlović, Steven Blockmans, Strahinja Subotić, and Michael Emerson, *Template 2.0 for Staged Accession to the EU*, European Policy Centre (CEP) & Centre for European Policy Studies (CEPS), August 2023.
2 European Commission, *EU Enlargement Forum*, November 2025.

Dusting off the Concept of Safeguards

Having been largely overlooked since the last round of enlargement, the safeguard clauses began to be slowly but surely re-examined in the wake of the EU's reprioritisation of enlargement. In the absence of a formal definition, these may be described as legal provisions set out in the Acts of Accession that allow the EU to take corrective measures if a new member state fails to uphold its commitments over a predetermined period of time following accession. Recognising that implemented reforms require time to take root and become sustainable in the long run, the Staged Accession Model was the first to revisit them in 2023 and embed them within forward-looking policy discussions. It did so while acknowledging the slow pace of the EU's internal reforms needed for further enlargement, particularly those related to keeping member states' democratic standards in check. Soon thereafter, the concept was taken up by Enrico Letta in his 2024 report "Much More Than a Market",[3] where he argued that a robust system of safeguards clauses, transition periods, and other tools must be carefully designed to anticipate and mitigate potential adverse effects of single market integration. He further emphasised that such mechanisms were crucial for reassuring the public, preventing economic shocks, and ensuring a smooth, mutually beneficial integration process. While both the Model's and Letta's approaches are built on the same premise, his primary concern lay in mitigating economic risks (particularly in the case of Ukraine), whereas the Model placed a key emphasis on rule-of-law considerations.

More recently, the European Commission's views on safeguard clauses have been more closely aligned with the approach proposed in the Model. When Marta Kos was nominated in 2024 as Commissioner-designate for enlargement, all eyes were on her hearing before the European Parliament. One important contribution of hers, however, went largely unnoticed in expert discussions: her replies to the European Parliamentarians' Questionnaire.[4] Notably, while she highlighted that the EU already possessed robust pre-accession tools to ensure candidate countries establish a solid track record in upholding the rule of law, she also stated that she would work to put safeguards in place "so that progress is not reversed after accession". Moreover, she added that "any future Accession Treaty must be drafted with this objective in mind," signalling an intention – also suggested by the Model – to use safeguards as a standard tool to be included in the Acts of Accession of all newcomers, regardless of their size, foreign policy alignment or current state of reforms. All these remarks gained political weight once safeguards were referred to in the Commission's 2025 Enlargement Package: "Future Accession Treaties will need to contain stronger safeguards against backsliding on commitments taken in the accession negotiations, as well as requirements for the new Member States to continue to safeguard and make irreversible their track record on rule of law".[5] Given Commissioner Kos's expressed optimism that one, two, or even three countries could become EU members by 2029,[6] the development of a concrete plan for such safeguards requires prompt action.

Taken together, the renewed emphasis on safeguards represents an effort to respond directly to key factors that will shape the Union's ability and willingness to enlarge.

- First, it is often overlooked that, in addition to the core membership criteria, the 1993 Copenhagen conclusions also identified "the Union's capacity to absorb new members, while maintaining the momentum of European integration," as an "important consideration in the general interest of both the Union and the candidate countries."[7] Although "absorption capacity" may sound like a technical term, it is in reality a deeply political concept which member states have used

3 Enrico Letta, *Much More Than a Market – Speed, Security, Solidarity: Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens*, European Council, April 2024, p. 140.

4 European Parliament, *Questionnaire to the Commissioner-Designate Marta Kos: Enlargement*, Questionnaires to the Commissioners-Designate, November 2024, p.8.

5 European Commission, *2025 Communication on EU enlargement policy*, press release, November 2025, Directorate-General for Enlargement and Eastern Neighbourhood, p.2

6 European Western Balkans, *Marta Kos in AFET: There Will Be No Geopolitical Discount, Enlargement Remains a Merit-Based Process*, January 2025.

7 European Council, *Copenhagen European Council - 21-22 June 1993 – Presidency Conclusions*, 1993.

in the past as an argument to delay accession.[8] The fact that the discussions on internal EU reforms have largely come to a standstill suggests that it may be invoked again in the future.

