

Enforcement, Incentives, and the Missing Link:

How Accession Treaties Can Strengthen Europe

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CONTENTS

1. Introduction	6
2. Evaluating EU Conditionality	7
Across Three Accession Waves: The Importance of	
Direct Incentives	7
2.1 Hungary – the EU’s persistent rule-of-law	
enforcement gap	7
2.2 Bulgaria and Romania: CVM – monitoring without	
transformation	8
2.3 Croatia: Front-loaded conditionality,	
post-accession drift	8
3. New Enlargement Instruments: Lessons from	
Montenegro, Albania and the Growth Plan.	10
3.1 IBAR and the new enlargement conditionality:	
Montenegro as a test case, Albania as a parallel track	10
3.2 The Growth Plan: real incentives outside the	
accession process	11
4. Designing the Next Generation of Accession Treaties:	
From Tested Practice to Coherent Reform	13
4.1 What has already been tested in accession	
treaties?	13
4.2 What has changed in practice since 2012?	14
4.3 The ongoing political debate: misdiagnosing the	
problem.	14
4.4 What would this mean in practice?.	15
5. Recommendations: Stop Tweaking the System. Start	
Using Accession Power Properly	16

EXECUTIVE SUMMARY

The EU has developed an increasingly sophisticated toolbox to promote the rule of law. Yet a structural flaw persists: conditionality is strongest before accession and fades once membership is granted. This credibility gap now distorts the enlargement debate and fuels proposals for staged accession, differentiated membership, indefinite transition, or even restricting new member states' veto rights.

This brief argues that these debates misdiagnose, and at times misplace, the problem. The core issue is not institutional parity or less-than-full membership; instead, it is the failure to embed credible enforcement directly into the legal architecture of accession itself, in such a way that strengthens both the EU's democratic core and integrity of reforms of the new member states.

Evidence from both member states as well as candidate countries, such as Hungary, Bulgaria, Romania, Croatia, Montenegro, Albania, and new instruments such as the Growth Plan for the Western Balkans points to a clear conclusion: monitoring alone rarely changes behavior, while legally grounded, incentive-based mechanisms – especially financial conditionality – consistently do. Sequencing reforms without consequences encourages strategic compliance rather than genuine institutional change.

The solution is pragmatic: accession treaties should be used as instruments of governance oversight. They already contain powerful tools – safeguards, transitional arrangements, conditional integration – but these remain underused and disconnected from the EU's modern rule of law framework. Used strategically, they can become the Union's strongest credibility anchor for enlargement.

What we propose:

- Anchor post-accession assessment in accession treaties and link it to enforceable consequences.
- Turn transitional arrangements into performance-based integration pathways, where progress unlocks access and backsliding triggers proportionate restrictions.
- Embed financial conditionality directly into accession law.
- Focus on safeguards that protect a narrow core of rule-of-law fundamentals: institutional independence and real-world performance.
- Trigger safeguards through objective criteria and qualified majority voting, not unanimity.
- Draw a clear red line against permanent differentiated membership and preserve full political equality.

If applied consistently, this approach allows the EU to enlarge credibly – without new membership categories or Treaty change – while protecting the Union’s legitimacy, cohesion, and democratic integrity. It is an argument that works for both sides: the political leadership in the EU member states, who may fear that the Western Balkans will slide through too easily because of the geopolitical moment, and the civil society and skeptical segments in the candidate countries, who fear that accelerating accession will be at the expense of significant transformation.

1. INTRODUCTION

Enlargement has returned to the center of the European Union’s political agenda. Russia’s war against Ukraine, instability in the Western Balkans, and growing geopolitical competition have transformed enlargement from a technocratic policy into a strategic necessity. Anchoring candidate countries firmly to the EU is no longer only about convergence; it is about security, resilience, and credibility.

At the same time, the EU’s experience over the past decade has created deep unease. Democratic backsliding in some Member States has revealed the limits of the Union’s capacity to enforce its foundational values once accession has occurred. This legacy now shapes almost every contemporary debate on enlargement: from proposals for staged accession and differentiated integration to calls for institutional reform and veto limitation.

