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MEMORANDUM

On the legal and evidentiary deficiencies of the European Union's restrictive measures against Israeli civil society actors in Judea and Samaria

I. Object of the present memorandum

Between April 2024 and May 2026, the Council has adopted three successive listings under the Global Human Rights Sanctions Regime targeting Israeli individuals and entities active in Judea and Samaria[1]. The first two designated individual settlers identified as responsible for acts of violence[2]. The third, adopted on 28 May 2026, marks a qualitative shift: for the first time, the Council has listed an Israeli non-governmental organization, Regavim, and its director, Meir Deutsch, on the express ground that they "*institute legal proceedings*" before Israeli courts[3].

This memorandum addresses one question, and one only: whether the listings comply with the standards the Court of Justice has, since *Kadi*, required of every restrictive measure operating as an individual sanction[4]. It does not relitigate the EU's broader political position on the conflict. It does not contest the principle of the autonomous sanctions regime. It argues, on the basis of the publicly available statements of reasons, that several of the listings, and acutely that of Regavim, fall short of those standards. The argument proceeds in four further sections: the jurisprudential yardstick (II), the evidentiary basis of the listings (III), the asymmetry in the application of Decision 2020/1999 (IV), and the specific question raised by the Regavim designation (V).

II. The applicable jurisprudential standard

Since 2008, the Court of Justice has held that fundamental rights form part of the very foundations of the Union legal order, and that every Union measure must comply with them[5].

[1]Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410 I, 7.12.2020, p. 13; Council Regulation (EU) 2020/1998 of the same date, OJ L 410 I, 7.12.2020, p. 1.

[2]Council Decision (CFSP) 2024/1175 and Council Implementing Regulation (EU) 2024/1172, both of 19 April 2024; Council Decision (CFSP) 2024/1967 and Council Implementing Regulation (EU) 2024/1960, both of 15 July 2024.

[3]Foreign Affairs Council, political agreement of 11 May 2026; Council Implementing Regulation (EU) 2026/1177 of 28 May 2026 implementing Regulation (EU) 2020/1998. Listed persons include Daniella Weiss, Meir Deutsch (director of Regavim) and Avichai Suissa; listed entities include the Nachala Settlement Movement, the Amana cooperative association, the NGO Regavim and the NGO HaShomer Yosh.

[4]Article 21(1) TEU; Article 6(1) TEU read together with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (CFR). On the standard of judicial review applicable to CFSP listing decisions, see Court of Justice, Case C-72/15, Rosneft, judgment of 28 March 2017, ECLI:EU:C:2017:236, paras. 60–81 and 102–107.

[5]Court of Justice, Joined Cases C-402/05 P and C-415/05 P, Kadi and Al Barakaat International Foundation v Council and

Three exigencies follow from the *Kadi* line of authority. The reasons given for a listing must be *individual, specific and concrete*: generic reference to a category or status does not suffice. The Council must *establish that those reasons are well founded*, on a "*sufficiently solid factual basis*", a standard of substantive proof, not of formal motivation, capable of withstanding judicial scrutiny[6]. The procedural rights of the listed person, to be heard, to access the file, to an effective remedy, must be respected throughout[7]. It is against this triple yardstick that the listings of 2024-2026 must be assessed.

III. The evidentiary basis of the "settler violence" listings

The statements of reasons annexed to the three implementing regulations do not identify the materials on which the Council relied, but track verbatim the categories used by the United Nations Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory (OCHA-oPT). Examination of that source reveals a methodological problem of significance.

OCHA-oPT defines its objective in the Palestinian theatre in terms that depart from those it uses elsewhere. Where the organisation describes its objective in Syria as the provision of "*life-saving assistance*", in Yemen as "*helping millions of destitute Yemenis overcome hunger*", in the Central African Republic as "*saving lives*", its objective in the West Bank is articulated as ensuring that "*duty-bearers are increasingly held to account*"[8]. That is the language of advocacy, not of humanitarian coordination. The point is not academic: data produced by an organisation that has institutionalised accountability against one party to a conflict as its operational objective cannot be treated, without further verification, as neutral evidence by an EU institution exercising a quasi-judicial function under Article 215 TFEU.

