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Proposal for a

## **COUNCIL DECISION**

**on the partial suspension of the Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe – the Framework Programme for Research and Innovation**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

This proposal concerns a decision of the Council on the partial suspension of the application of the Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe – the Framework Programme for Research and Innovation<sup>1</sup>. The partial suspension concerns the participation of entities established in Israel in activities funded under the Accelerator of the European Innovation Council (EIC).

Article 2 of 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 (Hereinafter referred to as “the Euro-Mediterranean Agreement”) provides that “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement”.

The Protocol to the Euro-Mediterranean Agreement between the European Communities and their Member States, of the one part, and the State of Israel, of the other part on a Framework Agreement between the European Community and the State of Israel on the general principles governing the State of Israel's participation in Community Programmes<sup>2</sup>, (hereinafter referred to as the ‘Protocol to the Euro-Mediterranean Agreement’), establishes the general principles for the participation of Israel in Union programmes, leaving the Commission and the competent authorities of Israel to determine the specific terms and conditions, including financial contributions, with regard to such participation in each particular programme (Article 5). The European Union programme Horizon Europe - the Framework Programme for Research and Innovation - was established by Regulation (EU) 2021/695 of the European Parliament and of the Council<sup>3</sup> (hereinafter referred to as the ‘Horizon Europe Programme’) and the Agreement between European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe – the Framework Programme for Research and Innovation<sup>4</sup> (hereinafter referred to as “the Agreement”) has been applied since 1 January 2021, the start of the Horizon Europe Programme, and covers Israel’s participation in all Pillars of the Programme.

The proposed act is for the Council to adopt a decision regarding the suspension of the Agreement, based on Article 218(9) TFEU. The Council Decision should be adopted to allow - in accordance with Articles 79 (2) of the Euro-Mediterranean Agreement - to partially suspend the Agreement immediately in view of the special urgency determined by the rapidly deteriorating humanitarian situation in the Gaza Strip following the military intervention of Israel, the blockade of humanitarian aid and the violations of human rights, which may lead to a further dramatic worsening of the situation on the ground.

The EU condemns Hamas’ terrorists attacks on Israel, which have triggered a spiral of violence in the region and calls for an immediate ceasefire in Gaza, for the unconditional

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<sup>1</sup> OJ L 95, p. 143, ELI: [http://data.europa.eu/eli/agree\\_internation/2022/323\(10\)/oj](http://data.europa.eu/eli/agree_internation/2022/323(10)/oj)

<sup>2</sup> OJ L 129, 17.5.2008, p. 40, ELI: <http://data.europa.eu/eli/prot/2008/372/oj>

<sup>3</sup> OJ L 170, 12.5.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/695/oj>.

<sup>4</sup> OJ L 95/143, 23.02.2022, p.1, [https://eur-lex.europa.eu/eli/agree\\_internation/2022/323\(10\)/oj/eng](https://eur-lex.europa.eu/eli/agree_internation/2022/323(10)/oj/eng)

release of all hostages and for an end to the conflict. The EU continues to support the ongoing diplomatic efforts to reach a comprehensive agreement.

Diplomatic engagement carried out by the High Representative of the European Union with Israel has led to improvements on the ground in terms of access of aid into Gaza (trucks accessing, opening of crossing points, rebuilding of critical infrastructure) and also contributed to the announcement of the Humanitarian truce announced by Israel on 27 July. Notwithstanding these efforts however change is not yet at the desired scale and the humanitarian situation remains severe.

On this basis, the European Commission considers that there is a case for a partial suspension of the Israeli's association to the Horizon Europe programme.

In view of this situation, the proposed act is for the Council to adopt a decision regarding the suspension of the Agreement, based on Article 218(9) TFEU. The Council Decision should be adopted to allow - in accordance with Article 79(2) of the Euro-Mediterranean Agreement in conjunction with customary international law as codified in Article 60 of the Vienna Convention on the Law of the Treaties between States and International Organizations or between International Organizations (1) (3), point (b) VCLT- to partially suspend the Agreement on account of a material breach by Israel of Article 2 of the Euro-Mediterranean Agreement, and as a matter of special urgency, with immediate effect given the risk of a severe further deterioration of the humanitarian situation on the ground.

The scope of the association of Israel to the Horizon Europe programme includes the association to Pillar 3 including the European Innovation Council (EIC). The EIC is implemented, in particular, through the EIC Accelerator calls which provide both grant and investment support for single eligible entities (SMEs and exceptionally small mid-caps). The support is at a high level of technology readiness (TRL levels 6 to 8 for the grant component, and potentially above this for the investment component) meaning that the technologies supported are likely to be market deployed in a short time frame. The support is provided for all fields of technology with a focus on breakthrough and disruptive technologies. Suspending the association of Israel with regard to such measures also for this reason appears as an appropriate and proportionate measure responding to the breaches of the Euro-Mediterranean Agreement.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent and complementary with 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, and with the Protocol setting up the framework Agreement between the European Community and the State of Israel on the general principles governing the State of Israel's participation in Community programmes.

- **Consistency with other Union policies**

This initiative is consistent with the EU's external relations (including considerations of human rights and fundamental freedoms).

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Following the recent decision by Israel to introduce a blockade to the access of humanitarian aid to Gaza, the humanitarian situation has deteriorated to an unprecedented and unsustainable level, driven by ongoing bombardments, military operations, mass displacement, and the

collapse of basic services. Based on UN reports, 90% of households face severe water insecurity and malnutrition rates are rising sharply. Severe shortages of medicine, equipment, and medical staff indicate an urgent need for humanitarian assistance. Virtually the entire Gaza population is at risk of famine, with children and vulnerable people in a particularly dramatic situation.

