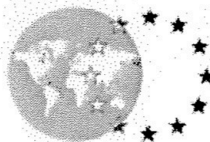


EUROPEAN EXTERNAL ACTION SERVICE



Head of Division

Brussels, le 20 July 2016
eeas.sg.affgen.2 (2016) 4124246

Mr. David Cronin

Subject: Your request for access to documents of 7 June 2016
Our ref: 2016/061

Dear Mr Cronin,

Thank you for your request for access to documents, which we have examined in the framework of Regulation (EC) No 1049/2001¹.

The services in charge have identified one document matching your request, which I am pleased to forward to you attached to this letter.

I kindly remind you that the document may not be copied or reproduced for commercial purposes without prior consultation with the EEAS.

Yours sincerely

Gabriele Visentin

The European External Action Service
EEAS/06 PAYO (PARC)
B- 1046 Brussels
access-to-documents@eeas.europa.eu

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (hereafter the "Regulation").

Commission guidelines on:
Israel and EU funding instruments

SCENE-SETTER

The past 2 weeks witnessed increased political and media interest in Israel on two issues that have long been on the EU agenda: (1) the 28 June adoption by COM of Guidelines on Israel and EU funding instruments and (2) ongoing work on the full and effective implementation of EU legislation on origin labelling of Israeli settlement products.

The Commission Notice of 28 June was formally sent by EEAS to the Israeli mission on 5 July. Strong opposition in Israeli media. The Notice was published on 19 July, as planned. A second wave of feedback coming from the international community – at political level (e.g. the Arab League) and from think tanks – was overwhelmingly positive, welcoming the EU's having used the instrument it fully masters – the Commission responsibility to execute the EU budget in strict conformity with EU foreign policy objectives.

KEY MESSAGES

COM guidelines on EU funding instruments:

- The guidelines do not change one inch our position of principle. The EU has a long-standing unanimous position on the issue of the occupied territories and settlements beyond 1967 borders which is well known.
- Politically, the guidelines do not prejudge peace negotiations on borders. When the parties agree changes to the 1967 borders, we will respect those – we have been consistent on this.

- COM is responsible for executing the EU budget's external aspects and implementing EU legislation in strict conformity with EU foreign policy objectives. Both MSs and EP have been vigilant not to allow EU funding to go to settlement-based entities or activities from 2014 onwards. EP made a clear linkage of this issue with its agreement for the "Horizon 2020" legislative package. The Guidelines show COM's capacity to deliver on its commitments.
- We work hard on developing cooperation with Israel within its recognized pre-1967 borders. COM is in favor of promoting Israel's participation in several EU programmes for the next financial period, including grants and financial instruments.
- With these guidelines, Israel as such will have nothing to lose in terms of participation in EU projects and will have very much to gain in terms of new possibilities for integration in the European space of research, innovation, business opportunities, culture and many other fields.

OTHER MESSAGES if time allows

COM guidelines on EU funding instruments:

Content of the guidelines on EU funding instruments

Their aim is to ensure that only entities and activities within Israel's pre-1967 borders are eligible for EU support, including participation on a no-cost basis. This means:

- (i) *place of establishment* within the Green Line,
- (ii) *activities* under the EU-funded projects within the Green Line.

They will be applicable to 3 categories of EU funding instruments (grants, prizes, financial instruments) from 2014 onwards.

In case of "serious irregularities" the Commission can claim back funds or may impose regulatory or contractual penalties.

Location of government ministries

The guidelines will not obstruct the signature of agreements with Israeli ministries and government agencies whose headquarters are located in East Jerusalem. This means that (i) the Israeli Minister of Science and Technology will be able to sign the agreement on Israel's association to the "Horizon 2020" programme even though his ministry is located beyond the Green Line; (ii) the Israeli Antiquities Authority (office in East Jerusalem) can apply for EU-funded projects but must implement them only within the Green Line.

Application to individuals

The guidelines do not apply to natural persons, therefore no discrimination between Israeli citizens. This means that a doctoral student living in a settlement but studying in the Hebrew University of Jerusalem can apply for an EU scholarship.

Why did the EU decide to publish the guidelines?

These guidelines were prepared in order to implement the Commission's commitment to make a distinction in relevant EU legislation between the State of Israel and the occupied territories. The Commission has pledged to the European Parliament to issue such guidelines in conformity with the EU long standing position that Israeli settlements are illegal under international law and with the non-recognition by the EU of Israel's sovereignty over the occupied territories. The EU's Foreign Affairs Council of 10 December 2012 has underlined the importance of limiting the application of agreements with Israel to the territory of Israel as recognised by the EU.

Why did the EU adopt the guidelines unilaterally, without negotiating with Israel?

The guidelines concern the implementation of EU legislation on programmes and the execution of the EU budget – these are both under the responsibility of the Commission. The issue is separate from negotiations with Israel on Israel's participation in EU programmes. Nonetheless, we have been very transparent in our planning and the preparation of the guidelines. First, in its replies to several written questions from the EP since November 2011, the Commission explicitly indicated its commitment to develop such comprehensive guidelines for the next financial period 2014-2020. Second, the EEAS informed the Israeli Mission in Brussels and the MFA on several occasions ever since December 2012, with an increasing level of detail. The text of the guidelines was sent to the Israeli Mission in Brussels shortly after their adoption, following their communication to EU Member States.