The concern behind these debates is justified: the EU’s post-accession enforcement capacity is weak. However, many of the proposed solutions misdiagnose the source of the problem. The starting point of our paper is thus deliberately pragmatic. Rather than advocating new categories of membership or constitutional redesign, it focuses on how the EU can use existing legal instruments more intelligently. Accession treaties already contain mechanisms for safeguards, conditional integration, and transitional arrangements. If aligned with the EU’s modern rule-of-law toolbox and incentive-based instruments, they could become the central vehicle for ensuring that enlargement strengthens rather than weakens the Union’s democratic core.

First, we revisit the EU’s most familiar instruments and experiences of rule-of-law conditionality – before and after accession. By examining where these tools have delivered results and where they have failed, the analysis clarifies a simple but decisive point: effectiveness depends less on the sophistication of monitoring and more on whether incentives and consequences are legally structured and politically credible. This empirical assessment provides the foundation for the subsequent argument on why accession treaties themselves should become the focal point of future conditionality.

2. EVALUATING EU CONDITIONALITY ACROSS THREE ACCESSION WAVES: THE IMPORTANCE OF DIRECT INCENTIVES

The structural weaknesses of EU conditionality are most clearly revealed through the post-accession and late-accession trajectories of member states and candidates across successive enlargement waves. The cases of Hungary, Croatia, Romania, Bulgaria, Montenegro, and Albania were selected because each was subject to distinct conditionality mechanisms, offering a comparative basis for assessing how different structures shape reform outcomes.

2.1 HUNGARY – THE EU’S PERSISTENT RULE-OF-LAW ENFORCEMENT GAP

Hungary joined the EU in 2004 without post-accession monitoring, based on the assumption that fulfilling the Copenhagen criteria would ensure long-term stability. This assumption proved misplaced. Article 7 TEU, designed as the Union’s safeguard against systemic backsliding, has proven structurally weak in practice. After Article 7(1) was triggered in 2018 because of systemic risks to judicial independence, media pluralism, corruption control, and institutional checks and balances, the procedure stalled in the Council. The unanimity requirement under Article 7(2) made sanctions politically unattainable, resulting in no behavioral change. In practice, Article 7 has functioned more as political signaling than enforcement.

Effectiveness emerged only once EU intervention became materially consequential. Financial conditionality introduced after 2020 – through the Rule of Law Conditionality Regulation and the Recovery and Resilience Facility – altered incentives by linking compliance to access to EU funds. The freezing of substantial funding¹ triggered targeted reforms in areas such as judicial governance and oversight structures. This confirms that EU leverage becomes effective only when it directly affects access to resources.

At the same time, this leverage remains limited. Reforms have often been narrowly tailored to meet EU requirements while preserving political control over key institutions.

Timing further limits impact. EU pressure became effective only after institutional capture had already become entrenched. Financial conditionality can slow further deterioration, but cannot reverse deeply embedded institutional patterns. Hungary, therefore, illustrates both the strengths and limits of the EU’s current rule-of-law architecture.

¹ Council of the European Union, Council adopts measures to protect the EU budget against breaches of the principles of the rule of law in Hungary, 6 December 2022. <https://www.consilium.europa.eu/en/press/press-releases/2022/12/06/council-adopts-measures-to-protect-the-eu-budget-against-breaches-of-the-principles-of-the-rule-of-law-in-hungary/>

2.2 BULGARIA AND ROMANIA: CVM – MONITORING WITHOUT TRANSFORMATION

The Cooperation and Verification Mechanism (CVM) was the EU's first attempt to address the enlargement credibility gap. Bulgaria and Romania joined the EU in 2007 despite incomplete reforms in key rule-of-law areas. The CVM introduced post-accession conditionality through benchmarks, monitoring, and reporting.

The two cases produced divergent outcomes. In Romania, EU conditionality reinforced reforms where domestic political will existed, including strengthening anti-corruption institutions. In Bulgaria, persistent failures to address high-level corruption continued despite formal compliance with benchmarks, confirming that technical alignment does not equal structural change.

