Assessing the political dialogue and cooperation pillar of the EU-Mercosur Association Agreement: towards a bi-regional strategic partnership?

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ABSTRACT

On 28 June 2019, the European Union and Mercosur reached a political agreement to establish an interregional trade agreement as ‘part of a wider Association Agreement between the two regions’. The European Commission and Mercosur member states went on to publish a summary of the negotiating results, while both sides started the process of legal revision. Meanwhile, the European External Action Service and Mercosur representatives were negotiating the political dialogue and cooperation part of the Association Agreement, which was completed one year later, on 18 June 2020, and has not been published. The present report is about the latter document, to which the author has been granted confidential access: it scrutinises its content, compares it to previous and similar agreements, analyses its prospects of ratification and impact – with a special focus on Brazil – and assesses its potential to cement a meaningful EU-Mercosur strategic partnership. The study is enriched by direct, off-the-record interviews as well as public documents and analyses. Its originality resides in the consideration of informal practices, besides and beyond formal frameworks, to estimate the odds of ratification and implementation of the agreement.
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<tr>
<td>AA</td>
<td>Association Agreement</td>
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<tr>
<td>APC</td>
<td>Association Parliamentary Committee</td>
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<tr>
<td>CAN</td>
<td>Andean Community (customs union that brings together Bolivia, Colombia, Ecuador and Peru)</td>
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<tr>
<td>CETA</td>
<td>Comprehensive and Economic Trade Agreement (between the EU and Canada)</td>
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<td>CMC</td>
<td>Common Market Council, Mercosur’s highest institution</td>
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<td>CSF</td>
<td>Civil Society Forum</td>
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<td>DAGs</td>
<td>Domestic Advisory Groups</td>
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<td>DG TRADE</td>
<td>Directorate General for Trade of the European Commission</td>
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<td>EEAS</td>
<td>European External Action Service</td>
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<td>EESC</td>
<td>European Economic and Social Committee</td>
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<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>EU</td>
<td>European Union. By extension, it is also applied to the European Community pre-1993</td>
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<tr>
<td>EUROLAT</td>
<td>Euro-Latin American Parliamentary Assembly</td>
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<tr>
<td>FTAA</td>
<td>Free Trade Area of the Americas</td>
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<td>IFCA</td>
<td>Interregional Framework Cooperation Agreement, in short Framework Agreement</td>
</tr>
<tr>
<td>JPC</td>
<td>Joint Parliamentary Committee, predecessor to Mercosur’s parliament</td>
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<tr>
<td>LAC</td>
<td>Latin America and the Caribbean</td>
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<tr>
<td>MERCOSUR</td>
<td>Southern Common Market</td>
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<tr>
<td>MP</td>
<td>Member of Parliament, congressperson</td>
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<td>NGO</td>
<td>Non-governmental Organisation</td>
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<tr>
<td>Parlacen</td>
<td>Central American Parliament</td>
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<td>Parlandino</td>
<td>Andean Parliament</td>
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<td>Parlasur</td>
<td>Mercosur Parliament</td>
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<td>Parlatino</td>
<td>Latin American Parliament</td>
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<td>SP</td>
<td>Strategic Partnership</td>
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<td>TSD</td>
<td>Trade and Sustainable Development</td>
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Methodology and structure

This report draws on four types of sources. First, it relies on the unpublished EU-Mercosur Association Agreement, to which the EEAS granted the author confidential access in order to write the analysis. Second, it scrutinises official documents such as the EU-Mercosur Interregional Framework Cooperation Agreement (1995) and the decisions and declarations produced afterwards by EU institutions and Mercosur countries. Third, it reviews and takes stock of scholarly papers and key policy reports that have been published over the last two decades. Fourth, the author conducted about twenty interviews under the promise of confidentiality with top officials from EU institutions, governmental advisors or diplomats based in Brasilia, Brussels, Buenos Aires, Hamburg, Lisbon, Madrid, Montevideo and Paris, as well as NGO representatives and experts from both regions.

The report is organized in eight parts. The first part introduces the history of EU-Mercosur relations since the beginning of interregional negotiations in the 1990s. The second part identifies the motives behind the search for a new agreement. The third part describes the substantive content and institutional structure of the proposed agreement. The fourth part delves into two key issues: the environment and geopolitical motivations. The fifth part digs into legal and cultural asymmetries between the parties that may get in the way of ratification or implementation. The sixth part focuses on Brazil, the largest Mercosur member state. The seventh part analyses the process and prospects of finalisation and ratification. The eighth part considers the choices before the EU and advances a few policy proposals.

1 History of EU-Mercosur relations

The Interregional Framework Cooperation Agreement (IFCA) that currently structures the relations between European Union and Mercosur was signed in Madrid on 15 December 1995, under the Spanish presidency of the EU. It was ‘exactly the same day that the Ouro Preto Protocol came into force, locking in Mercosur’s option for a customs union’ (Sánchez-Bajo, 1999, p. 931). The IFCA followed from the 1992 Inter-Institutional Co-operation Agreement (signed under the Portuguese presidency of the EU), the Joint Declaration of 22 December 1994, and the Declaration on Political Dialogue of 15 September 1995, and it entered into force on 1 July 1999. Its objective was ‘to strengthen existing relations between the Parties and to prepare the conditions enabling an interregional association to be created.’ The Association Agreement (AA) under scrutiny in this report is a late delivery on such promise. If ratified, it will replace and upgrade the IFCA.

The AA has two components: a Trade and Trade-related Matters Part (‘trade part’) and a Political Dialogue and Cooperation Part (‘political part’). The trade part was negotiated by the European Commission (DG TRADE) and finalised in Brussels on 28 June 2019, while the political part was negotiated by the European External Action Service (EEAS) and agreed upon on 18 June 2020. Both parts complement each other and should form a single package. However, this report focuses on the political part. In order to do a proper analysis, it is necessary first to understand the rationale and evolution of EU-Mercosur relations.

The EU initiative to launch interregional negotiations with Mercosur in the 1990s was a strategic reaction to the Free Trade Area of the Americas (FTAA), a U.S.-led initiative that, conducted between 1990 and 2005, encompassed thirty-four hemispheric countries (all but Cuba) and threatened to close their markets to

1 Mercosur is a regional organization established by the Treaty of Asuncion on 26 March 1991. Its founding and current member states are Argentina, Brazil, Paraguay, and Uruguay. While Venezuela was accepted in 2012, it has been suspended since December 2016. On 17 December 1994, the original members signed the Ouro Preto Protocol establishing Mercosur’s institutional structure and deepening the economic policies set forth in the founding treaty.

extra-regional powers (Malamud, 2020). Accordingly, the IFCA covered ‘trade and economic matters,’ but also ‘cooperation regarding integration and other fields of mutual interest.’ The institutionalisation of ‘regular political dialogue’ sought ‘to back up and consolidate closer relations.’ The EU wanted to ‘at all costs avoid an upsurge of US influence in the continent’ (Inter-American Development Bank, 1999, p. 34). Mercosur’s position was not purely passive though, as its members ‘used competition between the EU and the US to their advantage’ (Meissner 2018, p. 8). In sum, EU-Mercosur interregional negotiations were part of a broader geo-economic competition between the EU and the United States, which developed within the permissive geopolitical conditions brought about by the dissolution of the Soviet Union and the end of the Cold War.

The EU motives to promote the IFCA were mixed. Ramón Torrent, at the time Director for International Economic Relations in the Legal Service of the EU Council, has offered an insider’s view of what he calls ‘a strategy by default.’ First, decisions were made in Brussels not ‘on the basis of economic considerations but rather geo-strategic considerations’ (Torrent, 2013, p. 47). The negotiations were intended to provide ‘the first ‘inter-regional’ agreement between two regional integration organisations, an agreement that would be the best demonstration of ‘open regionalism” (Torrent, 2013, p. 48). The agreement would show to the world that the EU was not a fortress but a beacon. Second, the European Commission pushed Mercosur to upgrade its foundational treaty in order to grant the bloc legal personality, a status on which the recommendation to open negotiations was conditional. This requirement was reinforced by a ‘naive reading’ of the Protocol of Ouro Preto (Torrent, 2013, p. 49), which misled the EU officials into thinking that Mercosur was entitled to make joint decisions without going through individual ratification by each member state. Third, given the previous blunder, the asymmetry of negotiating capacity was so evident that the framework agreement was ‘finalized in Brussels and passed directly to the signature of the Mercosur governments (which did not even bother to comply with the formality of adopting a [Common Market Council (CMC)] decision in order to approve it as Mercosur’) (Torrent, 2013, p. 52). Diplomats of two Mercosur countries that took part in the negotiations confirmed for this report that centralisation on the EU side contrasted with decentralisation on the Mercosur side all throughout the process.

