

EU3D

Differentiation
Dominance
Democracy



Comparing differentiation in the EU, ASEAN and Mercosur in relation to China's influence

Introduction to the database

Cecile Pelaudeix

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Preface

The EU has expanded in depth and breadth across a range of member states with greatly different makeups, making the European integration process more differentiated. *EU Differentiation, Dominance and Democracy* (EU3D) is a research project that specifies the conditions under which differentiation is politically acceptable, institutionally sustainable, and democratically legitimate; and singles out those forms of differentiation that engender dominance.

EU3D brings together around 50 researchers in 10 European countries and is coordinated by ARENA Centre for European Studies at the University of Oslo. The project is funded by the European Union's Horizon 2020 research and innovation programme, Societal Challenges 6: Europe in a changing world – Inclusive, innovative and reflective societies (2019-2023).

The present report is part of the project's Workpackage Three on EU external differentiation. This report introduces the database, which is laid out on a separate excel sheet. The database contains data on differentiation in three regional organisations, the EU, ASEAN and Mercosur. This report and its accompanying database provide valuable information on the three regional institutions' responses to China's influence on foreign direct investment and security. The database is structured to shed light on how differentiated organisations may increase resilience or strategic autonomy in relation to China's influence.

John Erik Fossum
EU3D Scientific Coordinator

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Abbreviations

ASEAN	Association of South East Asian Nations
ASEAN+3	ASEAN, Japan, South Korea, China
ADMM	ASEAN Defence Ministers' Meeting
ADDM+	ASEAN Defence Ministers' Meeting Plus
ALADI	Latin American Integration Association (Asociación Latinoamericana de Integración)
ARF	ASEAN Regional Forum
BRI	Belt and Road Initiative
CAI	Comprehensive Agreement on Investment
CLMV	Cambodia, Laos, Myanmar, Vietnam
ECJ	European Court of Justice
EEA	European Economic Area
ECOWAS	Economic Community of West African States
EFTA	European Free Trade Association
EU	European Union
FDI	Foreign Direct Investment
FOCEM	Mercosur Structural Convergence Fund (Fondo para la Convergencia Estructural del Mercosur)
IAI	Initiative for ASEAN Integration
IPA	Instrument for Pre-Accession
Mercosur	Southern Common Market (Mercado Común del Sur)
MS	Member states
NATO	North Atlantic Treaty Organization
PESCO	Permanent structured cooperation
TAC	Treaty of Amity and Cooperation
TTC	Trade and Technology Council
RO	Regional organization

Chapter 1

Introduction

The database presents data in relation to differentiation in three regional organisations (ROs) – the EU, ASEAN and Mercosur – which are of relevance when understanding the institutional responses of these ROs vis-à-vis China's influence since 2014 in foreign direct investment and security issues. The research question associated with this database asks how differentiated organisations increase their resilience or strategic autonomy in relation to China's influence, assuming they are able to do so, and how differentiation plays a role in this process. The way in which a regional organisation shapes its institutional dimensions determines its specific 'differentiation configuration' (Fossum 2021) which can either be conducive to resilience or to vulnerability.

The research associated with this database considered three complementary hypotheses. The first hypothesis proposes that strengthening integration or cooperation within an RO is a suitable option for increasing resilience or strategic autonomy. Both the second and third hypotheses consider resilience or strategic autonomy through external cooperation mechanisms. The second hypothesis concerns partnerships with influential states in the region, while the third hypothesis argues that a regional organisation's cooperation with China may represent an option in terms of resilience but represents the least favourable option from the perspective of strategic autonomy.

This document is an introduction to the database which consists of an Excel document. The first section of this document briefly presents the typologies of differentiation used in the literature including those that use comparative approaches while the second section presents the typology

used in the database which focuses on three dimensions of differentiation: vertical, internal and external. The third section specifies the principles that form the basis for the instruments and type of data that are selected and provides justification for the choice of entries. The fourth section offers general observations on the results of the data analysis.

Chapter 2

Typologies of differentiation for a comparative approach to differentiation

2.1 Typologies in the European context

Differentiation is a concept used to analyse political systems which are distinct from those of states. It is applied to the legal dimensions of EU policies (Leuffen, Rittberger, and Schimmelfennig 2022; Leruth, Gänzle, and Trondal 2022; Holzinger and Tosun 2019; Schimmelfennig 2020) but also more generally when characterising a political system (Fossum 2019). In the first case, the concept generally used is 'differentiated integration'. However, the shorter term 'differentiation' is also used as a synecdoche, in the same context.

Differentiation focuses on the legal dimension (in terms of primary and secondary law) and refers to the non-uniform application of EU rules to member states and non-member states. It refers to the variations in vertical integration (the centralisation of policy-making), and in horizontal integration (the territorial extension of policies) (Leuffen, Rittberger, and Schimmelfennig 2022, 35), that occur in response to enlargements, various forms of crises, and various forms of opposition to integration (Fossum 2019, 8). The first typologies described differentiation as constituting exceptions to common EU rules, and categorised them as 'multi-speed', 'variable geometry', or 'core Europe' (Stubb 1996; Holzinger and Schimmelfennig 2012). Typologies also include distinctions between de jure and de facto differentiation (the latter defined as non-compliance and leeway in terms of the incorporation of provisions into national law), space (concentric circles), policy relevance (à la carte) - while variable

geometry refers to the duration (permanent/temporary) of new policy areas.

This database relies on the typology, which distinguishes between vertical, internal and external differentiation (Leuffen, Rittberger, and Schimmelfennig 2022) and extends it beyond the EU to other ROs. Leuffen, Rittberger, and Schimmelfennig (2022) define vertical differentiation as the variation in how policy-making (or integration) is centralised, internal differentiation as the non-uniform application of an RO's rules concerning primary or secondary law to member states, and external differentiation as the application of an RO's rules to non-member states. This typology offers the most fruitful insight for a comparative analysis of the three regional organisations: the EU, ASEAN and Mercosur, considering the objective of the research, which is to capture the institutional resilience of an RO in the face of an external hegemon.

2.2 Differentiation and comparative regionalism

With regard to regional comparison, Su (2007) and Warleigh-Lack (2015) proposed a typology of differentiation inspired by Stubb's tripartite model that distinguishes multi-speed, variable geometry and 'à la carte' differentiation (Stubb 1996) (see Table 1), a typology which was also recently applied to ECOWAS (Venturi et al. 2020).

Table 1. Warleigh-Lack's typology of differentiated integration (2015).