These guidelines will limit/make impossible Israeli participation in the EU programmes and financial instruments.

On the contrary, the EU wants Israel to make full use of the new opportunities that will be offered for participation in EU programmes and other funding instruments in the 2014-2020 financial framework, that is the seven-year framework regulating the annual budget of the European Union.

This is an important step with a view to ensuring that Israel's participation is not put in question given that the territorial application will be clearly addressed.

What do the guidelines cover?

The guidelines are applicable to all grants, prizes and financial instruments implemented under the EU's Financial Regulation as from the 2014 financial year. They cover the provision of EU financial support as well as participation on a no-cost basis.

Will Israeli banks be banned from taking EIB loans under the guidelines since they operate also in settlements?

Untrue! On financial instruments, the guidelines impose requirements only on final recipients, while banks are normally intermediaries. The requirement of not having operations in settlements will mostly affect companies that operate both in Israel proper and in settlements.

* * *

BACKGROUND

COM guidelines on EU funding instruments:

EU-Israel cooperation in research and innovation

- **Israel participation in the Framework Research Programme.**

Since 1996, Israel has been associated to the Framework Programmes. The most recent of the agreements that govern Israel's participation in the Programmes was signed in 2007 and provides Israel researchers, universities and companies with full access to the 7th RTD Framework Programme (FP7). In addition, Israeli representatives participate as observers in the FP7 implementing committees and bodies.

Israel has been associated to the **7th Framework Programme (FP7)** of the Community for research and technological development on the basis of an international agreement (Agreement on Scientific and Technical Cooperation between the EC and the State of Israel). This agreement requires that Israel contributes financially to the budget of the programme while Israeli entities get the right to participate and get funding from the FP under the conditions applicable to entities from EU Members States.

Israeli entities have successfully participated in the FP and Israel will likely apply to be associated to the new Union programme for research and innovation Horizon 2020 (2014-2020).

Associating Israel to Horizon 2020 would require a new international agreement. Given that the Protocol on the general principles governing the State of Israel's participation in Community programmes is being provisionally applied, this new agreement would take a

format of a **legally binding Memorandum of Understanding** negotiated by the Commission. This is a lighter legal/procedural format for the Commission, which does not require a formal decision of the Council or consent of the EP for conclusion. However, the Commission would still have an obligation to keep the EP immediately and fully informed during negotiations (and take account of EP's concerns). Negotiations on Israel's participation in Horizon 2020 will start on 25 June 2013.

One issue raised by the EP is participation in Horizon 2020 of Israeli entities active in the Occupied Palestinian Territories (OPTs). Under FP7 internal legislation and the association agreement currently in force there are no legal grounds for excluding such entities from participation or EU funding. This situation was subject to many questions from EP and civil society organisations. The Commission took a public commitment to deal with this problem horizontally across EU programmes in 2014-2020 financial perspectives. Appropriate horizontal guidelines are being finalised by the EEAS.

Application of these guidelines to the future research and innovation programme should in practice affect only few entities but would help to alleviate concerns of the EP and civil society organisations.

The "Waelbroeck amendment"

to the Rules for Participation in Horizon 2020

(proposed by prof. Michel Waelbroeck, submitted by S&D/Greens groups and passed adopted by the ITRE committee of the EP, still to be voted in EP plenary):

The draft amendment to Article 9 of the proposed Regulation on Participation in Horizon 2020 reads as follows:

“1.a. Horizon 2020 shall exclude legal entities (including any affiliated entities) whose participation, by the objectives they pursue, their place of establishment, the nature or location of their activities, would cause the European Union to recognize as lawful or render aid or assistance in maintaining a situation created by a serious breach of international law (including international humanitarian law), where such breach has been established by a resolution of the United Nations Security Council or by a judgment or advisory opinion of the International Court of Justice.”

Additional background relating to the European Parliament

EP consideration of Horizon 2020 Regulation and implications for timing of guidelines

Decisive pressure came from the EP, as it linked its approval for the "Horizon 2020" legislative package to the adoption of the COM guidelines. The issue was introduced via

the so-called "Waelbroek amendment" (below) penalising any entity which might have dealings with the occupation in contravention to international law, including the judgment of the ICJ.

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This amendment, inserted by S&D and Greens, was kept in the draft of the regulation until the last minute. In several trilogue meetings on the legislative package in April-June 2013, the EP made a linkage between its agreement for the "Horizon 2020" regulation and the guidelines. The EP wanted COM to produce the guidelines so that they agree to drop the amendment and give a green light only with a reference to the guidelines in a recital.

"Actions which fall within the scope of this Regulation should respect fundamental rights and observe the principles acknowledged in particular by the Charter of Fundamental Rights of the European Union. Such actions should be in conformity with any legal obligation, including international law and with the Commission notice of 28.07.2013 [guidelines on Israel/OPT] published in the OJ of XX.XX.2013, as well [as] with ethical principles, which include avoiding any breach of research integrity"

The agreement was reached on 27 June 2013 (i.e. just after Barroso cabinet gave its green light for an urgent written procedure for adoption on 28 June).

Next steps on the Horizon 2020 legislative package: a COREPER decision (taken on 17 July), an EP vote in the ITRE committee (September) and in plenary (October 2013).