European Parliament

Ratification scenarios for the EU-Mercosur agreement

On 6 December 2024, European Commission President Ursula von der Leyen and the four founding members of Mercosur – Argentina, Brazil, Paraguay and Uruguay – reached a political agreement on the trade pillar of the EU-Mercosur association agreement. Additional negotiations had taken place since March 2023 to address various concerns sparked by an earlier 2019 agreement in principle. While the legal basis of the text, now referred to as the EU-Mercosur Partnership Agreement, is still unknown, several ratification scenarios could be envisaged.

Background

The negotiations on the EU-Mercosur agreement were based on 1999 Council negotiating guidelines that sought to conclude an association agreement with Mercosur to upgrade the 1995 bloc-to-bloc Interregional Framework Cooperation Agreement (IFCA), in force since 1999. The three-pronged structure of the agreement originally envisaged is similar to other such agreements the EU concluded in the past with Central America (2012) and Chile (2002, modernised in 2024): it comprises a trade pillar, a political dialogue pillar and a cooperation pillar. The Commission, in charge of the trade pillar negotiations, published the chapters of the trade pillar on its dedicated website as agreed under the 2019 political agreement. In contrast, the European External Action Service, in charge of the negotiations on the other parts, has not published the text of the remaining pillars, although the corresponding negotiations closed in July 2020.

Following the political agreement on the trade pillar reached in December 2024 and the publication of its chapters as amended, and of a summary of the changes, the text is now due to undergo legal revision ('scrubbing') prior to being translated into the EU's official languages. Once this is completed, the Commission will submit to the Council proposals for Council decisions to sign and conclude the whole agreement. The agreement will then need to be ratified.

Commission proposals for Council decisions to sign and conclude the agreement

The Commission proposals, expected in mid-2025, will spell out the substantive legal bases that determine **whether the EU-Mercosur agreement will be submitted for ratification as a mixed agreement** that – next to provisions relating to the EU's exclusive trade competence ('EU-only' agreement) set out in Article 207 of the Treaty on the Functioning of the European Union (TFEU) – contains provisions concerning competence(s) shared between the EU and its Member States. It is also conceivable that the agreement will be **split into two agreements** (one EU only, one mixed) that either: a) enter into force consecutively – first as an *interim* EU-only agreement, which then elapses once the *final* mixed agreement has been ratified by the EU Member States; or b) co-exist as legally separate agreements after their ratification.

Unlike EU-only agreements, **mixed agreements not only require Council ratification and European Parliament consent but also ratification by the EU Member States** in accordance with their constitutional requirements. The Council adopts its decisions to sign (under Article 218(5) TFEU) and – after the European Parliament has given its consent – concludes (under Article 218(6)) the agreement and, if necessary, agrees on its provisional application. It does so by qualified majority, with Article 218(8) providing a number of exceptions when unanimity is required, including for association agreements.

Ratification scenarios

As the Commission has not indicated the legal basis it intends to propose for the EU-Mercosur agreement, several ratification scenarios used in the recent past could be envisaged.

1) The EU-Canada agreement model: A single mixed agreement

The Commission's initial proposal for Council decisions to sign and conclude the EU-Canada comprehensive economic and trade agreement (CETA) was subsequently modified to use a mixed legal basis. In its proposal for a Council decision, the Commission states that – since it could not agree with EU Member States

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whether CETA was a mixed agreement, and since CETA's provisional application since 2017 was a priority – CETA was based on Article 43(2) (agriculture/fisheries), Article 91 (transport), Article 100(2) (transport), Article 153(2) (social policy), Article 192(1) (environment) and the first subparagraph of Article 207(4) (common commercial policy), in conjunction with Article 218(5), and was thus deemed a mixed agreement. Experts have argued that several legal bases (e.g. for the environment) would not have been applicable to CETA in light of the 2017 Court of Justice of the European Union (CJEU) Opinion 2/15 on the distribution of exclusive and shared competences in the EU-Singapore free trade agreement (FTA). Since CETA's ratification at EU level, its ratification by EU Member States (17 of 27 have ratified as of December 2024) has been very slow. Mixed agreements bear the risk of blockage by a single EU Member State.

2) The EU-Chile agreement model: Split into an *interim* EU-only agreement and *final* mixed agreement

In 2023, the Commission submitted two proposals for Council decisions to sign and conclude the text for the modernisation of the 2002 EU-Chile association agreement. The proposals envisaged an interim EU-only agreement entering into force after ratification at EU level and ceasing to apply once a mixed agreement including the EU-only part enters into force after its ratification by all EU Member States:

- a proposal for an **EU-only EU-Chile interim trade agreement** (ITA) based on Article 91(1), Article 100(2) and Article 207(4) first paragraph, in conjunction with Article 218(5), adopted by a related Council decision; and
- a proposal for an **EU-Chile Advanced Framework Agreement** (AFA), **a mixed agreement including the trade pillar**, based on Article 91(1), Article 100(2), Article 207(4) first paragraph, Article 212 (economic, financial and technical cooperation with third countries), in conjunction with Article 218(5), adopted by a related Council decision. In its proposal for the AFA, the Commission states that the substantive legal basis for the Council decision depends mainly on the AFA's objective and content. It adds that 'the AFA pursues two main objectives and has two main components which fall within the scope of the common commercial policy, transport, and of the economic, financial and technical cooperation with third countries'. It concludes that, given 'the fact that the predominant components of the Agreement are trade policy, transport, and economic, financial and technical cooperation with third countries, the voting rule for this particular case is therefore qualified majority'.

The ratification of the EU-Chile agreement may be seen as a pertinent model, given the considerable similarities in the structure (objectives) and content with the EU-Mercosur agreement, despite the absence of some elements (such as investment protection and far-reaching investment liberalisation) from the latter due to a Council mandate dating back to a pre-Lisbon Treaty era, when investment was entirely an EU Member State competence. Moreover, the Council mandate (Title XI) refers to an ITA.

3) The EU-Singapore agreement model: Split into separate EU-only and mixed agreements

After the 2017 CJEU Opinion 2/15 determined that the EU-Singapore FTA contained elements of shared competences (i.e. provisions on portfolio investment and investment dispute settlement) and therefore would have been deemed a mixed agreement, in 2018 the EU-Singapore FTA was split into an FTA based on Article 91, Article 100(2) and Article 207(4) and into an investment protection agreement (IPA) based on Article 207(4), both in conjunction with Article 218(5). The former entered into force and the latter continues its process of ratification by EU Member States. The EU-Vietnam FTA underwent a similar split, the result of which is two legally separate agreements that remain separate after ratification.

Consent by the European Parliament, and formal conclusion

Under Rule 117(7) of its Rules of Procedure (RoP), Parliament decides by a single vote – in accordance with Rule 107 RoP – on a Council request to give its consent to the conclusion, renewal or amendment of an international agreement. It provides that, if Parliament declines to give its consent, its President must inform the Council that the agreement at issue cannot be concluded, renewed or amended. The consent procedure may not be prolonged for more than one year.

Following Parliament's consent, the Council would be able to adopt a decision to conclude the agreement pursuant to the procedure and voting rules set out in Article 218(6) and Article 218(8) TFEU respectively.