

Policy Brief | Jovana Marović

Fair Safeguards for Montenegro's EU Accession Treaty:

Credible Enforcement, Uncompromised Membership

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Executive Summary

Montenegro is entering the decisive phase of its EU accession talks. As negotiations move towards the specific accession arrangements, safeguards against post-accession backsliding are becoming a central political question. For member states, they must provide credible assurance that reforms will endure. For Montenegro, they must reinforce those reforms without creating a prolonged second-tier form of membership.

The European Commission's *Preparing for a wider Union* offers a framework for this debate, including a proposed fifteen-year institutional safeguard that could extend to the suspension of Council voting rights. This is a negotiating proposal, not a settled accession condition. Member states may amend or reject it, and the final arrangements must be agreed with Montenegro. The country therefore has both the opportunity and the responsibility to influence their design.

The case for stronger enforcement should not become a justification for accepting every safeguard proposed in its name. Financial conditionality, targeted sectoral remedies and effective monitoring can strengthen confidence in enlargement. An additional accession-specific route to suspending voting rights raises a different question: whether new members should face restrictions on political participation through procedures that differ from those applicable to existing members.

Montenegro should respond with a concrete alternative. This brief proposes a five-year limit for the special post-accession regime, clear grounds for activation, proportionate financial or sector-specific measures, protection of final beneficiaries and prompt recognition of verified remediation. During that period, the Commission should advance a defined set of measures for strengthening horizontal enforcement applicable to all member states. Weaknesses in the Union's common framework should not become a standing justification for extending exceptional treatment. The Union's horizontal instruments, including Article 7 TEU, would apply in full from accession and continue to apply after the special regime expires.

The purpose is to make enforcement credible while preventing exceptional treatment from becoming entrenched. Montenegro should enter the negotiations as a co-designer of safeguards that combine credible enforcement and full membership, building support for measures that protect the Union and sustain domestic reform without diminishing the political substance of membership.

1. Context & Challenge: Shaping Montenegro's Accession Terms

Montenegro is entering a phase of accession in which the design of safeguards will shape how it exercises its rights and fulfils its obligations during the initial years of membership, while already influencing the political support needed for ratification of its Accession Treaty. The Commission's November 2026 roadmap points towards the possible closure of all chapters in December 2026 and the signature of an Accession Treaty in June 2027.[1] These remain indicative milestones. The establishment of a dedicated working party on drafting the Treaty[2] and the European Commission's proposed financial package[3] nevertheless signal that preparations for accession have entered an operational phase.

The roadmap also envisages continued monitoring until accession, including of commitments on the fundamentals. Where monitoring identifies backsliding and targeted measures would be insufficient, it envisages a postponement clause in the Accession Treaty as a last resort. Post-accession safeguards would therefore follow continued pre-accession scrutiny.[4]

Alongside the remaining accession commitments, Montenegro must now address the safeguards that could govern its first years of membership. The design of these safeguards will also bear on ratification. Concluding negotiations will not remove the need to secure support for the Treaty across all contracting states, particularly in sceptical capitals. Concerns about the durability of reforms will remain part of that political debate.

The European Commission's pre-enlargement policy reviews[5] bring those concerns directly into the preparation of future accession arrangements. The Commission's proposed safeguards address the risk that commitments undertaken during accession negotiations may not be sustained after membership. It is in Montenegro's interest to address that risk, but through safeguards whose duration, scope and consequences are proportionate to the specific concerns identified.

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[1] European Commission, *2026 Communication on EU Enlargement Policy*, COM(2026) 690 final, Brussels, 4 November 2026, Annex I, "A roadmap for the accession negotiations with Montenegro". December 2026 and June 2027 are indicative milestones, subject to the necessary agreements and institutional decisions. https://publications.europa.eu/resource/cellar/e1f2fe10-d869-11f1-8501-01aa75ed71a1.0001.03/DOC_2

[2] Council of the European Union, *Ad hoc Working Party on Drafting the Accession Treaty with Montenegro* (AHWP DATM), established by COREPER on 22 April 2026. https://www.consilium.europa.eu/en/policies/montenegro/

[3] European Commission, "Commission presents financial package for Montenegro's EU accession", 30 June 2026. The package was submitted as a Commission proposal to the Council in the context of Chapter 33 on financial and budgetary provisions. https://enlargement.ec.europa.eu/news/commission-presents-financial-package-montenegros-eu-accession-2026-06-30_en

[4] European Commission, COM(2026) 690 final, Annex I, "A roadmap for the accession negotiations with Montenegro", section "Pre-accession monitoring".