- Second, enlargement-related debates are unfolding in a different and more challenging context than in previous enlargement rounds. Unlike in previous rounds of enlargement, concerns have substantially increased as to whether the Union can afford new members that could deliberately slow down its decision-making process as leverage to shield themselves from scrutiny over domestic rule-of-law issues.[9] With fears that "no member state is immune to the risk of illiberalism",[10] consensus on how to mitigate the risk of newcomers exploiting the EU's institutional vulnerabilities has yet to be reached.[11]
- Finally, the enlargement-related considerations are rendered more difficult as member states are faced with rising demands from domestic populations after a series of crises.[12] At the personal level, EU citizens overall point to rising prices, inflation, and the cost of living as primary concerns, while at the EU level they identify Russia's invasion of Ukraine, immigration and the international situation as the most pressing issues. While most EU citizens support further enlargement (52%), citizens from five member states – Germany, France,[13] Austria, Czechia, and Belgium – contain opposing majorities.[14] Among them, the negative consequences of enlargement most frequently cited are "increased instability and insecurity" and "complicated decision-making at the EU level".[15] Without effective and timely internal reforms of the Union, citizens' concerns risk being exacerbated, leaving the prospects for new accessions far from assured.

In light of these cumulative constraints, robust and well-designed safeguards emerge not as a technical add-on to Accession Acts (as was largely the case in the past), but as a means of *reconciling* the need for an effective enlargement policy with the necessity of ensuring that the EU remains functional as its membership grows.

8 Stefan Lehne, "*A Reluctant Magnet: Navigating the EU's Absorption Capacity*," Carnegie Europe, September 2023, *Carnegie Endowment for International Peace*

9 Benedetta Lobina, *The Impact of Rule of Law Backsliding on the EU's External Action*, *European Papers*, January 2024.

10 Manuel Müller and Tyyne Karjalainen. *Vetoes from illiberal member states threaten the EU: The Union can – and must – respond*. Der (euroaische) Foderalist, August 2025.

11 Although a final policy recipe to address the identified challenge is still missing, there is nonetheless an increasing debate on whether the Union should resort to *temporarily limiting the veto rights of newcomers* in all or some areas. Recognising that a candidate that has fulfilled the membership criteria might be forced to wait at the EU's gates simply because the latter was missing the necessary internal reforms needed to address its institutional vulnerabilities, it was the Staged Accession Model that proposed the veto limitation idea in 2021 to avert this scenario.
Strahinja Subotić, *As POLITICO Reports: Our Veto-limitation Proposal Gains Traction*, European Policy Centre (CEP), October 2025.

12 European Commission, *Standard Eurobarometer 104 - Public Opinion in the EU*, December 2025, pp.33, 38.

13 The risk of no enlargement increases further upon realisation that for an acceding act to be ratified in France, it would either need to be supported in a referendum or to obtain 3/5 parliamentary majority.

14 European Commission, *Standard Eurobarometer 104 - European Citizenship*, December 2025, p.49.

15 Ibid, p.51.

Looking at the Safeguards Mechanics

Having featured in successive waves of EU enlargement, safeguard clauses are hardly new. In particular, *Internal Market Safeguard Clause* (IMSC) and *Justice and Home Affairs Safeguard Clause* (*JHASC)* can be found in the Accession Act of 2003 (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia),[16] of 2005 (Bulgaria and Romania),[17] and of 2011 (Croatia).[18] A comparative analysis of these Acts reveals that the clauses exhibit two clear upsides and an equal number of downsides.[19]

- First, the safeguard clauses could be *activated swiftly and effectively*, without undue procedural obstacles. The Commission had the power to activate them simply upon the reasoned request of a member state or on its own initiative. By removing the need for the Council to decide,[20] the measure effectively circumvented the unanimity requirement that characterises the accession process, thereby significantly strengthening the clauses' leverage *vis-à-vis* newcomers.[21] At the same time, however, this leverage was partly diminished by the fact that the *corrective measures were never spelled out* in the Acts of Accession. The resulting uncertainty regarding the severity of the consequences for the states concerned weakened the deterrent effect of these clauses.
- The second advantage was that, once activated – which could even take place during the ratification period – the *measures adopted by the Commission would apply indefinitely*, that is, for as long as the identified issue remained unresolved. The corresponding limitation, however, was that the clauses *could be activated only within three years of accession*. In hindsight, this timeframe appears unduly short since post-accession backsliding may occur with a longer delay. In addition, applying the same activation timeframe to future enlargements would make it unlikely that the EU could adopt, before its expiry, the internal reforms necessary to subject newcomers to more robust Union-wide rule-of-law mechanisms.

This experience suggests that while safeguard clauses can provide the EU with meaningful leverage in the immediate post-accession period, their effectiveness ultimately depends on clearer definitions of the content of corrective measures and on a longer temporal scope for triggering of the clauses.

16 European Parliament, *Treaty of Accession: Provisional Version (Published 16 April 2003)*, Enlargement Documents

17 European Union. *Act of Accession of the Republic of Bulgaria and Romania to the European Union*, signed April 25, 2005; published November 2005, European Commission Directorate-General for Neighbourhood and Enlargement Negotiations

18 European Union. *Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community*, December 2012, in *Official Journal* L 112/21 (24 April 2012)

19 Besides the safeguard clauses on internal market and justice and home affairs, there is one more: *the general economic safeguard clause*. Unlike the two covered by the analysis which are used to strengthen the post-accession conditionality, this one aims to deal with adjustment difficulties which an economic sector or area in either old or new member states might experience.

