



Small steps – right direction

EU takes action on Israeli settlements

The European Union is taking a number of measures against Israeli settlements in the territories occupied by Israel since 1967, that is, the Golan Heights, the West Bank including East Jerusalem, and the Gaza Strip.

Like most other states in this world (apart from the US and Israel itself), the EU has long considered these settlements illegal under international law, since they are contrary to Article 49(6) of the Fourth Geneva Convention forbidding an Occupying Power to “transfer parts of its own civilian population into [ie colonise] the territory it occupies” [\[1\]](#).

The EU is now taking the following steps in regard to these illegal settlements:

- (A) New guidance has been issued to ensure that EU funds do not go to support activities in the settlements. Coupled with this, future agreements between the EU and Israel must explicitly state that they do not apply to the occupied territories.
- (B) The EU is in the process of drawing up a scheme for the labelling of settlement goods to be applied by retailers across the EU. This is expected to be finalised by the end of 2013.
- (C) The EU is in the process of drawing up guidance for EU citizens and enterprises about economic and financial involvement in the settlements.

Ireland remains committed to an EU-wide ban on settlement goods, but imposing such a ban requires unanimity amongst the 28 EU members, which doesn't exist at the moment. However, it is likely that the proposed labelling of settlement goods will discourage retailers from stocking them and customers from buying them if they are stocked.

The negative economic impact of these new steps on Israel will be very small. However, they are a welcome expression of political disapproval from the EU to Israel for its unremitting colonisation of occupied Palestinian territory.

It can be taken for granted that these steps will not persuade Israel to slow down its settlement building one iota, let alone cease it altogether and withdraw from the occupied territories so that a Palestinian state can come into being. That will require pressure of a different order of magnitude to be applied to Israel.

New EU guidelines

In the past, some Israeli entities have received EU funding for activities carried out in illegal settlements. The new guidelines should prevent this happening in the future.

These guidelines “on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onward” [2] are contained in a Notice, which was adopted by the European Commission on 30 June 2013. A very informative set of FAQs on the guidelines is available on the website of the EU delegation to Israel [3].

Grants and prizes

Under Point 9(a) of the Guidelines, only “Israeli entities having their place of establishment within Israel’s pre-1967 borders” are eligible for EU “grants and prizes”. According to Point 10:

“The place of establishment is understood to be the legal address where the entity is registered, as confirmed by a precise postal address corresponding to a concrete physical location. The use of a post office box is not allowed.”

Under Point 12(a), Israeli entities deemed eligible under 9(a) can only receive “grants and prizes” for activities which do **not** take place in the occupied territories.

Note, however, that the new guidelines do not prevent Israeli entities which operate in illegal settlements from receiving “grants and prizes” for activities carried out elsewhere.

It appears that in the past, whereas to be eligible Israeli entities were supposed to be “established” within the pre-1967 borders, there was nothing to stop them getting EU funding for activities carried out in illegal settlements. See, for example, the answer to a question in the European Parliament in June 2011 about support for Ahava under the EU’s scientific and technical research programmes (FP5 and FP7), which stated that “the participation condition of being established in a certain territory does not oblige a beneficiary to carry out the funded research in the place of its establishment” [4].

The new guidelines make it clear that to be eligible for EU “grants and prizes” the activities supported must not be carried out in the occupied territories.

To summarise: only Israeli entities based within Israel’s 1967 borders are eligible for EU “grants and prizes” and then only for activities which do **not** take place in the occupied territories.

(There is a small exception: Israeli entities may be eligible for carrying out activity in the occupied territories to benefit Palestinians, activity which will not take place in Israeli settlements – see Point 15 of the guidelines).

Financial instruments

The guidelines for eligibility for “financial instruments” (loans, guarantees, equity and other mechanisms) are more restrictive.

Under Point 9(b) of the Guidelines, only “Israeli entities having their place of establishment within Israel’s pre-1967 borders” are eligible as “final recipients” of “financial instruments”. Under Point 12(b), Israeli entities deemed eligible under 9(b) are eligible to be “final recipients” only if they do not operate **at all** in the occupied territories.