Model of differentiation	Main cause of differentiation	Vision of integration
Multi-speed	Short-term inability to implement policy	Policy regimes with temporarily carrying membership; laggards commit to catch up over time
Concentric circles (variable geometry)	Long term inability to implement policy	Various tiers of member states organised around a 'hard core'
À la carte	Choice not to participate, regardless of implementation capacity	Policy regimes with different membership coexist, with no 'hard core'

The limitations of the tripartite typology in the European context have been underlined by Schimmelfennig and Winzen, who argue that the

blurred distinction between variable geometry DI (variation across countries) and à la carte DI (variation across policies) acts as an obstacle to the use of the typology: 'Rather, differentiated integration in the EU varies significantly across both countries and policies' (Schimmelfennig and Winzen 2020). The objective of Warleigh-Lack's study was to show that differentiation is not a specific feature of the EU and that it is not a 'pathological' pattern of an 'integration gone wrong' either. He has pointed in particular to several instances of internal differentiation in ASEAN. Venturi et al. also conclude their analysis by recommending that differentiation should be seen as a 'normal' feature of regional organisations (Venturi et al. 2020, 16). However, this typology does not account (1) for the variation in integration and (2) neither does it allow for a distinction between external differentiation and external cooperation. Regarding the first point, the absence of consideration of variation in integration in the analytical framework is justified in the literature by the attempt to avoid Eurocentrism, but paradoxically, the lack of supranational institution re-emerges in the analysis as a weakness of the ROs (Venturi et al. 2020, 8).

Regarding the second point, the absence of distinction between external differentiation and external cooperation gives a biased analysis of the extent of the use of differentiation. Differentiation in ASEAN for example is generally described as characterised by two formulas: Minus X and Plus X: the former equals internal differentiation e.g., ASEAN minus 4 countries, and the latter equals external differentiation, e.g., ASEAN +3 countries. However, the Plus X syntagm, as explained further, is a mechanism of external cooperation and not of external differentiation. In an analysis of the capacity of institutional features of ROs to manage Chinese influence and ensure resilience, if not strategic autonomy, it is crucial to analyse those features of regional organisations that constitute their own internal mechanism, and those features that require external cooperation, which can in some cases help increase resilience but also hamper strategic autonomy if this cooperation entails a dependence that creates negative externalities. The distinction between external differentiation and external cooperation, which is paramount in this research, requires a clear understanding of the legal ramifications, as well as clarity around the political characteristics of differentiation.

Chapter 3

A typology for a comparative approach of differentiation amongst ROs

The typology elaborated for this database distinguishes between instruments which can be differentiated along vertical, internal and external dimensions according to a widely used definition (Leuffen, Rittberger, and Schimmelfennig 2022) and regional cooperation instruments which may or may not be driven by an RO. Differentiation firstly refers to the variation in centralisation of policy making (vertical differentiation), secondly to the non-uniform application of an RO's rules concerning primary or secondary law to member states (internal differentiation), and thirdly to the application of an RO's rules around primary or secondary law to non-member states (external differentiation). Drawing on Pedreschi and Scott (2020), external differentiation is the process through which a third country either adopts an RO's law or aligns its law with the RO's primary or secondary law, while external cooperation is defined here as a formalised mechanism through which RO Member State governments and a third state agree to find solutions to common problems without requiring the third country to adopt an RO law or align with its law.

The distinction between external differentiation and external cooperation (see below) emanates from the core objective of the research project associated with this database which consists of analysing and comparing the strategies of ROs to ensure resilience or strategic autonomy in the context of a rising and assertive China on the international stage. Instrument means a decision formalised by means of a written document endorsed by the ROs to elicit a behaviour from the Member States. The degree of formalisation of instruments can vary a lot between the three ROs (see

section 4.1 on the Selection of instruments). Table 2 synthesises the relation between differentiation and regional cooperation.

External differentiation is highlighted in light blue in Table 2, while external cooperation appears in grey.

Table 2. Relation between differentiation and regional cooperation.

	MEMBER STATES		ASSOCIATED STATES	THIRD STATES		
	RO's law				Not requiring adoption of / alignment with RO's law	
	Vertical differentiation supranational/intergovernmental				External cooperation Informal / Treaty-based	
	Internal differentiation		External differentiation			
Differentiation of RO instruments	No internal differentiation	Internal differentiation	External differentiation (Conditional rules apply)	External differentiation (Conditional rules apply)		
Regional Cooperation					Involves special treatment for MS	Does not involve special treatment for MS

Source: author's own elaboration based on the definition of external differentiation provided by Pedreschi and Scott (2020).

3.1 Vertical differentiation

Vertical differentiation refers to the variation in centralisation of policy making (or integration). Integration is defined as the pooling (of majority decisions) and/or delegation of authority to a third body. Pooling 'involves a transfer of authority so that member states collectively participate in, but do not individually control, "decision-making"'. Delegation, by contrast, denotes 'a conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former' (Hawkins et al. 2006, 7). The three ROs were founded on treaties. The EU and Mercosur were established respectively in 1957 and in 1991 by the Rome Treaty and the Treaty of Asunción, while the ASEAN Charter was only established in 2007 (ASEAN Secretariat 2007), 40 years after ASEAN was established in 1967 (see Table 3) All three ROs aim to strengthen 'integration', as explicitly mentioned in their respective treaties: for the EU in the preamble and articles 20 and 21 of the Treaty on European Union (*Consolidated Version of the Treaty on European Union* 2016); for ASEAN in the preamble and articles 1, 2, 10 of the ASEAN Charter (ASEAN Secretariat

2007); for Mercosur in the preamble and articles 1, 8, 20 and annexes of the Treaty of Asunción (1957). Using this term therefore cannot be viewed as a sign of ethnocentrism. However, whilst integration in the EU was conceived as a gradual transfer of sovereignty from the national to the community level, Mercosur and ASEAN have never sought this objective, and their institutional features remain strongly intergovernmental with little delegation of authority to their secretariat, and decision-making based on consensus. However, this does not justify non-consideration of the integration dimension. It is not scientifically acceptable to ignore the specificity of the EU case in comparative regionalism on the basis of the possibility of Eurocentrism in academic research: ‘a non-EU-centric perspective does not mean the EU’s record should be ignored’ (Acharya 2016, 110). While this dimension is used in the database, the typology supranational/intergovernmental does not entail any sense of finality, but it does not preclude either the possibility of highlighting the merits of one or other of the types of vertical integration.

Vertical differentiation has two ordinal values: integrated (coded according to the type of competences given to the supranational body), and intergovernmental. All decisions taken in ASEAN and Mercosur are intergovernmental (see Table 3). The comparison of the types of decisions taken amongst the three ROs is presented in Table 3, along with the major differences in terms of powers conferred to the parliaments and their representativity (see Figure 1). ASEAN legislation uses the term ‘Charter’ to designate the founding treaty of ASEAN, as well as another instrument: the 2022 Charter of the ASEAN University Network (which replaced the 1995 Charter).