2 The push for a new agreement

In the two decades past since the coming into force of the IFCA, the evolution of both blocs has diverged. The European Union has broadened and deepened: its membership went from 15 to 27, and its institutional structure grew more complex after the treaties of Amsterdam, Nice, and Lisbon. In contrast, Mercosur’s membership has not varied in spite of a short-lived inclusion of Venezuela, and its legal structure remains chiefly the same. The IFCA allowed for regular interregional meetings and protracted trade negotiations, but it did not institutionalise convergence between both regions and did not prevent China, rather than the EU, from making commercial inroads in the Mercosur countries as the United States receded (Urdinez, Mouron, Schenoni and Oliveira, 2016). Today, the EU is Mercosur’s second biggest trade partner after China.

EU-Mercosur negotiations for an association agreement, which on the EU side followed the 1999 Council negotiating directives adopted in Brussels on 17 September, started in April 2000. The negotiations encompassed a broad spectrum of chapters but excepted provisions on investment, and they were suspended in 2004 after an exchange of market offers revealed substantial differences between the parties. Interregional negotiations were relaunched in 2010 but stalled again in 2012. After an exchange of market access offers in May 2016, negotiations regained momentum as a result of, among other factors, the arrival in power of pro-business presidents in Argentina and Brazil, and the growing menace of US unilateralism expressed by Donald Trump. However, the EU negotiating mandate remained unchanged. The subsequent

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negotiation rounds witnessed progress on a wide range of chapters, although the parties tended to remain in disagreement on each other’s sensitive issues. The European Parliament consistently supported EU-Mercosur negotiations and stressed their economic and political importance (European Parliament, 2013). It also systematically regretted their slow pace, deplored the protectionist measures on trade and investment taken by some Mercosur countries, and reiterated the importance of including respect for democratic principles, fundamental and human rights, and the rule of law, as well as environmental and social standards. For the Mercosur countries, on the other hand, the heart of the negotiations was exclusively the trade part.

The parties failed to conclude an agreement at the end of 2017 as originally planned, and trade negotiating rounds dragged throughout 2018. After each round, the European Commission issued short technical reports that recorded both progress and obstacles; the governments’ declarations, on the other hand, invariably maintained an optimistic tone and the promise of a near agreement. Depending on the interlocutor, the failure to reach an agreement was attributed to three reasons: substantive disagreement between the parties, Mercosur’s internal weaknesses, and the EU’s internal disagreements. Unexpected to most observers, the parties eventually reached an agreement on 28 June 2019 that was announced by several EU and Mercosur heads of state during the G20’s Summit in Osaka, Japan. What remained under the public radar was that it was just half of the Association Agreement, the trade part. The political part was agreed on one year later, on 18 June 2020, and – contrary to the trade part – remains unpublished. The EEAS granted confidential access to the document for this report.

3 The substance of the new agreement

To assess the value added by the AA it is necessary to compare it to the current IFCA, but also to similar agreements more recently signed by the EU with other Latin American countries. A proper comparison should encompass both matter and form.

3.1 Content matter

Consulted for this report, a source from EEAS described the novelties of the AA vis-à-vis the IFCA:

*The IFCA aimed to intensify cooperation and political dialogue on trade, with a view to gradual trade liberalisation and, ultimately, the signature of a full Association Agreement. The IFCA is therefore a ‘stepping stone’ towards the preparation of the EU-Mercosur Association Agreement.*

*In addition to a fully-fledged free trade agreement, the AA contains a more ambitious political dialogue and cooperation chapter, with a significantly bigger weight on areas such as (a) environment, climate change and biodiversity; (b) digital development including cyber security, personal data protection, digital economy; (c) labour rights and corporate social responsibility; and (d) international cooperation on security and organised crime.*

*These areas are key policy priorities for the EU, the success of which critically depends on an active global engagement, particularly with like-minded partners such as Mercosur countries.*

*Furthermore, in comparison to the IFCA, the AA gives a central role to (a) the promotion of sustainable development, and (b) the active involvement of civil society in the implementation of the agreement.*

In comparison with agreements signed with other countries or blocs, the source added:

*The political dialogue and cooperation chapters are very similar to the proposed modernised agreement with Mexico (formal adoption still pending), even if the EU-Mercosur agreement is slightly more extensive, including dialogue and cooperation on regional integration, civil space and the export of*

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services to the EU. The modernised EU-Chile agreement is still under negotiation but broadly follows the same structure.

In sum, the proposed AA is deeper than the previous framework and similar to other agreements currently under negotiation [with Chile and Mexico], with the addendum of regional integration issues that are not pertinent when negotiating with single countries instead of regional blocs. In the latter respect, a similar provision exists in the Association Agreement between the EU and Central America.  

### 3.2 Institutional structure

Under the IFCA, several ministerial meetings and summits were held, but they were convened on an ad-hoc basis. The last summit took place in 2010, on the occasion of the relaunch – one of many – of the EU-Mercosur negotiations. The AA foresees a more complex architecture for engagement under the Summit configuration, which will continue to be ‘the highest level of political and policy dialogue.’ The text provides for a structured dialogue at ministerial level (Association Council), senior official level (Association Committee), and technical level (sub-committees that may be created by, and report to, the Association Committee).

The Association Council and Association Committee are arenas for exchange and coordination, but they are also decision-making bodies – formally. At the Council, ‘Decisions shall be binding on the Parties, which shall take all necessary measures, in accordance with their internal procedures, to implement them.’ In turn, the Committee (which assists the Council) ‘shall have the power to take decisions as provided for in this Agreement or where such power has been delegated to it by the Association Council.’ However, as decisions require ‘mutual agreement’ and implementation remains in the hands of the parties, ‘binding’ decisions are doomed to be ‘voluntary,’ whether at the decision-making stage or at the implementation stage.

As regards composition, both the Council and the Committee are to have different constitutions depending on whether they are addressing matters related to trade or to political dialogue and cooperation.

The AA also provides mechanisms for NGOs, business representatives, trade unions, the EU Economic and Social Committee, and the European Parliament to bring concerns to the table through the Domestic Advisory Groups (DAGs), the Civil Society Forum (CSF), and the Association Parliamentary Committee (APC). In the EEAS view, the political dialogues are the main forum where parties update each other on key policy developments, coordinate positions in multilateral fora, define new needs for international cooperation and raise issues, including on topics such as deforestation and indigenous peoples’ rights. The political dialogues constitute one of the most significant benefits this agreement would bring: an institutionalised space of dialogue to foster mutual understanding, define common goals and address concerns. This institutional space at Mercosur level does not exist at present.

Contrary to the last claim, similar spaces (such as a consultative civil society forum, a political concertation forum, a labour committee, and a parliamentary instance) do exist in Mercosur. They just do not work as in the EU. According to an expert consulted for this report, some of the institutions proposed in the AA look overambitious when considering the performance that similar structures have shown in Mercosur and other Latin American experiences. As argues Doctor (2015, p. 981), ‘interregionalism cannot compensate

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6 The Association Council can address ‘any major issue arising within the framework of this Agreement.’ As such, its decisions cover both the political and trade parts of the AA.
for low intraregional institutionalisation or ameliorate the impacts of intergovernmentalism or substitute for weak political willingness to act to deepen regional integration.’

