

Recent developments in EU external relations

The perspective of the Council Legal Service

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ANY COMMENT MADE IS ON A PERSONAL TITLE AND DOES NOT BIND THE COUNCIL OR ITS LEGAL SERVICE.

Outline

The Council's Legal Service

- ❖ Introduction: **The role of the Council Legal Service**
- ❖ A few recent developments in EU external relations:
 - The signature of the Mercosur agreements
 - Some recent developments in the case-law on CFSP

Introduction

The Council's Legal Service

- ❖ **Legal adviser to the Council, the European Council and Intergovernmental Conferences**
 - Legal aspects of EU policy-making (Council and European Council Conclusions, Statements, Declarations)
 - International agreements and non-binding instruments (Article 218 TFEU & the *Swiss MoU case*)
 - Revision of the Treaties – accession negotiations
- ❖ **Ensures the legality and drafting quality of legal acts**
- ❖ **Represents the Council and the European Council before the Court of Justice of the EU**

Signature of the Mercosur Agreements

1999: Negotiating directives call for an association agreement and an interim agreement:

It is envisaged that the provisions of the Association Agreement falling within the competence of the EC shall be the subject of an Interim Agreement concluded by the EC and Mercosur (and its Party States, if necessary). The Interim Agreement shall remain in force until the entry into force of the Association Agreement.

2019: agreement on the trade part but renegotiation

2025: Commission proposals for the signature and conclusion of:

- ❖ **EU-Mercosur Partnership Agreement (EMPA)**

- ❖ **Interim Trade Agreement**

Signature of the Mercosur Agreements

The EMPA and Council Decision 2026/185

- ❖ Four Parts:
 - Part I: General Principles and Institutional Framework
 - Part II: Political Dialogue and Cooperation
 - Part III: Trade and Trade Related Matters
 - Part IV: Final Provisions
- ❖ Substantive legal bases: Art. 91(1), 100(2), 207(4) 1st subpara, 209(2) and 212 TFEU.

The iTA and Council Decision 2026/183

- ❖ Copies Part III of the EMPA
- ❖ EU-only agreement
- ❖ Substantive legal bases: Art. 91(1), 100(2), 207(4) 1st subpara TFEU

Signature of the Mercosur Agreements

The 'fall-back' clause

- ❖ Concerns about the iTA being applied without an operational safeguard

- ❖ Art. 2 of Dec. 2026/183 on the signature of the iTA of 9 January 2026:

Until the adoption and entry into force of a specific Union legislative act implementing the bilateral safeguard clause for agricultural products of the EMPA and of the ITA, the Commission may, by means of implementing regulations, adopt bilateral safeguard measures that are consistent with the conditions set out in Chapter 9 of the ITA and in this Decision. [...]

- ❖ Precedent: Art. 3 of the signature Dec of the EU-UK TCA (Dec 2020/2252)

- ❖ Art. 2 is replicated in the draft decision on conclusion. Overtaken by Regulation 2026/687 implementing the bilateral safeguard clauses of the EMPA and the iTA for agricultural products

Signature of the Mercosur Agreements

- ❖ **EMPA:** Provisional application foreseen for Parts I, II and IV (with a few exceptions). **NOT** for trade.
- ❖ **iTA:** **Cion proposed PA in the conclusion decision**; this was amended. PA of the entire agreement foreseen with at least one Mercosur state. In the end, all of them agreed to PA per 1 May 2026 (OJ L868 of 15.4.2026).
- ❖ **Article 218(5) TFEU:** *The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.*
- ❖ **Signature of the EU-Korea FTA:** Council decided not to PA before the EP has given its consent to the FTA and the bilateral safeguards Regulation is in force. Somewhat similar CETA. There is **no practice or right for the EP**.

Signature of the Mercosur Agreements

EP resolution of 21 Jan 2026 and request to the Court

EP's **Article 218(11) TFEU** request (lodged on 29 April 2026). Three blocks of questions:

- ❖ Are the Council decisions on the signature and conclusion of EMPA and iTA compatible with the **procedural requirements of the Treaties**, in particular Article 217 TFEU, Article 218(2), (4), (6) and (8) TFEU, in the light of Articles 4(3) and 13(2) TEU?
- ❖ Is the **rebalancing mechanism** provided for in Chapter 21 iTA and Chapter 29 EMPA compatible with the Treaties and the need to ensure the autonomy of the EU legal order, in particular Articles 11, 168, 169 and 191 TFEU and Articles 35, 37 and 38 of the Charter?
- ❖ Are the provisions of the iTA and the EMPA compatible with the Union's **precautionary principle as enshrined in Article 191(2) TFEU** and underpinning Articles 168, 169 and 191 TFEU and Articles 35, 37 and 38 of the Charter, and developed in the Court's case-law? In particular, is the authority granted to an arbitration panel to assess the EU's application of that principle compatible with the requirements under Union law?
- ❖ Case C-460/26 (*PL v. Council*)

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... and now for something completely different ...