European Commission, Signature of the Accession Treaty of the European Union (EU) with Croatia: background note, December 2011.

20 As for the Commission's obligation to consult the Member States, two key sources provide further insight. Firstly, the Declaration 43 attached to the Final Act that facilitated 2004 enlargement, explicitly stated the following: "before deciding on whether to apply the internal market and justice and home affairs safeguard clauses, the Commission of the European Communities will hear the view(s) and positions of the Member State(s) which will be directly affected by such measures and will duly take into account these views and positions". Secondly, a glance at the Acts of Accession reveals that the wording of the JHASC foresees a stronger involvement of member states, as it states – unlike the IMSC – that the Commission will undertake the measure only "after consulting the member states". While both insights are valuable, they do not change the fact that the Commission would have a big discretion as for when and how the safeguards are used.

European Commission, Declaration 43, Treaty of Accession, 2004.

21 In the case of safeguards, the treaties state that the undertaken measures would be "maintained no longer than strictly necessary and, lifted when the relevant commitment is implemented". It is added that "in response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect".

While their use *temporarily differentiates* between newly acceded member states and the rest, other forms of differentiation – introduced by the Acts of Accession – have likewise been tolerated within the EU legal order. Besides the (in)famous case of temporary limitation of labour movement in the aftermath of the "big bang" enlargement,[22] the example in point is Croatia's Act of Accession which conferred additional powers on the Commission in relation to Croatia's outstanding obligations.

- In the *shipbuilding* sector (Annex VIII), Croatia agreed to restructure its companies through privatisation, subject to regular Commission monitoring. The post-accession obligations applied to several major shipyards and included capacity reductions, production caps, and minimum own-contribution requirements. The companies were also prohibited from receiving new rescue or restructuring aid for at least ten years after privatisation. In the event of non-compliance, the Commission was empowered to order Croatia to recover any aid granted in breach of those conditions, with compound interest.
- Similarly, Croatia agreed to the restructuring of the *steel sector* (Annex IX). It committed to ensure that a steel company named in the Act repays earlier restructuring aid, together with interest, before or upon accession. Failing full reimbursement by the date of accession, the Commission was empowered to order Croatia to recover any rescue and restructuring aid granted to that undertaking since 2006, with compound interest, thereby rendering post-accession recovery mandatory in the event of non-compliance.

Such provisions may be interpreted in the same light as safeguards, which have been characterised as "as a direct continuation of pre-accession monitoring",[23] insofar as they respond to the specific challenges faced by newcomers in contrast to older member states.[24] Their incorporation into the Acts of Accession reaffirms that temporary distinctions are tolerated within the EU legal order, given the essential yet flexible nature of the principle of equality of member states.[25]

Revisiting Safeguards Through a Rule-of-Law Lens

At the time when safeguards were first introduced in 2004, post-accession democratic backsliding was of limited concern. Instead, with an abrupt increase in the number of member states, greater emphasis was placed on the necessity to preserve the integrity of the single market. Hence the *Internal Market Safeguard Clause* was introduced and subsequently reinstated in later waves, i.e. in Article 37 of Bulgaria's and Romania's Act of Accession, and in Article 38 of Croatia's Act. Being almost identical in wording, the articles stipulate that appropriate measures can be taken if these countries fail to fulfil commitments undertaken in the context of the accession negotiations, thereby "causing a serious breach of the functioning of the internal market" or "an imminent risk of such breach". This includes commitments in *any* sectoral policy which concern economic activities with cross-border effect. Essentially, the clause covers the full scope of the internal market: the four freedoms (freedom of movement of goods, capital, services, and labour) and sectors such as competition, energy, transport, telecommunication, agriculture, and consumer and health protection (e.g. food safety).[26] In case of an identified risk in these areas, the applied measures

22 Such differentiation was driven by domestic political rather than rule-of-law concerns ahead of the "big bang" enlargement. With fears of sudden labour inflows from lower-income accession countries, some member states restricted access to their labour markets for up to seven years.

23 Martina Spernbauer, "*Benchmarking, Safeguard Clauses and Verification Mechanisms – What's in a Name? Recent Developments in Pre- and Post-Accession Conditionality and Compliance with EU Law*," *Croatian Yearbook of European Law and Policy* 3, March 2008, p.286.