The AA contemplates the establishment of institutional and social bi-regional structures. As mentioned, the institutional structures prominently include the Association Parliamentary Committee (APC), designed ‘to foster closer relations and ensure regular dialogue between the European Parliament and the Parliament of Mercosur.’ According to the text, the APC shall consist of members of the European Parliament, on the one hand, and of the Parliament of Mercosur (Parlasur) on the other; it will be informed of the implementation of the AA and may make recommendations to the Association Council. Given the incomplete, consultative, and controversial nature of Parlasur, though, the APC may prove useful for bi-regional exchange of information but hardly become an effective instrument of accountability or monitoring. However, it could be used to promote ‘integration from below’ and ‘framed participation’ (Dabène 2009, p. 168; see Section 8 of this report), enticing the mobilisation of civil society.

The political part of the AA also foresees two social rather than governmental structures, the Domestic Advisory Groups (DAGs) and the Civil Society Forum (CSF). They ‘should be comprised of a balanced representation of independent civil society organizations’ from across various domains, but the text does not establish any nomination procedures. According to EEAS sources, DAGs are a relatively new institutional device that have allowed, in cases such as the EU agreement with the Andean countries, to identify and deal with infringements to labour regulations. However, the written record is less promising. In a report based on a worldwide survey and several interviews with EU and non-EU DAG members, Martens, Potjomkina and Orbie (2020: 74) found that,

>DAGs have attained little political relevance. There are numerous reasons for this, starting with organisational issues... At a more substantive level, DAG members criticised a lack of genuine dialogue between DAGs and both governments and the European Commission, which constitutes an accountability deficit. And besides the perceived neglect of DAGs and their work, DAG members view their limited political impact also as a result of missing instruments: there are still no tools for DAGs to start a dispute settlement mechanism. To make better use of DAGs’ expertise and enable them to fulfil their assigned monitoring role, improvements should be made at various levels: ensure that regular meetings take place; provide sufficient resources for participation and the support of a secretariat; ensure independent and representative DAG membership; establish clear work programmes; invest in DAG-to-DAG relations; improve the process of developing joint statements; establish more interaction between DAGs and governments: institutionalise relations between DAGs and parliaments; provide structural resources for conducting research; establish feedback loops with governments and the European Commission; and maximise enforceability of the TSD chapters.

The European Commission cannot be unaware of these shortcomings. In a report on the role of civil society under the European Union/Colombia/Peru/Ecuador Agreement, the European Economic and Social Committee (EESC, 2020: 3) found that,

>the Andean governments have delayed setting up and recognising the Domestic Advisory Groups (DAGs), [...] they have not provided their members with travel funds to attend meetings, and [...] the Peruvian government has not facilitated the operation of an autonomous DAG [...] The European Commission needs to press the Andean governments to shoulder their responsibilities for the operation of their countries’ DAGs and for travel by their representatives [...] The EESC calls on the European Commission to finance the attendance at meetings of all members of the European DAG. The EESC is grateful for the support given to the representatives of Andean civil society and would like this assistance to be maintained until the Andean governments take up this responsibility.

In short, the operation and performance of these institutional devices are dependent on EU funding and the (scarce) good will of the non-European counterparts.
The DAGs, as well as the CSF, are also mentioned in the document that summarises the trade part of the AA as the ‘civil society consultation mechanisms built into the agreement.’ Interviewed for this report, representatives of civil society organisations in Mercosur revealed that they were unaware of the existence of the political part of the AA. The judgement they make of the AA is limited to the trade part, the diffusion of which has raised more concerns than serenity. For example, a scholar activist complained that women were never mentioned in the agreement, while in fact women are mentioned 22 times – and girls five – in the political part. The opaqueness of the negotiating process, but also of the negotiating results, rendered impossible for actors on the ground to assess the fitness of the AA provisions and institutional structure. As long as compliance depends on legitimacy, even a flawless institutional design may falter if those who are bound by it do not feel a modicum of ownership.

4 Key issues: ecopolitics and geopolitics

There are issues that cut transversally the two parts of the AA, and the social and ecological transition tops them all (Sanahuja and Rodríguez, 2021). These issues have become highly politicised in recent years, and variegated sources consulted for this report fear that they have the potential to paralyze the agreement and even bring down governments. Environmental concerns, albeit incorporated in the text, might derail ratification if they remain unsatisfied. Geopolitical objectives, in contrast, are not explicit in the text but are frequently mentioned in published documents and off-the record communications. While the AA reference to a ‘strategic partnership’ may be a functional equivalent to a geopolitical alliance, the concept is never defined. According to the consulted sources, which include top government officials from both blocs, the geopolitical objectives of the AA include dealing with the superpowers (namely United States and China) and resisting strategic subordination. The twin concerns of protecting the environment and preventing geopolitical decline have been succinctly connected by Nolte and Saraiva (2021): ‘Europe has yet to find the correct balance between geopolitics and ecopolitics. The agreement with Mercosur is the first test.’

4.1 The environment

Apart from trade, the environment has become the most controversial bilateral issue. This expresses legitimate concerns as well as a hidden agenda, as some actors – governments included – resort to environmental arguments with unconfessed protectionist interests (Sanahuja and Rodríguez, 2021, p. 20). An EEAS source emphasised that the political dialogue and cooperation chapters turn the AA into a strategic partnership, meaning that it goes beyond immediate trade benefits and helps achieve key environmental goals:

Through political dialogue and cooperation, the agreement will be a key lever to accelerate the green transition in Mercosur partners, including by facilitating the transfer of green technologies and promoting sustainable value chains between our regions. The agreement foresees numerous spaces for structured dialogue between both regions, involving a broad range of actors, including business associations and civil society. The agreement will therefore be one of the key enablers to project the objectives of the European Green Deal in our relations with Mercosur.

Although the AA has staunch supporters among EU member states, chiefly Portugal and Spain, others disagree regarding its suitability. Between the public announcement of the trade part and the confidential
completion of the political part, the Netherlands and France presented a non-paper asking for bolder goals and means. Their trade ministers called for the EU ‘to improve its approach in analysing the socio-economic aspects of trade effects, and to increase its ambition regarding the nexus between trade and sustainable development in all its dimensions, consistent with the implementation of the European Green New Deal.’ The proposal received no collective support and was not included in the political part of the AA.

Environmental NGOs have been harsh in their criticism. Greenpeace got access to the text of the political part and prepared a seven-page document denouncing that ‘the AA has major shortcomings, particularly with regard to climate and environmental protection.’ Climate and environmental protection, the document goes, is ‘merely “desired”, with weak legal status.’ Furthermore, it follows, ‘while the European Commission is happy to impose sanctions when it comes to other trade agreements or areas, it presents flimsy reasons for resisting doing the same in the event of environmental and climate protection requirement violations.’ Consulted about this objection, a top EEAS official deflected the accusation by claiming that cooperation agreements are not supposed to contemplate sanctions, as they are based on the principle of collaboration. Another official added that the EU has never imposed sanctions on a country with which it has a trade agreement.

Discussions over the environment have fed NGO proposals to contemplate it as an essential elements clause, just like ‘democratic principles, human rights and fundamental freedoms’ (from AA text). An element being essential means that its respect is not just a goal, but a condition for ratification and for the subsequent continuation of the AA (Hoffmann and Krajewski, 2021).

On the Mercosur side, government officials declared for this report that it is easy to tell when environmental concerns are real and when they are excuses. For these sources, the real question is, ‘are you ready to put your money where your mouth is and finance economic and ecological restructuring?’ As Pablo Grinspun, the Argentine ambassador to the EU, publicly declared:

*If there are preoccupations in Europe concerning the fight against climate change and the problem of deforestation, and if there are some issues in the Mercosur countries related to this, this isn’t because of lack of willingness to act but because of a lack of opportunities and financial means.*

If the trade part of the AA has been caricatured as an exchange of ‘cars for cows,’ the row over the political part could be depicted as an exchange of ‘money for trees.’ To be sure, these analogies are oversimplifications; but if they convey any truth, this is that the solution to remaining hurdles lie beyond the small print of the institutional design and more into the nitty gritty of material exchanges. Although EU sources reject a quid pro quo, the AA anticipates the need to assist potential losers during the transition period as, for instance, it encourages ‘the European Investment Bank and other financial institutions to continue its operations in Mercosur countries.’

