



Brussels, 28th of November 2017

Ms. Federica Mogherini
High Representative of the European Union
for Foreign Affairs and Security Policy
Vice-President of the European Commission

Cc: European Commissioner for Justice, Consumers and Gender Equality, Ms. Vera Jourova

Dear High Representative / Vice-President Mogherini,

We are writing to you regarding the incitement to hatred and violence perpetuated by ongoing calls for Boycott, Divestment and Sanctions, a movement that questions the legitimacy of the State of Israel and creates tensions among our European Christian, Muslim and Jewish constituents.

We would like to reiterate on the occasion of the Centennial Celebration of the Balfour Declaration our unwavering European commitment to the security of the State of Israel, 'home of the Jewish people', to a peaceful resolution of the Israeli – Palestinian conflict, and to a democratically elected peace-seeking Palestinian unity government.

However, offering a platform for an unsubstantiated distortion of the democratic State of Israel does not only represent a breach of the EU's stated aim of promoting peace (Art. 2, TEU) but is also setting the grounds for further incitement against European Jewish citizens. Therefore, it represents a clear infringement on their rights to human dignity, freedom, democracy and equality as enshrined in Art. 2, TFEU, by disguising this new form of anti-Zionism and anti-Semitism as a legitimate exercise of the freedom of speech.

We welcome in this regard Chancellor Angela Merkel's Christian Democratic Union party's (CDU) resolution highlighting the anti-Semitic character of any calls for boycott of Israeli goods and services 'as the same language, in which people were called to not buy from Jews',

as well as the Social Democratic Party's (SPD) condemnation of widespread anti-Zionist anti-Semitism.

Consequently, we would like to call for the enforcement of the provisions as laid out within the Framework Council decision 2008/913/JHA on combating racism and xenophobia, according to which all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion descent or **national or ethnic origin** is to be punishable under law.

We also call for an additional clarification of the EU leadership's statements regarding the stark rejection of any form of boycott of the State of Israel. As such, we kindly urge you to outline an appropriate procedure to be further followed by the Union that would seek to address the incitement to hatred and violence and discriminatory practice of calls for boycotts, divestments and sanctions against the State of Israel.

On the grounds of the European Human Rights Court decision in the case of Erbakan v. Turkey (July 2006) "it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance", and in the case of M'Bala M'Bala v. France (October 2015) where "the freedom of expression [was used] for ends incompatible with the letter and spirit of the Convention", we urge you to distinguish between legitimate political criticism and calls for boycotts of an entire nation, which effectively amount to collective punishment and an instigation to hatred and violence towards the Jewish communities all over Europe.

We therefore urge you to take leadership on the enforcement of Your Excellency's earlier expressed opposition to any form of boycott of the State of Israel made back in February 2016, and to facilitate consensus among the Member States on the best policy practices for dealing with organisations such as the BDS.

We equally call upon the Commission and the relevant EU bodies to ensure that no EU public funds go to organisations calling for a boycott of the State of Israel, and to instruct their relevant agencies not to engage with companies, organizations or other entities involved with the BDS movement.

Respectfully,

1. MEP Cristian Dan PREDA (EPP, Romania) (co-initiator)
2. MEP Ioan Mircea PAȘCU (S&D, Romania) (co-initiator)
3. MEP Arne GERICKE (ECR, Germany) (co-initiator)
4. MEP Petras AUŠTREVICIUS (ALDE, Lithuania) (co-initiator)

5. MEP Fulvio MARTUSCIELLO (EPP, Italy)
6. MEP Lars ADAKTUSSON (EPP, Sweden)
7. MEP Péter NIEDERMÜLLER (S&D, Hungary)
8. MEP Marijana PETIR (EPP, Croatia)
9. MEP Ramon TREMOSA i BALCELLS (ALDE, Spain)
10. MEP Maria GRAPINI (S&D, Romania)
11. MEP Traian UNGUREANU (EPP, Romania)
12. MEP Beatriz BECERRA BASTERRECHEA (ALDE, Spain)
13. MEP Alojz PETERLE (EPP, Slovenia)
14. MEP Antonio LOPEZ-ISTURIZ WHITE (EPP, Spain)
15. MEP Inese VAIDERE (EPP, Latvia)
16. MEP Milan ZVER (EPP, Slovenia)
17. MEP Anna Elżbieta FOTYGA (ECR, Poland)
18. MEP Renate WEBER (ALDE, Romania)
19. MEP Frederique RIES (ALDE, Belgium)
20. MEP Geoffrey VAN ORDEN (ECR, UK)
21. MEP Ramona MANESCU (EPP, Romania)
22. MEP Hannu TAKKULA (ALDE, Finland)
23. MEP Tunne KELAM (EPP, Estonia)
24. MEP Daciana Octavia SARBU (S&D, Romania)
25. MEP John FLACK (ECR, UK)
26. MEP Miltiadis KYRKOS (S&D, Greece)
27. MEP Julia PITERA (EPP, Poland)
28. MEP Artis PABRIKS (EPP, Latvia)
29. MEP Iuliu WINKLER (EPP, Romania)
30. MEP Adina VALEAN (EPP, Romania)
31. MEP Dietmar KÖSTER (S&D, Germany)
32. MEP Olga SEHNALOVA (S&D, Czech Republic)
33. MEP Anna ZABORSKA (EPP, Slovakia)
34. MEP Christofer FJELLNER (EPP, Sweden)
35. MEP Heinz BECKER (EPP, Austria)
36. MEP Jan ZAHRADIL (ECR, Czech Republic)
37. MEP Patricia LALONDE (ALDE, France)
38. MEP Alberto CIRIO (EPP, Italy)