Table 3. General overview of the main institutional features of the EU, ASEAN and Mercosur

	EU	ASEAN	Mercosur	
Main characteristics				
CREATION	European Coal and Steel Community CSC Paris Treaty 1951 EEC Rome Treaty 1957	Bangkok Declaration 1967	Treaty of Asunción 1991	
TYPE OF RO	Supranational	Intergovernmental	Intergovernmental and inter-presidential	
CHARTER, LEGAL PERSONALITY	The EEC since 1957 (Rome Treaty) The EU in 2007 (Lisbon Treaty)	Since 2007 (ASEAN Charter)	Since 1994 (Protocol of Ouro Preto)	
EXTERNAL REPRESENTATION	High Representative for Foreign Affairs and Security Policy/Vice-President of the Commission (HRVP)	Secretary General	None (High Representative General of Mercosur 2010-2017)	
Source of law – Decision making				
SUPRA-NATIONAL	<p>Ordinary legislative procedure (community method)</p> <p>Parliament – Council Parliament Co-decision Simple majority Council Co-decision Qualified majority Commission Initiative and implementation. (Plus: Adoption of implementing acts and delegated acts)</p>	<p>Regulations Apply automatically to all MS Binding</p> <p>Directives Objectives to be achieved Binding</p> <p>Decisions Binding on certain states</p> <p>Recommendations No binding force</p> <p>Opinions - No binding force</p>	No	No
INTERGOVERNMENTAL	<p>Special legislative procedures</p> <p>Council of the EU</p> <p>By consent or as a result of consultation with the Parliament Common Foreign Security Policy Almost always unanimous voting</p>	<p>Decisions</p>	<p>Normal procedure</p> <p>ASEAN summit</p> <p>Charters Agreements Protocols Memorandum Instrument of extension Conventions Consensus One exception: economic agreements ('Asean minus X' formula).</p>	<p>Normal procedure</p> <p>Council of the Common Market</p> <p>Common Market Group</p> <p>Trade commission</p>
SPECIFIC CO-OPERATION MECHANISM	Enhanced cooperation (Treaty based) <u>In defence matters:</u> PESCO. Legally binding commitments EDA Certain missions	–	–	–
COORDINATION	Open Method of Coordination	–	–	–
PRESIDENTIAL	No	No	President	Decrees
Parliaments				

	EU Parliament Directly Elected MP 705 members (446 million hbts)	No, but there is an Inter-Parliamentary assembly Article (AIPA), consultative Only national delegations 15 members (647 million hbts)	Yes, but has a consultative role Created 2005 No direct election. No proportional representation 184 members (295 million hbts)
PARLIAMENT POWERS	Legislative (Co-decision) / Budgetary /Supervisory Political impetus: Resolutions	Consultative and Recommendary	Consultative and Recommendary Declarations / Recommendations / Reports
Dispute settlement - Enforcement			
COURT	ECJ Sanctions from the ECJ (except for CFSP: Intergovernmental)	Provision for a High Council (in the TAC) Protocol for Enhanced Dispute Settlement Mechanism Dispute resolution mechanisms in economic agreements	Arbitration tribunals Permanent review tribunal 2002 Protocol de Olivos para la solución de controversias en el Mercosur
SUSPENSION - EXCLUSION	2007: Article 7 of the Treaty of Lisbon: certain rights can be suspended if there is 'a clear risk' that a member state is breaching the EU's fundamental values, including freedom, democracy, equality, and the rule of law.	2008: the ASEAN Charter adds that MS shall adhere to 'the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms'.	1998: The Ushuaia Protocol on Democratic Commitment provides for the 'Democratic clause': the suspension of a member in the event of non-respect of the rules of democracy.

Source: author's own compilation.

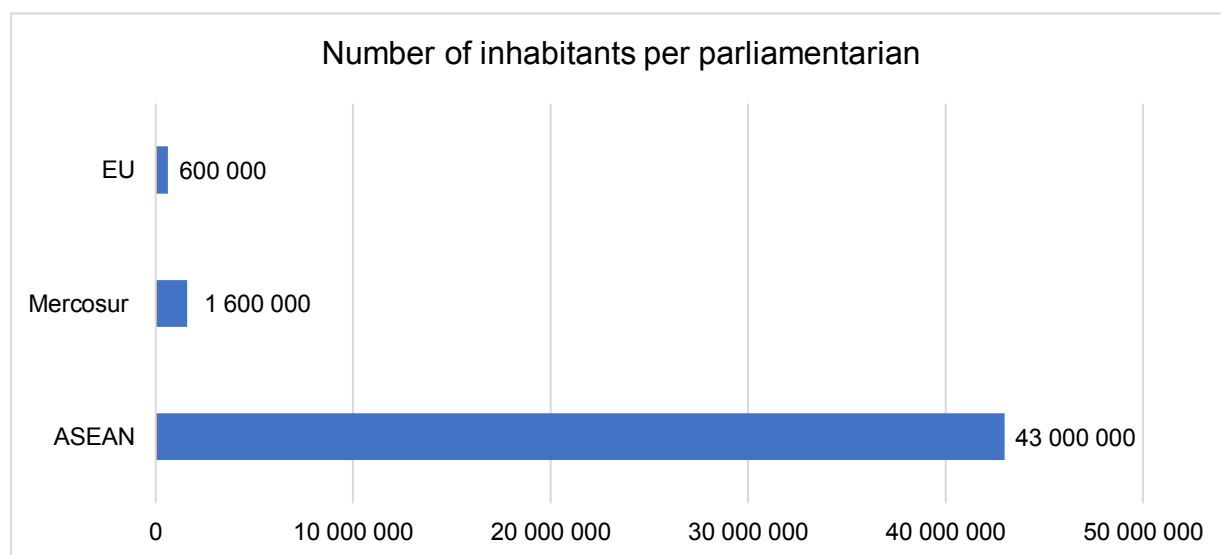


Figure 1. Parliamentary representativity in the EU, ASEAN and Mercosur.

3.2 Internal differentiation

Internal differentiation refers to the application of non-harmonised rules to certain member states (see Table 4). Some instruments are not internally

differentiated: neither the EU Foreign Direct Investment (FDI) screening regulation nor the 2000 Decision n° 32/00 on the relaunch of Mercosur which binds states to jointly negotiate agreements of a commercial nature with third countries. Instruments that display internal differentiation features include PESCO as regards the EU, the ASEAN Comprehensive Investment agreement, the Initiative for ASEAN Integration (IAI), and FOCEM as regards Mercosur. This database considers regional funds, which are aimed at reducing disparities in development, to be instruments of a differentiated nature. FOCEM emanates from the Common Market Council and intends inter alia to ‘reduce asymmetries - in particular of the less developed countries and regions.’ (Consejo Del Mercado Común 2014). The Initiative for ASEAN Integration (IAI) (*Ha Noi Declaration On Narrowing Development Gap For Closer ASEAN Integration 2001*) aims to reduce the development gap between member states, acting as a differentiated instrument since at least the IAI’s Work Plan in III 2016 and Work Plan IV in 2020 (ASEAN Secretariat 2020). These two Work Plans do not refer to the Charter, but in both the declarations, which set out the Work plans, the parties (ASEAN member states) agree that the Work Plan constitutes an integral part of the ASEAN’s latest roadmap, ‘ASEAN 2025: Forging Ahead Together (2015)’ (ASEAN Secretariat 2015). And the Kuala Lumpur Declaration establishing the ‘ASEAN 2025: Forging Ahead Together’ roadmap does refer to the Charter in article 5.¹ The IAI is specifically designed to support the less developed countries, referred to in ASEAN documents as the CLMV countries (Cambodia, Laos, Myanmar and Vietnam). Article 3 of the 2001 IAI (*Ha Noi Declaration On Narrowing Development Gap For Closer ASEAN Integration 2001*) reads: ‘We shall devote special efforts and resources to promoting the development of the newer Member Countries of ASEAN (Cambodia, Laos, Myanmar, and Viet Nam or CLMV) with priority given to infrastructure, human resource development, and information and communication technology’.