24 Safeguards are so unique that they may appear "partly foreign to the usual EU functioning", as they confer on the Commission powers it would not normally possess. While Professor Christophe Hillion originally made this claim when he was analysing the safeguard clauses, the same interpretation can apply to the Commission's role of ensuring Croatia's post-accession.
Christophe Hillion, *The European Union is dead. Long live the European Union... A commentary on the Treaty of Accession 2003*, Vol.29, No.5, October 2004, p. 607.

25 Steven Blockmans, *The Legality of a Temporal Suspension of Veto Rights for New EU Member States*, Centre for European Policy Studies (CEPS) and European Policy Centre (CEP), July 2023.

26 European Commission, *Frequently Asked Questions about the Safeguard Clauses Included in the Treaty of Accession of Bulgaria and Romania*, October 2005.

would be proportional and taken on a case-by-case basis, with priority given to those measures which least disturb the functioning of the internal market. While both articles are wide in terms of economic scope, the Croatian one goes a step beyond, by adding that the article may be applied if there is "a threat to the Union's financial interests". This demonstrates that the clauses can evolve over time, with their scope tailored to the specific risks of each enlargement round.

While the IMSC is primarily aimed at remedying economic disturbances, a case can also be made for its application to certain aspects of the rule of law. Since the clause has, from Croatia's accession, included the protection of the EU's financial interests, it has effectively become aligned with Chapter 32 (Financial Control). Covered as part of Cluster 1 (Fundamentals), this chapter governs internal control systems, audit, anti-fraud measures, and cooperation with EU bodies, which directly affects the protection of EU funds. The clause can act as an important safeguard against misuse of EU funding, weak financial control, selective enforcement of rules, and lack of cooperation with the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO). Similarly, although less explicitly, a link can be made between the IMSC and Chapter 5 (Public Procurement). Also covered by the Fundamentals cluster, this chapter is critical for ensuring a transparent, competitive, and non-discriminatory business environment across the EU. If a newcomer were to violate public procurement rules, allowing political favouritism, or rigged tenders – something the WB6 have been struggling with[27] – the clause could provide protection against unfair advantages for domestic or politically connected firms, preventing equal access for EU businesses. Therefore, a broader reading of the clause could result in restricting newcomers' access to EU procurement markets, freezing funds, or suspending participation in cross-border infrastructure projects until compliance is restored. Ultimately, such an approach would be in line with the view – as outlined in the 2025 EU Competitiveness Compass[28] and EU Justice Scoreboard[29] – that the rule of law is central for the functioning of the single market.

Besides economic concerns, the EU also had some reservations regarding mutual trust and the effective acquis implementation in sensitive areas by past newcomers. At first, the *Justice and Home Affairs Safeguard Clause* – as laid down in 2004 and then covered by Article 38 of the Act of Accession of Bulgaria and Romania – was limited only to cooperation relating to *mutual recognition in criminal law* (under Title VI of the EU Treaty)[30] and *in civil matters* (under Title IV of the EC Treaty).[31] At that time, for instance, a member state may stop complying with arrest warrants issued by the newcomer's institutions. Meanwhile, the clause evolved with Croatia's Article 39, as it referred to the entire area of "Freedom, Security, and Justice" (pursuant to Part Three Title V of the TFEU). As such, it stipulated that the Commission could take action in the event of "serious shortcomings or any imminent risk of such shortcomings" in the implementation of EU law and standards in areas of judicial cooperation in civil and criminal matters, border management, asylum and immigration, and police cooperation. Unlike the IMSC which emphasised those measures "which least disturb the functioning of the internal market", this clause went further by explicitly providing that measures may take the form of "a temporary suspension of the application of relevant provisions and decisions". This trajectory underscores the capacity of accession

27 Miloš Pavković, *Lex Specialis as Modus Operandi: Analysing Public Procurement Systems in the Western Balkans*, policy brief, European Policy Centre (CEP), November 2025

28 European Commission, *A Competitiveness Compass for the EU*, COM(2025), January 2025.

29 European Commission, *The 2025 EU Justice Scoreboard*, COM(2025), July 2025.

30 This includes, mutual recognition of judgments and judicial decision; approximation of criminal laws and regulations; police and judicial cooperation in criminal matters having a cross-border dimension ((a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions; (b) prevent and settle conflicts of jurisdiction between Member States; (c) support the training of the judiciary and judicial staff); and cooperation with Eurojust and Public Prosecutor.

31 This includes, mutual recognition of judgments and of decisions; to ensure a high degree of legal certainty for citizens in cross-border relations governed by civil law; to guarantee citizens easy and effective access to civil justice in order to settle cross-border disputes; to simplify cross-border cooperation instruments between national civil courts; and to support the training of the judiciary and judicial staff.

safeguards to adapt progressively to the EU's evolving concerns, even in more sensitive areas.

