

## The Haunted EU-Mercosur Agreement: Recent Developments

### Introduction

On January 21, 2026, the European Parliament (EP) passed a resolution requesting the opinion of the Court of Justice of the European Union (CJEU or the Court) on the compatibility of the EU-Mercosur Agreement (Agreement) with the European Union (EU) Treaties.<sup>1</sup> While the Agreement had been negotiated as a single treaty,<sup>2</sup> and specifically as a mixed association agreement,<sup>3</sup> subject, *inter alia*, to ratification by individual EU member states, the negotiated text was eventually split in two parallel treaties.<sup>4</sup>

In its split form, the Agreement comprises the EU-Mercosur Partnership Agreement (EMPA)<sup>5</sup> and the Interim Trade Agreement (ITA),<sup>6</sup> signed on January 16, 2026.<sup>7</sup> Both require EP consent before the European Council (Council) may conclude them,<sup>8</sup> as well as ratification by individual Mercosur countries. EMPA is further subject to ratification by individual EU member states.<sup>9</sup> EMPA sets the framework for multi-sectoral cooperation on political dialogue, legal affairs, climate change, and trade and investment. ITA primarily includes provisions on trade and investment, but it is intended to apply only until EMPA's entry into force. Once in force, EMPA will effectively absorb ITA.<sup>10</sup> A primary objective of the Agreement is to create a free trade zone between the two regions.

This *Insight* first addresses the historical background of the negotiations between the EU and Mercosur. It then briefly notes main arguments for and against the Agreement, and the political momentum which led to the Agreement being signed. The *Insight* further addresses the EP's vote to refer the Agreement to the Court for a compatibility opinion. It

moves on to highlight the politically problematic question of the Agreement's provisional application before concluding with what might happen once the CJEU renders its opinion.

## **Background**

The EU<sup>11</sup> has 27 member states. The Southern Common Market (Mercado Común del Sur, or Mercosur)<sup>12</sup> currently has four full members: Argentina, Brazil, Paraguay and Uruguay. Efforts to establish closer commercial ties between the two regions date back to the 1990s. The EU concluded a number of bilateral agreements with individual Mercosur countries in the 1990s.<sup>13</sup> Negotiations, however, for a bi-regional, broad-scope trade agreement have been ongoing for the better part of the last three decades.<sup>14</sup>

Negotiations for an agreement on trade and political dialogue cooperation (excluding investment) were originally launched in 2000,<sup>15</sup> but it was not until 2016, under new pro-business administrations in Argentina and Brazil, that there was diplomatic momentum for a treaty.<sup>16</sup> In 2019, an agreement in principle concerning trade was reached<sup>17</sup> and negotiations on political cooperation were concluded in 2020.<sup>18</sup> In December 2024, an improved political agreement for a comprehensive partnership agreement was reached.<sup>19</sup> In September 2025, the European Commission (Commission) formally proposed the split of the Agreement into two parallel, legally distinct, instruments, EMPA and ITA.<sup>20</sup> The Council authorized their provisional application.<sup>21</sup> On 21 January 2026, the EP referred EMPA and ITA to the CJEU for a compatibility opinion.<sup>22</sup> As a result, the Council's conclusion of the agreements, which was preconditioned on EP's consent, is now on hold at least until the CJEU opines. EMPA is further subject to ratification by individual EU member-states. All along, the Commission had stated that its focus was more on the political processes than on the provisional application of the Agreement.<sup>23</sup> On February 26, 2026, it announced that it "will now proceed with provisional application,"<sup>24</sup> following ratification by Uruguay and Argentina a few days before.

The Council is the highest political institution of the EU, consisting of the heads of state or government of the 27 member-states. It "defines the EU's overall political direction and priorities."<sup>25</sup> One of its central functions is to officially appoint the members of the Commission, the latter being the executive branch of the EU, subject to the Council's direction.