The categorical apparatus of OCHA-oPT itself raises questions. The category "*incidents involving Israeli settlers*" includes, on the organisation's own methodology, Palestinians killed or injured in the course of attacks *they themselves perpetrated* against Israelis[9]. By way of illustration: on 17 March 2023, an Israeli couple was fired upon near Hawara; the husband, a former US Marine, returned fire and neutralised the attacker. On 20 June 2023, four Israelis were shot dead at a restaurant near Eli; the Palestinian assailant was killed by an off-duty soldier. In both cases, the Palestinian aggressor figures in OCHA-oPT's casualty tables under the rubric of "settler-related incidents"[10]. A reader of the aggregate figures would have no means of identifying the underlying facts.

Investigative reporting has, on the basis of internal communications of the US Security Coordinator, documented that the reports transmitted to the United States Congress, on which

Commission, judgment of 3 September 2008, ECLI:EU:C:2008:461, paras. 326, 334–336.

[6]Court of Justice, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Commission and Others v Kadi (Kadi II), judgment of 18 July 2013, ECLI:EU:C:2013:518, paras. 116–119 and 121–124, holding that the listing authority must "establish that the reasons relied on against the person concerned are well founded" on the basis of "sufficiently solid factual basis". See also Case T-228/02, OMPI v Council, judgment of 12 December 2006, ECLI:EU:T:2006:384, paras. 138–141 and 173.

[7]Court of Justice, Case C-348/12 P, Council v Manufacturing Support & Procurement Kala Naft, judgment of 28 November 2013, ECLI:EU:C:2013:776.

[8]OCHA-oPT, Humanitarian Response Plan 2023, Strategic Objectives and Response Approach, January 2023, pp. 12 and 40. The formulation "duty-bearers are increasingly held to account" is absent from comparable OCHA country plans for Syria, Yemen, Somalia, Afghanistan or Nigeria. See NGO Monitor, UN OCHA-oPT: Exploiting Humanitarianism to Advance Political Warfare, March 2021.

[9]OCHA-oPT, Data on Casualties, interactive dashboard, ochaopt.org/data/casualties. The category "incidents involving Israeli settlers" includes, by OCHA-oPT's own methodology, Palestinians "killed or injured during attacks or alleged attacks they perpetrated against Israeli settlers".

[10]On the Eli shooting attack of 20 June 2023: Reuters, "Palestinian gunmen kill four Israelis in West Bank", 21 June 2023. On the Hawara incident of 17 March 2023: Times of Israel, 21 March 2023.

the first wave of American settler-violence sanctions was based, relied without independent verification on figures supplied by OCHA-oPT and a small number of Palestinian and Israeli advocacy organisations[11]. The Council, in adopting Decision (CFSP) 2024/1175, did not refer to any independent evidentiary process; nor have subsequent listings done so.

OCHA-oPT's Protection Cluster, the working group producing the data underlying the "settler violence" categories, is composed, by OCHA-oPT's own disclosures, of fourteen non-governmental organisations. Three of those (Addameer, Al-Haq and Defense for Children International - Palestine) were designated by the Israeli Minister of Defence in October 2021 as terrorist organisations affiliated with the Popular Front for the Liberation of Palestine[12]. The Humanitarian Response Plan published by OCHA-oPT in January 2023 further includes among its partner organisations the Union of Agricultural Work Committees, whose Dutch funding was suspended in January 2022 following documented links between its leadership and the cell responsible for the 2019 murder of Rina Schnerb[13] and World Vision, whose Gaza regional manager was convicted in June 2022 by the Beersheba District Court of channelling funds to Hamas[14]. We take no position here on the substantive merits of the Israeli designations; we note that the contested character of these affiliations ought to have prompted a heightened, not a diminished, evidentiary scrutiny on the part of the Council.