[5] European Commission, *Preparing for a wider Union*, COM(2026) 705 final, Strasbourg, 6 October 2026, particularly Part IV, "Safeguards in future accession treaties". https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52026DC0705

The Commission's approach is a proposal, not a predetermined accession settlement. Member states are not obliged to accept it as presented. The scope, duration and decision-making procedures therefore remain matters for negotiation. Montenegro should use this negotiating space to advance its own position before the Commission's framework becomes the default around which member states negotiate.

The case for embedding credible enforcement in accession treaties has been developed in the earlier BiEPAG brief.[6] Earlier accession rounds underline the need to connect commitments with consequences; they do not settle how far exceptional treatment should extend. The immediate task is to distinguish safeguards that protect the functioning of the Union and sustain reform from restrictions that would unnecessarily weaken Montenegro's position within it.

Montenegro should therefore approach the negotiations with a constructive offer: acceptance of effective post-accession scrutiny, accompanied by clearly defended limits on exceptional treatment. Such an offer must demonstrate how serious backsliding would be addressed while preserving the political substance of membership. That is the basis for building confidence among member states and a sustainable domestic case for the accession settlement.

2. Previous Safeguards: Enforcement Gaps and Prolonged Scrutiny

Previous enlargements have exposed weaknesses that stronger safeguards must address. Article 7's demanding political thresholds have hindered the effective use of sanctions; Croatia's accession framework concentrated leverage before membership and provided for post-accession sectoral safeguards, but did not establish a monitoring mechanism comparable to the CVM;[7] and the CVM subjected Bulgaria and Romania to prolonged differentiated scrutiny while producing uneven reform outcomes. As examined in the earlier BiEPAG brief,[8] these experiences reveal the limits of enforcement dependent on political agreement and of monitoring whose duration is not fixed in advance. Montenegro's accession arrangements should close those gaps without reproducing prolonged institutional probation.

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[6] Jovana Marović and Odeta Barbullushi, *Enforcement, Incentives, and the Missing Link: How Accession Treaties Can Strengthen Europe*, BiEPAG, February 2026. https://www.biepag.eu/wp-content/uploads/2026/02/howaccession-treaties-canstrengtheneurope-226.pdf

[7] The Cooperation and Verification Mechanism (CVM) was established by Commission Decisions 2006/928/EC (Romania) and 2006/929/EC (Bulgaria), adopted on 13 December 2006 and taking effect upon accession on 1 January 2007. It monitored judicial reform and the fight against corruption and, in Bulgaria's case, organised crime. The mechanism had no predetermined end date; its closure depended on satisfactory fulfilment of the benchmarks. The founding decisions were repealed by Commission Decisions (EU) 2023/1786 (Romania) and 2023/1785 (Bulgaria), adopted on 15 September 2023.

[8] Marović and Barbullushi, *Enforcement, Incentives, and the Missing Link: How Accession Treaties Can Strengthen Europe*, pp. 7–9. See also the Act concerning the conditions of accession of the Republic of Croatia, Articles 36–39, OJ L 112, 24 April 2012.

3. The Commission's Proposal: Stronger Enforcement at the Cost of Prolonged Differentiation?

The European Commission's proposal contains elements worth supporting.[9] It links proposed accession safeguards with horizontal financial conditionality and sets out common principles of objective evidence, proportionality, judicial scrutiny and regular review. For sectoral safeguards, it proposes significantly extending the previous three-year activation period and allowing further extensions under defined conditions. It also distinguishes the activation period from the duration of measures adopted within it, which may remain in force as long as the conditions justifying them persist. These principles provide a useful basis for limiting discretion. Their value will depend on how precisely they are expressed in the final provisions.

The main difficulty lies in the proposed institutional safeguard. It would address serious breaches of Article 2 TEU values and of the principle of sincere cooperation, apply for fifteen years after accession and, in particularly serious cases, could include the suspension of Council voting rights. Measures would be deemed adopted unless rejected by a qualified majority in the Council. This combination of duration, decision-making procedure and potential political consequences demands closer examination.

A prolonged regime requires more than a general reference to backsliding. Fifteen years would keep a new member under an exceptional framework well beyond the immediate transition to membership. The concern is not simply the length of the period, but whether the risks identified justify that duration and whether a shorter, more targeted arrangement could provide credible protection. A fixed endpoint avoids an indefinite regime; it does not, by itself, establish proportionality.

Suspending voting rights changes the nature of the safeguard. A targeted restriction on funding or sectoral cooperation can be connected to a specific failure and corrective action. Suspension of Council voting rights affects the state's participation in decisions across the Union. Any justification must therefore explain why remedies directed at the breach would be insufficient and why an additional accession-specific route to this political consequence is necessary.

