

# THE EU-MERCOSUR SPLITTING: A DEMOCRATIC HIJACK

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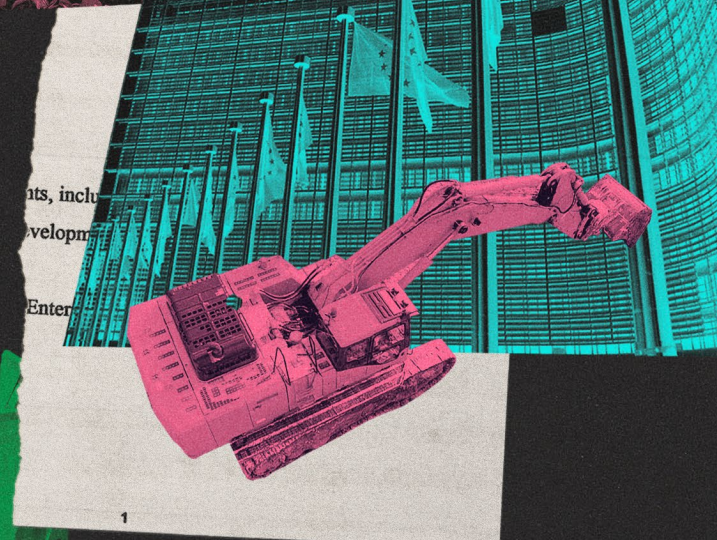
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Mercosur trade agreement

Agreement in principle

Brussels, 1 July 2019

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## HOW THE EUROPEAN COMMISSION BYPASSES OPPOSITION TO CONTROVERSIAL TRADE DEAL

The free-trade agreement concluded with Mercosur (Brazil, Argentina, Paraguay, Uruguay), would be the biggest trade deal ever adopted by the European Union, covering a market representing 774 millions of citizens.

Trade deals are often described in purely economic terms, but in reality they impact our everyday life on issues as diverse as the quality of the food we eat, jobs, our environment, health and fundamental rights. That is why for many years, civil society organisations have denounced the negative impacts the EU-Mercosur deal would have on climate, deforestation, agriculture and human rights.

The controversy around trade deals is further fuelled by a lack of transparency, democracy, citizen participation, and the involvement of civil society organisations representing the public interest. In 2020, the EU Ombudsman<sup>1</sup>, the ethics watchdog, issued a decision criticising the failure of the European Commission to finalise an updated sustainability impact assessment before concluding the EU-Mercosur trade negotiations. In 2023, the EU Ombudsman addressed a direct letter to the president of the European Commission, Ursula von der Leyen, asking her to consider publishing the draft additional instrument proactively.<sup>2</sup> The Commission did not follow the Ombudsman recommendations and the EU-Mercosur negotiations have thus reinforced a more-than-problematic decision-making pattern.

The final EU-Mercosur text was ultimately published in December 2024. After a legal scrubbing and translation in all the EU languages, the text needs to be ratified by the EU institutions. However, the European Commission already expressed its wish to use a procedural trick to fast-track the ratification and bypass the opposition of several member states and national parliaments: the so-called 'splitting'. In this briefing we expose why this splitting manoeuvre of the EU-Mercosur deal damages EU democracy and citizens' trust in EU institutions.

# MASSIVE OPPOSITION TO EU-MERCOSUR AND SO-CALLED 'FREE'-TRADE DEALS

International trade is one of the most controversial European policies. For many years, negotiations of free-trade agreements have resulted in massive opposition movements across the continent, bringing together diverse social groups, organisations and interests. Hundreds of thousands of people have protested against TTIP and CETA throughout Europe, including 320,000 in Berlin alone in September 2016. From farmers to climate activists, from labour unions to consumer groups, the opposition to free-trade deals is clear.

The negotiations on EU-Mercosur lasted more than 25 years and have been marked by a complete lack of transparency<sup>3</sup> and participation of civil society. Members of the European Parliaments have also complained on many occasions about the secrecy of the negotiations and the lack of consultation. More than 400 organisations<sup>4</sup> from both sides of the Atlantic have recently expressed their firm opposition to the deal. Opponents to the deal include labor unions, NGOs, Indigenous Peoples, farmers organisations and consumer groups<sup>5</sup>. The EU-Mercosur deal is the epitome of an outdated, unsustainable, undemocratic trade agreement.

It is no secret that the main proponents of the deal are big multinational companies on both sides of the Atlantics. The automotive<sup>6</sup> industry, agri-business and pesticides producers<sup>7</sup> like BASF<sup>8</sup> and Bayer, have been strongly pushing for the deal. It is no surprise that these companies are also the main beneficiaries of the deal.

In 2024-2025, farmers' protests against EU-Mercosur spread in France,<sup>9</sup> Belgium,<sup>10</sup> Ireland,<sup>11</sup> Spain,<sup>12</sup> Poland,<sup>13</sup> Czech Republic<sup>14</sup>. Several national and regional parliaments have also opposed the deal. Already in 2019<sup>15</sup> the Austrian Parliament vetoed EU-Mercosur in a binding vote for the Austrian government.<sup>16</sup> The Walloon<sup>17</sup> and Brussels<sup>18</sup> Parliaments also voted against EU-Mercosur. The same goes for the Dutch Parliament,<sup>19</sup> and the French Senate<sup>20</sup> and National Assembly.<sup>21</sup> Several governments have additionally expressed reservations or even strong opposition to EU-Mercosur, such as France, Ireland, Poland.