IV. The question of asymmetry in the application of Decision (CFSP) 2020/1999

Decision (CFSP) 2020/1999 identifies, as conducts warranting designation, torture and other inhuman treatment, extrajudicial killings, arbitrary arrests, and "widespread, systematic or otherwise serious" abuses of fundamental rights. The instrument is, by its text, applicable irrespective of the identity of the perpetrator.

The Palestinian Authority operates, under Law No. 14 of 2004 on Prisoners and Released Prisoners, supplemented by Government Decisions Nos. 23 of 2010 and 19 of 2013, a system of monthly stipends paid to individuals convicted by Israeli courts of acts of terrorism, and to the families of those who died in the course of such acts. The amount paid is calibrated to the length of the sentence; the longer the sentence, the higher the monthly payment[15]. The reform announced by the PA in February 2025, which purported to convert the scheme into need-based welfare, has not reduced the aggregate amount disbursed: Israeli government figures place 2025 disbursements at approximately USD 214 million, up from USD 144 million in 2024[16]. The President of the Palestinian Authority has, on the public record, characterised the 7 October 2023 attack in which some 1,200 persons were murdered and 240 taken hostage as having "shaken the foundations of the Israeli entity", and has not retracted that characterisation[17].

[11] Liel Leibovitz, "The Fraudulent Case Against 'Violent Settlers'", Tablet Magazine, 2024.

[12] Israel Ministry of Defense, Counter Terrorism Order (Designation of a Terrorist Organization) (amendment), Yalkut HaPirsumim 9693, 21 October 2021, designating, inter alia, Addameer, Al-Haq and Defense for Children International - Palestine.

[13] OCHA-oPT, Humanitarian Response Plan 2023, list of participating organizations, p. 55. On the suspension of Dutch funding to the UAWC in January 2022, see NGO Monitor, "Union of Agricultural Work Committees (UAWC)".

[14] District Court of Beersheba, State of Israel v Mohammed Halabi, SCrimC 12074-08-16, judgment of 15 June 2022.

[15] Palestinian Authority, Law No. 14 of 2004 on Prisoners and Released Prisoners; Government Decisions Nos. 23 of 2010 and 19 of 2013.

[16] Taylor Force Act of 2018 (Pub. L. 115-141, Division S, Title X). 2025 figure of approximately USD 214 million reported by Israel Policy Forum, "Making the PA's 'Martyr' and Prisoner Payments Reform Real", February 2026.

[17] Mahmoud Abbas, interview published in Al-Hayat Al-Jadida, June 2025, characterising the 7 October 2023 attack as having "shaken the foundations of the Israeli entity".

The disparity of treatment that is in fact observable is not a matter of policy preference; it is a matter of internal consistency in the application of an instrument designed, by its drafters, to operate without regard to the identity of the perpetrator. Nor is the imbalance merely substantive: it is also evidentiary. The conduct attributed to identified PA officials is documented in the PA's own published budgets and in PA-owned media. The conduct attributed to the Israeli individuals listed by the Council, by contrast, rests on aggregate figures produced by the source examined in Section III[18]. None of those individuals has, to our knowledge, been the subject of indictment by the Israeli Public Prosecutor's Office; none has been convicted by any tribunal. This is the inverse of the standard required by *Kadi II*.

V. The Regavim listing and the right of access to a court

On 28 May 2026, the Council adopted Implementing Regulation (EU) 2026/1177, listing the Israeli non-governmental organisation Regavim and its director, Meir Deutsch. The statement of reasons published by the General Secretariat of the Council is, on this point, unequivocal: Regavim and its leadership "*lobby for the demolition of Palestinian property with the aim to expand the control of Israel to the whole West Bank and institute legal proceedings to that end*"[19]. Recourse to legal proceedings before a domestic court is, on the face of the Council's own statement, a constitutive element of the conduct sanctioned. It is not an aggravating circumstance; it is not a manner of the conduct; it is one of the operative grounds of the designation. This is without precedent in the jurisprudence of EU restrictive measures.

