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Ireland and the EU place respect for international law and human rights at the centre of their foreign relations. This is particularly important when it comes to managing growing trade and business with Israel as it continues to deepen its control over the occupied Palestinian territories (OPT), expand its settlements in contravention of international law and systematically violate the human rights of the Palestinian population. On 26 May the Dáil Éireann adopted a motion declaring that Israel's actions in the West Bank "amount to unlawful de facto annexation". Ireland now has an opportunity, and responsibility, to translate this declaration into concrete action.

Ireland should become the champion of the EU's 'differentiation policy' which aims to fully and effectively exclude the OPT (and the illegal settlements located there) from bilateral relations with Israel. This can ensure that trade and business ties with Israel fully respect international law and United Nations Security Council Resolution 2334 of 2016 – calling on all states to distinguish between the territory of the State of Israel and the territories occupied since 1967 in their bilateral relations.

This differentiation policy recognises Israel within its internationally recognised borders while ensuring non-recognition of Israel's internationally unlawful acts, including its settlements and the unlawful extension of its domestic administrative regime to them (which increasingly treats the settlements as part of sovereign Israel). Over the past hundred years this duty of 'non-recognition' has become deeply imbedded in the international legal order to disincentivise wars and the forcible acquisition of foreign territory. Besides the EU, countries such as the United States, Brazil, China, and South Korea have advanced some limited differentiation measures.

The goal of EU differentiation is first and foremost to protect the integrity of the EU's domestic legal order from Israel's internationally unlawful acts – in effect erecting an EU legal firewall between Israel and the settlements. However, in doing so, it also challenges Israel's annexation of Palestinian territory which aims to erase any political or economic distinction between Israel and its settlements, treating them as an integral part of Israel. By ensuring that bilateral relations with Israel do not benefit its illegal settlement activities, Ireland and the EU can help defend the territorial basis for a future two-state solution and counter the current slide towards a one-state reality of unequal rights based on the permanent subjugation of Palestinians under Israeli military control.¹

It has been estimated that the value of EU imports from settlements is approximately fifteen times the value of EU imports from Palestinians. This means that the EU imports over 100 times more per settler than per Palestinian.² Settlement producers enjoy Israeli state subsidies and can easily reach international markets via state-built roads that bypass Palestinian communities. In contrast,

¹ Hugh Lovatt, "EU differentiation and the push for peace in Israel-Palestine", European Council on Foreign Relations (ECFR), 31 October 2016, available at:

https://ecfr.eu/publication/eu_differentiation_and_the_push_for_peace_in_israel_palestine7163

² "Trading away Peace: How Europe helps sustain illegal Israeli settlements", October 2012, available at:

<https://reliefweb.int/report/occupied-palestinian-territory/trading-away-peace-how-europe-helps-sustain-illegal-israeli>

Palestinian traders in the West Bank are hampered by Israeli restrictions on access to markets and natural resources. Palestinian businesses in Gaza are under an even more stringent blockade.

The annual cost of Israeli restrictions to the Palestinian economy has been estimated at € 5.2 billion or 85% of the total Palestinian GDP. Palestinian exports have decreased from over 50% of Palestinian GDP in the 1980s to less than 15% of GDP more recently.³ This is effectively blocking the implementation of the EU's preferential trade agreement with the Palestinian Authority – which is left reliant on financial assistance from the EU and other foreign donors.

The Irish parliament – in both of its chambers – has voted for the Occupied Territories Bill that would prohibit trade with illegal settlements. This is currently on hold due to political and legal difficulties. However, there is more Ireland can do, working with like-minded states to advance action at both EU and national levels.

So far, differentiation has been applied to six main areas – although deficiencies remain. These focus mostly on trade issues, but also extend into other areas such as taxation and public funding for joint research and development projects.

1. **Trade.** Settlement products – such as wine, dates, herbs, as well as manufactured products from Israeli industrial zones in the West Bank – are not entitled to benefit from preferential tariffs under the 1995 EU-Israel Association Agreement. Under a "technical arrangement" reached in 2004 between Israel and the EU, European customs and importers (including in Ireland) must check the postcodes of the place of origin to deny preferential treatment to settlement products. However, the system is unnecessarily cumbersome and not fully reliable, placing administrative burden on European customs and importers.
2. **Labelling:** Since 2015, the EU has maintained guidelines requiring settlement goods be correctly labelled as “products of the West Bank (Israeli settlements)” rather than as “products of Israel” as has often been the case. (These guidelines also apply to Israeli products originating in the occupied Syrian Golan Heights). However, enforcement is weak – despite a confirmatory ruling from the European Court of Justice in 2019. EuMEP's research into settlement wine imported to Europe shows that a majority is still wrongly marked as “products of Israel”.⁴
3. **Product certification:** The EU does not recognise Israel's authority to certify organic and animal-based products originating in Israeli settlements. As a result, exports of animal-based products from settlements to the EU have been stopped, while organic products from settlements cannot be marketed as ‘organic’.
4. **Funding.** Under the European Commission's 2013 funding guidelines, EU public funds cannot benefit settlement entities or activities. This, for example, applies to Israel's participation in the EU's flagship research programme Horizon 2020 and its successor Horizon Europe.
5. **Business advisories:** Approximately 18 EU states – including Ireland – have published advisories on government websites warning companies about the risks of economic involvement with

³ Ibid.

