C/2026/3687

5.8.2026

P10_TA(2026)0008

Request for opinion from the Court of Justice on the compatibility with the Treaties of the proposed EU-Mercosur Partnership Agreement (EMPA) and Interim Trade Agreement (ITA)

European Parliament resolution of 21 January 2026 seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposed Partnership Agreement between the European Union and its Member States, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part, and the proposed Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (2026/2560(RSP))

(C/2026/3687)

The European Parliament,

— having regard to the proposed Partnership Agreement between the European Union and its Member States, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (12450/2025),

— having regard to the proposed Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (12419/2025),

— having regard to the proposal for a Council decision on the conclusion, on behalf of the European Union, of the Partnership Agreement between the European Union and its Member States, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (COM(2025)0357),

— having regard to the proposal for a Council decision on the conclusion, on behalf of the European Union, of the Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (COM(2025)0339),

— having regard to the draft Council decision on the conclusion, on behalf of the European Union, of the Partnership Agreement between the European Union and its Member States, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (12443/2025),

— having regard to the Council decision of 9 January 2026 on the signing and provisional application of the Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (12417/1/2025 REV 1),

— having regard to the draft Council decision on the conclusion, on behalf of the European Union, of the Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part (12418/1/2025 REV 1),

— having regard to Article 3(5), Article 4(3), Article 10(3), Article 13(2) and Article 21 of the Treaty on European Union (TEU),

— having regard to Article 218 of the Treaty on the Functioning of the European Union (TFEU), in particular paragraphs 2, 4, 5, 6, 8, 10 and 11 thereof,

— having regard to Articles 11, 168, 169, 171 and 191 TFEU,

— having regard to Articles 35, 37 and 38 of the Charter of Fundamental Rights of the European Union (the Charter),

— having regard to the Council negotiating directives of 1999 for the agreement between the European Union and the four founding members of Mercosur – Argentina, Brazil, Paraguay and Uruguay (hereinafter the 1999 negotiating directives),

— having regard to the agreement in principle between the European Union and the four founding members of Mercosur – Argentina, Brazil, Paraguay and Uruguay – as negotiated in 2019 and its new and revised chapters and the protocols and annexes thereto,

— having regard to Court of Justice of the European Union (CJEU) Opinion 1/17 of 30 April 2019 concerning the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part (CETA) and CJEU Opinion 2/15 of 16 May 2017 concerning the Free Trade Agreement between the European Union and the Republic of Singapore,

— having regard to the Framework Agreement on relations between the European Parliament and the European Commission ([1]), in particular paragraphs 23-29 thereof regarding international agreements,

— having regard to the Council conclusions of 22 May 2018 on the negotiation and conclusion of EU trade agreements (hereinafter the 2018 Council conclusions), in particular paragraph 3 thereof,

— having regard to Rule 117(6) of its Rules of Procedure,

A. whereas in 2019, the Commission published the agreement in principle summarising 'the negotiating results of the trade part of the EU-Mercosur Association agreement'; whereas in December 2024, the Commission announced that it had finalised the negotiation of the EU-Mercosur agreement; whereas on 3 September 2025, the Commission presented the EU-Mercosur agreement as two parallel legal texts, namely the EU-Mercosur Partnership Agreement (EMPA) and an Interim Trade Agreement (ITA), and put forward its proposals to the Council for the signature and conclusion of the EMPA; whereas the EMPA is a mixed framework agreement, which requires unanimous approval in the Council, the consent of Parliament and ratification by all 27 Member States before it can fully enter into force; whereas the ITA covers only those provisions falling under the exclusive competence of the EU and requires only a qualified majority in the Council and Parliament's consent to enter into force;

B. whereas the 1995 Interregional Framework Cooperation Agreement, which forms the basis of the 1999 negotiating directives, was presented, in its preamble, as a 'prelude to the negotiation of an Interregional Association Agreement' and as being aimed at 'prepar[ing] the conditions enabling an interregional association to be created';

C. whereas the 1999 negotiating directives authorised the negotiation of an association agreement with the Mercosur countries, thus requiring Council unanimity and ratification by national parliaments; whereas neither the scope of the ITA nor its consequences on Member States' veto power could have been anticipated at the time this mandate

([1]) OJ L 304, 20.11.2010, p. 47, ELI: http://data.europa.eu/eli/agree_interinstit/2010/1120/oj.

was issued and agreed on; whereas the Council confirmed its position in its 2018 Council conclusions and stated that '[i]t is for the Council to decide whether to open negotiations on this basis. It is equally for the Council to decide, on a case-by-case basis, on the splitting of trade agreements. Depending on their content, association agreements should be mixed. The ones that are currently being negotiated, such as with Mexico, Mercosur and Chile, will remain mixed agreements'; whereas the EU-Mercosur Trade Agreement, agreed in principle in July 2019, also refers to the EU-Mercosur Association Agreement; whereas a deviation from the 1999 negotiating directives and the 2018 Council conclusions could be considered to be incompatible with EU law;