With the Union's concerns much greater in 2026 than in 2004, 2007 or 2013, the JHASC could serve as a bridge toward wider protection of the rule of law after accession. Formerly one of the three Maastricht pillars, the Area of "Freedom, Security and Justice" is now one of the most significant shared competences. It holds particular importance as it largely corresponds to Chapter 24 of the accession negotiations – a core component of the Fundamentals cluster and one of the key "blocking chapters" against which overall progress in accession talks is assessed. As such, it is closely interlinked with its 'sister chapter', Chapter 23 on "Judiciary and Fundamental Rights", which covers the functioning of the judiciary, fight against corruption, protection of fundamental rights, and freedom of expression. In that light, one could argue that if a new member state manipulates judicial processes for political gain, fails to effectively combat organised crime, or allows security forces to act with impunity, it would not only erode the domestic rule of law but also directly endanger EU-wide cooperation in the Area of Freedom, Security and Justice. In such circumstances, a broader reading of the clause would allow the Commission to temporarily suspend judicial cooperation instruments, freeze funding, restrict access to agencies such as Europol or Eurojust, or limit participation in Schengen-related policies until compliance with EU standards is restored. Given the close interconnection between Chapters 23 and 24 during the pre-accession period, the JHASC can likewise be understood as capable of addressing post-accession rule-of-law deficiencies more broadly.

Finally, closely related to post-accession safeguards is the Union's decision to use an Accession Act to enhance *interim conditionality* during the ratification period. With Croatia's Act of Accession, the Monitoring Clause (Article 36) was introduced for the first time, which allowed the Commission to "closely monitor all commitments undertaken" before and by the date of accession. As part of that process, the Commission was authorised to develop regular progress reports, organise peer monitoring missions, and issue early warning letters if additional benchmarks were not met. Its potency lay in the fact that it applied to areas of "judiciary and fundamental rights" – including the continued development of track records on judicial reform and efficiency, the impartial handling of war crimes cases, and the fight against corruption – and of "freedom, security and justice", alongside the aforementioned shipyard and steel restructuring obligations.[32] The leverage of the mechanism *vis-à-vis* Croatia was based on the fact that, if issues of concern were identified, the adoption of a Council decision by qualified majority– upon a Commission's proposal – would suffice to enable taking "all appropriate measures". However, its effectiveness was limited by the fact that Croatia's Act did not specify the scope or nature of potential measures in the event of unfulfilled benchmarks. Moreover, it contained no explicit timeframes, thereby leaving open the question whether the undertaken measures could be maintained after accession.[33] These are omissions that future Accession Acts cannot leave unaddressed.

32 Strahinja Subotić, "*A Quid Pro Quo Approach to Enlargement Reform: Streamlining Accession while Safeguarding the Union*," European Policy Centre (CEP), January 2026.
33 Adam Łazowski, "European Union Do Not Worry, Croatia Is Behind You: A Commentary on the Seventh Accession Treaty," *Croatian Yearbook of European Law and Policy*, 2012, pp.34-36.

Examples of (Successful) Change of Behaviour

Past experience with the application of safeguard clauses is scarce, yet it offers valuable insights. The first instance of activation occurred not after accession, but during the ratification period. The IMSC was invoked against Bulgaria just before it became a new member state. The Commission adopted a Regulation suspending certain benefits stemming from EU transport legislation after identifying shortcomings in the field of civil aviation safety.[34] Essentially, the Commission considered that the automatic mutual recognition of certificates and licences issued by the Bulgarian authorities would have been liable to create distortions of competition within the EU internal aviation market, by allowing Bulgarian air carriers to operate without meeting the same technical and safety standards applicable to other EU operators. On that basis, the IMSC was triggered, with the main effect of excluding Bulgarian air carriers from the benefit of being considered "Community carrier[s]", thereby requiring them to continue operating as third-country operators.[35] Following the imposition of these measures, subsequent inspections confirmed that Bulgaria had significantly improved its compliance with EU aviation safety requirements and restored its administrative capacity to effectively enforce the relevant acquis. Accordingly, in September 2008 the Commission adopted a new regulation repealing the safeguard measures.[36] The case highlights how safeguard clauses allow the Commission to intervene decisively yet reversibly to address serious compliance gaps.