The procedural asymmetry with existing members is substantial. Article 7 TEU already permits the suspension of Council voting rights, but only after the European Council unanimously determines, after obtaining the European Parliament's consent, that a serious and

[9] European Commission, *Preparing for a wider Union*, COM(2026) 705 final, Strasbourg, 6 October 2026, Part IV, particularly subsections 1–3 on common principles, sectoral safeguards and the proposed institutional safeguard. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52026DC0705

persistent breach exists, and the Council then decides by qualified majority.[10] The proposed accession mechanism would provide a different route to a comparable consequence. Faster enforcement may be desirable, but its political implications cannot be treated as a technical adjustment.[11]

Review guarantees do not remove the underlying design question. Objective evidence, judicial scrutiny and reversibility are essential protections. They do not settle whether a particular sanction belongs in the special regime or whether its duration is justified. Equally, describing the mechanism as complementary to Article 7 does not resolve the consequences of maintaining different procedures for new and existing members.

Accession-specific distinctions require a justification proportionate to their duration, scope and consequences. Montenegro should assess the proposal clause by clause, supporting provisions that make commitments enforceable while challenging those whose duration or consequences exceed what is necessary to address the identified risks.

[10] Treaty on European Union, Article 7(2)–(3), read together with Article 354 TFEU. The state concerned does not participate in the relevant votes. Article 7 TEU. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12012M007, Article 354 TFEU, https://eur-lex.europa.eu/eli/treaty/tfeu_2012/art_354/oj/eng

[11] See Case C156/21, *Hungary v Parliament and Council*, EU:C:2022:97, paragraphs 167–180, distinguishing budgetary conditionality from a procedure circumventing Article 7 TEU. That judgment concerns secondary legislation and does not directly determine the permissibility of an institutional safeguard clause in an accession treaty.

4. Montenegro's Counterproposal: Clear Boundaries, Credible Enforcement

Montenegro should respond to the Commission's proposal with a safeguard architecture that member states can take seriously as an enforcement mechanism. Opposition to prolonged institutional probation will be more persuasive if accompanied by a workable alternative. That alternative must demonstrate how breaches would be identified, what consequences would follow and how compliance would restore the normal exercise of membership rights.

The proposed framework rests on a distinction between the continuity of obligations and the duration of exceptional treatment. Montenegro's obligations will continue throughout membership; the special accession regime, by contrast, should have a defined endpoint. Otherwise, the Union risks using exceptional arrangements to compensate indefinitely for weaknesses in its general enforcement framework.

The boundaries below translate that position into concrete negotiating proposals.

Dimension	Red lines	Recommended design
Institutional Equality & Duration	No open-ended accession-specific monitoring or repeated extensions justified by weaknesses in the Union's general enforcement framework. No additional accession-specific deprivation of Council voting rights.	A strict five-year sunset clause, running from the date of accession, should terminate the special accession-specific safeguard regime, including its dedicated monitoring requirements. A five-year period is proposed as a negotiating balance: it would allow sustained post-accession assessment across several annual reporting cycles while placing a clear limit on exceptional treatment. The experience of previous enlargements points to an enforcement gap rather than a lack of monitoring. No new measures may be adopted under that regime after its expiry. This expiry would not affect Montenegro's continuing obligations under EU law or measures independently adopted under the Union's generally applicable instruments, subject to their respective legal conditions. The transition should be accompanied by a defined set of measures for strengthening horizontal enforcement applicable to all member states.

EU Accountability & Horizontal Enforcement	No assumption that additional scrutiny of newcomers can compensate indefinitely for ineffective enforcement across the Union. No automatic extension of exceptional treatment because the EU has failed to strengthen its common instruments.	A defined set of measures for strengthening horizontal enforcement, with clear milestones for following up monitoring findings and using available enforcement instruments, distinguishing action under existing powers from proposals requiring decisions by other institutions or member states. Annual reporting should assess delivery, identify outstanding decisions and make responsibility for delays explicit.
Decision-Making & Vetoes	No unanimity requirement for activating, adjusting or lifting financial and sectoral safeguards under the special regime. No individual vetoes that turn enforcement or restoration into bilateral bargaining.	Under the special accession-specific regime, Commission proposals to activate, amend or lift targeted financial and sectoral measures should be deemed adopted as Council decisions unless rejected by a qualified majority within a specified period. The Treaty must define voting thresholds, Montenegro's participation, deadlines and entry into effect. Measures under generally applicable EU instruments would retain their existing procedures.
Safeguard Activation	No vague triggers, sanctions based on unrelated political disagreements or automatic penalties for missing an isolated numerical target.	Clear commitments, verifiable indicators and a reasoned assessment establishing the seriousness of the breach and its connection to the proposed remedy. Montenegro must have access to the substance of the evidence, an opportunity to respond and the possibility of proposing corrective action.
Sanctions & Financials	No blanket restrictions disconnected from the breach. No measures that make citizens, farmers or other final beneficiaries the principal bearers of institutional failure.	Targeted financial measures directed at affected allocations or management arrangements. Their scale should reflect the seriousness, duration and effects of the breach. Financial measures should be calculated on a defined funding base, taking account of their likely effects. Any accession-specific financial clause should expressly define the breaches it covers and the connection required between those breaches and the financial measures.

