

FREQUENTLY ASKED QUESTIONS ABOUT THE SAFEGUARD CLAUSES INCLUDED IN THE ACCESSION TREATY OF BULGARIA AND ROMANIA

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Portal EUROPE presents the content of a leaflet distributed to the MEPs before Olli Rehn's report and the subsequent plenary debate on Bulgaria and Romania's accession: What are the safeguard clauses?

The Treaty of Accession of Bulgaria and Romania includes three provisions which allow the Union to remedy difficulties encountered as a result of accession: a general economic safeguard clause; a specific internal market safeguard clause; and a specific justice and home affairs safeguard clause.

These safeguards are the same as the ones included in the Accession Treaty of the Member States who joined on 1 May 2004.

There are other safeguard mechanisms in the existing EU legal order.

In addition to these safeguard clauses, there is a clause which may postpone the accession of any or both countries by one year, should they be manifestly unprepared for EU membership. (see Article 39 of the Act of Accession).

General economic safeguard clause (Article 36 of the Act of Accession)

Under which conditions may the general economic safeguard clause be applied?

The general economic safeguard clause is a traditional trade liberalisation safeguard measure which also has been included in previous Accession Treaties. It aims to deal with adjustment difficulties which an economic sector or area in either old or new Member States may experience as a result of the inclusion of a new Member State into the internal market of the European Union. This would typically relate to sudden strong competitive pressure in one or the other product market. It means that a new Member State may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the internal market. Under the same circumstances, any old Member State may apply for authorisation to take protective measures with regard to a new Member State.

Who decides, and when?

General economic safeguard measures may be decided by the European Commission upon the request of a Member State. They can be decided only after accession on the basis of serious and liable difficulties which persist in any sector of the economy. The general economic safeguard clause can be applied until the end of the third year after accession.

Internal market safeguard clause (Article 37 of the Act of Accession)

Under which conditions may the internal market safeguard clause be applied?

The internal market safeguard clause may be applied if,

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- a) a new Member State has not met its relevant commitments made in the accession negotiations;
- b) there is a serious breach of the functioning of the internal market, or an imminent risk of such a breach.

The internal market safeguard clause relates to commitments covering the full scope of the internal market. It covers the area of the four freedoms and includes sectors such as competition, energy, transport, telecommunication, agriculture and consumer and health protection (e.g. food safety). Measures may be decided before accession to prevent serious and imminent breaches to the functioning of the internal market. Measures decided before accession would be applicable as from accession.

Who decides, and when?

Safeguard measures in the internal market area are taken by the European Commission upon its own initiative or upon a motivated request of any Member State.

Safeguard measures in this area may be taken until 3 years after accession, but they may be applicable beyond that date if the situation is still not remedied. The European Commission may modify, shorten or terminate measures in response to progress.

What kind of safeguard measures in the internal market area may the European Commission take?

The European Commission will decide upon the measures to take on a case-by-case basis. The measures may limit the application of the internal market in the given sector only as much as necessary to remedy the situation and priority will be given to measures that disturb least the functioning of the internal market.

It should be noted that, as from accession, other procedures (notably infringement) and specific safeguards in the EU legal order (e.g. in food safety, transport sector) are applicable, i.e. shortcomings by Bulgaria and Romania will be dealt with as in other Member States. Shortcomings may also have automatic penalising effects, such as the inability of the European Commission to distribute EU funds.

Justice and home affairs safeguard clause (Article 38 of the Act of Accession)

Under which conditions may the justice and home affairs safeguard clause be applied?

The justice and home affairs safeguard clause may be applied if there are serious, or imminent risks of serious shortcomings in the transposition or implementation of EU rules relating to mutual recognition in the area of criminal law (Title VI of the EU Treaty) or civil matters (Title IV of the EU Treaty) by a new Member State.

Who decides, and when?

The procedure is very similar to that of the internal market safeguard clause. However, the European Commission must consult Member States not only when terminating measures but also when adopting or modifying measures.

Safeguard measures in this area may be taken until 3 years after accession, but they may be applicable beyond that date if the situation is still not remedied. Measures decided before accession would be applicable as from accession.

What kind of safeguard measures may the European Commission take?

The nature of the measures is very similar to those under the internal market safeguard clause. It could temporarily suspend specific rights under the EU acquis which are directly related to the shortcomings of a new Member State.

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Postponement clause (Article 39 of the Act of Accession)

Under which conditions may the postponement clause be applied?

If the European Commission finds clear evidence that the state of preparations for adoption and implementation of the acquis in Bulgaria or Romania is such that there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by January 2007 in a number of important areas, the postponement clause may be applied.

In the case of Romania, the clause may be invoked not only in case of lack of preparation "in a number of important areas", but also if one or more of 11 specific commitments (in the areas of justice and home affairs and competition) are not met.

Who decides, and when?

The Council decides unanimously on the basis of a European Commission recommendation. If the postponement clause is used on the grounds of one or more of the 11 specific commitments related to Romania, only qualified majority voting is needed.