3.3 External differentiation

Pedreschi and Scott have provided useful clarity regarding how external differentiation should be defined in the context of the EU. They define

¹ The heads of State/Government of ASEAN member states ‘RESOLVE that ASEAN Member States as well as ASEAN Organs and Bodies shall implement the ASEAN 2025: Forging Ahead Together, in a timely and effective manner, in accordance with the purposes and principles of the ASEAN Charter’.

external differentiation as ‘the process through which a third country either adopts EU law or aligns its law with the EU *acquis*.’ (Pedreschi and Scott 2020, 5). They propose that external differentiation can be achieved as a result of unilateral instruments as well as through the conclusion of international agreements. They further specify that external differentiation

arises on the one hand when an international agreement entered into by the EU requires one or more third countries to adopt EU law or to achieve a specified degree of alignment between third country and EU law. It also arises when a unilateral EU act makes the granting of an advantage conditional on legal alignment and/or on ‘foreign conduct’ complying with EU law

(Pedreschi and Scott 2020, 63).

Drawing on Pedreschi and Scott (2020), external differentiation is defined here as the process through which a third country either adopts an RO’s law or aligns with the RO’s law. In the absence of such a requirement in the terms of the agreement, the association of third parties is a matter of external cooperation. This is the case with the above-mentioned IAI, of which the external dimension consists of the participation of external states (the Dialogue partners). These countries are not legally bound by the instrument, which in this case is a Declaration, nor are they bound by their status as Dialogue partners since this does not entail any obligation. The IAI is thus internally differentiated and has an external cooperation dimension.

The EU, ASEAN and Mercosur have developed distinct relations with third states, all of which are in their close neighbourhood except for Russia, a Dialogue Partner of ASEAN which is geographically distant from the ASEAN. These states have received different denominations and their relations with the RO are governed by specific rules (see Table 4). The EU is the RO with the widest range of categories of third states of which the rules that govern the relation with the RO are the most constraining.

External states to the EU with a specific status include associated states, partner countries, candidate countries, neighbourhood countries and third states participating in PESCO. Clear and binding rules in terms of values and policy alignment with the EU apply to these states. Preamble (6) of the Instrument for Pre-Accession (IPA) III (European Parliament and Council of the EU 2021) reads: ‘The enlargement process is built on

established criteria and fair and rigorous conditionality'. ASEAN has Dialogue partners and Sectoral partners as well as candidate countries. No specific rules are provided in the Charter or subsequent documents for these states except for minimal rules for candidate countries. Mercosur makes a distinction between associated countries and candidate countries: both are subject to the democratic clause.

The distinction between third states and associated states needs to be specified further, something that is present in EU legislation and can vary depending on the legislation. Norway is considered to be an associated country (in relation to the European defence Fund), or a third state (in terms of its participation in PESCO). The notion of third states is used in Council decision 2017/2315 on PESCO (article 9, Participation of third states in individual projects). 'Third States may exceptionally be invited by project participants, in accordance with general arrangements to be decided in due time by the Council in accordance with Article 46(6) TEU' (Council of the European Union 2017). The Decision does not refer to the category of 'associated states.' Participants are Member States and third states. Hence, Norway is considered a third state as far as PESCO is concerned. By contrast, Regulation (EU) 2021/697 on the European Defence Fund, which also applies to the EEA, refers to the concept of associated country, and non-associated third country. Article 5, regarding Associated countries, establishes that 'The Fund shall be open to the participation of members of the European Free Trade Association which are members of the EEA, in accordance with the conditions laid down in the Agreement on the European Economic Area (associated countries)' (European Parliament and Council of the European Union 2021). In the context of the European Defence Fund, Norway is hence an associated country.

Only the EU has instruments that are externally differentiated in the policies under scrutiny.

Table 4. Rules governing the relations between an RO and third states.

	EU	ASEAN	Mercosur
Associated states	EEA and EFTA states (Norway, Iceland, Lichtenstein, Switzerland) Based on the EFTA Convention and the Agreement on the European Economic Area	-	Bolivia, Chile, Colombia, Ecuador, Peru Surinam, Guyana,
	EFTA Convention. Established in 1960. 2021 Consolidated version. Agreement on the European Economic Area (EEA) 1994		Democratic clause: It is mandatory to adhere to the Protocol of Ushuaia on Democratic Commitment in MERCOSUR, be a member of ALADI and have an FTA

	The Community acquis applies to the areas covered by the agreements		with Mercosur or fulfil the conditions of art. 25 of the Treaty of Montevideo that established ALADI in 1980.
Partner country	'Partner country' means a country or territory that may benefit from Union support under the Instrument pursuant to Article 4. (Recital 14, Preamble of 2021 Regulation on Global Europe, art. 4. Conditionalities apply (Article 8)	-	-
	Regulation (EU) 2021/947 Global Europe Specific rules apply		
Dialogue partners Sectoral partners	-	Dialogue partners: Australia, Canada, China, the EU, India, Japan, New Zealand, South Korea, Russia and the United States	-
		Art.44 (1) of ASEAN Charter. The ASEAN Foreign Ministers Meeting may confer on an external party the formal status of Dialogue Partner, Development Partner, Special Observer, Guest, or other status that may be established henceforth. No rules specified in the Charter	
Candidate countries	Albania, Moldova, the Republic of North Macedonia, Montenegro, Serbia, Turkey and Ukraine	Timor-Leste (agreement in principle in 2022 to admit it as a MS)	Bolivia
	Accession criteria (Copenhagen criteria): Art. 6(1) and Article 49 of the Treaty on European Union. Specific rules apply Pre-accession assistance criteria: (Regulation (EU) 2021/1529 establishing the Instrument for Pre-Accession Assistance (IPA III)). Specific rules apply	Basic rules specified in Art.6 of the Charter	Democratic clause Art. 20 Asuncion Treaty. The Treaty of Asuncion is open to new additions from other States Parties of the Latin American Integration Association (ALADI), that adhere to the Protocol of Ushuaia on Democratic Commitment in MERCOSUR
Neighbourhood countries	16 of the EU's closest Eastern and Southern Neighbours: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine, Russia	-	-
	European Neighbourhood Policy. Association agreements. Specific rules apply		
Third countries	Depending on the legislation: non-EU MS or non-associated MS	-	-

Source: author's own compilation.