This will have an impact on the ability of Israeli enterprises to borrow from, for example, the European Investment Bank, which from 2008-2012 provided loans totalling about half a billion euros to Israel enterprises. This included one in 2011 for 120 million euros to the Israel National Water Company, Mekerot, which operates in the occupied territories as well as Israel [5]. Such a loan will not be possible under the new guidelines.

To summarise: only Israeli entities which are based within Israel's 1967 borders and don't operate **at all** in the occupied territories are eligible to be "final recipients" of EU "financial instruments".

(A Point 15 exception also applies for "financial instruments").

Future agreements inapplicable to the occupied territories

In addition to introducing the new guidelines, the EU Foreign Affairs Council has recently decided that all new agreements between the EU and Israel must explicitly state their inapplicability to the occupied territories. A political decision to this effect was taken at the EU Foreign Affairs Council on 10 December 2012:

"The European Union expresses its commitment to ensure that – in line with international law – all agreements between the State of Israel and the European Union must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967, namely the Golan Heights, the West Bank including East Jerusalem, and the Gaza Strip." ([\[6\]](#), page 8)

Will Israel be prepared to sign an agreement containing language that says, or even implies, that all the territories occupied by Israel in 1967 are not part of Israel today? It's difficult to see how Israel could, given that, according to Israeli law, the Golan Heights and East Jerusalem are Israeli territory.

A Jerusalem Post article (*'We will not accept any external dictates regarding our borders'*, 16 July 2013 [\[7\]](#)), gives an example of the language which Israel might have to sign. This is taken from an agreement on the next stage of the Euro-Med Youth Program, which is currently under negotiation between the EU and Israel and reads as follows:

"This agreement will be implemented in conformity with the European Union's position that the territories that came under Israel's administration in June 1967 are not part of the territory of Israel."

This language gives expression to the position of the EU, not of Israel, on what constitutes the "territory of Israel". Nevertheless, the Jerusalem Post article quotes a "senior Israeli official" saying that this is "an example of language that Israel cannot live with", because "by signing that type of language, Israel would – in effect – disown its own laws, since the Knesset has legislated the annexation of both Jerusalem and the Golan Heights".

The article also quotes language from the recently signed Open Skies agreement, where the territorial clause reads:

"The application of this agreement is understood to be without prejudice to the status of the territories that came under Israel's administration after June 1967."

The senior official describes this as "language we can live with", unsurprisingly since it does not state explicitly that Israeli territory today does not include the territory it occupied in 1967.

Responding to these new EU requirements, Israeli Prime Minister Binyamin Netanyahu said:

“As Israel’s prime minister, I will not allow hundreds of thousands of Israelis living in Judea, Samaria, the Golan Heights and our united capital of Jerusalem to be harmed. ... We will not accept any external dictates regarding our borders. ... That issue will be decided only in direct negotiations between the sides.”

So, is it possible that there will be no more agreements between the EU and Israel? It’s unlikely. Most likely, language will be devised that Israel will be prepared to sign, albeit reluctantly. Given the importance of its relationship with the EU, Israel is not going to allow it to stagnate.

Labelling of settlement products

The European Commission is in the process of devising an EU-wide scheme for labelling settlements products.

In a letter to relevant EU commissioners on 8 July 2013 (published by Haaretz [\[8\]](#) & [\[9\]](#)), EU Foreign policy chief, Catherine Ashton, sought their assistance in finalising the scheme by the end of 2013. The letter noted:

“An overwhelming majority of Member States have recently supported or openly demanded the preparation of EU-wide guidelines on this issue in order to implement EU law in a coherent manner.”

The scheme is likely to be similar to the one introduced in the UK in December 2009 at the request of UK retailers, who were anxious that there be a standard form of labelling to enable their customers to distinguish goods produced by Israeli settlers in the West Bank from those produced by Palestinians.

