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WORKING DOCUMENT

Additional Protocol to the Euro-Mediterranean Agreement establishing an EC-Israel Association on an EC-Israel Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)

Committee on Foreign Affairs

Rapporteur: Véronique De Keyser

I – PURPOSE AND CONTENT OF THE AGREEMENT (SUMMARY BASED ON LEGISLATIVE OBSERVATORY INFORMATION)

PURPOSE: to conclude an additional Protocol to the EU-Israel Euro-Mediterranean Association Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA).

The agreement takes the form of a Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part (signed on 20 November 1995), as opposed to a self-contained agreement.

The Protocol will allow Community exporters, if they so choose, to test and certify their industrial products, prior to export, **once only**, subject to the same (aligned) requirements, and then to access the **Israeli market** without having to comply with any further conformity assessment requirements. The certification procedures will need to be carried out **only once for both markets**, and the same aligned requirements or standards will invariably apply. The recognition of certification will make for savings and stimulate exports.

Article 47 of the Association Agreement calls for conformity assessment agreements to be concluded where appropriate, and Article 55 stipulates that every effort must be made to **approximate the parties' laws**. That is the aim of the Protocol, which is to be concluded by the Council after Parliament has given its consent.

CONTENT OF THE AGREEMENT: In general, the agreement will facilitate market access by eliminating technical barriers to trade in industrial products. To that end, ACAA employs two mechanisms:

- **under the first mechanism**, mutual recognition of products operates on the basis of the *acquis communautaire* that has been transposed by the partner country, in the same way as it would apply to products placed on the market of a Member State. It allows industrial products covered by it and certified as compliant in accordance with EU procedures to be placed on the Israeli market without having to undergo any further approval procedures, and vice versa. At present it is confined to a single sector: **good manufacturing practice (GMP) for pharmaceutical products**. Israel has taken over the Community technical legislation in the sector covered by the Annex to the Protocol and participates in the European organisations in that sector;

- **the second mechanism**, i.e. mutual acceptance of industrial products not jointly regulated, serves to confirm that Articles 16 and 17 of the Euro-Mediterranean Agreement with Israel apply without other restrictions in the product sectors covered by it. Consequently, annexes based on this mechanism will provide that where there are no European technical regulations, industrial products listed in those annexes lawfully traded on one party's market (i.e. on the territory of Israel or of an EU Member State) may be lawfully traded on the market of the other party. At present, the agreement does not have any annex implementing this mechanism.

II – ASSESSMENT OF THE POLITICAL CONTEXT OF THE PROTOCOL

The AFET Committee has been asked to deliver an opinion for the INTA Committee under a consent procedure. To that extent it is being called upon to give an assessment of the political context in which the Protocol will be applied, assuming that it is concluded, and of its possible implications for the EU's commitments as regards compliance with international and Community law.

Bilateral relations between the EU and Israel are based on the Association Agreement and the Action Plan.

At its last meeting (February 2011) the EU-Israel Association Council stated (in point 27) that *ACAA is a means of giving effect to the present Action Plan and therefore does not exceed the existing political framework*. Be that as it may, it will be up to Parliament, once it has considered the political and legal implications of the Protocol, to decide whether or not to give its consent.

OBLIGATION OF COHERENCE

The entry into force of the Treaty of Lisbon has served to impose an explicit requirement on the EU to ensure **coherence**, both in terms of the individual spheres of its external action and between those policy areas and other policies. The necessary coherence is provided by the Council and Commission, assisted by the HR/VP. It would be inconceivable for EU economic or commercial policy to take priority over respect for human rights and international law.

It follows that commercial policy, development policy, humanitarian aid, and so forth form part and parcel of EU foreign policy, whose action is informed by the core principle of respect for human rights, viewed as universal and indivisible in every sense.

This obligation of coherence was spelt out by Parliament in its June 2011 resolution on democratisation (De Keyser report)[1], when it noted that '***the objectives of the common commercial policy should be fully coordinated with the EU's overall objectives****; … that, pursuant to Article 207 of the Treaty on the Functioning of the European Union, the EU's common commercial policy must be conducted "in the context of the principles and objectives of the Union's external action", and that, pursuant to Article 3 of the Treaty on European Union, it must contribute,* inter alia*, to sustainable development, the eradication of poverty and the protection of human rights*'.

It goes without saying that the same obligation applies to the EU's revised neighbourhood policy, which as introduced two key concepts, differentiation and positive conditionality ('more for more').

Parliament's resolution of 14 December 2011 on the review of the ENP (David-Siwiec report)[2] clearly reaffirms (in paragraph 7) the principles underlying the ENP in the following terms: '*Although the EU does not seek to impose a model or a ready-made recipe for political*

[1] Report of the Committee on Foreign Affairs on EU external policies in favour of democratisation, 16 June 2011 (A7-0231/2011).
[2] Report of the Committee on Foreign Affairs on the review of the European Neighbourhood Policy, 24 November 2011 (A7-0400/2011).

reforms, [Parliament] *underlines that* ***the ENP is based on shared values****, joint ownership, mutual accountability and respect and the commitment to democracy, human rights, the rule of law, the fight against corruption, the market economy and good governance*'.