Article 47 of the Charter, read together with Article 19(1) TEU, enshrines the right to an effective remedy. The European Court of Human Rights has, since *Golder v United Kingdom* in 1975, treated access to a court as a constitutive element of the right to a fair trial under Article 6 ECHR, a right not absolute, but which cannot be subjected to restrictions impairing its very essence[20]. Regavim's activity consists, as a matter of fact, in petitioning the High Court of Justice of the State of Israel, a court whose independence is, at the time of writing, the subject of no formal challenge by any EU institution, to enforce planning law in respect of unauthorised construction. The High Court adjudicates on the merits in each case, granting petitions where the planning authorities have acted unlawfully and dismissing them where they have not[21]. Regavim petitions in respect of both unauthorised Palestinian and unauthorised Israeli construction, a fact rarely reported. What the Council has, in substance, sanctioned is the act of asking an independent domestic court to enforce the law of the territory in which it sits.

The litigation ground is not the only one. The Council relies equally on the fact that Regavim and its leadership lobby for the demolition of Palestinian property[22]. This second ground is no easier to sustain than the first. To address a public authority by lawful means, and to press for the

[18]FinCEN, Alert on Israeli Extremist Settler Violence Against Palestinians in the West Bank, FIN-2024-Alert001, 1 February 2024 (US Treasury alert structurally relying on OCHA-oPT data).

[19]Council of the EU, Press Release, "Extremist Israeli settlers: EU lists four entities and three individuals", 28 May 2026: Regavim and its leadership "lobby for the demolition of Palestinian property with the aim to expand the control of Israel to the whole West Bank and institute legal proceedings to that end" (emphasis added).

[20]European Court of Human Rights, Golder v United Kingdom, application no. 4451/70, judgment of 21 February 1975, Series A no. 18, paras. 35–36; Bellet v France, application no. 23805/94, judgment of 4 December 1995, paras. 36–38. In EU law: Article 47 CFR; Article 19(1) TEU; Court of Justice, Case C-64/16, Associação Sindical dos Juízes Portugueses, judgment of 27 February 2018, ECLI:EU:C:2018:117.

[21]Israel, Basic Law: Judicature, 5744–1984, sections 15(c) and (d), conferring jurisdiction on the High Court of Justice over actions and omissions of public authorities; HCJ 910/86 Ressler v Minister of Defence, (1988) 42(2) PD 441.

[22]See n 19 above.

enforcement of the law in force, is not a departure from democratic life; within the Union's own constitutional order it is one of its recognised forms. Article 11 TEU requires the institutions of the Union themselves to give representative associations the opportunity to make their views known and to maintain an open and regular dialogue with civil society[23]. The freedoms of expression and of association, which bind those same institutions in the exercise of their powers, protect that activity as a matter of fundamental right[24], and the European Court of Human Rights has long held that non-governmental organisations, no less than the press, perform the function of a public watchdog and on that account enjoy the protection of Article 10 of the Convention[25]. An organisation that compiles surveys of unauthorised construction and asks the competent authorities to apply the planning law engages in conduct that the Union, in every other setting, treats as the ordinary substance of an active civil society. The one concrete instance the statement offers in support of this ground is Regavim's having sought the enforcement of a demolition order against a structure built without a permit, a structure that the Union had itself funded[26]. The merits of such a dispute are for the court seised of it to determine, and not for the Council.

A word is due on the description under which the regime operates. These measures are presented, in the Council's communications, as a response to extremist settler violence[27]. The conduct attributed to Regavim is the negation of such violence. To bring a petition before a court, and to advocate before the competent authorities, are the means by which a claim is pressed without recourse to force; they are the contrary of the vigilante conduct the regime exists to address. Nor is the present listing the first to reach beyond violence so understood. In July 2024 the same regime designated the activist group Tzav 9 by reason of its obstruction of humanitarian convoys, conduct the Council characterised as violent protest and as the destruction of relief supplies[28]. That designation, whatever view is taken of its merits, concerned acts of an order quite different from those for which the Global Human Rights Sanctions Regime was instituted, namely genocide, crimes against humanity, torture, extrajudicial killing and arbitrary detention[29]. A regime whose stated purpose is to shield civilians from violence withdraws its protection, by the Regavim listing, from the very conduct that is by definition not violent: the pressing of a claim before a judge. That is to invert the incentive the rule of law exists to create.