## **Arguments for and against the Agreement**

Proponents of the Agreement argue that it will boost strategic trade and political ties, support economic growth, strengthen trade competitiveness and resilience. In particular, the Agreement will promote European farming sector interests mainly by boosting EU agri-food exports while protecting EU geographical indications of origin, securing and diversifying European supply chains, and gradually eliminating Mercosur-imposed tariffs on EU exports to Mercosur countries, thus making European products significantly more competitive.<sup>26</sup> The Agreement also aspires to contribute to the fight against climate change and deforestation, in part through making the Paris Agreement one of its essential elements.<sup>27</sup> The political cooperation prong of the Agreement is further meant to promote cooperation in such fields as human rights, digital transformation, mobility, counter-terrorism, and crisis management.<sup>28</sup>

Opposition arguments include, among others, fears that European farming is going to suffer from unfair competition pressures, as might be caused by “import surges and/or price drops, that disrupt local produce markets.”<sup>29</sup> Additional objections consider consumer protection and food safety concerns,<sup>30</sup> underscored, in part, by the “significant regulatory differences between the EU and the Mercosur countries in relation to food production and sanitary and veterinary standards” as well as the reduction of auditing and control measures for agricultural imports from Mercosur countries.<sup>31</sup> These regulatory differences had been a main reason for the long negotiation over terms of trade.

## **Events Leading to the Request for a CJEU Opinion**

Attempting to ease European farmers’ concerns, a new Regulation (2026/687) backing additional safeguards to prevent harm to European agricultural sector, was proposed by the Commission in October 2025. The Regulation was adopted by the EP on February 12, 2026 and by the Council on March 5, 2026. At the time of this writing, its entry into force is pending.<sup>32</sup> This Regulation applies only to ITA, but will continue to apply once EMPA enters into force.<sup>33</sup>

Unfortunately, the political decision to split the Agreement into two separate treaties seems to have undermined the European public’s trust in the EU’s political and executive

directorate, because the EU-Mercosur negotiations had been based on the premise that the mixed association agreement that would emerge would be subject to both EP consent and to individual EU member-state ratifications. This understanding was reflected in the original 1999 negotiating mandate that the Commission had received from the Council, and was reaffirmed in 2018.<sup>34</sup>

Understandably, a single agreement subject to both EP and individual EU member-states' consent could take much longer to enter into force, if at all. Uncertainty around the global economy and conditions for international peace and security, arguably influenced the political decision to split the Agreement in two, aiming at expedited entry into force of at least its trade component. The parties' elusive hope is that ITA will bring some sense of stability to the two regions. Hence, it was no surprise that the signing of the Agreement was hailed as a landmark.<sup>35</sup>

### **The Motions for Referral to CJEU**

The motion leading to the adoption of the resolution referring EMPA and ITA to the CJEU was not the only one put to vote on January 21, 2026. At the same plenary sitting, and immediately following, the EP rejected a second motion with a similar request. Both motions were requesting a CJEU opinion on the agreements' compatibility with EU Treaty law.<sup>36</sup> However, the adopted motion seeks, in rather broad terms, the Court's opinion "on the compatibility with the Treaties of the proposed agreement and the EU's proposed conclusion of the EMPA and the ITA, and the procedure followed," without reference to specific provisions of the EU Treaties in its operative part. On the other hand, the rejected motion's operative part contained questions on compatibility with both general and specific principles of EU Treaty law.<sup>37</sup> For instance, it referred to the precautionary principle<sup>38</sup> (whereas the adopted resolution only referred to it in its recitals). Similarly, it highlighted concerns about the agreements' compatibility with other principles of EU Treaty law, including, *inter alia*, the competence allocation between the EU and its members, as well as with the procedural EU Treaty rules applicable to the conclusion of mixed association agreements, the common commercial policy,<sup>39</sup> and the general duty of consistency.<sup>40</sup>

The adopted motion was introduced by EP members of the Group of the “European People's Party” (Christian Democrats); the rejected motion was introduced by members of the “Patriots for Europe” Group. A “Motion of censure on the Commission by the European Parliament” regarding both agreements,<sup>41</sup> supported by the latter group, was rejected on January 22, 2026. These developments showcase the highly political dimension surrounding the Agreement.