3.4 External cooperation

The broad understanding of legal validity suggested by Pedreschi and Scott (2020) also allows for a clear distinction to be made between external differentiation and external cooperation. External cooperation is defined here as a formalised mechanism through which the governments of RO

Member States and a third state agree to find solutions to common problems without requiring the third country to adopt an RO law or to align with its law. While often viewed as an instance of external differentiation, portrayed in the case of ASEAN as ‘concentric circles’ (Warleigh-Lack 2015; Venturi et al. 2020), the ASEAN Plus X mechanism of ASEAN belongs to this category. This is also the case with the ASEAN+3 forum (Japan, China, South Korea), and the instruments that emanate from ASEAN+3 (such as the Chiang Mai Initiative Multilateralisation) which are often considered to be instances of differentiation.

This section briefly refers to those multilateral or bi-regional instruments which particularly need to be distinguished from differentiation. Their legal nature varies from fora to treaties. Furthermore, it is worth noting that some regional cooperation instruments can be driven by an RO yet are not differentiated instruments. This is the case with ASEAN instruments which require third states to recognise ASEAN’s ‘driving force’ or ‘centrality’. However, ‘centrality’ is not defined in any specific way and has no legal force. The concept of ‘centrality’ cannot be used as a criterion for determining whether an instrument is externally differentiated or not: the concept of ‘centrality’ has a political rather than a legal dimension. The present document does not elaborate further on this aspect.

The Master Plan on Connectivity 2025 is an ASEAN instrument. Its *external* dimension resorts to external cooperation. External partners are indeed associated (as providers of external capital) but they are not constrained in any way by the ASEAN Charter nor by the Master Plan. Their association with the Master Plan on Connectivity 2025 is thus rather a mechanism of cooperation. The Preamble of the 2016 Vientiane Declaration on the Adoption of the Master Plan on ASEAN Connectivity 2025 simply expresses appreciation for the support shown by the Dialogue Partners and external parties towards the Master Plan on ASEAN Connectivity 2025 and their readiness to partner with ASEAN concerning the implementation of the Master Plan (ASEAN Secretariat 2016, 3).

Other instruments that fall within the category of regional cooperation include the ASEAN+3 – which is a forum that emerged as a consequence of the Asian Financial Crisis of 1997, and since then has extended its scope of cooperation from a financial safety net to a platform which covers a wide range of areas. Another instrument is the forum ASEAN Defence Ministers' Meeting Plus or ADMM+, whose Concept paper of 2009 states that members should be full-fledged Dialogue Partners of ASEAN; have

significant interactions and relations with the ASEAN defence establishment; and should be able to work with the ADMM to build capacity so as to enhance regional security in a substantive way in order to promote capacity-building in the region in the fields of defence and security. As for the East Asia Summit, which is also a forum, the 2005 Declaration provides that 'participation will be based on the criteria for participation established by ASEAN' (*Kuala Lumpur Declaration on the East Asia Summit 2005*).

The EU was instrumental in putting in place the European Political Community, a platform for political coordination between European countries across the continent: a proposal for the creation of this forum was presented by French President Emmanuel Macron on 9 May 2022 at the European Parliament on the occasion of the conclusion of the Conference on the Future of Europe, and the letter for the first meeting was sent by Charles Michel, President of the European Council. The EU has also established two partnerships of importance: a cooperation instrument with NATO in 2023 and the bi-regional strategic partnership between the EU and ASEAN in 2020. Mercosur has not put in place any specific external mechanism in relation to the rising influence of China in the areas of investment and security. The relevance of the bi-regional agreement between the EU and Mercosur regarding resilience vis-à-vis China is discussed in the book.

Chapter 4

Database configuration

4.1 Instrument selection

The instruments included in the database are selected based on several criteria: their relevance vis-à-vis the question of resilience and strategic autonomy in relation to the influence of China, their legal dimension, and the time frame of the study.

Sources

RO laws were accessed via the following sources:

- For the EU, the source was EUR-Lex, the 'Online gateway to EU Law' <https://eur-lex.europa.eu/homepage.html>; and European Online Sources <https://www.europeansources.info/>
- for ASEAN, the 'Legal Instruments Database' <https://asean.org/legal-instruments-database/>
- for Mercosur, the 'Mercosur Law Database' <https://www.mercosur.int/documentos-y-normativa/normativa/> and the database of the Organization of American States http://www.sice.oas.org/agreements_s.asp.

Data in the database also originates from academic literature of which the full references are given in the Excel document. Information which is not referenced in the Excel document was extracted from the instrument itself of which the link is provided in the database.

Policy relevance

The database considers two policy areas, trade and security, which are of major relevance when examining resilience and strategic autonomy in relation to Chinese influence. More specifically, trade includes policies that relate to foreign direct investment, and therefore includes policies that screen foreign direct investments (the EU FDI Screening regulation is the only example of this) but also policies that aim to enhance intra-regional investment (EU Invest, the ASEAN Comprehensive Investment Agreement, the Master Plan on ASEAN connectivity 2025, the Decision on intra Mercosur Investment facilitation).

Policies that aim to reduce the development gap and economic asymmetries (FOCEM in Mercosur, IAI in ASEAN) are also considered to be those that could in principle prevent member states from deepening their dependence on Chinese investment should the RO envisage such a policy orientation.

Regarding security, the database includes instruments which are directed towards strengthening the RO's defence (PESCO), limiting the RO's dependence on external military supplies (the Regulation on a European Defence Fund), both instruments of which are only to be found in the EU. It does not consider instruments which aim to counter terrorism (such as 'Our eyes' in ASEAN which is open to external cooperation (Tan 2020, 34)). Cooperation in terms of defence and security in ASEAN takes the form of external cooperation: the Treaty for Amity and Cooperation, the ADMM+, and the ASEAN Regional Forum. In Mercosur, differentiation in defence issues was discussed in the earlier stages of Mercosur (Frenkel 2019) but the proposal did not receive the approval of all Member States.

Legal dimension

The EU, ASEAN and Mercosur issue several types of decisions (see Table 3) that emanate from institutions which are strictly intergovernmental in ASEAN and Mercosur. Furthermore, while the EU formalises decisions to a high degree, ASEAN regionalism is based to a large extent on informality rather than formal and institutionalised rules (Deinla 2017, 7). The database covers primary and secondary law as well as international agreements. International agreements also include statements, e.g., the EU-US Trade and Technology Council Inaugural Joint Statement from 2021. Instruments include policies, but also programs, strategies, declarations

when relevant regarding resilience or strategic autonomy *and* when they are explicitly related to an instrument of primary or secondary law.