Beyond internal market concerns, safeguard clauses have also been used in more sensitive policy areas. In 2013, right after Croatia's accession, the Commission activated the JHASC – the so-called "Article 39 procedure" – after Croatia failed to comply with its accession commitments concerning the European Arrest Warrant (EAW).[37] Although Croatia had correctly transposed the EAW during accession negotiations, it amended its legislation just three days before joining the EU to limit the warrant's retroactive application, despite repeated Commission warnings and without having secured the right to do so in its Accession Treaty. Under the modified legislation, Croatia would not have to surrender to other member states persons accused or convicted of crimes committed before 7 August 2002. This breach undermined mutual trust and judicial cooperation across the Union, prompting the Commission – following consultations with the Member States – to impose enhanced monitoring and suspend access to the Schengen Facility. This entailed the freezing of funds intended to help prepare Croatia's Schengen accession, amounting to €120 million for 2013-14. Just one week later, Croatia reached an agreement with the Commission under which the amended law on the application of the EAW would enter into force no later than 1 January 2014.[38] The Croatian episode demonstrates that safeguard clauses can induce rapid and concrete compliance by attaching immediate legal and financial consequences to breaches of core accession commitments.

The two examples are clear instances of the EU *reactive* deployment of safeguard clauses to sanction newly acceded states for non-compliance with Union rules and to encourage prompt re-adherence to the standards. The potential of safeguards, however, does not stop there, as they also allow for a *proactive* approach. Noting persistent democratic deficiencies in Bulgaria[39] and Romania[40] just weeks prior to their accession, the Commission decided to rely on the aforementioned Articles 37

34 European Commission. *Commission Regulation (EC) No. 1962/2006 of 21 December 2006 in application of Article 37 of the Act of Accession of Bulgaria to the European Union*, December 2006

35 European Commission, *European Commission Invokes Safeguard Clause Against Bulgaria on Aviation Safety*, , December 2006.

36 European Commission. *Commission Regulation (EC) No. 875/2008 of 8 September 2008 repealing Regulation (EC) No. 1962/2006*, Official Journal of the European Union, September 2008

37 European Commission, *Commission takes action to ensure Croatia correctly implements the European Arrest Warrant and surrender procedures between Member States*, September 2013.

38 Radio.net, "*Croatia, EC Reach Agreement on Extradition Law*," September 25, 201.

39 European Commission. *Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime*, December 2006

40 European Commission. *Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption*, December 2006.

and 38 – covering the two clauses respectively – as the legal basis to introduce *the Cooperation and Verification Mechanism* (CVM).[41] Following the introduction of enhanced oversight, the two countries were subject to a set of post-accession benchmarks in the areas of judicial reform and the fight against corruption. In the event of a failure to address them adequately, the Commission had the authority to apply safeguard measures, including the suspension of member states' obligation to recognise and execute Bulgarian and Romanian judgments and judicial decisions, such as European arrest warrants. Many have, however, deemed the listed measures as "relatively inconsequential", with the CVM only gaining more weight when member states leveraged the reforms against Bulgaria and Romania's Schengen entry.[42] In that vein, the Mechanism has often been criticised for its "incapacity... in bringing substantive reforms,"[43] as evidenced by its formal closure only after 17 years, in September 2023. Given that the current candidate countries are facing similar issues to those faced by Bulgaria and Romania at the time of their accession, there is no doubt that the EU, together with think tank experts, will need to critically assess the Mechanism's shortcomings and recalibrate its design for future enlargements. [44]

Lastly, *the Monitoring Clause* played a decisive role in guiding Croatia's final steps toward EU membership. The mixed results from the CVM in the case of Bulgaria and Romania prompted the Union to introduce and apply the Monitoring Clause to Croatia to keep it on its toes.[45] The October 2011 Progress Report[46] and April 2012 Monitoring Report[47], having analysed the state of play in all negotiating chapters, concluded that Croatia had made substantial progress in aligning with the acquis, but a limited number of outstanding issues remained. This prompted the adoption of two revised action plans in May 2012, reinforcing Croatia's commitment to completing its accession obligations. The October 2012 Comprehensive Monitoring Report[48] further confirmed that the country continued to make good progress overall, yet highlighted as many as eight key chapters where increased efforts were required. This ranged from competition policy (chapter 8), through judicial reform and the fight against corruption (chapter 23), to anti-discrimination and border management issues (chapter 24). Importantly, these reports had *political weight* during the ratification period as their findings were closely scrutinised by several member states, particularly the United Kingdom, the Netherlands, and Germany, before they ratified Croatia's accession treaty.[49] Right before accession, the final May 2013 Monitoring Report assessed that Croatia had completed the ten priority actions, particularly in anti-corruption efforts, and had demonstrated the ability to fully

41 European Commission, *Q&A: Commission closes the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania*, September 2023.

42 Milada Anna Vachudova and Aneta Spendzharova, *The EU's Cooperation and Verification Mechanism: Fighting Corruption in Bulgaria and Romania after EU Accession*, Swedish Institute for European Policy Studies, March 2012, p.1.