In addition, paragraph 13 of the resolution lays down an **obligation to assess the human rights situation**: '[Parliament] *Considers that human rights situations should be* ***continuously monitored*** *– with particular regard to the rights of children, women and minorities – and human rights dialogues conducted with all partner countries and that an* ***annual assessment of the situation*** *as well as the outcomes of the dialogues should be included in the annex to the annual progress report of each partner country with a clear mechanism to reconsider and progressively limit bilateral cooperation if human rights violations are confirmed;* ***underlines that the approach towards various partner countries regarding the human rights situation has to be credible***'.

The conclusions of the February 2011 meeting of the EU-Israel Association Council refer to a number of situations which the EU considers to be contrary to respect for international law – a principle that it advocates – and at variance with its own laws and legal obligations:

- occupied territories and continued settlement building (points 7 and 8)
- blockade of Gaza (point 11)
- rights of minorities in Israel (point 20)
- NGOs (point 27).

There has not been the slightest improvement in any of these cases. On the contrary, the policy of building settlements in the occupied territories is continuing in spite of repeated condemnation by the EU's highest authorities.

In July 2011 the Member States' 27 heads of mission posted in Jerusalem produced a report entitled 'Area C and Palestinian State Building'[1], focusing on access to natural resources (water), economic activity, the settlement policy, mobility arrangements, the destruction of civil property, and the impact of international aid. Their view is that expansion of the settlements and restrictive Israeli measures are jeopardising a two-state solution. The report notes that the number of settlers in 1972 stood at 1 200. Forty years on, there are 310 000 divided between 124 'official' settlements (built with the permission of the Israeli authorities) and 100 unofficial settlements. Diplomats point out, moreover, that the so-called closed areas, whether classed as 'military' or as 'nature reserves' are constantly increasing while Palestinian facilities are continuing to be destroyed.

Ongoing settlement building and expansion are greatly undermining the efforts of the EU and the Quartet to bring the parties back to the negotiating table. There is wide acceptance today within the international community as a whole that the continued existence of settlements in the occupied territories constitutes a major obstacle to the resumption of direct talks. That notwithstanding, the EU must continue to bring its economic and diplomatic weight to bear on

[1] Area C, comprising 62% of the West Bank, is under Israeli civil and security control as provided for in the 1993 Oslo Accords.

the peace process, but it also needs to think now about applying its new 'more for more' approach. The 27 European heads of mission have drawn up a list of recommendations aimed at bolstering the Palestinian presence on the West Bank and in East Jerusalem, as well as calling on the Commission to consider what legal means might be employed to end European investment in the settlements.

LEGAL RESPONSIBILITY

At present Israel applies all the agreements concluded with the EU in the whole of its territory and in the territories occupied since 1967. However, the EU does not recognise Israel's application of the Association Agreement to the territories annexed since 1967, nor does it recognise any Israeli legislation advocating annexation and settlement of those territories (e.g. the 1980 Israeli law annexing East Jerusalem). It considers such laws to be contrary to international law. Its authorities, therefore, are required to refrain from giving effect to them in any way whatsoever, since this is prohibited by current Community law and by the EU's international obligations.

That being the case, if the ACAA Protocol were to be concluded as it now stands, the European companies that were parties to the relevant agreements would be led to operate in a manner that would infringe their code of conduct and, above all, run counter to their governments' obligations to promote and respect human rights.

Furthermore, a legal interpretation of certain articles of the Protocol might allow Israel to implement the Protocol on the basis of its national law defining the territorial scope of its **domestic market**, in other words including the territories occupied since 1967 not under Palestinian economic administration. If that were to happen, the EU would be in a situation in which it would be failing to comply with 1) its obligations under the EU-Israel Association Agreement and 2) its obligations in international law.

Conclusion

When conducting its foreign policy, the EU must not deviate from the provisions of the Treaty of Lisbon or its obligations in international and Community law. The same applies to Parliament as far as its own resolutions are concerned.

In addition, if an agreement cannot be implemented without breaking the law, it must not be concluded. The ACAA Protocol could be applied in accordance with Community law if its substance were such as to dispel all ambiguity about the status of the territories occupied since 1967, as defined in international law. However, the inescapable conclusion at present is that legal interpretations are continuing to diverge (see Annex).

The Committee on Foreign Affairs has to have all the necessary information on which to base a (political and legal) assessment, and the rapporteur therefore proposes, at this stage of the procedure, that it request a legal opinion.

ANNEX

Text of the Protocol (extract)

Article 9

Procedures for the recognition of Responsible Authorities and the notification of Notified Bodies

1. The following procedure shall apply for the recognition of Responsible Authorities which are responsible for the effective implementation of Community and national law, to ensure the conformity of industrial products with Community or national law or to require their withdrawal from the market and, where appropriate, are able to notify, suspend, remove suspension and withdraw the notification of Notified Bodies:

   (a) a Party shall forward its nomination to the other Party in writing, stating the **territory** and title of the Annex to this Agreement under which the **Responsible Authority** is competent to carry out the tasks listed in Article 8.1, including as appropriate any limitations to such competence within the territory or the scope of the Annex;

   (b) on the acknowledgement of the other Party, given in writing, the Responsible Authority shall be considered as competent to carry out the tasks listed in Article 8.1 in relation to the Annexes for which it has been recognised from that date.