The CVM generated real leverage only when linked to concrete incentives. The suspension of EU funds in 2008–2009 and the political linkage between CVM closure and Schengen accession in 2022–2023 created meaningful pressure, even without a formal legal connection. Absent such incentives, monitoring alone produced limited impact.

Overall, the CVM remained a political priority but delivered uneven outcomes. Its experience confirms three lessons: monitoring matters only when tied to consequences; conditionality without credible sanctions encourages superficial compliance; and narrow benchmarks incentivize box-ticking rather than systemic reform.

2.3 CROATIA: FRONT-LOADED CONDITIONALITY, POST-ACCESSION DRIFT

Croatia entered the EU in 2013 under the most demanding rule-of-law accession framework applied to date. Accession depended on strict compliance with Chapters 23 and 24, detailed benchmarks, continuous monitoring and the credible threat of delayed accession under Article 36² of the Accession Treaty.

Before accession, conditionality worked effectively. Reforms in judicial organization, anti-corruption policy, war crimes prosecution, and minority rights progressed because accession depended on demonstrable implementation rather than formal adoption. Conditionality thus functioned as a preventive enforcement mechanism.

² Article 36, 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 [2012] OJ L112/21, providing for continued monitoring by the Commission and allowing the adoption of appropriate measures, including the possibility to recommend postponement of accession in the event of serious shortcomings in fulfilling commitments. <https://eur-lex.europa.eu/legal-content/DA/ALL/?uri=CELEX:52012SC0338>

After accession, however, EU's impact on institutional transformation weakened. Croatia was not subject to any post-accession mechanism comparable to the CVM, and EU's leverage is now exerted mainly through financial instruments. Reforms that unlock funding progress predictably, while politically sensitive reforms – such as those affecting media independence, prosecutorial autonomy, and politicized appointments – remain slow or stalled.

The Croatian case therefore illustrates both the strengths and limits of the EU's current approach. Front-loaded conditionality prevented backsliding, but once accession incentives disappeared, the EU lost its strongest leverage to bring about significant and durable institutional transformation. The framework proved effective at preventing collapse and maintaining baseline compliance, but insufficient for ensuring long-term transformation.

3. NEW ENLARGEMENT INSTRUMENTS: LESSONS FROM MONTENEGRO, ALBANIA AND THE GROWTH PLAN

3.1 IBAR AND THE NEW ENLARGEMENT CONDITIONALITY: MONTENEGRO AS A TEST CASE, ALBANIA AS A PARALLEL TRACK

The EU's 2012 enlargement methodology reform responded to a clear failure: formal compliance with accession criteria did not prevent post-accession backsliding. The redesigned approach therefore front-loaded rule-of-law conditionality. Chapters 23 and 24 became the backbone of negotiations, opened first, closed last, and made a condition for progress across all policy areas. Interim benchmarks, continuous monitoring, and formal reversibility replaced the earlier one-off compliance model.

The 2020 revised methodology reinforced this logic through the cluster approach and by positioning the Fundamentals Cluster as the gatekeeper of the entire process. Progress across negotiations is now explicitly conditional on credible performance in rule-of-law reforms. This transformed conditionality from a technical checklist into a structured sequencing mechanism.

The Interim Benchmark Assessment Report (IBAR) represents the most concrete operational expression of this model. Institutionally, it functions as a mid-term gatekeeping mechanism.

Montenegro is the only candidate to have received an IBAR,³ making it the first real test of whether front-loaded conditionality can shape reform trajectories before accession. Montenegro's experience therefore has systemic relevance, as it sets the template for future candidates. Yet its limitations remain structural. IBAR primarily assesses formal fulfilment – legal frameworks, institutional design and early track records. It cannot ensure irreversible depoliticization, nor does it impose material costs. Its main sanction remains delay rather than enforcement.

Albania illustrates similar logic through a different trajectory. Prior to negotiations, Albania adopted constitutional reforms in 2016 and implemented an extensive vetting process that removed a significant number of judges and prosecutors. A distinctive feature was the continuous external monitoring mechanism involving EU and US experts, which protected against domestic capture of the reform process.