The asymmetry between the negotiating parties is perhaps most visible in the Greenpeace document. In its barebones, it questions the AA for not providing the EU with enforcing and sanctioning capacity over the Mercosur countries should the latter damage the environment. Clearly though tacitly, Mercosur is perceived as a potential source of harm while the EU is blamed as a faulty protector. What these critics demand is for the EU to establish ‘red lines’ (Müller, 2020) – so much for the reciprocity principle. A Mercosur expert lamented that some European activists see the AA as toothless because it is not ‘imperialist’

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(injerencista) enough. Asked to comment, a representative from a European NGO retorted that civil society had not been mobilized in the Mercosur countries. As to counterparts, he added, while some Argentine and Uruguayan organizations worked fine, Brazilian organizations were harder to work with, and Paraguayan organizations were nowhere to be found.

4.2 Geopolitical objectives

Asymmetry rules also regarding geopolitics. While Mercosur countries try to diversify their foreign relations, especially regarding trade and investment, the EU seeks not to be left behind by other global powers. Hence, from a European viewpoint, the AA negotiations evolved from seeking to balance the United States, right after the end of the Cold War, to struggling to balance China, today’s rising strategic rival.

China’s trade with Latin America and the Caribbean grew 26-fold between 2000 and 2020. The percentage of LAC’s exports to China of its total exports ‘increased from 1.3 % in 2000 to 14.5 % in 2020,’ while the stock of Chinese investment in LAC as a share of China’s total overseas investment stock ‘increased from 12 % in 2014 to a peak of 21.4 % in 2017’ (Ding, Di Vittorio, Lariau and Zhou, 2021). More to the point, China has been Brazil’s leading trade partner since 2009, and its weight has increased during the pandemic. In April 2020, China displaced Brazil to also become Argentina’s leading trade partner. In contrast, trade between the EU and Mercosur peaked in 2011.

Although neither the United States nor China are mentioned in the AA, the parties ‘agree that the political dimension is an essential part of the strategic Association’ and vow ‘to establish a political agenda, cooperate in areas of common interest and make efforts to coordinate their positions in order to undertake joint initiatives in the appropriate international fora.’ Cooperation areas include international peace and security, preventive diplomacy, confidence-building measures, and the peaceful resolution of disputes, as well as democracy, human rights, social developments, and gender equality. The digital economy, civil space activities, and regional integration are among the most innovative fields of cooperation. The AA explicitly acknowledges the asymmetry between the parties as it includes an article looking into increasing the participation of Mercosur member states in exports of services to the European Union.

The intention of the EU to balance the big powers is not a question of interpretation or confidential information, but it has been made clear by the High Representative for Foreign Affairs and Security Policy, Josep Borrell:

> The EU-Mercosur accord must not be seen as a mere free trade instrument [...]. It has a profound geopolitical meaning: it is a tool permitting both regions to face the rising confrontation between the United States and China, whereby both Latin America and the EU run the risk of falling into a position of strategic subordination (Borrell, 2020, p. 4).

The opposite of strategic subordination is strategic autonomy, which requires joining forces between like-minded actors that risk being sidelined by other global powers. ‘Like-minded’ means mainly two things: democratic and Western. While the former meaning is publicly endorsed, the latter has surfaced in the interviews. Thus, for the geopolitically minded, discussion over ‘cows for cars’ or ‘money for trees’ distracts from the fact that the AA has higher priorities. In contrast, for social actors worried about trade imbalances or environmental damage, geopolitical goals are less relevant and, sometimes, even noxious.

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While trade is a matter of concern on both Atlantic shores, the environment and geopolitics are more pressing on the European side. For example, green parties are either non-existent or electorally irrelevant in the Mercosur countries. As to geopolitical objectives, an Argentine diplomat who took part in the negotiations stated sympathetically for this report that a grandiose ‘narrative is a component of the EU soft power,’ but not a priority for Mercosur. A top Brazilian diplomat went even further, as he questioned the correspondence between the EU narrative and its own material interests: ‘Latin America is not a geopolitical priority for the EU, all official rhetoric notwithstanding; indeed, I cannot think of a world region that is less relevant to the EU than Latin America.’ An EU diplomat consulted for this report agreed with this assessment while two Portuguese and Spanish interviewees disagreed, what paradoxically displays how Latin America is of peripheral interest to the EU.

5 Understanding the Mercosur countries: cultural and legal features

It is widely acknowledged today that the early successes of Mercosur did not rest on supranational institutions but rather on interpresidentialism. An extreme type of intergovernmentalism, interpresidentialism results from the combination of a domestic institution, i.e. concentrationist presidentialism, with a foreign policy strategy, i.e. presidential diplomacy (Malamud 2005). Interpresidentialism is supported domestically by political institutions rather than societal demands, and it is propelled by political preferences rather than social preferences. Besides, it is proactive and substantially autonomous from economic interdependence. It does not involve bargaining among several players since one of them, the president, overrules all others, be they cabinet ministers, congressional majorities, the diplomatic corps, or regional institutions. Interpresidentialism does not cancel multi-level governance but transforms it from a decentred network into a hub-and-spokes mechanism. Interregionalism between such contrasting regional structures as the EU and Mercosur no longer resembles a ‘pure’ type, as it does not develop strictly between regional organizations, but a ‘hybrid’ or ‘trans-regional’ type (Hänggi, 2006; Ribeiro-Hoffmann, 2016), as it brings together a regional organization on one side and a less institutionalised grouping of countries on the other.

Bi-regional forums such as the Euro-Latin American Parliamentary Assembly (EUROLAT) were once thought to empower regional parliaments in Latin America (Malamud and Sousa, 2007). EUROLAT brings together 150 parliamentarians, 75 from the European Parliament and 75 from the Latin American side including the Latin American Parliament (Parlatino), the Central American Parliament (Parlacen), the Andean Parliament (Parlandino), and the Mercosur Parliament (Parlasur), as well as national representatives from the Mexican and Chilean congresses. EUROLAT replaced a previous forum, the Euro-Latin American Inter-parliamentary Conferences, in November 2006. However, it did not succeed in empowering regional parliaments. In Latin America, in the provocative words of a specialist, ‘the regional Parliaments are mocked (Parlandino), criticized (Parlacen), or ignored (Parlasur)’ (Dabène 2009, p. 153).

Low levels of civil society participation, and the very weakness of Parlasur, are the consequence of Mercosur itself having little decision-making authority. Just as the growing engagement of organised interests and the organisational development of the European Parliament were a response to increased EU competences, the modicum scope of Mercosur decisions explains the lack of interest of civil society and social movements towards regional institutionalisation (Hochstetler, 2007). Contrary to the European experience, where Brussels is seen as a significant power site, the perceived unimportance of Mercosur institutions discourages citizens’ participation and reduces social demands for further integration. The creation of a parliamentary committee, as well as the establishment of institutional provisions for civil society participation in the implementation of the AA, should consider the weak historical record of similar institutions. A neat institutional design does not guarantee performance.
It would be misleading to take the EU and Mercosur as institutionally equivalent. Legal detail and formalised procedures characterise the EU, whereas legal minimalism and informal procedures prevail in Mercosur. This features have historical roots.

5.1 Informal approaches to the law

Informality is not a novel feature in Latin American politics. ‘Accept but do not comply’ (obedézcase pero no se cumpla) already was an ancient legal formula in Castilian law. Its practice, however, reached its pinnacle in the Indias, that is, Spanish America, since the sixteen’s century (González Alonso, 1980). It consisted of verbally accepting a given legislation without actually enforcing it. Portuguese America did not stay behind: ‘the law does not stick’ (a lei não pega) is a widespread adage that captures the Brazilians’ behaviour regarding their legal system (Panizza and Barahona de Brito 1998), also described by the popular saying, ‘to friends, everything; to foes, the law’ (aos amigos tudo, aos inimigos a lei).