D. whereas national parliaments in various Member States have already signalled their opposition to the ratification of the EU-Mercosur agreement by adopting resolutions to that effect; whereas separation of the EU-Mercosur agreement into two separate legal texts, namely the EMPA and the ITA, circumvents national parliaments' right to ratify the ITA; whereas it is important to ensure effective consultation of citizens, the European Parliament, national and regional parliaments, civil society and other relevant stakeholders at every stage of the process to guarantee democratic accountability;

E. whereas Chapter 21 Article 21.4(b) and Chapter 1 Article 1.3(k) of the ITA introduce a newly designed 'rebalancing mechanism or clause' which allows a party to seek compensation if a 'measure applied by the other party nullifies or substantially impairs any benefit accruing to it under the covered provisions in a manner adversely affecting trade between the parties, whether or not such measure conflicts with the provisions of this Agreement, except if otherwise expressly provided'; whereas this mechanism aims to compensate for the economic impact of a trading partner's legislation or practice, even when these do not violate the provisions of the Agreement; whereas, for example, in Chapter 21 of the ITA, Article 21.20 and Article 21.21 thereof provide that a countermeasure will only be suspended once the measure in question has been 'withdrawn or amended so as to eliminate that nullification or substantial impairment'; whereas this mechanism could be used by Mercosur countries to pressure the EU to refrain from enacting or enforcing legislation and other measures related to climate and environmental protection, food safety or bans on certain pesticides;

F. whereas the Brazilian Government's interpretation of the temporal scope of the rebalancing clause differs from the Commission's interpretation, with Brazil considering it to extend as far back as 2019;

G. whereas this clause is more wide-reaching than existing ones in previous free trade agreements concluded by the EU and differs in scope and content to the clause set forth in the General Agreement on Tariffs and Trade (GATT) and in Article 26(1) of the WTO Dispute Settlement Understanding; whereas the rebalancing clause contained in the GATT has never been invoked against sustainable development legislation, presumably because such legislation would be covered by the general exceptions clause of Article XX GATT;

H. whereas the possibility of Mercosur countries gaining compensation for the trade effects of EU's sustainability measures might incite the EU co-legislators to refrain from adopting such measures and put pressure on the Commission to withdraw, amend or halt the implementation of current legislation; whereas the mechanism could have an impact, in particular, on legislation that aims at preserving the rights protected by the Charter and the Treaty principles on which the EU's legal order rests;

I. whereas there are significant regulatory differences between the EU and the Mercosur countries in relation to food production and sanitary and veterinary standards; whereas the EU-Mercosur agreement reduces auditing and control measures for agricultural imports from Mercosur; whereas Chapter 6 of the ITA, on sanitary and phytosanitary measures, encompasses several measures that weaken existing control mechanisms; whereas in accordance with Article 6.12(2) thereof, sanitary and phytosanitary measures are only acceptable if they are provisional and reviewed 'in a reasonable period of time'; whereas under EU law, the application of the precautionary principle is not made conditional on such a requirement;

J. whereas Chapter 18 of the ITA, on trade and sustainable development, restricts the application of the precautionary principle, notably to situations of 'risk of serious environmental degradation or to occupational health and safety'; whereas these restrictions may result in reducing the levels of health, consumer and environmental protection in the EU; whereas current EU measures allowed under the EU precautionary principle could be challenged in front of an arbitration panel and could justify compensations;

1. Is concerned that the splitting of the EU Mercosur agreement into the EMPA and the ITA may be incompatible with Article 218(2) and (4) TFEU, as well as with the principle of conferral, the institutional balance principle and the sincere cooperation principle enshrined in Article 4(3) and Article 13(2) TEU; is concerned that the negotiation guidelines issued by the Council may not be respected and that this may affect the voting rules in the Council and prevent national parliaments from having their legitimate say on the agreement;

2. Is concerned that the rebalancing mechanism provided for in the EU Mercosur agreement may, at least, be incompatible with Articles 11, 168, 169 and 191 TFEU and Articles 35, 37 and 38 of the Charter and may threaten the EU's ability to maintain the autonomy of the EU legal order;

3. Is concerned that the EMPA and the ITA may compromise the application of the precautionary principle, which could result in incompatibility with, at least, Articles 168, 169 and 191 TFEU as well as Articles 35, 37 and 38 of the Charter; is also concerned that the precautionary principle might be adversely affected by the authority granted to an arbitration panel to assess the EU's application of the precautionary principle;

4. Decides to seek an opinion from the Court of Justice, in accordance with Article 218(11) TFEU, 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 in seeking to obtain that conclusion;

5. Instructs its President to quickly take the necessary measures to obtain such an opinion from the Court of Justice and to forward this resolution, for information, to the Council and the Commission.