³ Interim Benchmark Assessment Report (IBAR) – Chapter 23: Council Document AD-13-2024-INIT, Consilium, 2024, <https://data.consilium.europa.eu/doc/document/AD-13-2024-INIT/en/pdf>

Both Albania and Montenegro, alongside Serbia and North Macedonia, are now included in the EU Rule of Law Reports. However, unlike Member States, they are not subject to Article 7 conditionality, nor do they receive formal country-specific recommendations. This reinforces the broader pattern: strong diagnostics, limited enforcement.

Taken together, these cases lead to a clear conclusion. The post-2012 enlargement architecture is more structured, coherent, and politically visible than earlier models. However, its center of gravity remains strategic steering rather than enforcement. IBAR and cluster conditionality structure the sequencing and signal credibility, but they do not fundamentally alter incentive structures. In the absence of tangible costs for non-compliance, the risk of strategic compliance persists. The new methodology manages the process more effectively, but it still cannot guarantee deep and irreversible institutional transformation.

3.2 THE GROWTH PLAN: REAL INCENTIVES OUTSIDE THE ACCESSION PROCESS

The Growth Plan (and Reform Agendas) for the Western Balkans, launched in 2023, represents the first enlargement-related instrument to introduce clear, financially measurable conditionality. Modelled on the Recovery and Resilience Facility, it links concrete reform steps to disbursements and allows payments to be withheld or reallocated in cases of non-compliance. Unlike the enlargement methodology, which relies primarily on sequencing and political signaling, the Growth Plan introduces a transactional logic: implementation unlocks funding; failure produces cost.

Each beneficiary country submits a Reform Agenda covering five policy areas, including, though to a limited extent, the rule of law and governance. While formally country-owned, these agendas are effectively co-designed with the Commission, which retains control over benchmarks, timelines, and assessments. Many measures overlap directly with enlargement conditionality, including judicial reform, anti-corruption measures, public administration reform, and IBAR-related benchmarks. In practice, the Growth Plan imports core elements of accession conditionality into a parallel financial instrument.

The Growth Plan contains real incentives and sanctions, while the enlargement framework itself (IBAR, clusters, annual reports) remains largely procedural. The two tracks operate in parallel but are not institutionally integrated. A country can perform well under the Growth Plan yet remain stalled in accession-related reforms. Conversely, progress in negotiations does not automatically unlock financial rewards, contrary to the intended logic of the new methodology.

⁴ Although the basis for this has existed since the 2020 revised enlargement methodology.

The time-limited nature of the instrument further constrains its effectiveness. Operating only until 2027, the Growth Plan cannot function as a long-term safeguard for reform irreversibility. Its leverage is strongest in the short term and fades precisely when reforms become politically most costly.

The broader implication is revealing. Where the EU introduces real incentives, it does so outside the enlargement framework rather than within it. Financial conditionality is embedded in a parallel economic instrument, while accession conditionality remains dominated by monitoring, sequencing, and political discretion. This institutional split reflects an unresolved tension in EU policy: the Union is willing to pay for reforms but remains reluctant to anchor those incentives directly within the legal architecture of accession itself.



4. DESIGNING THE NEXT GENERATION OF ACCESSION TREATIES: FROM TESTED PRACTICE TO COHERENT REFORM

Now is the time to think of accession through the pragmatic lens: not what can be discounted, based on the logic of geopolitical necessities, but how it can be reinforced, while, at the same time, linked to clear and effective incentives and sanctions.

Analysis across enlargement cases and instruments reveals a persistent structural weakness in the EU's approach to accession. The Union has invested heavily in sophisticated mechanisms for diagnosing rule-of-law deficiencies, structuring pre-accession conditionality and, more recently, attaching financial consequences to reform performance. What remains missing is a coherent legal architecture that carries credible safeguards into the moment of accession and beyond, embedded directly in accession treaties themselves.

4.1 WHAT HAS ALREADY BEEN TESTED IN ACCESSION TREATIES?

Contrary to the perception that accession treaties merely confirm membership, EU practice demonstrates that they can function as flexible legal instruments capable of embedding conditionality and safeguards when concerns about readiness arise.