The EU approach towards Latin America in general and Mercosur in particular has traditionally neglected the rootedness of these informal conventions, which are now extensively documented (Helmke and Levitsky, 2006). Diplomatic strategies aiming at the institutionalisation of EU-Mercosur relations have rested on the EU tradition of formal law. Instead, the EU might need to focus on material incentives and informal networks to the detriment of declarations of principle and written law, as the futility of declaratory regionalism (Jenne, Schenoni and Urdinez, 2017) and precocious institutionalisation (Malamud 2010) has also been documented.

5.2 Mercosur’s institutional structure

Mercosur’s institutional structure superficially resembles the EU’s: there is a permanent secretariat in Montevideo (Uruguay), a tribunal in Asunción (Paraguay), and a parliament in Montevideo. Indeed, institutional diffusion, whether by direct EU sponsorship or indirect Mercosur emulation, has been registered by the scholarly literature (Börzel and Risse, 2014). Regional diffusion is the process by which policies and institutions of a regional organisation, usually the European Union, spread to other regions. However, formal similarity between two institutions may conceal deep functional differences. For example, Mercosur’s secretariat is an administrative and technical body with no political authority, bearing no resemblance with the EC or the earlier High Authority of the European Coal and Steel Community.

In turn, Mercosur’s Permanent Review Tribunal is not a supreme judicial authority but an optional appeals panel. Since its establishment in 2005, it has issued six arbitration rulings, three consultative opinions, and seven resolutions either clarifying previous consultative opinions or declining to provide one. In short, the tribunal has produced sixteen juridical decisions in as many years.

Finally, Mercosur’s Parliament (Parlasur) has no legislative authority, no competence on the bloc’s budget, and minimal monitoring capacity over the bloc’s modicum bureaucracy. Installed in 2007, its founding treaty established a transition period that should end in 2014 with direct popular elections involving limited proportionality – to prevent one single country (Brazil) from holding the majority of seats. However, popular elections were conducted only in Paraguay (three times) and Argentina (once), so in 2019 the member states decided to call them off. Henceforth, Mercosur MPs continue to be national lawmakers sent by each national congress, as were the members of the Joint Parliamentary Committee that preceded Parlasur. Proportional representation, even limited, has also not been achieved: at the time of writing, Brazil sends 36 representatives and Argentina 39, although Brazil’s population is five times as large as Argentina’s.

The trajectory of both the Tribunal and Parliament follows a similar pattern: civil society organisations, professional communities, and epistemic communities – such as lawyers, social scientists, judges and lawmakers, but no grassroots organisations (Grugel, 2007) – demanded the creation of regional institutions that fit their worldviews and advance their interests. National executives conceded, but they created
institutions that lack decision-making authority or functional autonomy, or both. Setting institutions without empowering them resulted in a proliferation of toothless bodies. These bodies are not effective counterparts to formally equivalent regional institutions such as the European Court of Justice or the European Parliament.

Contrary to previous expectations, and given the continuation of executive supremacy in regional affairs (Malamud 2014), spillover effects did not take place. Instead, spillaround prospered: more institutions were created in more policy areas, but they were not granted further authority (Malamud and Dri, 2016). Feeling impotent, epistemic communities became encapsulated and civil society organisations retracted from institutionalised participation at the regional level. Organised interests preferred to influence governments through lobbying, while grassroots organisations opted for more confrontational tactics and mobilisation. In Mercosur, regional institutions are mostly empty shells. Presidents, vested interests, and street protests have the upper hand in the decision-making process. The dominance of executive authority and informal practices is unlikely to be tamed by a formal interregional framework. Understanding the contrasting legal cultures of the EU and Mercosur may prevent the illusion of, paraphrasing Joseph Nye, token interregionalism. It may also help develop more effective strategies for engagement.

6 Focus on Brazil

Brazil accounts for 80% of Mercosur’s population and GDP. Additionally, three factors turn it into a dealmaker – or deal-breaker: its strong agribusiness sector (which favours the agreement), its powerful industrial lobby (which is more apprehensive), and its coverage of 60% of the Amazon rainforest (whose deforestation is one of the main obstacles to the finalisation and ratification of the agreement). Understanding Brazil’s society and politics is key to estimating the prospects of the AA (for an overview see Gómez Ramírez, 2021).

Contemporary Brazilian politics is characterised by three elements: coalitional presidentialism, extreme party fragmentation, and ideological polarisation. Not all combinations of these elements are favourable to ratification, and no particular combination is predictable, but we may devise worst-case and best-case scenarios. First, though, it is necessary to understand what these elements mean.

‘Coalitional presidentialism’ is a concept coined in 1988 by Brazilian political scientist Sérgio Abranches. He meant to describe a political system in which a strong presidential office coexists with proportional representation and a multi-party system. Abranches’s argument was that Brazil, whose institutional design resembled the United States, was governed like a western European country. Like the US president, the Brazilian head of state is elected for a fixed term; yet, once elected, Brazilian presidents lack a congressional majority and need to resort to coalition building in congress. They do so via diverse exchanges, among which financial handouts and appointments to cabinet portfolio are paramount. In short, presidents hand money and ministries in exchange for legislative support. Nowadays, coalition presidentialism is commonplace in large parts of Africa, the former Soviet space, and Latin America. However, its mechanics and drawbacks are not familiar to the wider public.

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14 In European integration theories, spillover is the notion that integration in one sector will create incentives for integration in further sectors, so as to fully capture the benefits – or limit the costs – of integration in the initial sector. Spillover implies both enlarging the policy scope and increasing the level of authority of an organization.

15 In 2020, Brazil had a population of 212 million people, whereas Argentina, Paraguay, and Uruguay combined had 56 million. As to GDP, Brazil’s was USD 1 444 billion whereas Argentina’s, Paraguay’s, and Uruguay’s combined was USD 472 billion (source: https://data.worldbank.org/indicator/NY.GDP.MKTP.CD, retrieved on 5 November 2021).

16 Executive distribution of money to lawmakers has two forms, legal and illegal. The legal form refers to budget allocations for projects in the constituencies of the parliamentarians, which is known in the literature as ‘pork.’ The illegal form refers to bribes directly transferred to the parliamentarians’ pockets, the top example of which was the 2005 mensalão (‘big monthly payment’) scandal (see Power and Taylor, 2011).
Extreme party fragmentation is the combined result of proportional representation and open lists in legislative elections. Party leaders have little control over candidates, and such control diminishes even further once candidates are elected. Party discipline is generally low, party switching is frequent, and party fragmentation is so high that passing a law typically requires the agreement of around ten parties (at the time of this writing, the largest party in the House of Representatives holds just 10% of the seats, while the six largest parties combined do not reach the quorum). Extreme party fragmentation, in conjunction with low party discipline and high party switching, turns pro-government coalitions viable but expensive and unstable.

Ideological polarisation is a newer phenomenon. Some expected that stronger ideological positions would be beneficial to both party system consolidation and coalition making, as it made political alignments more stable. However, the impact has been the opposite. While polarisation prevails at the presidential race, fragmentation thrives at the congressional arena. Inter-institutional conflicts, among which public quarrels between the president and the Supreme Court, have become recurrent lately. By mid-2021, President Jair Bolsonaro declared that the upcoming presidential elections were going to be rigged and hinted that he would not accept defeat, while cosying to the armed forces and military police forces to gain their support. Political stability suffered when President Rousseff was impeached and ousted in 2016; five years later, what is at stake is constitutional stability.

Even if fostering political stability, coalitional presidentialism led to opportunistic support of the government of the day, undermining the ability of the legislature to hold the president to account (Chaisty, Cheeseman, and Power, 2018). In the case at hand, this means that congress is unlikely to refuse ratification should the president sign the AA but, by the same token, it is unlikely to hold him accountable should he fail to implement it. For the EU and European NGOs alike, working jointly with Brazilian economic actors and civil society organisations appears as a more promising way to promote executive action than inter-parliamentary channels. This should come as no surprise: the reactive nature of Latin American parliamentary assemblies has been abundantly shown in the literature (Cox and Morgenstern, 2001). Although the Brazilian congress has become more assertive since 2009, and especially after 2015, ‘we should be careful not to equate a stronger Congress with a change in the overall balance of power between branches’ (Rey, 2020).