This is the case with the Initiative for ASEAN Integration (IAI), which is based on a Declaration, and is included in the database, as it is described as an integral part of ASEAN's latest roadmap, 'ASEAN 2025: Forging Ahead Together (2015)', of which the Declaration (The Kuala Lumpur Declaration establishing the 'ASEAN 2025: Forging Ahead Together') does refer to the Charter in article 5. Article 5 provides that 'ASEAN Member States as well as ASEAN organs and Bodies shall implement the ASEAN 2025: Forging Ahead Together, in a timely and effective manner, in accordance with the purposes and principles of the ASEAN Charter' (ASEAN Secretariat 2015). This is also the case with the Vientiane Declaration on the Adoption of the Master Plan on ASEAN Connectivity 2025 (2016), which specifies that the Master Plan on ASEAN Connectivity 2025 shall be an integral part of the 'ASEAN 2025: Forging Ahead Together' roadmap. As regards the EU, such instruments include the Global Gateway and Global Europe which are based on a joint-Communication and a Regulation respectively.

Time frame

The time frame of the database is from 2013 to 2022. It starts with the launch of the Chinese Belt and Road Initiative and ends in 2022 with a consideration of the most recent policy developments, which shed light on the ways in which the three ROs adapt to policies. Where relevant, reference is made to instruments that were established before 2013, especially if no further recent instruments have been put in place.

4.2 Variables

The content of the database is presented via a single Excel spreadsheet which includes the following variables (displayed in columns):

- Title
- Short title
- Policy area
- Date
- Status
- Type of instrument
- Legal basis
- Third state (agreements)

- Weblink
- Subject matter
- Critical juncture
- Vertical differentiation
- Internal differentiation
- External differentiation

Information about critical juncture and differentiation is not filled in for the external partnerships between the ROs and external powers. By definition, differentiation does not apply to such instruments. As for the critical juncture for establishing partnerships between ROs and external powers, identification of the multiple factors at stake would not bring significant added value to the research. Partnerships are selected based on their relevance vis-à-vis the influence of China. Some were negotiated before 2014 but their relevance to the time frame of the study justifies their consideration in the database.

The three types of instruments (regional organisations' instruments, external partnerships, and partnerships with China) are displayed via rows in the Excel document and are identified as such in the database in column A (RO = 1; RO-state/RO/IO = 2; RO-China = 3).

The interpretation of external cooperation takes into consideration the number of partnerships, the policy concerned (trade, partnership agreement, strategic partnership) and their scope (whether specific provisions are provided in terms of screening FDI, and whether defence policy is covered). As far as partnerships with China are concerned, specific attention is given in the case of ASEAN to (1) the overlap with existing regional instruments, e.g., in terms of connectivity, (2) the reliance on the Asian Infrastructure Investment Bank (China wields a great deal of influence on this bank (Luo, Yang, and Houshmand 2021, 29–30)²), and (3) the way in which voting power is distributed in ASEAN +3.

² Luo, Yang and Houshmand specify that 'critical issues that China disapproves will never pass but critical issues that China supports are also difficult to pass unilaterally. In many ways, the AIIB is a defensive institution whereby China does have the absolute ability to stop critical actions while no single member has distinctly more power than others to set the agenda' (Luo, Yang, and Houshmand 2021, 29).

4.3 List of instruments and differentiation features

The tables below display descriptions of the instruments analysed.

Table 5. List of EU instruments analysed

EU	Short title	Date	Vertical differentiation		Int diff	Ext diff
			Intergov	Compe- tences		
RO INSTRUMENTS						
Trade						
1.	FDI Screening Regulation	2019		Exclusive	No	No
2.	EU-China strategic outlook	2019	Intergov		No	Yes
3.	Invest Plan for the Balkans	2020		Shared	No	Yes
4.	Invest EU	2021		Exclusive	No	Yes
5.	Pre-Accession	2021		Exclusive	No	Yes
6.	Global Europe	2021		Shared	No	Yes
7.	Global Gateway	2021		Shared	No	Yes
Security						
8.	Accession to the EU 1993	1993		Exclusive	No	Yes
9.	PESCO	2017 - 2020	Intergov		Yes	Yes
1	EDF	2021		Shared	No	Yes
10.	EU Strategy Indo-Pacific	2022	Intergov		No	Yes
11.	NIS2 Directive (cybersecurity)	2022		Shared	No	Yes
EXTERNAL COOPERATION						
Trade						
12.	EU Singapore FTA	2018 -				
13.	EU-Mercosur AA	2018 - 2019				
14.	EU-Japan Connectivity and infrastructure	2019				
15.	EU-US TCC	2021				
16.	EU-India Connectivity	2021				
17.	EU-Vietnam Trade Agreement and IPA	2019 -				
Security						
18.	EU-Indonesia Partnership and Coop. Agree- ment	2009				
19.	EU-Philippines Partnership and Coop. Agreement	2018				
20.	EU-Japan Strategic Partnership	2019				
21.	EU-Singapore Partnership and Coop. Agree- ment	2019				
22.	EU-ASEAN Strategic Partnership	2020				
23.	EU-Thailand Partnership and Coop. Agree- ment	2022				

24.	EU-Malaysia Partnership and Coop. Agreement	2022				
25.	EU-NATO	2023				
COOPERATION WITH CHINA						
Trade						
26.	Comprehensive Agreement on Investment	2020 (on hold)				
Security						
27.	EU-China Strategic agenda	2013				

Table 6. List of ASEAN instruments analysed

ASEAN	Short title	Date	Intergov.	With China	Int diff	Ext diff
RO INSTRUMENTS						
Trade						
1.	ASEAN Comprehensive Investment Agreement	2009	Intergov.		Yes	No
2.	Master Plan on ASEAN Connectivity 2025	2016	Intergov.		No	No
3.	Initiative for ASEAN Integration Work Plan IV (2021-2025)	2020	Intergov.		Yes	No
Security						
4.	ASEAN outlook on the Indo-Pacific	2019	Intergov.		No	No
EXTERNAL COOPERATION						
Trade						
5.	ASEAN-Japan Comprehensive Eco Partnership (AJCEP)	2008				
6.	Chiang Mai Initiative Multilateralization (CMIM)	2010		Yes		
7.	Regional Comprehensive Economic Partnership Agreement	2020		Yes		
Security						
8.	Treaty of Amity and Cooperation	1976		Yes		
9.	ASEAN Regional Forum	1993		Yes		
10.	East Asia Summit	2005		Yes		
11.	ASEAN Defence Ministers' Meeting Plus	2010		Yes		
12.	US-ASEAN Comprehensive Strategic Partnership	2022				
13.	EU-ASEAN Strategic Partnership	2020				
14.	ASEAN-India Comprehensive Strategic Partnership	2022				
15.	ASEAN-Australia Comprehensive Strategic Partnership	2021				
16.	ASEAN-New Zealand Partnership (2021-25) Plan Action	2020				
COOPERATION WITH CHINA						
Trade						
17.	Agreement on Investment with China	2009		Yes		

18.	Deepening Coop. on Infrastructure Connectivity	2017		Yes		
19.	Synergising Master Plan ASEAN Connectivity and BRI	2019		Yes		
Security						
20.	ASEAN-China Comprehensive Strategic Partnership	2021-2022		Yes		

Table 7. List of Mercosur instruments analysed

Mercosur	Short title	Date	Intergov.	With China	Int Diff	Ext Diff
RO INSTRUMENTS						
Trade						
1.	Decision 32/00 relaunch of Mercosur, 2000	2000	Intergov.		No	No
2.	Decision on FOCEM, 2004	2004	Intergov.		Yes	Yes
3.	Decision on intra Mercosur Investment facilitation	2017	Intergov.		No	No
EXTERNAL CO-OPERATION						
Trade & security						
4.	EU-Mercosur Association Agreement, 2018-2019	2019-2020				

4.4 Main quantified results in relation to differentiation

This section presents aggregated results in relation to the 3 research hypotheses.