### **Provisional Application**

The immediate effect of the agreements’ referral to the CJEU is that it “freezes,” if temporarily, further steps towards their conclusion and entry into force. Since the referral, the question on the agreements’ provisional application has generated additional discussion. Assuming it is not prohibited under an agreement’s own terms, provisional application of an international agreement between the EU and a third party is permissible under EU Treaty law, and the Council may authorize it along with its signature.<sup>42</sup> It did so with EMPA and ITA. Each also provides for provisional application under their own terms.<sup>43</sup> As mentioned above, the Commission announced that it now intends to proceed with provisional application.

However, the pending Court’s opinion and the need for EP’s consent leave room for doubt whether the Agreement may, or should, be provisionally applied as it stands. Here, both a positive CJEU outcome and a subsequent EP consent are, at best, hypothetical. Is it therefore accurate to say that the agreements’ entry into force is truly “pending” given this twofold contingency? Interestingly, the pertinent articles in the agreements carefully speak of provisional applications “before” (not “pending”) entry into force. In this light, a more appropriate question might be: is provisional application of the agreements appropriate (rather than permissible under EU Treaty law)?

### **Now What? Concluding Remarks**

It may take at least a year for the CJEU to opine. A “green light” by the Court will mean that the EP will then have to vote on granting or withholding its consent for one or both agreements. Assuming the EP consents, EMPA will still require additional ratifications by EU member states before it may enter into force. If EP withholds consent, the Council will

be barred from concluding the agreements. While it would not be the first time,<sup>44</sup> the Council will also find itself in the rather awkward position to have to repeal its previous decisions on the signing and the provisional application of the agreements, and to notify its Mercosur counterparties that it does not intend to become a party to the agreements.

If the CJEU opinion is adverse, the agreements may not enter into force unless amended accordingly (or unless the EU Treaties are revised— a highly improbable scenario).<sup>45</sup> While, technically, it is the entry into force (not the provisional application) that is barred in the event of a finding of incompatibility, it is difficult to see how provisional application of a treaty that does not survive the Court’s scrutiny would continue to be acceptable. In any case, amending the agreements to make them compatible to the EU Treaties would necessitate new negotiations, signatures, consents – and potentially new challenges.

In the meantime, the Agreement is likely to continue to stir heated debate and further reaction from affected sectors, as it is provisionally applied. It remains to be seen whether its overall impact will be positive or negative for the peoples and the economies of the two regions.

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<sup>1</sup> European Parliament Resolution P10\_TA(2026)0008, Jan. 21, 2026, [https://www.europarl.europa.eu/doceo/document/TA-10-2026-0008\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-10-2026-0008_EN.html).

<sup>2</sup> *Id.* ¶ A.

<sup>3</sup> In the context of EU treaty-making, a “mixed association agreement” is a treaty concluded between the EU and its member-states on the one side and one or more third states (and/or organizations on the other side). The term “mixed” means that on the European side the treaty-making competence for the regulated subject matter is shared between the EU and its member-states. Areas of shared competence include, for

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example, consumer protection, transport, and the environment. Treaty on the Functioning of the European Union art. 4, Oct. 26, 2012, 2012 O.J. (C 326) 1 [hereinafter TFEU]. Trade agreements fall under the exclusive treaty-making power of the EU. *Id.* art. 3. In mixed (shared competence) agreements, both the EU and its member states are contracting parties. In non-mixed (exclusive competence) agreements, the EU is the only contracting party. When the treaty regulates areas falling under both the EU's exclusive and shared competence, it will be a "mixed" agreement. The term "association" means that the third state(s) and/or organization(s) associate with the EU (and in the case of mixed agreements, its member-states) through the treaty. On the concept of EU association agreements, see generally M. Latek, *EU Association Agreements: Common Patterns and Specific Characteristics*, Eur. Parliamentary Research Serv., Briefing (Feb. 19, 2012),

[https://www.europarl.europa.eu/thinktank/en/document/LDM\\_BRI\(2012\)120333](https://www.europarl.europa.eu/thinktank/en/document/LDM_BRI(2012)120333). On international agreements concluded by the EU, see generally <https://eur-lex.europa.eu/EN/legal-content/summary/international-agreements-and-the-eu-s-external-competences.html>.

