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Accompanying measures in the context of Bulgaria's and Romania's accession

Throughout the one and half decade of preparations for EU accession Bulgaria and Romania have carried out an extraordinary reform process and they have gone through a remarkable transformation. Their accession does not compromise the functioning of the EU. However, there are still a limited number of areas where further progress is needed in the months leading to accession and beyond. Upon accession, the Commission will, if necessary, take accompanying measures to prevent or remedy any persisting shortcomings to ensure the smooth accession of both countries. These include safeguard measures, transitional measures, financial corrections on EU funds, and a cooperation and verification mechanism for the judiciary and the fight against corruption.
These measures complement the Commission's established tools to perform its role as guardian of the Treaties and to ensure the correct application of EU policies in all Member States. These include infringement procedures, competition policy measures, and [traditional] measures for the management of EU funds, and monitoring mechanisms, for example in the areas of Internal Market and Justice, Liberty and Security.
The Commission will make full use of these instruments wherever necessary to ensure the smooth accession of Bulgaria and Romania.

What are the safeguard clauses?

Safeguard mechanisms of last resort which are triggered either to prevent or to remedy particular problems or threats to the functioning of the Union. Any measures taken should be proportional to the corresponding shortcomings.

The EU legal order, which applies to all Member States, provides many safeguard measures in the various EU policies.

In addition to this, the Accession Treaty for Bulgaria and Romania provides for further safety nets to address potential accession related difficulties. The following three safeguards can be invoked up to 3 years after accession:

- a general economic safeguard clause; (Article 36)
- a specific internal market safeguard clause; (Article 37)
- a specific justice and home affairs safeguard clause, (Article 38)

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

What is the general economic safeguard clause?

The general economic safeguard clause is a traditional trade policy measure. 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 accession. Member States (new and old) may apply, during a period of three years after accession, for authorisation to take protective measures in order to remedy such economic difficulties. The European Commission may then decide such measures. They can be decided only after accession and shall not entail frontier controls.

What is the internal market safeguard clause?

If Bulgaria or Romania fails to implement internal market legislation with a cross border effect and this risks a serious breach in the functioning of the internal market, the European Commission may take safeguard measures. It may do so either upon its own initiative or on the request of a Member State.

Such safeguard measures may be taken until 3 years after accession, but they may be applicable beyond that date until the situation is remedied. The European Commission may modify, shorten or terminate the measures in response to progress. If necessary, the measures may be decided prior to accession and become applicable upon accession.

The internal market safeguard clause covers the four freedoms and other sectoral policies such as competition, energy, transport, telecommunication, agriculture and consumer and health protection (e.g. food safety).

The Commission will decide upon the measures on a case-by-case basis. The measures may limit the application of the internal market or cross-border EU policy in the given sector only as much as necessary to remedy the situation. Priority will be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing safeguards in the EU laws and standards. The internal market safeguard measure applies exclusively to Bulgaria and Romania and not to the other Member States.

What is the justice and home affairs safeguard clause?

If there are serious, or imminent risks of serious shortcomings in Bulgaria or Romania in the transposition or implementation of EU rules relating to mutual recognition of judgements in criminal or civil law, the Commission may, after consulting the Member States, take safeguard measures. It may do so either upon its own initiative or on the request of a Member State.

Safeguard measures in this area may be taken until 3 years after accession, but they may be applicable beyond that date until the situation is remedied. Measures decided before accession would be applicable as from accession. If necessary, the measures may be decided prior to accession and become applicable upon accession.

The justice and home affairs safeguards are closely linked to the functioning of the justice system. Examples of areas covered are insolvency proceedings, proceedings on matrimonial matters and the matters of parental responsibility, uncontested claims, or the European Arrest Warrant.

Concretely, the Commission could temporarily suspend specific rights of Bulgaria and Romania under the EU laws and standards. For instance, it could enable current Member States to refuse *automatic* recognition and enforcement of certain civil and criminal judgement and arrest warrants in either Romania or Bulgaria.

What are transitional measures?

