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**Author:** Tezcan, Narin

**Title:** Legal constraints on EU Member States as primary law makers : a case study of the proposed permanent safeguard clause on free movement of persons in the EU negotiating framework for Turkey's accession

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Do Member States of the EU have a free hand in drafting Accession Treaties, or are there legal constraints on their primary law making function in this context? That is the central question this thesis addresses. It argues that such constraints do exist, and tries to identify them, thereby hoping to provide some insight into the nature of the EU legal order. The point of departure as well as the main focus of the study is the proposed permanent safeguard clause (PSC) on free movement of persons in the Negotiating Framework for Turkey. It is with reference to the PSC that legal provisions, rules, principles and norms that might constrain Member States as primary law makers in the context of accession are identified.

The thesis examines constraints on Member States flowing from three levels: *the pre-accession level*, that is the existing legal framework built on the EEC-Turkey Association Agreement, known as the Ankara Association Law (Part I); *the accession process level*, which is comprised of past practice and existing EU rules on enlargement (Part II); and last but not least, *the constitutional foundations of the Union* (Part III), which constrain Member States whenever they act within the scope of Union law both as primary and secondary law makers.

The constraining force of legal rules analysed increases in every subsequent part of the thesis, reaching a climax in Part III, which reveals what the Court of Justice of the EU considers to be the essence or the 'very foundations' of the Union legal order, which it protects against encroachment, just like some constitutional courts do to protect the 'inner unity' or 'basic structure' of their constitutions.

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# Legal constraints on EU Member States as primary law makers

A Case Study of the Proposed Permanent  
Safeguard Clause on Free Movement of  
Persons in the EU Negotiating Framework  
for Turkey's Accession

N. TEZCAN