Some recent developments in CFSP case-law

The use of financial constructions to obfuscate assets or the importance of a businessperson

- ❖ **T-271/22 (*Melnichenko I*)**: Listed for being *a leading businessperson involved in economic sectors providing a substantial source of revenue to Russian Government*.

On the use of trusts: by setting up the trust and designating himself as its beneficiary, the applicant retained, through the companies and intermediate structures [...] economic interests in [the companies]. The fact that the appellant used an intermediate legal structure, such as a trust, is not such as to prevent it from being regarded as the holder of the shareholdings managed by that trust for the purposes of the application of criterion (g) (point 71).

- ❖ See also T-234/22 (*Ismailova v. Council*)

Some recent developments in CFSP case-law

Joined cases C-428/24 and C-476/24 (*FZ AR*)

- ❖ FZ AR: fertiliser company, owned (through a string of companies) by a professional trustee company), for trust XT.
- ❖ SX: company owning the “Sailing [...] A” in trust for the N Trust.

Beneficiary of both trusts: Mr ZU, replaced by his wife around the time of his listing. Then his wife was listed too. Italy freezes FZ AR and the boat.

Trust deeds: “le trustee ne pourrait pas distribuer au bénéficiaire de ce trust le moindre avantage économique provenant du trust”.

Art. 2(1) of Reg. 269/2014: All funds and economic resources **belonging to, owned, held or controlled** by any natural or legal persons, entities or bodies listed in Annex I shall be frozen.



Sailing Yacht A

Some recent developments in CFSP case-law

- 93. [A]fin de garantir l'effet utile [...], la notion d'« appartenance » doit être interprétée en ce sens qu'elle couvre non seulement les situations dans lesquelles un tel pouvoir sur les fonds et les ressources économiques concernés peut être attesté juridiquement, mais également les situations dans lesquelles une personne [...] possède en fait ce pouvoir, en dépit du fait que, juridiquement, le titulaire dudit pouvoir est une autre personne [...].
- 94 [L]a notion de « contrôle » englobe toutes les situations dans lesquelles une personne [...] est en mesure d'influencer les choix d'une autre personne, et ce même en l'absence de tout lien juridique, de propriété et de participation dans le capital entre l'une et l'autre de ces personnes.
- 127 [L]e recours à des structures inutilement complexes ainsi qu'aux trusts liés à une personne inscrite sur la liste [...] peut en soi constituer un indice du contrôle d'une telle personne sur une entité non inscrite sur cette liste.
- 129 [C]onstituent un indice du contrôle de personnes inscrites [...] sur des entités non inscrites sur [la] liste le fait que certaines de ces entités ont été créées ou ont changé d'identité peu de temps avant l'adoption du régime de sanctions ou la désignation de la personne, et/ou n'exercent aucune activité commerciale crédible, le fait qu'une ou plusieurs fiducies soient utilisées comme destinataires des actifs d'une entité que possède ou contrôle une personne désignée ainsi que le fait que la gestion des fiducies fasse intervenir des professionnels de la juridiction dans laquelle les fiducies ont été constituées.

Some recent developments in CFSP case-law

The *EPF* case (T-457/24, *HU v. Council and European Peace Facility*)

- ❖ Art. 31: **constructive abstention**: In that case, the MS shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position.
- ❖ HU had abstained from Dec. 1471 allocating the windfall profits to the UKR armed forces. However, it then sought to veto the EPF decision implementing this Decision.
- ❖ Questions of **admissibility** and of **substance**.
- ❖ Hearing held on 6 March 2026.

Some recent developments in CFSP case-law

T-457/24, *HU v. Council and European Peace Facility*)

Admissibility:

- ❖ Court standard to interpret its jurisdiction pursuant to Articles 24 TEU and 275 TFEU: if the acts and omissions at issue are not directly related to those political or strategic choices, the Court of Justice of the European Union has jurisdiction to assess the legality of those acts or omissions or to interpret them. By contrast, if those acts or omissions are directly related to those political or strategic choices, that institution must declare that it lacks jurisdiction (C-29/22 and C-44/22, *KS and KD*, point 117).
- ❖ Is the alleged violation of a procedural (voting) rule a matter that falls within this jurisdiction or is the matter intimately political?

Substance: an abstaining MS must refrain from any action likely to conflict with or impede Union action based on that decision (Art. 31 TEU). That implies refraining from any action to block the disbursement of the windfall profits.

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Questions and comments?