⁴ “Waiting for enforcement: Origin indication of Israeli settlement wines on sale in the EU”, European Middle East Project (EuMEP), February 2020, available at: https://eumep.org/wp-content/uploads/EuMEP_research_settlement_product_origin_v2.pdf

settlements.⁵ But the EU itself has so far resisted publishing an EU-wide advisory – although it does have a far more extensive and prescriptive business advisory for occupied Crimea.

6. **Bilateral agreements.** Since 2012, all new EU agreements with Israel must include territorial clauses explicitly indicating their inapplicability to Israeli settlements and the occupied territory. This practice has yet to be fully replicated at the national level. As research by ECFR shows, a majority of agreements between Israel and individual member states lack clear territorial definitions.⁶ This can allow Israeli authorities to define an agreement's scope of application according to their own interpretation of Israel's territory, enabling settlements and their residents to benefit. It also creates challenges and uncertainties for European domestic authorities when it comes to enforcing the provisions of agreements.

These differentiation measures are based on the proper application of EU and international law. They should not be considered as a politically coercive actions (such as sanctions or other punitive measures). The measures that the EU has so far taken to differentiate between Israel and its settlements fall far short of the kinds of measures implemented in response to Russia's annexation of Ukrainian territory. To enforce its non-recognition of Russia's sovereignty over Crimea, the EU has banned all trade with, and investment in, the Crimean Peninsula. In addition, most EU states do not recognise Russian passports issued to Crimea residents and the latter can only apply for EU visas via Ukraine.

The legal rationale that underpins differentiation, based on existing EU regulations and policy positions agreed by all member states, means that it is possible to implement differentiation measures without the need for additional sign-offs from all 27 countries. Other measures can be implemented at national level, either individually, or as part of a coalition of willing member states. With this in mind, Ireland should work to kickstart a process to advance differentiation with the EU and like-minded member states. The process should examine and advance specific options, expanding on the following headlines:

At the EU-level:

Ensure trade practices conform to international law and the EU's guidelines on the promotion of compliance with international humanitarian law (which applies to situations of occupation and annexation). At a minimum, this should include a revision to the 2004 technical arrangement to ensure that Israeli authorities and exporters clearly indicate the origin of goods rather than dumping postcode numbers on European custom authorities and importers to sort through. However, member states should also examine legal options for a full EU ban on trade with Israeli settlements, in line with the Occupied Territories Bill proposed in Ireland.

Publish an EU business advisory to strengthen awareness of European companies on the risks of business activities in the settlements, including financial transactions, investments, purchases, procurements and services. Proactively discourage EU domiciled companies from engaging in business activities with Israeli settlements.

Review the full scope of bilateral EU relations with Israel to ensure their conformity with the EU's differentiation policy and effective implementation by relevant European authorities. Where deficiencies are identified, work to elaborate appropriate technical or regulatory fixes.

⁵ "EU member state business advisories on Israeli settlements", European Council on Foreign Relations (ECFR), available at: https://ecfr.eu/article/eu_member_state_business_advisories_on_israel_settlements

⁶ "Differentiation Tracker", European Council on Foreign Relations (ECFR), available at: <https://ecfr.eu/special/differentiation-tracker>

Evaluate and promote member state compliance with EU labelling requirements for settlement products.

At the national-level:

Systematically include territorial clauses in all future member state agreements with Israel modelled on EU practice. Publicly clarify that all existing bilateral agreements are inapplicable to the occupied territory. Ireland has stated this recently, along with several other member states. Others should be encouraged to follow suit. Governments should also ensure that these positions are correctly implemented by their domestic authorities.

Require domestically domiciled businesses to conduct enhanced human rights due diligence in conflict affected areas to mitigate their exposure to international law violations and structural human rights abuses. This can draw on existing legislative initiatives undertaken by several European parliaments.⁷

At the United Nations:

Leverage Ireland's membership of the UN Security Council to raise awareness of third state duties under UN Security Council resolution 2334 and promote best practices to differentiate between Israel and the occupied territory in bilateral relations.

Support the UN database of companies involved in settlements. Unlike Belgium and Sweden, Ireland has yet to express support for the UN database of companies involved in settlements published last year. It should speak out at the UN Human Rights Council in Geneva to ensure continued updating of the database, so that companies can be added or de-listed as required.

In conclusion, the EU has so far taken a number of measures to exclude Israeli settlement entities and activities from relations with Israel. But the EU's differentiation policy has not been applied coherently nor enforced sufficiently, neither by the EU nor by member states. Israeli settlements continue to benefit from bilateral agreements signed with Israel as well as from European business ties and investment. There is therefore a lot of 'unfinished business'. But political will has often been lacking. This is where Ireland can lead and make a real difference -- to the benefit of the EU's trading relation with Israel, the international rules-based order, and the prospect of future Israeli-Palestinian peace.

⁷ "Comparative table: Corporate due diligence laws and legislative proposals in Europe", European Coalition for Corporate Justice (ECCJ), 14 June 2021, available at: <https://corporatejustice.org/publications/comparative-table-corporate-due-diligence-laws-and-legislative-proposals-in-europe>