<sup>4</sup> Following two separate proposals to that effect by the European Commission to the European Council in September 2025. European Commission, Press Release IP/25/1644 (Sept. 2025), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_1644](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1644).

<sup>5</sup> EU-Mercosur Partnership Agreement [EMPA], Feb. 27, 2026, 2026 O.J. (L 186) 1, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202600186](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202600186).

<sup>6</sup> EU-Mercosur Interim Trade Agreement [ITA], Feb. 27, 2026, 2026 O.J. (L 184) 1, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202600184](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202600184).

<sup>7</sup> European Commission, *EU-Mercosur Agreement*, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement_en).

<sup>8</sup> When the EU "concludes" a treaty, it means that it "expresses its consent to be bound by" the treaty. Once a negotiated treaty text is ready for signature, the European Council will adopt a "Decision" authorizing the signing of the treaty (typically by the European Commission) on behalf of the EU and subject to the treaty's further "conclusion." Provisional application may be authorized in the same Decision. If the European Parliament then consents to the conclusion of the signed treaty, the Council will adopt a second Decision "on the conclusion" by which it essentially approves the treaty. To the extent that the initial Decision (on the signing) also authorized provisional application, this second Decision may identify parts of the treaty that may be provisionally applied, if any. Such Decisions on the "conclusion" of a treaty are equivalent to instruments of approval, since the text will typically state that the agreement is "hereby approved on behalf of the Union." However, the preferred term in such Decisions is "conclusion." See TFEU art. 218.

<sup>9</sup> See European Parliamentary Research Service, Briefing (Nov. 2016), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593513/EPRS\\_BRI\(2016\)593513\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593513/EPRS_BRI(2016)593513_EN.pdf).

<sup>10</sup> European Commission, *EU-Mercosur Agreement*, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement_en).

<sup>11</sup> European Union, *About the EU*, [https://european-union.europa.eu/index\\_en](https://european-union.europa.eu/index_en).

<sup>12</sup> Mercosur, *About Mercosur*, <https://www.mercosur.int/en>.

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<sup>13</sup> European Union, *Bilateral Framework Agreements for Cooperation with the Mercosur Countries*, <https://eur-lex.europa.eu/EN/legal-content/summary/bilateral-framework-agreements-for-cooperation-with-the-mercotur-countries.html>.

<sup>14</sup> Noteworthy developments include: the 1992 Interinstitutional Cooperation Agreement, providing for cooperation on the fields of technical assistance, information exchange, training and institutional support (with agriculture, technical norms and customs being set out, early on, as priority areas); the 1995 Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part (aiming at strengthening the existing ties and at laying “the foundations for an Interregional Association between the EU and the Southern Common Market (Mercosur) of the other part; and the 1999 Council authorization to the Commission to start negotiations with Mercosur for the conclusion of a mixed association agreement and according to negotiating directives to that effect.

<sup>15</sup> European Parliament, *Legislative Train Schedule: EU-Mercosur Association Agreement* (Sept. 2018), <https://www.europarl.europa.eu/legislative-train/carriage/eu-mercotur-association-agreement/report?sid=1801>.

<sup>16</sup> *Id.*

<sup>17</sup> European Parliament, *Legislative Train Schedule: EU-Mercosur Association Agreement* (Dec. 2020), <https://www.europarl.europa.eu/legislative-train/theme-a-stronger-europe-in-the-world/file-eu-mercotur-association-agreement?sid=4301>.

<sup>18</sup> European Commission, *Text of the EU-Mercosur Agreement*, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement/text-agreement_en).

<sup>19</sup> Council of the European Union, *EU-Mercosur Agreements Explained*, <https://www.consilium.europa.eu/en/policies/eu-mercotur-agreements-explained/>.