The Commission may, for three years after accession, prevent the export of Bulgarian or Romanian products which do not comply with EU veterinary, phytosanitary and food safety rules, to the rest of the EU.

To take a concrete example, the export of live pigs and pig meat products of Romania and Bulgaria to the rest of the EU will remain banned as long as the animal disease classical swine fever has not been eradicated. For instance, food safety in Europe can be guaranteed by the possibility to prevent the sale of unsafe products in the internal market. The Commission may add further food establishments to the list of those banned for three years after accession from exporting to the rest of the EU after accession. Those establishments which do not comply with EU standards can only sell their products on the domestic markets. By the end of this period, these establishments either have to be upgraded or close down.

In addition, there are also transitional measures which have been agreed during the accession negotiations, laid down in the Accession Treaty. They concern specific areas where either Bulgaria and Romania or the current Member States are allowed to not fully apply the EU laws and standards during a limited period after accession. These areas cover for example the free movement of workers, acquisition of land, road transport and some aspects of the environmental and agricultural EU laws and standards.

What are financial corrections on EU funds?

Upon accession, Bulgaria and Romania will benefit from substantial EU funds, in particular structural and agricultural funds. The Commission will ensure that these funds are properly managed. Any improper use of EU funds will lead to financial corrections. These may consist of delayed disbursements, reduction on future payments or recovery of funds.

For structural funds, the EU laws and standards provide four types of control that may lead to financial corrections. Firstly, every Member State needs to submit operational programmes which have to be approved by the Commission before any payments can be made. Secondly, if Bulgaria or Romania do not have adequate management, certification and audit authorities, no interim payments will be made. Thirdly, the disbursement of funds for the programmes can be interrupted, suspended or cancelled if the Commission suspects or detects cases of irregularities or fraud including corrupt practices. Finally, financial corrections can take place in case irregularities are found during the regular ex-post controls.

For agricultural funds, Member States are obliged to have accredited and efficient paying agencies to ensure the sound management and control of agricultural expenditure. Secondly, Member States are also required to operate an integrated administrative and Control system (IACS), for the direct payments to farmers and parts of rural development expenditures, in order to avoid for example fraudulent practices and irregular payments. Thirdly, if Member States fail to operate such control systems properly, the Commission decides ex-post on financial corrections through the annual financial controls. Finally, if the Commission concludes that the funds are not spent according to the rules, the Commission may suspend or temporarily reduce the payment of advances, on a case-by-case basis.

In addition to these mechanisms for agricultural funds applicable to any Member State, the Commission has introduced specific rules for Bulgaria and Romania to address the risk that their IACS will not function properly as from accession. The funds covered by IACS present around 80% of the agricultural funds and concern direct payments to farmers and rural development expenditure.

This additional mechanism gives the two countries time to complete the necessary work on a properly functioning IACS. The Commission will closely monitor the situation in 2007. In case of systemic problems with the management of EU funds, the Commission will later in 2007 decide whether to withdraw provisionally 25% of the payments covered by IACS. During the annual ex-post controls, the Commission decides whether to maintain the reduction.

What is the cooperation and verification mechanism for the judiciary and the fight against corruption?

The Commission will establish a mechanism to cooperate and verify progress within the reform of the judiciary and in the fight against corruption and organised crime after accession. This will be based on the Accession Treaty. Both Bulgaria and Romania shall report regularly on progress in addressing specific benchmarks. The first report should be submitted by 31 March 2007.

The Commission will provide internal and external expertise to cooperate and provide guidance in the reform process and to verify progress. The Commission will then report to the European Parliament and the Council by June on the progress made by both countries in addressing the benchmarks. The Commission's reports will assess whether the benchmarks have been met, need to be adjusted and may request further reports on progress if necessary. The mechanism will continue until the benchmarks have been met.

Should either country fail to address the benchmarks adequately, the Commission will apply the safeguard measures of the Accession Treaty (see above).

The Commission will adopt a Decision implementing and defining the modalities of this mechanism after consulting the Member States. It will enter into force on 1 January 2007.