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The European Union Toughens its Stand on the 1967 Lines

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If all the diplomatic steps taken by Israel fail, including some at the highest political level, the EU Commission will publish in its *Official Journal* "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 Onwards."

At first glance this step may appear to have only marginal ramifications, but in the long run this is a precedent that may cause the Israeli economy serious damage, even if this was not intended by those who drafted the guidelines. The EU policy on the territories captured by Israel in the 1967 war was shaped more than 30 years ago (for example, in the 1980 Venice Declaration) and in effect has not changed since. In 2005 the EU compelled Israel to introduce a change in the certificate of origin attached to its exports destined for the EU, so that customs officials at each point of entry would be able to collect the full duty on products manufactured or grown in these territories. As such, these products were treated differently by the EU from other products arriving from Israel within the 1967 lines, which, according to the 1995 free trade agreement between Israel and Europe, enjoyed duty-free entry into the European markets.

In December 2012 The EU Foreign Affairs Council, comprising the Foreign Ministers of the member states, decided that "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...The European Union and its Member States reiterate their commitment to ensure continued, full and effective implementation of existing European Union legislation and bilateral arrangements applicable to settlement products."

The current EU guidelines document, based on the Foreign Affairs Council decisions, is so sweeping that it is unclear whether its full potential impact was understood by those who drafted it. The guidelines, for example, state that they apply to all financial

instruments managed by the EU various bodies. One of them is the European Investment Bank, which operates in Israel using the services of Israeli banks and grants loans to Israeli entities. It is not clear whether these EIB operations were known to the guidelines drafters, along with the potential damage to the Bank itself if these operations are terminated.

Similarly unclear is the guideline that only entities established within Israel's pre-1967 borders will be eligible for grants, prizes, and cooperation with European financial instruments, and how the Commission will view a long list of Israeli entities established in pre-1967 lines that have more than an "unacceptable" postal address (as defined by the guidelines), and operate in, but not only in, the territories occupied in 1967. Article 12 of the guidelines stipulates that activities carried out only within the pre-1967 lines will be recognized as eligible for grants or prizes. But it remains unclear how the Commission would consider, for example, an Israeli scientist who carries out experiments in his house in Ariel and then, with his European colleague, submits a request for an EU research grant in the framework of the next EU R&D program, Horizon 2020. Israel has yet to negotiate its participation in this program before it comes into force on January 1, 2014. However, Israel has participated in EU research and development programs since 1995, and both Israel and the EU are keen on continuing this successful cooperation. However, a demand by the EU for tough "territorial clauses" that not all Israeli entities can fulfill and the Israeli government cannot accept poses a big question mark to future cooperation.

The EU moral political position is slightly tainted by its own selectivity. For years, for example, the EU pressed Israel to reach an "open skies" agreement, which has clear economic advantages for European airlines, many of which face serious financial troubles. The agreement was signed by the Israeli Minister of Transportation and his EU counterpart and awaits ratification. The agreement was reached six months after the Foreign Affairs Council declaration and has a "territorial clause" reflecting the European political message, but in "softer" language that does not contain measures with damage potential: "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." It must be assumed that those who negotiated on behalf of the EU knew that frequently Israeli air controllers direct incoming planes eastwards, above territory occupied in 1967, not to make a political point but to allow the pilots smoother landings. The EU negotiators agreed to this language because first, even this mild language is sufficient to remind Israel of the positions held by the EU and its member states on the territories. Second, in the drive to secure the benefits to European airlines, the EU found the necessary creativity to ensure that they be attained.

For its own good Israel must resolve the issue of its relations with the Palestinian people through the formula of two states for two peoples. Europe is certainly entitled to its own view on the various parameters of a solution, but it should not try to impose these views through the power of the purse. The holes in Europe's economy are so big that even economic relations with a relatively small economy such as Israel's has a positive impact. Avoiding the publication of the new guidelines would enable the EU and Israel to negotiate a formula for the territorial applicability of their bilateral agreements. The current Israeli government and those that follow should not expect the EU to grant European taxpayer money to Israeli entities associated either by their address or by their primary activity with the territories. However, neither should the EU, in voicing its opinions, cause damage far beyond what even Israel's harshest critics in Europe anticipated or desired.