Besides internal politics, also foreign and defence policy may stand on the way of the AA. In February 2020, a 45-page-long document based on interviews with hundreds of army officers was leaked to the press. Entitled ‘Defense scenarios 2040’, it listed concerns and predictions about France becoming Brazil's biggest military threat over the next 20 years, mostly due to a possible dispute over the Amazon. A hypothetical internationalisation of this region feeds a deep national angst. Speculations were that France could demand the UN to support an intervention in indigenous lands that would be conducted from French Guyana – the French territory shares a 730-kilometre border with Brazil. All possible irritants for both sides are present in this alteration: a dispute over the Amazon, a contention regarding indigenous policy, and old post-colonial resentments. Although government sources tried to play down the proposal, a public squabble between President Bolsonaro and President Emmanuel Macron in August 2019 had already soured the bilateral relationship. Yet, blaming Bolsonaro would miss the point: EU-Brazil relations were stagnated before his inauguration in January 2019.

EU-Brazil bilateral relations reached their pinnacle in 2007 when, disappointed with the freezing of EU-Mercosur negotiations, the EU swung from interregionalism to bilateralism (Meissner, 2018). The EU came

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up with a Strategic Partnership (SP), a type of cooperation agreement with large extra-European states that it had already signed with all other regional powers worldwide. However, EU-Brazil relations entered a phase of suspended animation in 2014, after the seventh EU-Brazil Summit took place in Brussels (Ferreira-Pereira, 2021). The balance sheet of the SP is split in half: seven years of apparent success were followed by seven years of clear failure. This experience should moderate expectations about institutions and focus the attention on the convergence of preferences.

Brazil’s priority vis-à-vis the EU has always been trade. As a Brazilian ambassador in Europe explained for this report, cooperation may be relevant for the smaller Mercosur members, but it is not for Brazil. Therefore, interregional institutions have only limited interest for Brasilia, as they allow for mutual learning between dissimilar partners – as is the case with China – but are unnecessary for dealing with such like-minded partners as the EU. Accordingly, Brazil’s strategy in the negotiations has been offensive in the economic dimension and defensive in the political dimension.

In recent years, even before Bolsonaro took office in 2019 (see Viola and Franchini, 2018), Amazon deforestation has become a divisive issue between Brazil and the EU. However, the productivist stance of the Brazilian government is not shared by all Brazilian producers. Indeed, the split between environmentally-aggressive and environmentally-sensitive agribusiness sectors (because of reputational costs, if not for other reasons) has become blatant at the COP26 held in Glasgow in 2021, as Brazil featured two separated stands: while the Confederação Nacional do Agronegócio (CNA) sponsored the official pavilion, the Associação Brasileira do Agronegócio (ABAC) attended the parallel pavilion, organized by civil society organizations. The latter pavilion was more prolific as regards activities and more successful as regards attendance. This division gives support to the argument that, in the medium run, engaging with civil society and market agents will be more fruitful for interregional collaboration than pressing a recalcitrant government. The AA, the argument goes, is expected to create a forum and provide the instruments to facilitate such engagement.

7 Process and prospects of ratification

Under EU law, the AA is a mixed agreement. This means that it includes both topics that fall under EU exclusive competence and topics that are of national competence, which in turn requires ratification at both EU level as well as in EU Member States according to their own procedures. This makes the ratification process cumbersome and uncertain. In contrast, there is no such thing as a mixed agreement for Mercosur, so there is no way to exclude national parliaments from the ratification process. However, Mercosur does practice what came to be called ‘bilateral ratification.’ This procedure means that, once a treaty has been signed by all member states, it will enter into force in the countries that ratify it independently of what happens in the others. In an extreme case, one EU member state is enough to derail the whole agreement; in the opposite extreme, the AA could enter into force between the EU on one side and only one Mercosur member state on the other.

7.1 Negotiating mandate and recent objections

To accentuate the asymmetries between the negotiating parties, the European Union has had an explicit negotiating mandate while Mercosur has had none.

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The European Council’s negotiating directives of 1999 (see footnote 3), so-called ‘the 1999 mandate,’ emphasise that the agreement should rest on two pillars: one political, the other economic and commercial. It also states that the agreement ‘will be balanced, comprehensive and will constitute a single undertaking,’ indissolubly linking both pillars and conferring them equal status. Henceforth, ‘if the Commission cannot deliver the association agreement on the basis of the mandate received from the Council, it must seek a new negotiating mandate to negotiate a trade agreement, and inform the European Parliament in accordance with Article 218 (10) TFEU’ (Van den Berghe, 2021, p. 6).

In contrast, Mercosur has no negotiating mandate: its members coordinated their positions before each negotiating round. Indeed, as most other regional organizations, Mercosur has no agency: it lacks a central authority as much as a diplomatic service, its norms have neither direct effect nor direct applicability, and its existential narrative has been long exhausted (Malamud 2013). This is why its ups-and-downs along the negotiating process depended so much on the political orientation of the incumbent presidents, especially in Argentina and Brazil. In recent years, however, domestic politics got in the way of interregional negotiations also in the EU.

France was first. On 2 July 2019, just a few days after the announcement of the EU-Mercosur agreement in the G20 meeting in Osaka, several ministers declared that there would not be ‘an accord at any price,’ and that they would not ‘sacrifice French agriculture on the altar of an international agreement.’ On 23 August 2019, during the G7 summit in Biarritz, President Macron threatened to veto the agreement if Brazil failed to fulfil its environmental obligations. Ireland followed soon on France’s tracks, as its parliament voted on 11 July 2019 to press the government to oppose the agreement. On 19 September 2019, the Austrian parliament rejected the EU-Mercosur agreement, and on 8 March 2021, the Austrian government followed suit. On 3 June 2020, it was the turn of the Dutch parliament to reject it. On 21 August 2020, the German chancellor communicated that she had ‘considerable doubts’ over the agreement due to the worsening deforestation in the Amazon. Yet, it was on 7 October 2020 that the AA project received its heaviest blow, as the European Parliament passed a resolution on the implementation of the common commercial policy stating that:

(The EP) considers that the association agreement between the EU and Mercosur represents the largest ‘bloc to bloc’ deal of its kind and has the potential to create a mutually beneficial open market area encompassing approximately 800 million citizens; points out that this agreement, like all EU trade agreements, must ensure fair competition and guarantee that European production standards and methods are upheld; points out that the agreement contains a binding chapter on sustainable development that must be applied, implemented and fully assessed, as well as specific commitments on labour rights and environmental protection, including the implementation of the Paris climate agreement and
the relevant implementing rules; **emphasises that the EU-Mercosur agreement cannot be ratified as it stands** (emphasis added).

This paragraph refers to the trade part of the Association Agreement, given the EP’s labour and environmental concerns. However, since the whole agreement is considered as one package, an interviewee connected to the legislative procedures suggested that the political part could be renegotiated, or an addendum included, to enhance current provisions on environmental protection. This would alleviate the EP’s concerns and reduce the risk that the whole AA is rejected when it arrives for consent. The possibility or reopening negotiations, however, has been officially cast off for the time being.27

Criticism has also come from civil society organisations. A document sponsored by Greenpeace and two companion NGOs has posed two main objections, which focus on the trade part but have implications for the political part:

*With respect to procedural standards, the parties [opted for a little] forceful mechanism which ultimately rests on the[ir] political will to implement… the recommendations of [a] panel of experts.*

*With respect to substantive standards, the draft EU-Mercosur AA formulates human rights obligations and commitments which refer to multinational environmental and labour agreements often in a non-binding manner. Many provisions only contain ‘best endeavour’-clauses and are mere declarations of intent or remain vague and only entail a low level of commitment* (Hoffmann and Krajewski 2021).

In a nutshell, the concern is that compliance is not binding and ultimately rests on good will. When inter-party confidence is high, good will may suffice; when it is low, as NGO’s criticism over the opacity of the negotiations and the repeated public quarrels between Presidents Bolsonaro and Macron illustrate, stronger guarantees are required.