Single Market Integration	No broad restrictions on the free movement of citizens or workers through the special safeguard mechanism. No suspension of unrelated forms of participation.	Modular, sectoral measures identifying the precise rules or mutual-recognition arrangements affected. Each restriction must have a demonstrable connection to the breach, protect individual rights and specify the corrective action required for restoration.
Projection of Final Beneficiaries	No presumption that suspending transfers to public authorities justifies withholding payments owed to final recipients. No reliance on general assurances of protection without arrangements for implementing them.	Continued payment obligations, clear reporting and accessible complaint procedures, with responsibility for payments and applicable deadlines clearly identified. Where legally and operationally feasible, ring-fencing, direct management or alternative payment channels should preserve support for eligible beneficiaries.
Remediation & Reversibility	No irreversible penalties, indefinite suspension without reassessment or arbitrary political delays in recognising corrective action.	A one-month deadline for the Commission to assess a substantiated notification of remediation and submit a proposal or adopt a reasoned decision, with any extension duly justified and notified to Montenegro. The Treaty should set a separate timetable for restoring payments once a measure is lifted.
Independent Verification & Judicial Protection	No unreviewable implementing decisions or indefinite delay justified by an unspecified need for further verification.	Independent expertise should support assessment where necessary, under clear mandates and deadlines. Decisions must be reasoned and subject to judicial review under the applicable legal framework, including access to interim protection where available.

Why These Boundaries Matter

Expiry of the special regime would not end EU scrutiny or enforcement. Infringement procedures, budgetary conditionality[12], applicable sectoral mechanisms and Article 7 TEU would remain available under their respective legal conditions, alongside continued monitoring and recommendations through the annual Rule of Law Report.

The indicators below provide a practical basis for assessing institutional performance within the proposed framework.

Indicators: Measuring Institutional Performance

The following indicators would support assessment of sustained institutional performance. Baseline values, reporting methods and any numerical targets should be agreed before the special regime takes effect. Assessment should combine measurable results with scrutiny of institutional independence, procedural safeguards and the quality of decisions.

Area	Proposed indicator	What the assessment must establish
Judicial Backlog	Sustained reduction in cases older than three years against an agreed baseline and annual reduction targets, with particular attention to the oldest unresolved cases.	The reduction results from effective case resolution, rather than reclassification, transfers or the exclusion of difficult cases. Reporting should distinguish courts and case categories and account for cases newly entering the backlog.
Special State Prosecutor's Office	Progress towards filling and retaining the operational posts required under an agreed staffing plan, with separate reporting on prosecutors, professional staff and administrative personnel.	Recruitment is merit-based and staffing translates into operational capacity. Assessment should distinguish permanently appointed and seconded personnel and examine retention, workload, expertise and the resources needed to perform assigned functions.

[12] Regulation (EU, Euratom) 2020/2092, Articles 4–5, on the conditions for adopting measures, proportionality and continuing obligations towards final recipients and beneficiaries. https://eur-lex.europa.eu/eli/reg/2020/2092/oj/eng

Constitutional Court	Sustained timely resolution of constitutional complaints and other proceedings, measured separately by category, alongside a reduction in older unresolved cases.	Improved timeliness is accompanied by effective access to constitutional justice and reasoned decisions. Reporting should include average duration, the age of pending cases and compliance with applicable deadlines for urgent proceedings.
Administrative Court	Sustained reduction in the actual duration of proceedings and the stock of older unresolved cases, against an agreed baseline and improvement timetable.	Reporting distinguishes actual case duration from statistical disposition time, accounts for incoming cases and shows whether older and complex cases are being resolved. Faster processing must preserve procedural fairness and the quality of judicial review.
Judicial and Prosecutorial Independence	Appointments, promotions, dismissals, disciplinary proceedings and case allocation comply in law and practice with agreed safeguards against undue interference.	Assessment examines transparent and merit-based procedures, reasoned decisions, access to effective review and institutional responses to substantiated allegations of interference. Formal compliance must be tested against actual practice.