With regard to differentiation and hypothesis 1 - strengthening integration and using differentiation within the RO as a suitable option for increasing resilience or strategic autonomy - the EU and ASEAN use differentiation in almost the opposite way (see Graph 3). ASEAN resorts as much to internal differentiation as it does to not differentiating at all (50% of regional instruments), whereas the EU makes extensive use of external differentiation (91% of regional instruments), which ASEAN does not use at all.

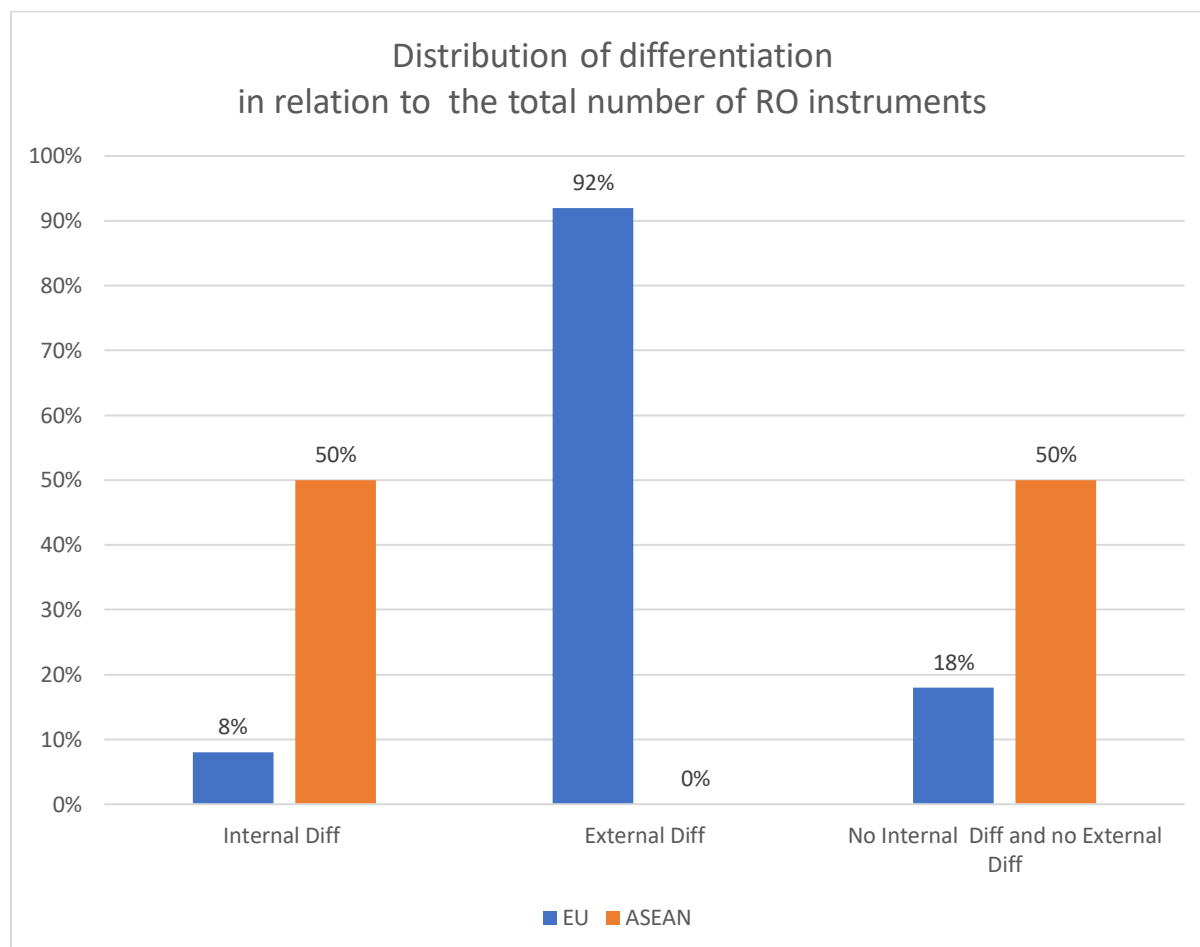


Figure 2. Distribution of differentiation in the EU and ASEAN in relation to the rise of China.

Regarding hypothesis 2, the results show great variation in the use of policy instruments in relation to the rise of China among the EU, ASEAN and Mercosur (see Graph 3). The latter uses far more regional instruments than external cooperation instruments, whereas ASEAN mostly relies on external cooperation mechanisms rather than integration instruments. The EU is situated in between, with 41% of instruments being regional in nature, and 59% being external cooperation partnerships. The vast majority of EU regional instruments are of a supranational nature, whether this be exclusive competences (30% of all instruments) or shared competences (11% of all instruments).

Considering the small number of instruments (4) established by Mercosur which can be interpreted as having an impact on the influence of China (not designed to enhance resilience but potentially useful for this purpose nonetheless), the remainder of the statistics only concern the EU and ASEAN, which display 27 and 20 instruments respectively.

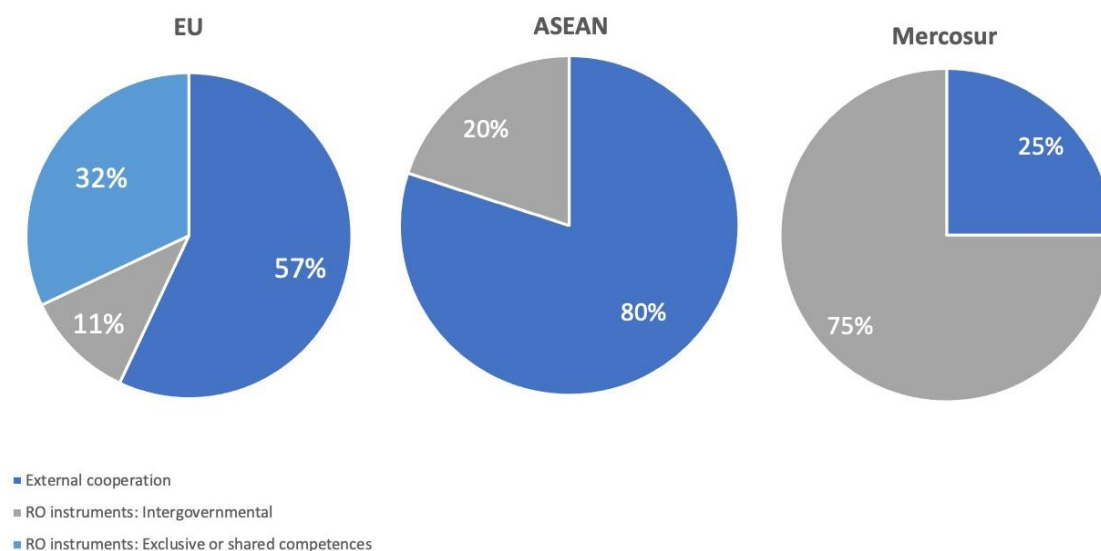


Figure 3. Distribution of instruments in the EU, ASEAN and Mercosur.