Croatia's Accession Treaty provides the clearest example. Article 36 established legally binding post-signature monitoring and the credible possibility of delayed accession in case of serious deficiencies. The political effect was tangible: the prospect of postponement triggered late-stage reforms in judicial cooperation and anti-corruption oversight. The lesson is straightforward: the EU's strongest leverage in the enlargement process remains the credibility of legal consequences attached directly to accession.

Other precedents reinforce this conclusion. Financial safeguards applied to Bulgaria, Romania and Croatia further demonstrated that access to EU funds can be phased and conditioned through treaty law itself, not only through secondary legislation.

4.2 WHAT HAS CHANGED IN PRACTICE SINCE 2012?

Since the reform of the enlargement methodology in 2012 and its revision in 2020, conditionality has become more structured and continuous. Chapters 23 and 24 were front-loaded, interim benchmarks introduced, reversibility formalized, and IBAR was established as a gate-keeping mechanism. The annual Rule of Law Reports have further strengthened the EU's diagnostic capacity through a more consistent, evidence-based assessment framework.

More importantly, the emergence of financial conditionality instruments – most clearly through the Growth Plan and RRF-style mechanisms – has confirmed a decisive empirical lesson: governments respond to conditionality when non-compliance produces tangible costs.

Yet these developments have not produced a coherent architecture. The most powerful incentives now operate through parallel instruments, while the accession process itself remains dominated by sequencing, reporting, and political discretion. This creates an unresolved tension: the EU increasingly accepts the need to pay for reforms but remains reluctant to embed enforceable safeguards into the legal structure of membership itself. Conditionality is strongest where it is least legally connected to accession, and weakest where the stakes are highest.

4.3 THE ONGOING POLITICAL DEBATE: MISDIAGNOSING THE PROBLEM

Faced with enforcement failures and geopolitical urgency, policymakers have advanced proposals for staged accession, differentiated integration, partial membership, and restrictions on veto rights. For the purpose of brevity and pragmatism, we will not delve into the internal debates on EU institutional reform. Instead, our focus lies on proposals concerning enlargement policy.

These proposals respond to a genuine concern but misdiagnose its cause. The weakness of EU enforcement does not stem primarily from the existence of veto rights. Article 7 has failed not because Member States are equal, but because it relies on political decision of the EU member states, rather than legally embedded consequences. Where enforcement has been structured through objective procedures, financial mechanisms, and qualified majority decision-making, it has worked; where it has relied on peer pressure, it has not. In other words, for the normative power of the EU to work, it needs to re-activate its coercion power of incentives and sanctions even after accession.

More critically, proposals that institutionalize permanent differentiation risk undermining the normative foundation of enlargement itself. The promise of full and equal membership has been central to the EU's legitimacy, transformative power, and geopolitical credibility. Creating second-class membership would avoid the more necessary task: redesigning accession treaties as instruments of governance.

4.4 WHAT WOULD THIS MEAN IN PRACTICE?

It implies maintaining full political equality of membership while legally sequencing participation in certain trust-based domains. Conditionality in relation to participation in regimes such as Schengen, mutual recognition instruments, agencies with operational powers, or sensitive internal market freedoms could be strengthened and tied explicitly to sustained performance in clearly defined rule-of-law safeguards, assessed through existing tools such as the Rule of Law Reports.

5. RECOMMENDATIONS: STOP TWEAKING THE SYSTEM. START USING ACCESSION POWER PROPERLY

The core message is blunt: the EU does not have a design problem. It has a discipline problem. Accession treaties are already one of the Union's strongest legal instruments – they are simply underused. If enlargement is to remain credible, treaties must become binding governance contracts, not ceremonial entry documents.

◀ **Hardwire accountability into membership**

Post-accession monitoring must stop being political theatre. Every accession treaty should legally lock in continuous Commission assessment in core safeguard areas and explicitly link those assessments to enforcement, which would be binding. This is the fastest way to convert soft monitoring into real leverage – without inventing new institutions.