43 Adrianno Dirri, "*The Cooperation and Verification Mechanism. The End of the 'Exceptionalism'*", in "EU Rule of Law Procedures at the Test Bench: Managing Dissensus in the European Constitutional Landscape", Cristina Fasone, Adriano Dirri, and Ylenia Guerra, eds, *Palgrave Studies in European Union Politics*, 2024, p.93.

44 Formally, as experts indicate, the Commission has repeatedly stated that there is no connection between the technical requirements for Schengen entry and the CVM benchmarks. Yet, in December 2010 France and Germany publicly linked the two, declaring in a joint letter that Schengen entry should be postponed until positive developments in Bulgaria and Romania. Accordingly, the experts continue to argue that using Schengen as a reward for meeting CVM benchmarks "has significantly increased the external incentives" for both ruling parties to deliver reform. Essentially, vetoing Schengen accession functioned as a corrective to the CVM's limited effectiveness. For future enlargements, a more coherent approach would entail embedding stronger safeguards against post-accession backsliding within the accession act itself, thereby obviating the need to block Schengen entry in parallel or resort to comparable ad hoc measures.
Vachudova and Spendzharova, *The EU's Cooperation and Verification Mechanism: Fighting Corruption in Bulgaria and Romania after EU Accession*, p.12.

45 Łazowski, *European Union Do Not Worry, Croatia Is Behind You*, p.34.

46 European Commission, *Croatia 2011 Progress Report*, Commission Staff Working Document SEC(2011) 1200 final, October 2011, Directorate-General for Neighbourhood and Enlargement Negotiations

47 European Commission, *Monitoring Report on Croatia's Accession Preparations*, communication from the European Commission to the European Parliament and the Council, April 2012, European Commission

48 European Commission, *Comprehensive Monitoring Report on Croatia 2012*, October 2012,

49 Mirna Vlašić Feketija and Adam Łazowski, "The Seventh EU Enlargement and Beyond: Pre-Accession Policy vis-à-vis the Western Balkans Revisited," *Croatian Yearbook of European Law and Policy 10*, December 2014, p. 20.

comply with EU standards before accession.[50] This paved the way for Croatia's official accession on 1 July 2013. As such, Article 36 serves as a valuable precedent for future enlargements, particularly in those candidates where rule of law, governance, and judicial reforms remain critical concerns.

Making Safeguards Fit for Future Enlargements

As the Union prepares to accept new members, it is necessary to consider how safeguard clauses can be made fit to address contemporary concerns in relation to enlargement. In that light, a comparative analysis of past practices yields two key insights. On the one hand, when the misbehaviour involved identifiable, limited-in-scope, and targeted breaches, the Commission proved successful in promptly inducing behavioural change among newcomers, with the simple activation procedure proving key to ensuring their timely application. On the other hand, when the identified deficiencies were more severe and broader in scope – as was the case when the CVM was introduced – the undertaken measures were unable on their own to promptly produce the desired behavioural change. Such *conditional effectiveness* raises important questions about the adequacy of existing safeguard clauses in the context of future enlargements. As concerns about post-accession backsliding have grown compared with the period when the clauses were originally introduced, so too has the need to strengthen and adapt them. Accordingly, the following section sets out key recommendations to ensure that, as the Union enlarges, safeguard clauses can be applied effectively and to their full potential in cases of breaches or risks of breaches of accession commitments, including in the area of the rule of law.

1. Extend the Activation Period

The past Accession Acts gave the EU only three years after accession to potentially activate a clause. Given the increasing vulnerability of democracies – even in places where they have long been well established – the EU would be wise to extend the activation period. This would provide the Commission a longer timeframe to monitor the performance of the new members' institutions. The Staged Accession Model posited that this period should be extended to a period up to 10 years, which corresponds to more than two full governmental terms. Doing so would transform safeguard clauses from short-term insurance mechanisms into more durable enforcement tools capable of responding more effectively to delayed or gradual forms of backsliding.

Past experience illustrates that there is no principled reason why the clauses could not be extended as suggested. For example, in anticipation of the "big bang" enlargement, the European Council affirmed, in late 2002, that safeguard clauses are prone to activation in the first three years after accession. The European Council came to the same conclusion in late 2004, ahead of the accession of Bulgaria and Romania.[51] Moving forward, assuming that a consensus on their extension is found upon the Commission's proposal, such an extension would also grant the EU as a whole more time to agree on the reforms necessary to strengthen Union-wide rule of law mechanisms. In that scenario, by the time the activation period expires, a new member state would seamlessly transition into the EU's reinforced compliance framework, thereby ensuring continued adherence to the agreed standards.

