**MOTION FOR A RESOLUTION seeking an opinion from the Court of Justice of the European Union on the compatibility of the EU-Mercosur Partnership Agreement and the Interim Trade Agreement with the Treaties**

pursuant to Rule 117 (6) of the Rules of Procedure

European Parliament resolution seeking an opinion from the Court of Justice of the European Union on the compatibility of the EU-Mercosur Partnership Agreement and the Interim Trade Agreement with the Treaties

*The European Parliament*,

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

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

- having regard to Article 11, 168, 169, 171 and 191 of the TFEU,

- having regard to Articles 35, 37 and 38 of the EU Charter of Fundamental Rights,

- having regard to the Commission proposal for a Council decision on the conclusion, by the European Union of an EU-Mercosur Partnership Agreement (hereafter "EMPA") and an Interim Trade Agreement (hereafter "ITA") with the four founding members of Mercosur – Argentina, Brazil, Paraguay and Uruguay,

- having regard to the Council's Negotiating Directives of 1999 for the agreement between the European Union and the four founding members of Mercosur – Argentina, Brazil, Paraguay and Uruguay (hereinafter 1999 Negotiating Directives),

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

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

- having regard the Framework Agreement on relations between the European Parliament and the European Commission regarding international agreements (paragraphs 23-29),

- having regard the Council conclusions on the negotiation and conclusion of EU trade agreements of 22 May 2018, paragraph 3 (hereinafter "the 2018 Council conclusions"),

A. whereas in 2019 the Commission published the agreement in principle summarising "the negotiating results of the trade part of the EU-Mercosur Association agreement"; whereas in December 2024 the Commission announced that it finalised negotiations for the EU-Mercosur agreement; whereas on 3 September 2025 the European Commission presented the EU-Mercosur agreement as two parallel legal texts of the EU-Mercosur Partnership Agreement (EMPA) and an Interim Trade

Agreement (ITA) and put forward its proposals to the Council for the signature and conclusion of the EMPA; whereas the EMPA is a mixed framework agreement, which requires unanimous approval in the Council, the European Parliament's consent and the ratification of all 27 Member States before it can fully enter into force, and ITA covers only those provisions falling under the exclusive competence of the EU and requires only a qualified majority in the Council and the European Parliament's consent to enter into force;

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

C. whereas the 1999 Negotiating Directives authorised negotiations of an Association Agreement with the Mercosur countries, thus requiring Council unanimity and national parliaments ratification; whereas neither the scope of the ITA nor its consequences on Member States' veto power could have been foreseen at the time this mandate was issued and thus agreed upon; whereas the Council confirmed its position in its 2018 Council conclusions and stated that that '[i]t is for the Council to decide whether to open negotiations on this basis. It is equally for the Council to decide, on a case-by-case basis, on the splitting of trade agreements. Depending on their content, association agreements should be mixed. The ones that are currently being negotiated, such as with Mexico, Mercosur and Chile, will remain mixed agreements."; whereas the EU-Mercosur trade Agreement in principle, published in July 2019, also refers to the EU-Mercosur Association Agreement; whereas a deviation from the 1999 Negotiation Directives and the 2018 Council conclusions could be considered as incompatible with EU law;

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

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

F. whereas the Brazilian government's interpretation of the scope *ratione temporis* of the rebalancing clause differs from the one of the European Commission, going back as far as 2019 in the case of Brazil;

G. whereas this clause is wider-reaching than existing ones in previous Free Trade Agreements concluded by the EU and differs in scope and content to the clause set forth in the General Agreement

on Tariffs and Trade (GATT) and in Article 26(1) of the WTO Dispute Settlement Understanding (DSU); whereas the rebalancing clause contained in the GATT has never been invoked against sustainable development legislation, presumably because such a legislation would be covered by the general exceptions clause of Article XX GATT;

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

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

J. whereas the Trade and Sustainable Development Chapter (Chapter 18) of the ITA restricts the application of the precautionary principle, notably to situations of "risk of serious environmental degradation or to occupational health and safety " ; whereas these restrictions may result in reducing the level of health, consumer and environmental protection, in the European Union; whereas current EU measures allowed under the EU precautionary principle could be challenged in front of an arbitration panel and justify compensations;

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

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

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

4. Decides to seek an opinion from the Court of Justice, in accordance with Article 218(11) TFEU, on the compatibility with the Treaties of the proposed conclusion, by the EU, of the EMPA and ITA, and the procedure followed in seeking to obtain said conclusions.

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