In response, the UK Department for Environment, Food and Rural Affairs (DEFRA) issued advice to retailers, the essence of which is as follows:

“For produce from the West Bank, labelling currently states country of origin as ‘Produce of the West Bank’. Traders and retailers may wish to indicate whether the product originated from an Israeli settlement or from Palestinian producers. This could take the form, for example, of ‘Produce of the West Bank (Israeli settlement produce)’ or ‘Produce of the West Bank (Palestinian produce)’, as appropriate.” (*Technical advice: labelling of produce grown in the Occupied Palestinian Territories*, paragraph 4, [\[10\]](#))

This scheme was voluntary, but it was put into effect by most large retailers in the UK. At the moment, it is unclear if the EU-wide scheme will be voluntary or mandatory but in either event it is likely that it will be widely used.

Guidance about involvement in Israeli settlements

The EU is also in the process of drawing up guidance for EU citizens and businesses regarding involvement in economic and financial activities in Israeli settlements.

This is a response to a recommendation from the EU Heads of Mission (HoMs) in Palestine in their 2012 report on East Jerusalem. In it, they urged the EU and EU member states to “prevent, discourage and raise awareness about problematic implications of financial transactions, including foreign direct investments, from within the EU in support of settlement activities, infrastructure and services” [\[11\]](#).

The Irish Government already provides limited guidance, albeit hidden away amongst travel advice on the Department of Foreign Affairs website [\[12\]](#):

“The purchase of property in Israeli settlements in the occupied Palestinian Territory, or the Golan Heights under Israeli occupation is subject to risk. The Irish Government considers these settlements to be illegal under international law. The establishment of Palestinian sovereignty in the areas currently under Israel occupation and the restoration of Syrian control to the occupied Golan Heights may have legal consequences for the purchasers of such properties. Potential purchasers should seek independent legal advice before undertaking such purchases.”

This common EU guidance has yet to be finalised. Individual EU member states may if they wish add to this guidance.

David Morrison
28 July 2013

References:

- [\[1\]](http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/380) www.icrc.org/applic/ihl/ihl.nsf/INTRO/380
- [\[2\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:0009:0011:EN:PDF) eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:0009:0011:EN:PDF
- [\[3\]](http://eeas.europa.eu/delegations/israel/documents/press_corner/20130719_faq_guidelines_eu_grants_en.pdf) eeas.europa.eu/delegations/israel/documents/press_corner/20130719_faq_guidelines_eu_grants_en.pdf
- [\[4\]](http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2011-006190&language=EN) www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2011-006190&language=EN
- [\[5\]](http://www.eib.org/projects/loans/regions/mediterranean-countries/il.htm) www.eib.org/projects/loans/regions/mediterranean-countries/il.htm
- [\[6\]](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/EN/foraff/134152.pdf) www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/EN/foraff/134152.pdf
- [\[7\]](http://www.jpost.com/Diplomacy-and-Politics/Netanyahu-slams-new-EU-settlement-directives-320026) www.jpost.com/Diplomacy-and-Politics/Netanyahu-slams-new-EU-settlement-directives-320026
- [\[8\]](http://www.haaretz.com/polopoly_fs/1.537332.1374538611!/image/987017094.jpg) www.haaretz.com/polopoly_fs/1.537332.1374538611!/image/987017094.jpg
- [\[9\]](http://www.haaretz.com/polopoly_fs/1.537333.1374538690!/image/2279811626.jpg) www.haaretz.com/polopoly_fs/1.537333.1374538690!/image/2279811626.jpg
- [\[10\]](http://archive.defra.gov.uk/foodfarm/food/pdf/labelling-palestine.pdf) archive.defra.gov.uk/foodfarm/food/pdf/labelling-palestine.pdf
- [\[11\]](http://www.eccpalestine.org/wp-content/uploads/2013/02/EU_Homs_Jerusalem_Report_2012-1.pdf) www.eccpalestine.org/wp-content/uploads/2013/02/EU_Homs_Jerusalem_Report_2012-1.pdf
- [\[12\]](http://www.dfa.ie/home/index.aspx?id=8773) www.dfa.ie/home/index.aspx?id=8773

Sadaka supports a peaceful settlement in Israel/Palestine based on the principles of democracy and justice, be that in two states or in one state. We maintain an independent position on internal politics within Palestine, favouring neither Fatah, Hamas nor any other Palestinian political organisation.