### 7.2 Scenarios and strategies for ratification

The finalisation and ratification of the AA in first place, and its enforcement later, are dependent on domestic dynamics as much as on interregional dynamics. A special focus should be kept on six countries, which are crucial due to different factors: Argentina and Brazil (because of their political unpredictability), France and Germany (due to their regional influence within EU governance), and Portugal and Spain (given their special relationship with Latin America). Take Brazil, where the path from President Luiz Inácio Lula da Silva to President Bolsonaro meant a sea change in foreign policy, or Argentina, well known for defining its foreign policy according to domestic rather than international factors (Amorim Neto and Malamud, 2015). The 2022 presidential election in Brazil, which may result in such contrasting outcomes as Lula getting back to power or Bolsonaro staging a self-coup, could be a game-changer (Akkoyunlu and Lima, 2021). In the EU, a misalignment between French and German preferences due to the rise of populist parties is more likely, and certainly more consequential, than a decline in support to the AA from Spain and Portugal. In short, several national elections over the next two years, on both the EU and Mercosur, have the power to make or break the AA. Opposition by smaller member states would not be costless, but EU antece-dents – such as the overruling referenda called in Denmark (1993) and Ireland (2002 and 2009) – suggest that it is not unsurmountable (Atikcan, 2015). Opposition by Belgian subnational parliaments, on the other hand, is as predictable as more intractable. Already on 20 January 2020, Belgium’s southern Wallonia region, which briefly blocked an EU-Canada trade deal in 2016, declared that it was ‘totally opposed’ to the agreement ‘in its current state.’28

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Mercosur’s ‘bilateral ratification’ procedure turns the result even more uncertain, and a close antecedent suggests it could be even worse. In 2007, the Andean Community (CAN by its Spanish acronym) issued Decision 667 to allow for flexibility in the negotiation of an Association Agreement with the EU, after Decision 598 had already authorised member states to ‘exceptionally’ negotiate on an individual basis. These two decisions effectively, if not formally, dismantled the customs union. If Mercosur’s internal disagreements led to a similar outcome, the EU would be left with no unified counterpart.29 A CANification of Mercosur, by allowing member states to negotiate on their own, would effectively kill bloc-to-bloc interregionalism (Malamud 2020). Yet, for the EU, the AA might still make sense even if only Brazil remained on board. As shown below, the EEAS discards this possibility and expects the agreement to be kept interregional.

According to Hoffmann and Krajewski (2021), there are four possible ways out of the ratification conundrum, only one of which they deem satisfactory. Ranked by growing order of complexity, these ways are: including a simple interpretive declaration, adding a ‘side letter’ or separate protocol, renegotiating the agreement, and splitting it.

The first option is a simple interpretive declaration.30 This is ‘an authoritative statement of the parties concerning the interpretation of an international agreement, which is to be taken into account in the systematic interpretation of the treaty… When interpreting the agreement, the declaration must therefore be consulted and the agreement interpreted in the light of the interpretive declaration’ (Hoffmann and Krajewski, 2021: p. 18). An interpretive declaration is an understanding between the parties that expresses their views as to the meaning of a particular provision. Interpretive declarations may be agreed upon by governmental experts and adopted simultaneously with the text of the treaty, as was the case with CETA. The objection to this option is that interpretative declarations are only one of several sources of interpretation, and they do not have the same strength under international law as a protocol or an annex to the agreement.

In the second option, ‘a so-called “side letter” would be added to the EU-Mercosur AA. Assuming that the language of such a side letter would suggest that it contains legally binding obligations, it could be a self-standing agreement, i.e. an additional agreement or protocol. It is possible that an additional agreement is concluded and that this treaty is concluded at the same time as (or before) the EU-Mercosur AA’ (Hoffmann and Krajewski, 2021: p. 17). Objections to this option point to the potential emergence of contradictions with the AA, but also highlight that this strategy does not stand better chances of being approved than a renegotiation.

The third option, renegotiation, is preferred by the authors as it could allegedly address all aspects under debate. The parties would not need to start from zero but could focus on necessary modifications to the agreement, most notably adding ‘essential elements’ clauses.

*An essential elements clause or human rights clause is a provision that would allow the suspension of the agreement if either side breaches its commitment under an agreement mentioned in the essential elements clause such as human rights treaties or the Paris Agreement on climate* (Hoffmann and Krajewski, 2021, p. 14).

The objection to renegotiation is simple: given current and foreseeable political conditions on both parties, the chances of success are minimal.

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29 In September 2021, Uruguay announced that it intended to open bilateral trade negotiations with China, fostering heated discussions within the bloc. See https://www.france24.com/es/programas/el-debate/20211001-comercio-mercosur-china-uruguay-acuerdo, retrieved on 8 November 2021.

30 Conditional interpretive declarations, as opposed to simple ones, may be considered as ‘dormant reservations’ and have legal strength (Polakiewicz, 1999: p. 78).
The fourth option, splitting, is rather focused on facilitating ratification than on changing substantive provisions. According to media reports and diplomatic sources consulted for this report, EU officials have suggested to treat separately the trade part of the AA from the rest of the agreement. This would allow ratification by EU institutions alone without the involvement of the member states (the so called ‘EU only’ option). This is legally possible since the trade part of the AA would fall into the exclusive competence of the EU whereas the political part of the AA would remain into the shared competence of the member states and the EU. The European Court of Justice has given its consent to such a procedure with respect to the EU-Singapore Free Trade Agreement. There are three main objections to the splitting though. The first one is that both parts of the AA would need adjustment, since each contains a number of institutional provisions that the other part relies on or refers to. The second objection is that the negotiating mandate refers to a mixed agreement, so a split would enter in contradiction with the mandate and create unpredictable legal effects. The third objection is that the political part of the AA could remain frozen for years or even be rejected, thus justifying all the concerns that the previous three strategies were supposed to alleviate.

At the time of writing, a decision regarding the legal basis of the agreement has not been made. However, the EC has made clear its belief that ‘with the agreement, the EU will be able to engage Mercosur countries on a broad range of issues covering not only trade but also climate change, environment, human and labour rights’ (European Commission, 2021).

During the first semester of 2021, Portugal held the presidency of the European Council and claimed to make of the AA one of its global priorities: ‘In view of the strategic interest, the Presidency will seek to contribute to creating conditions for the signing of the EU-Mercosur Association Agreement.’ Argentina presided over Mercosur at the same time, and a top diplomat confirmed for this report that joint efforts were made, but to no avail.

In September 2021, when questioned about the strategies ahead, an EEAS official disclosed the list of activities underway:

An additional instrument is being prepared, which details and specifies the sustainability provisions of the Agreement and respective monitoring arrangements. A key criterion for this additional instrument, as agreed with Member States and Mercosur partners, is that it would not lead to a reopening of the negotiations, which has taken 20 years to conclude. Additional criteria include that commitments should be ‘region-to-region’ (i.e. not only to e.g. Brazil) and should be reciprocal. EEAS and Commission services are currently working on a proposal. An exact legal format (e.g. protocol, interpretative text or political declaration) has not been decided yet.

This additional instrument is set to work in conjunction with a broader set of policy initiatives, including ‘new legislation that limit the placement on EU markets of products resulting from deforestation, and oblige companies to carry-out due diligence on environment and human rights in their supply chains.’ More specifically, ‘a Team Europe Initiative on the Amazon is being prepared to address the key drivers of deforestation, including cooperation to monitor and tackle forest fires, the promotion of sustainable value chains, and the protection of indigenous rights.’ This charming operation might have an impact on the European public, but it will only impress Mercosur leaders if it is endowed with material compensations.

31 As a case in point, the EU-Central America Association Agreement was signed in 2012 and its trade pillar entered into force in 2013 after ratification by the Central American countries, but the ratification of the political and cooperation part in the EU is still blocked be the two Belgian regional parliaments of Brussels and Wallonia (see https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/DELEGATIONS/DCAM/DV/2021/06-03/CouncilOverview_AgreementestablishinganAssociationbetweentheEUandCentralAmerica_EN.pdf, retrieved on 18 November 2021).