Hypothesis 3 posits that cooperating with China represents an option in terms of resilience but represents the least favourable option from the perspective of strategic autonomy. Results in the database show that the EU has engaged in far fewer external partnerships with China than it has with ASEAN – 13% and 50% of external cooperation respectively (see Figure 4). Furthermore, the two agreements that engage the EU with China are either on hold (the Comprehensive Agreement on Investment – CAI) or not in line with the most recent foreign policy regarding China. The CAI still needs the ratification of the EU Parliament which will not happen until Chinese counter-sanctions against MEPs are lifted (European Parliament 2021).³ The bilateral EU-China Strategic agenda signed in 2013 is now considered to not be in line with the most recent EU official position on China reflected in the 2019 Joint Communication to the European Parliament, the European Council and the Council, 'EU-China – A strategic outlook'.

³ On 20 May 2021, the European Parliament adopted a resolution on Chinese counter-sanctions that were imposed due to EU human rights sanctions against selected Chinese officials in connection with reported human rights abuses in Xinjiang, China. The resolution states that the European Parliament will not consider the agreement until Chinese counter-sanctions are lifted. The CAI is therefore on hold.

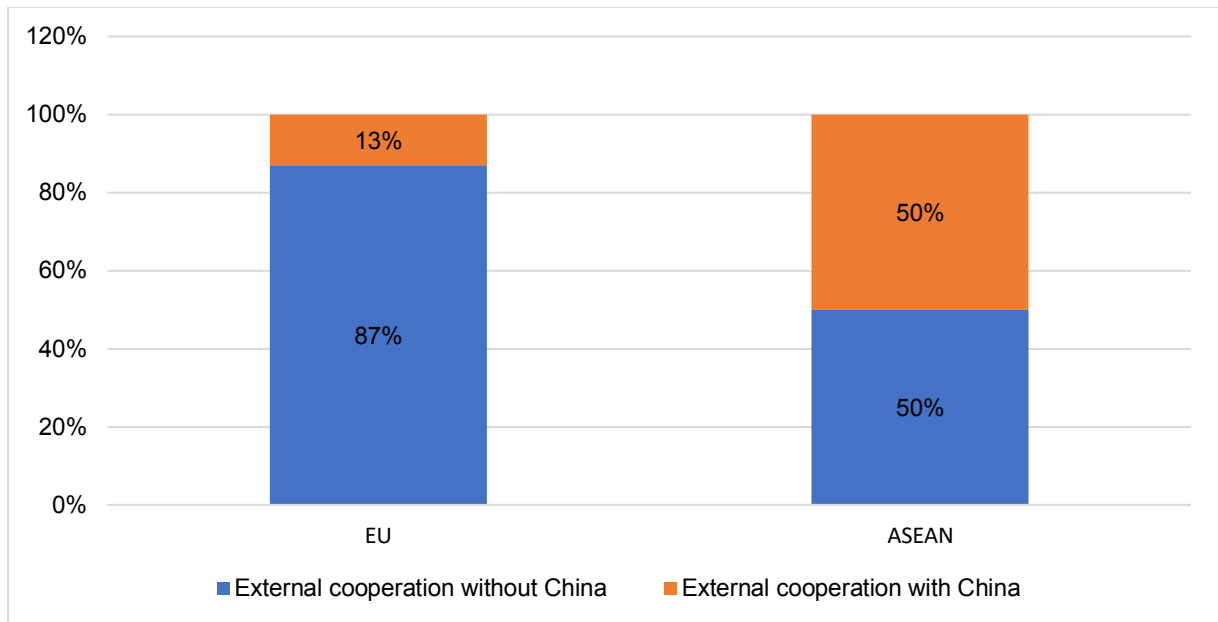


Figure 4. Share of external cooperation with China and not involving China in the EU and ASEAN.

Chapter 5

Observations

While a full interpretation of the database on differentiation and on data regarding external cooperation is provided in the book – in relation to the three hypotheses underlying the research project – a few observations are presented here. It is also worth noting that the database, which is presented in an Excel document, can be used for other purposes.

From a theoretical perspective, the analytical framework used in the database allows for a renewed appreciation of external differentiation. It shows that ASEAN uses external differentiation far less extensively than previously assessed in the literature. By contrast, the EU uses external differentiation widely. This situation can be explained by the difference in legalisation between the EU and ASEAN, and by the difference in power relations between the RO and their associated and partner countries. The EU's relations with most of its associated and partner countries (accession partnership, neighbourhood policy) are oriented towards supporting development. Contrastingly, ASEAN's relations with external partners are structured around the premise of the partners' capacity to support ASEAN's development, both in terms of resources and expertise (Thuzar 2015, 1).

Mercosur has used fewer instruments to counter the issue of Chinese influence, which can be explained by three factors. (1) China's influence appears so far to be of a lesser magnitude in Mercosur than in the EU and ASEAN. This situation can be related to the geographical distance with China and Paraguay's support of Taiwan. (2) Politically, the shifts in the

Brazilian presidency have affected Mercosur's external relations. Under the first Lula presidency, autonomy was defined by participation in multilateralism, by diversification (Cepaluni and Vigevani 2012), and agreements with China that allowed for an alternative to US hegemony. By contrast, Bolsonaro's foreign policy favoured a nationalistic understanding of autonomy and acted as a subordinate to the Trump administration (Amorim and Ferreira-Pereira 2021, 5). (3) Institutionally, Mercosur only deals with trade and not with defence. The EU-Mercosur Association agreement potential to be a game changer regarding strategic autonomy for the EU and for Mercosur is diversely assessed in the literature (Caetano 2022; Malamud 2022).

While the EU has developed differentiation to the point of describing it as a 'system' of differentiated integration (Leuffen, Rittberger, and Schimmelfennig 2013) and is increasing its use of external differentiation in trade and security policies, it has also recently engaged in informal external cooperation, as exemplified by the European Political Community, a forum which makes it possible to reach out to the countries of Europe beyond the accession process (European Commission 2022).

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