Despite this massive rejection of free-trade, the European Commission persists in conducting less and less democratic ways to push through trade policies and deals, opting for procedural tricks to bypass oppositions and silence public debate.

## SPLITTING TRADE DEALS TO BYPASS OPPOSITION

Anticipating a long, complicated and potentially unsuccessful, ratification process for EU-Mercosur, the European Commission wants to fast-track the ratification with a splitting maneuver. But what does it mean concretely?

While 'trade' is an exclusive competence of the EU, most international agreements' scope go beyond trade and are considered as mixed agreements. This means competences are shared between the EU and its member states. Thus, EU-Mercosur is a mixed agreement because it contains a trade part (competence of the EU) as well as a political and cooperation pillar (shared competence with member states).

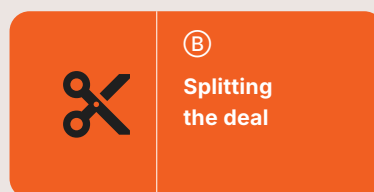
The ratification of mixed agreements requires a vote in the European Parliament and a unanimous vote from EU governments in the Council. This means every member state has a right to veto. In the case of EU-Mercosur, a country like France could then block the ratification. Furthermore, the deal must also be ratified by EU member states in accordance with their constitutional requirements, which usually includes approval by national parliaments. In Belgium for example, trade agreements must be ratified by both the Flemish and Walloon parliaments in order to be ratified by the federal State.

The splitting of the agreement would allow a different ratification process. If the Commission follows the same architecture than for previous agreements, the trade part – an exclusive competence of the EU – would be split from the political and cooperation pillar – shared competence. The trade part would still go through the Council and European Parliament votes. However, the Council would only need a qualified majority instead of unanimity to approve the deal. A qualified majority is reached if two conditions are simultaneously met:<sup>22</sup>

- 55% of member states vote in favour - in practice this means 15 out of 27
- the proposal is supported by member states representing at least 65% of the total EU population

The ratification could still be prevented by a blocking minority but it would need to include at least four Council members. Furthermore, approval by all relevant parliaments at national level would not be necessary anymore. It means that a rejection of the deal in a national or regional parliament could not block EU-Mercosur from being ratified.

## THE EU COMMISSION'S 'DIVIDE AND CONQUER' TRICK: SPLITTING THE DEAL



## **A DEMOCRATIC HIJACK BREACHING EU LAW**

The EU-Mercosur case has received extensive media coverage and is facing significant opposition. But problems related to the splitting issue go beyond the EU-Mercosur agreement. Indeed, a series of trade agreements have already been adopted through this anti-democratic trick, which has become the European Commission's new routine for forcing controversial trade agreements through.

After the extremely difficult CETA negotiations, the European Commission changed its trade policy processes and decided to go for a splitting of all mixed agreements. Since then, all trade deals with investment protection chapters (with the controversial ISDS mechanism) have been ratified through a splitting: EU-Chile, EU-Vietnam, EU-Singapore. Bypassing national parliaments and unanimity among Member States has become the new routine of EU trade policy. However, EU-Mercosur would be the first trade deal with no investment protection chapter, that is offered for splitting. This would set a dangerous precedent.

A legal analysis authored by Prof. Dr. Markus Krajewski and Julian Werner<sup>23</sup> concludes that a splitting of EU-Mercosur breaches the mandate given by the Council to the Commission and could violate EU law. They suggest that if the Commission presents a proposal for the adoption of a "split" or of an "interim" free trade agreement, an affected Member State or the European Parliament could immediately seek the opinion of the European Court of Justice, on the basis of Article 218 (11) of the Treaty on the Functioning of the EU (TFEU). Client Earth's Amandine Van den Berghe legal analysis<sup>24</sup> led to similar conclusions and added that a splitting would also violate the obligation of loyal cooperation referred to in Article 4 (3) of the Treaty on EU (TEU) and Article 13 (2) TEU. With five national and regional Parliaments having already voted against EU-Mercosur, it is even more important that all levels of decision-making at European and member state level are consulted.

## **ANOTHER TRADE IS POSSIBLE**

The splitting maneuver of EU-Mercosur is the latest development of a process that, from the negotiating mandate to the ratification, lacked democratic participation and transparency. The European Commission could have replied to the opposition against EU-Mercosur by understanding the roots of discontent. On the contrary, it chose to enforce the undemocratic practice of splitting deals to bypass Member States' veto in the Council and the vote of national parliaments.

The splitting of trade deals in order to side-line public opposition fuels distrust in EU institutions and gives arguments for Eurosceptic forces. This will only benefit the far-right. But the splitting issue goes beyond the narrow scope of trade policy. In a global political context where far-right leaders like Putin and Trump (from the outside) and Orban (from the inside) attack the European Union, the priority for the EU should be to reinforce its democratic processes rather than undermining them.

Trade negotiations should not be secret and undemocratic. There are many other ways to conduct trade negotiations that can strengthen democratic scrutiny, civil society participation and rebuild trust in the EU institutions.

We ask the European Commission to not go for a splitting of EU-Mercosur and to reopen the negotiations of the EU-Mercosur deal. Another trade is possible, alternatives are numerous. It only takes political courage.

## Endnotes

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### Friends of the Earth Europe

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