8 EU options and policy proposals

The main mission of the AA is to strengthen the bilateral relation between the EU and Mercosur as regards trade, political dialogue, and cooperation. Secondly, it aspires to forge a strategic partnership that improves the standing of both parties in the multilateral arena. To reach both aims, the AA needs to be finalised, ratified, and implemented. None of these aims is granted, not even likely – although official sources refrain from acknowledging this in public. What follows is a set of four short proposals that, derived from the above discussion, attempt to improve the odds.

8.1 Aim low to score high: interregionalism from below (and beside)

AA negotiations have been conducted as an intergovernmental business. This is normal, as the formal result will be an international agreement. It also has historical roots: both the EU and Mercosur were created from above, whether via Jean Monnet’s ‘de facto solidarity’ brought about through concrete achievements or via interpresidentialism in Mercosur. This method was initially effective, but it is no longer so: interregionalism, just like regional integration, has evolved ‘from permissive consensus to constraining dissensus’ (Hooghe and Marks, 2009). Governments willing to build larger communities need to engage their citizens along the process, not afterwards or top down. There are two instruments to do so: transnational arenas and transgovernmental networks.

Borrowing from the literature on democratisation, two sources of international influence can be identified: leverage and linkage. Leverage designates a government’s level of vulnerability in the face of foreign pressure, while linkage refers to the intensity of connections and cross-border flows between countries. Historical precedent suggests that investing on mechanisms of leverage, such as diplomatic pressure, conditionality, or sanctions, is likely to backfire. In contrast, linkage mechanisms are more subtle and diffuse, as they include ties on five broader dimensions: economic, geopolitical, social, communication, and transnational civil society (Levitsky and Way, 2005). Empowering civil society organisations promises to be more fruitful than conducting protocolar summitry or developing interregional comitology. If this is so, and depending on activism rather than design, the DAGs and the Civil Society Forum could have more influence on the workings of the AA than the APC. Transnational arenas for social interaction may provide for the ‘double function of learning and socialisation’ (Dabène 2009, p. 170) that legal enforcement mechanisms cannot. If public opinion is open to green transnational alliances, as claims Nolte (2021), a combination of hard (trade) alliances with soft (social) networks might both promote the agreement and make it work. This would be interregionalism from below.

As to higher-level cooperation, just above civil society but below top-governmental level, Alcañiz (2016) has shown how expert bureaucrats from developing countries cooperate with foreign peers to compensate for the lack of investment of their own governments. The ensuing constitution of transgovernmental networks has improved international cooperation on environmental and nuclear technology despite budget cuts and beyond obstacles found at the political level. In short, informal networks have substituted for official relations. Now think of Brazil: even if its political trajectory seems currently unpredictable (Stuenkel, 2021), the country’s professional bureaucracy has traditionally been rather stable. This suggests that working through transgovernmental networks of technocrats may offer greater stability and larger payoffs for the bilateral and interregional relationship than intergovernmental committees of politicians. Such a mechanism could be called interregionalism from beside.
8.2 Align preferences rather than institutions (and cultivate transparency)

Some interviewees emphasised that the prospects for a successful agreement hinge on preference convergence rather than enforcement clauses. In their view, the problem with the AA is not that it lacks mechanisms for enforcement, but that the goals of the parties have diverged over time. Indeed, the emergence of China has shifted the global centre of gravity and reduced the relative interdependence between the EU and Mercosur. While China’s share of trade and foreign investment in the region has grown steadily in the last two decades, the EU’s has remained stagnant. Divergence of interests and priorities has ensued. If preference convergence is to be recovered, it should stem from common, or at least complementary, goals. This is easier said than done. Citizens from the EU and Mercosur might feel cultural proximity to each other but not enough as to sacrifice their material interests. Moreover, the prevailing social sentiment on both shores is political disaffection: citizens feel alienated from the political elites. To see their governments striking deals behind closed doors is a further motive for estrangement. The antidote would be to cultivate transparency and engage with the public. A case in point: the public diffusion of the political part of the AA could have improved the disposition of civil society groups and epistemic communities in both regions. The text deals with many of the topics that were absent or minimised in the trade part like gender issues, human rights, and democracy. Rather than the lack of enforcement mechanisms, its weakest point is the secrecy with which it was negotiated first and kept confidential later. Ironically, this public report is about such confidential document. The author had to analyse it without being allowed to quote it, but only paraphrase it. The reader, whether an EU or Mercosur citizen, would be right to feel puzzled.

In modern, complex, and democratic societies there are too many veto powers. When they cannot be sidestepped, they should be persuaded. If formal institutions and enforcement mechanisms are relevant, even more so are public legitimacy and the alignment of social preferences. Remember that, in Latin America, informality is a core organizational pattern.

8.3 Recalibrate the correspondence between means and aims

The goal of creating an EU-Mercosur strategic partnership, which carried some currency in the 1990s, sounds overambitious today. While rising US-China bipolarity threatens to marginalise the EU, Latin America is already perceived as decreasingly relevant in world affairs, whether regarding demographic trends, military power, global trade, or diplomatic influence (Schenoni and Malamud, 2021). By the same token, blaming the AA of contributing to Amazon deforestation is an overestimation of its potential impact (Grieger 2020). A recalibration of aims is in order for means to work out. The AA should be evaluated by its opportunity costs rather than by its prospective benefits. In other words, what it may prevent is probably more consequential than what it may produce.

Not engaging with Mercosur will not solve deforestation and will give more space to other global actors to set their agenda with less attention to sustainability. According to official sources, the AA gives the EU a means for positive engagement with the region. The recent announcement by Uruguay to start negotiations with China on a free trade agreement further underscores the urgency of concluding the AA. Nolte and Ribeiro (2021) argue that ‘not signing the EU-Mercosur agreement will not reduce Brazilian meat exports, but it will deprive the EU of leverage against Brazil to protect the Amazon rainforest.’ As argued above, it will also deprive EU citizens and NGOs of linkage.

For Europeans who promote a green agenda, would it be more convenient to isolate a reluctant country (or rather, its government) or to engage with it (or rather, its society), as the AA allows to do? For Europeans who advance a geopolitical agenda, would it be more convenient to go it alone or to build institutional frameworks of cooperation, as the AA is set to do? These are the questions that came up over and again during the interviews conducted for this report.
From a broader perspective, there is nothing special about EU-Mercosur relations. They are part of the EU’s broader strategy of institutionalizing relations with all powers and regions of the world. As for Mercosur, and especially for Brazil, ‘transactions with the EU worked as a bargaining chip in negotiations with the United States about the FTAA’ (Nolte and Ribeiro, 2021, p. 89). Accordingly, Cienfuegos Mateo (2010, p. 5, fn. 6) states that ‘from a strict perspective, mutual association is not really strategic for either the EU or Mercosur […] it is actually more of a desideratum than a reality.’ None of the parties perceives the other as a top priority, yet both have promoted the AA as ground-breaking. Negative reactions against it are linked to the exaggerated expectations raised by the negotiating parties themselves. Depicting the AA for what it really is, an institutional instrument to promote engagement not between colossuses but between players increasingly challenged in the global arena, may help societies understand what is at stake.

8.4 Consider timing

Timing is of the essence, as political cycles in the EU and Mercosur have seldom been synchronised. A top negotiator from a Mercosur country anticipated the opening of a window of opportunity in the second semester of 2023, when Brazil will be chairing Mercosur’s CMC and Spain will be chairing the European Council. Provided that the French presidential election of April 2022 has kept or brought a non-protectionist leader in office, and that the Brazilian elections of October 2022 have changed the current state of affairs, conditions will be given for trade policy, ecopolitics, and geopolitics to align themselves into propelling the signature of a treaty that would otherwise risk never to see the light. That the most optimistic expectation locates the sooner chance two years from now speaks tons of the unrealism with which the AA has been presented into the public sphere. This perspective of time sums up and highlights the expediency of the three other proposals: aim low, align preferences, and recalibrate means and ends.
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