<sup>20</sup> European Commission, *Text of the EU-Mercosur Agreement*, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement/text-agreement_en).

<sup>21</sup> Council of the European Union, *European Council*, <https://www.consilium.europa.eu/en/european-council/>.

<sup>22</sup> European Parliament Resolution P10\_TA(2026)0008, *supra* note 1.

<sup>23</sup> European Commission, Daily Press Briefing (Jan. 12, 2026).

<sup>24</sup> European Commission, Statement STATEMENT\_26\_500 (Feb. 26, 2026), [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_26\\_500](https://ec.europa.eu/commission/presscorner/detail/en/statement_26_500).

<sup>25</sup> Council of the European Union, *What the Council Does*, <https://www.consilium.europa.eu/en/council-eu/what-the-council-does/>.

<sup>26</sup> European Commission, *Questions and Answers: EU-Mercosur Trade Agreement*, QANDA\_24\_6245, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_24\\_6245](https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_6245).

<sup>27</sup> European Commission, Statement STATEMENT\_26\_500, *supra* note 24.

<sup>28</sup> Council of the European Union, *EU-Mercosur Agreements Explained*, <https://www.consilium.europa.eu/en/policies/eu-mercotur-agreements-explained/#agriculture>.

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<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., *Fact Check: Will the Mercosur Trade Deal Open the Door to ‘Toxic’ Food in the EU?*, Euronews, Jan. 28, 2026; *Why EU Farmers Are Upset About Mercosur Deal*, Reuters, Nov. 18, 2024; *Italy, France Say It Is ‘Premature’ to Sign EU-Mercosur Trade Deal*, Reuters, Dec. 17, 2025.

<sup>31</sup> European Parliament Resolution P10\_TA(2026)0008, *supra* note 1.

<sup>32</sup> Commission Regulation 2026/687, Mar. 19, 2026, 2026 O.J. (L 687) 1, <https://eur-lex.europa.eu/eli/reg/2026/687/oj>.

<sup>33</sup> Council of the European Union, Press Release, *EU-Mercosur: Council Greenlights Safeguards for Agricultural Products* (Mar. 5, 2026), <https://www.consilium.europa.eu/en/press/press-releases/2026/03/05/eu-mercousur-council-greenlights-safeguards-for-agricultural-products/>.

<sup>34</sup> See *generally* recitals in European Parliament Resolution P10\_TA(2026)0008, *supra* note 1.

<sup>35</sup> European Commission, Press Release (May 16, 2026).

<sup>36</sup> The references “EU Treaty law” (also “fundamental EU law”) refers to the law under the Treaty on European Union and the Treaty on the Functioning of the European Union (collectively “EU Treaties”). These references are to be distinguished from references to the treaty-making power of the EU.

<sup>37</sup> European Parliament, Motion for a Resolution B10-0061/2026 (Jan. 21, 2026), [https://www.europarl.europa.eu/doceo/document/B-10-2026-0061\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-10-2026-0061_EN.html).

<sup>38</sup> TFEU art. 191, *supra* note 3.

<sup>39</sup> *Id.* art. 207(1).

<sup>40</sup> *Id.* art. 7.

<sup>41</sup> European Parliament, Motion for a Resolution B10-0063/2026 (Jan. 22, 2026), [https://www.europarl.europa.eu/doceo/document/B-10-2026-0063\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-10-2026-0063_EN.html).

<sup>42</sup> TFEU art. 218(5), *supra* note 3.

<sup>43</sup> EMPA art. 30.2, *supra* note 5; ITA art. 21.3, *supra* note 6.

<sup>44</sup> See, e.g., Council Decision 2012/15/EU of Jan. 9, 2012, Repealing Council Decision 2011/491/EU on the Signing and Provisional Application of a Protocol to the Fisheries Partnership Agreement Between the European Union and the Kingdom of Morocco, 2012 O.J. (L 6) 1, 1–2 (due to EP refusal to grant consent).

<sup>45</sup> TFEU art. 218(11), *supra* note 3.