2. Specify Activation Conditions and Corrective Measures More Precisely

The effectiveness of safeguard clauses depends on predictability. Yet, they have so far occupied remarkably little space in the Acts of Accession, thereby creating uncertainty as to their *modus operandi*. Not only are they brief in their wording, but the language they em-

50 European Commission, *Monitoring Report on Croatia's Accession Preparations*, March 2013
51 Council of the EU, *Copenhagen 12 and 13 December 2002 – Presidency Conclusions*, January 2003 & European Council, Brussels European Council (16 and 17 December 2004) – Presidency Conclusions, December 2004.

ploy is also notably vague. Future Acts of Accession should move beyond abstract references to 'serious breaches' and clearly define the types of conduct that may trigger corrective measures, including persistent non-enforcement of EU law, systemic infringements of judicial independence, misuse of EU funds, or similar violations. Clearer triggers would strengthen the deterrent effect of safeguards and reduce political contestation at the point of activation.

Similarly, the articles on safeguard clauses in Accession Acts remain more than vague on what the "appropriate measures" would entail in practice in case of registered backsliding in respective areas. The clearer and more predictable the consequences of breaches of membership commitments after accession, the greater the leverage the EU will have *vis-à-vis* new Member States in ensuring compliance. For this reason, safeguard clauses should set out, at least in indicative terms, the range of corrective measures available to the Commission. Placing the potential consequences in plain sight would further strengthen *ex ante* deterrence by prompting new member states to think twice before engaging in conduct that risks activation of a safeguard clause.

3. Link the Existing Clauses More Explicitly with the Rule of Law

The analysis demonstrates that safeguard clauses are not static and have evolved from one enlargement to another. A case in point is the IMSC, which was amended to incorporate the protection of the EU's financial interests as an additional element alongside its standard application across all sectors of the internal market. Similarly, the JHASC was expanded to cover the entire Area of Freedom, Security and Justice. There is no reason why this evolutionary trajectory should not continue. While the analysed safeguard clauses formally protect against breaches of obligations in specific areas, future Acts of Accession should clarify that serious and systemic rule-of-law deficiencies constitute breaches of accession commitments where they directly impair the functioning of the areas covered by the IMSC and JHASC. Such clarification would acknowledge the functional interdependence between internal market, justice and home affairs, and broader rule-of-law concerns.

4. Ensure coverage of the entire scope of Article 2 TEU through safeguard clause(s)

Although linking existing clauses more closely to the rule of law would constitute a step in the right direction, the introduction of new safeguard clause(s) would represent an optimal solution. Such a step would, first and foremost, encompass those areas stemming from Chapter 23 (*Judiciary and Fundamental Rights*). With it, the Commission would be given the mandate to explicitly address rule-of-law concerns in future enlargements, in particular the continued development of track records in judicial reform and in the fight against corruption. The clause(s) should also incorporate monitoring of newcomers' *functioning of democratic institutions* (FoDI). Ever since the 2020 Revised Enlargement Methodology, FoDI has been treated as a special sub-area within the Fundamentals Cluster – alongside public administration reform and economic criteria. Given that developments in FoDI are closely intertwined with the state of affairs in Chapter 23 – with deficiencies in one largely negatively reflected in the other – interlinking the two even upon accession would increase the potency of the clause(s).

With Article 7 TEU – the Union's primary mechanism for suspending rights in cases of rule-of-law backsliding – proving politically unworkable, new safeguard(s) should emerge as a more effective and operational alternative for addressing newcomers' potential backsliding. In the context of future enlargements, as new member states would be closely monitored through annual Rule of Law Reports and assessed in the Justice Scoreboard, among other instruments, the Commission would enjoy clear and early insight into potentially adverse developments. The closer the future Acts of Accession come to comprehensive safeguard(s) cover-

ing the full spectrum of Article 2 TEU commitments, the more clearly the Union will signal its readiness to tackle any potential backsliding by newcomers head-on. In an ideal scenario, this would effectively amount to the introduction of a sort of a *Fundamentals Safeguard Clause*.

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By implementing these recommendations, the Commission would ensure that "the new generation of accession treaties" responds to the well-documented challenges facing the ongoing enlargement efforts. Embedding a set of robust and comprehensive safeguard clauses in the Accession Acts would provide added guarantees to all existing member states that the EU would have access to effective tools to remedy any disturbances caused by new members who fail to make good on their obligations in the first decade of membership. However, to mitigate the risks of democratic backsliding in the long term, the EU must continue to seek consensus on further internal reforms that would enable it to ensure that all member states comply with the fundamental values enshrined in Article 2 TEU. A clearly demonstrated commitment to further EU reforms, including those aimed at protecting democratic values, would also help build acceptance of prolonged and expanded safeguard clauses among the governments and publics of candidate countries. Although safeguard clauses are regarded as non-negotiable elements of the Acts of Accession, political and societal acceptance of accession terms will be crucial for ensuring much-needed pro-European continuity in newly acceded member states in the aftermath of enlargement.

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