The High Representative has presented to the Foreign Affairs Council of 23 June a review of Israel's compliance with the Article 2 of the Euro-Mediterranean Agreement. The review has concluded that there are indications that Israel would be in breach of its human rights obligations under the Article 2 of the Euro-Mediterranean Agreement.

Diplomatic engagement with Israeli authorities has been intensive at various levels but has not led to a significant, sustainable, change of the situation on the ground.

The European Union has therefore the right to respond to such a breach in a way that is proportionate and in view of promoting the end of the violations identified in the review of compliance with Article 2 of the Euro-Mediterranean Agreement. In particular, in line with Article 79, "In the selection of measures, priority shall be given to those which least disturb the functioning of the Agreement".

On this basis, the European Commission considers that there is a case for a partial suspension of the Israeli's association to the Horizon Europe Programme.

Once the Decision is adopted by the Council, the Commission will notify the Association Council about the partial suspension of application of the Agreement in writing, along with the reasons of special urgency justifying that decision, in compliance with Article 79 (2) of the Euro-Mediterranean Agreement.

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions '*suspending the agreement* and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

- **Subsidiarity (for non-exclusive competence)**

n.a

- **Proportionality**

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely, to suspend the participation of Israeli entities in the EIC Accelerator calls, which provide both grant and investment support for single eligible entities (SMEs and exceptionally small mid-caps). Suspending the association of Israel with regard to such measures appears as an appropriate and proportionate measure responding to the breaches of the Euro-Mediterranean Agreement, given that the EIC Accelerator support is provided at a high level of technology readiness meaning that the technologies supported are likely to be market deployed in a short time frame with a focus on breakthrough and disruptive technologies.

- **Choice of the instrument**

The objectives of this proposal can only be achieved by an act that suspends the application of the international agreement. Therefore, a Council decision suspending the Association Agreement is needed.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

n.a.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

n.a.

### **4. BUDGETARY IMPLICATIONS**

Any budgetary implication will be assessed through the regular automatic contribution mechanism foreseen in the Association Agreement

### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

n.a.

- **Explanatory documents (for directives)**

n.a.

- **Detailed explanation of the specific provisions of the proposal**

n.a.

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## COUNCIL DECISION

**on the partial suspension of the Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe – the Framework Programme for Research and Innovation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 186 and Article 188, second paragraph in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe (hereinafter “the Agreement”) applies since 1 January 2021. According to the Agreement, legal entities established in Israel may participate in indirect actions of the Horizon Europe Programme under terms and conditions equivalent to those applicable to legal entities established in the European Union, including respect for the European Union restrictive measures. **The Agreement is based on 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<sup>5</sup> and its integral Protocol on association to Union programmes.
- (2) Article 2 of the Euro-Mediterranean Agreement states that respect for human rights and democratic principles should guide the internal and international policy of the Parties and that they should constitute an essential element of their cooperation under the agreement.
- (3) Article 79(2) of the Euro-Mediterranean Agreement provides that a Party may take appropriate measures if it considers that the other Party has failed to fulfil an obligation and may act without further consultation in cases of special urgency and that in the selection of measures, priority shall be given to those which least disturb the functioning of that Agreement.
- (4) The EU condemns Hamas’ terrorists attacks on Israel, which have triggered a spiral of violence in the region and calls for an immediate ceasefire in Gaza, for the unconditional release of all hostages and for an end to the conflict.
- (5) The High Representative has presented to the Foreign Affairs Council of 23 June a review of Israel’s compliance with the Article 2 of the Euro-Mediterranean Agreement. The review has concluded that there are indications that Israel would be in breach of its human rights obligations under the Article 2 of the Euro-Mediterranean Agreement.

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<sup>5</sup> OJ L 147, 21.6.2000, p. 3, ELI: [http://data.europa.eu/eli/agree\\_international/2000/384/oj](http://data.europa.eu/eli/agree_international/2000/384/oj).

- (6) With its intervention in the Gaza Strip and the ensuing humanitarian catastrophe, including thousands of civilian deaths and rapidly rising numbers of spreading extreme malnutrition specifically of children, Israel is violating human rights and humanitarian law and thus is in breach of an essential principle of the EU-Israel cooperation under the Euro-Mediterranean Agreement.
- (7) It is appropriate, in accordance with Article 79(2) of the Euro-Mediterranean Agreement, read in conjunction with customary international law as codified in Article 60 of the Vienna Convention on the Law of the Treaties between States and International Organizations or between International Organizations, to partially suspend the Agreement on account of a material breach by Israel of Article 2 of the Euro-Mediterranean Agreement, and as a matter of special urgency.
- (8) The functioning of the Agreement will not be disproportionately affected since it does not target the overall EU-Israel cooperation and dialogue in research, technological development and demonstration, but is aimed at temporarily suspending the EIC Accelerator calls, which provide both grant and investment support for single eligible entities (SMEs and exceptionally small mid-caps). Suspending the association of Israel with regard to such measures appears as an appropriate and proportionate measure responding to the breaches of the Euro-Mediterranean Agreement.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe shall be partially suspended to the effect that from the date of effect of the suspension legal entities established in Israel shall not be eligible to participate in calls for grant and investment support under the Horizon Europe EIC Accelerator.

Ongoing agreements with entities established in Israel concerning the EIC Accelerator support shall not be affected. The suspension shall take effect thirty calendar days following the day of its notification to the Association Council.

#### *Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council*  
*The President*