39. MEP José Inácio FARIA (EPP, Portugal)
40. MEP Miroslav MIKOLÁŠIK (EPP, Slovakia)
41. MEP Elisabetta GARDINI (EPP, Italy)
42. MEP Salvatore Domenico POGLIESE (EPP, Italy)
43. MEP Alessandra MUSSOLINI (EPP, Italy)
44. MEP Barbara MATERA (EPP, Italy)
45. MEP Massimiliano SALINI (EPP, Italy)
46. MEP Gunnar HÖKMARK (EPP, Sweden)
47. MEP Branislav ŠKRIPEK (ECR, Slovakia)
48. MEP Rupert MATTHEWS (ECR, UK)
49. MEP Stefano MAULLU (EPP, Italy)
50. MEP Aldo PATRICIELLO (EPP, Italy)
51. MEP Svetoslav MALINOV (EPP, Bulgaria)
52. MEP Pavel TELIČKA (ALDE, Czech Republic)
53. MEP Iveta GRIGULE-PĒTERSE (ALDE, Latvia)
54. MEP Charles GOERENS (ALDE, Luxembourg)
55. MEP Laima Liucija ANDRIKIENE (EPP, Lithuania)
56. MEP György HÖLVÉNYI (EPP, Hungary)
57. MEP Monika BEŇOVÁ (S&D, Slovakia)
58. MEP Esteban GONZALEZ PONS (EPP, Spain)
59. MEP Viorica DĂNCILĂ (S&D, Romania)
60. MEP Andi CRISTEA (S&D, Romania)

Annex I

High Representative / Vice – President Federica Mogherini speaks with Prime Minister of Israel, Benjamin Netanyahu¹

Federica Mogherini, High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission, spoke today to Prime Minister of Israel Benjamin Netanyahu and had an exchange of views on EU bilateral relations, the Middle East Peace Process (MEPP) and regional issues.

HRVP Mogherini expressed solidarity with the people of Israel who have suffered from terrorist violence. She restated the EU's unequivocal condemnation of all terrorist acts and incitement to terrorism and violence. HRVP Mogherini repeated the commitment of the EU to the security of the State of Israel.

HRVP Mogherini also underlined that the indication of origin does not constitute a boycott and should in no way be interpreted as such. *She stressed the EU's opposition to boycotts against Israel and its firm rejection of BDS attempts to isolate Israel.*

Annex II

Remarks by President Donald Tusk before his meeting with Prime Minister of Israel Benjamin Netanyahu²

Our meeting takes place at a very challenging time for the Middle East. Devastating conflicts continue in many countries, with serious consequences across the borders. Failed or failing states. Extremist movements and terrorists like Da'esh. So much human suffering. So many fleeing conflict and terror. So little peace, democracy, prosperity and rule of law.

Israel has vital national interests at stake - interests which the EU is helping to safeguard with concrete actions. *We have to avoid words like boycott because for sure this is not intention of Europe, no country in Europe wants to boycott Israel.* The essence of our relation is quite the opposite. I am keen to discuss how we can further work together to address these challenges, in Europe and in your region, which affect us all. One way to do so is to revive the Middle East Peace Process. I know this is a very difficult process, there is not black-and-white and I am fully aware that it needs patience and time.

¹ EEAS press release https://eeas.europa.eu/headquarters/headquarters-homepage/5273/high-representativevice-president-federica-mogherini-speaks-prime-minister-israel-benjamin_en

² Consilium Press Release <http://www.consilium.europa.eu/en/press/press-releases/2015/09/09-tusk-remarks-meeting-israel-netanyahu/>

Annex III

Council Framework decision on combating racism and xenophobia ³

Offences concerning racism and xenophobia

1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

1. (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or ***national or ethnic origin***;
2. (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
3. (c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;
4. (d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

Annex IV

European Human Rights Court – Hate speech ⁴

That being so, as a matter of principle **it may be considered necessary** in certain democratic societies **to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ...**, provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued”

(*Erbakan v. Turkey* judgment of 6 July 2006, § 56).

“In the Court’s view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10, but was in reality, in the circumstances of the case, **a demonstration of hatred and anti-Semitism and support for Holocaust**

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF>

⁴ http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention. The Court thus concluded that the applicant had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.”

(M’Bala M’Bala vs France)