These are proposed assessment indicators, not automatic grounds for sanctions. Failure to meet a target should trigger examination of its causes and institutional consequences. Activation of a safeguard should require a reasoned finding of a serious breach of a specified commitment; formal achievement of a target should not preclude action where evidence demonstrates such a breach.

5. Strategic Positioning: Montenegro as a Co-Designer of Treaty Integrity

Montenegro should place this safeguard architecture at the centre of its own accession proposals. Waiting for member states to settle their positions would narrow the space for negotiation and leave Montenegro responding to a framework designed primarily around others' concerns.

A proactive position would also strengthen the political case against prolonged institutional probation. Rejecting additional restrictions without proposing credible enforcement mechanisms could reinforce doubts about the country's commitment to sustained reform. A concrete counterproposal should specify the scrutiny and enforceable consequences Montenegro is prepared to accept, while explaining its objections to measures it considers disproportionate in duration or political effect. It would allow the country to negotiate as a contributor to the Union's institutional resilience.

The first task is to turn principles into negotiable provisions. The proposed boundaries should be accompanied by draft clauses covering activation, decision-making, review and expiry. Particular attention should be paid to the legal treatment of unresolved breaches at the five-year mark, the funding base for financial measures and the protection of final beneficiaries. These are the issues on which member states will test whether the alternative offers sufficient assurance.

The second task is to build support around specific solutions. Montenegro should identify member states willing to engage on individual elements of the proposal, rather than assume that a single coalition will support the entire package. Agreement on protecting voting rights may not imply agreement on duration or financial conditionality. A structured diplomatic campaign should map where positions converge, where compromise is possible and which provisions require the strongest defence.

That engagement should distinguish institutional roles. Member states are central to agreeing the accession settlement and securing national ratification. The Commission's technical and legal input will shape the available options, while the European Parliament's consent gives parliamentary engagement a separate political importance.[13] Montenegro should tailor its case accordingly, explaining how its proposal answers each institution's concerns.

The third task is to build support for a common enforcement agenda. Montenegro should present the proposed sunset clause together with the proposed measures for strengthening horizontal enforcement. This pairing would connect its defence of full membership with a wider European interest: ensuring that serious backsliding can be addressed wherever it occurs. The diplomatic case would consequently extend beyond protecting Montenegro from prolonged scrutiny to challenging the institutional weakness used to justify it.

Domestic credibility must underpin the external campaign. A government seeking limits on exceptional scrutiny should be prepared to accept transparent reporting, independent verification and public examination of its own performance. Parliament, civil society and the

[13] Treaty on European Union, Article 49, concerning the Council's unanimous decision on admission after consultation of the Commission and the consent of the European Parliament, agreement on accession conditions, and ratification by all contracting states in accordance with their constitutional requirements. https://eur-lex.europa.eu/eli/treaty/teu_2012/art_49/oj/eng

institutions responsible for implementation should therefore be involved in developing the proposal. The position will carry greater weight if it is visibly grounded in a commitment that extends beyond the government conducting the negotiations.

The objective is to make a balanced safeguard framework part of the case for ratifying Montenegro's accession. By acting early and presenting workable provisions, Montenegro can help address member states' concerns while defending the political substance of membership. Montenegro should support its negotiating position with a sustained record of reform implementation and a concrete explanation of how its proposed safeguards would address serious breaches without placing Montenegro under a fifteen-year accession-specific institutional safeguard framework.

6. Conclusions

Montenegro should use the negotiating space to challenge disproportionate restrictions and offer an alternative capable of securing member states' confidence.

The lessons of previous enlargements support stronger enforcement. The difficulty of confronting backsliding in existing members cannot, by itself, justify subjecting newcomers to a substantially different political regime for fifteen years. Equally, defending full membership requires Montenegro to demonstrate how its alternative would respond to serious failures in practice.

The central arrangement should therefore be explicit: sustained compliance backed by enforceable consequences, alongside a defined endpoint to exceptional treatment. Its credibility will depend on the clarity of the provisions, their practical effects and how effectively the responsible institutions apply them.

The political objective should be to secure an accession settlement that member states can ratify with confidence and that Montenegro can defend as full membership. That requires credible consequences for backsliding and credible limits on exceptional powers. Montenegro should negotiate both with equal determination.

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