◀ **Replace “transitional exceptions” with performance-based integration**

Transitional arrangements should stop protecting political sensitivities and start rewarding performance. Deliver results → get deeper access to agencies, funds, programmes, and sensitive market areas. Backslide → lose access in a targeted, proportionate way. Membership stays intact, but privileges are earned. This turns integration into a powerful incentive structure rather than a diplomatic compromise.

◀ **Acknowledge reality: money is the strongest lever**

Financial conditionality works. Everything else mostly doesn't. Accession treaties should explicitly link post-accession funding to concrete milestones, with clear legal procedures for suspension when standards collapse. This doesn't create new power – it simply makes the existing leverage transparent, predictable, and contractually grounded.

◀ **Cut the checklist. Focus on the institutions that actually matter**

Stop measuring legal paperwork. Start measuring institutional behavior. Treaties should tailor/identify safeguards based strictly on what determines democratic survival: independent courts, autonomous prosecutors, real anti-corruption enforcement, and protected media space. The benchmark should be performance, not formal compliance.

◀ **Make enforcement automatic, not political**

Safeguards fail when they depend on political courage. They work when they are triggered by rules. Activation should be based on objective Commission assessments and adopted by qualified majority, with built-in proportionality and review. No drama, no improvisation, no hostage-taking. Predictability is credibility.

◀ **Second-class membership cannot be an option**

Two-tier membership is not a solution – it is a strategic deference. It would signal weakness externally. The EU should be explicit: conditionality exists to protect full membership, not to justify permanent exclusion within it.

◀ **Start fixing enforcement**

The failure of Article 7 proves the problem: condemnation without consequences is meaningless. Where the EU used objective criteria and financial leverage under qualified majority, it achieved results. The lesson is obvious: enforcement improves by redesigning triggers and incentives, not by reopening constitutional wars over institutional balance.

ABOUT US

The Balkans in Europe Policy Advisory Group (BiEPAG) is a group of policy analysts, scholars and researchers, established as a joint initiative of the European Fund for the Balkans and the Centre for Southeast European Studies of the University of Graz with the aim to promote the European integration of the Western Balkans and the consolidation of democratic, open countries in the region. BiEPAG is composed of prominent policy researchers from the Western Balkans and all of Europe who have established themselves for their knowledge and understanding of the Western Balkans and the processes that shape the region.

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The European Fund for the Balkans (EFB) is a joint initiative of the Erste Foundation, Robert Bosch Foundation and King Baudouin Foundation that envisions and facilitates initiatives strengthening democracy, fostering European integration and affirming the role of the Western Balkans in addressing Europe's challenges. Its strategy is focused on three overarching areas – fostering democratisation, enhancing regional cooperation and boosting EU Integration. The EFB supports the process of affirming the efficacy of EU enlargement policy across the Western Balkans, improving regional cooperation amongst civil society organisations based on solidarity and demand-driven dialogue. It provides means and platforms for informed and empowered citizens to take action demanding accountable institutions and democracy. The focus is on continuous reforms of the policies and practices of the Western Balkans countries on their way to EU accession.

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The Centre for Southeast European Studies was set up in November 2008 following the establishment of Southeast Europe as a strategic priority at the University of Graz in 2000. The Centre is an interdisciplinary and cross-faculty institution for research and education, with the goal to provide space for the rich teaching and research activities at the university on and with Southeast Europe and to promote interdisciplinary collaboration. The Centre also aims to provide information and documentation and to be a point of contact for media and public interested in Southeast Europe, in terms of political, legal, economic and cultural developments. An interdisciplinary team of lawyers, historians, and political scientists has contributed to research on Southeast Europe, through articles, monographs and other publications. The centre regularly organizes international conferences and workshops to promote cutting edge research on Southeast Europe.

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Cover image: Jovana Marović

A street art mural in Brussels dedicated to the people of the European Union and the Western Balkans, created by Rikardo Druškić. The title of the mural — “It is only with the heart that one can see well” — is a reference to the book “Le Petit Prince” by Antoine de Saint-Exupéry.

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