We are conscious that this argument may appear remote from the original concern of European policy-makers when Decision (CFSP) 2020/1999 was extended to the West Bank theatre, the protection of Palestinian civilians from acts of violence. That concern is legitimate; nothing herein suggests otherwise. But the instrument adopted to address it has, in twenty-six months, been extended from individual perpetrators of violence (April 2024), to outposts characterised as sources of violence (July 2024), to a civil society organisation that engages in litigation (May

[23] Article 11(1) and (2) TEU.

[24] Articles 11 and 12 of the Charter of Fundamental Rights of the European Union; on the application of the Charter to the institutions of the Union, Article 51(1) CFR.

[25] European Court of Human Rights, Magyar Helsinki Bizottság v Hungary [GC], application no. 18030/11, judgment of 8 November 2016, on the public watchdog function of non-governmental organisations under Article 10 of the Convention.

[26] European External Action Service, statement of 28 May 2026, identifying the demolition of an EU-funded Palestinian primary school at Jubbet adh-Dhib, near Bethlehem, as an instance of the conduct relied upon; Council Implementing Regulation (EU) 2026/1177 of 28 May 2026.

[27] Council of the European Union, press release of 28 May 2026, "Extremist Israeli settlers: EU lists four entities and three individuals"; European Council conclusions of 26 June 2025.

[28] Council Implementing Regulation (EU) 2024/1960 of 15 July 2024, statement of reasons concerning Tzav 9 (regular blockage of humanitarian convoys; incidents at Kerem Shalom on 18 January 2024, at Tarqumiyah on 13 May 2024 and at Binyamin on 16 May 2024, characterised as violent protest and the destruction of relief supplies); Council of the European Union, press release of 15 July 2024.

[29] Article 1 of Council Decision (CFSP) 2020/1999 of 7 December 2020, setting out the acts that warrant designation under the Global Human Rights Sanctions Regime.

2026). The trajectory is itself instructive. By what principle, intelligible in advance and applicable to all comparable cases, is the line to be drawn between advocacy that is protected and advocacy that may be sanctioned? If the answer is *ad hoc*, on the basis of the political acceptability of the views expressed, the regime has been used in a manner that none of its drafters intended and that none of its judicial interpreters has authorised[30]. The precedent is not specific to Israel: environmental NGOs petitioning national courts against industrial installations, taxpayers' associations challenging administrative concessions, anti-corruption groups filing private criminal complaints, all engage in conduct structurally indistinguishable from Regavim's. European policy-makers, whatever their views on the Israeli-Palestinian conflict, have a direct institutional interest in not allowing the precedent to consolidate.

VI. Conclusions and recommendations

The present memorandum does not invite the addressees to revisit the political assessments that have, since October 2023, informed the EU's position on the West Bank. It invites them to apply, to that situation, the standards that the EU has imposed upon itself when it created the Global Human Rights Sanctions Regime, and that the Court of Justice has demanded of every individual restrictive measure since 2008. On that basis, we respectfully submit that: (i) the listings adopted on the basis of OCHA-oPT data without independent evidentiary process rest on a factual basis whose solidity is, at least, open to serious doubt; (ii) the asymmetry between the treatment of Israeli civilians never indicted for any offence and the absence of any designation of identified Palestinian Authority officials whose conduct falls on its face within the material scope of Decision (CFSP) 2020/1999 raises a question of consistency that, if unaddressed, undermines the credibility of the regime; and (iii) the listing of Regavim and Meir Deutsch on the express ground that they institute legal proceedings before an independent domestic court is incompatible with Article 47 CFR, with Article 6 ECHR, and with the principle of legality governing measures adopted under Article 215 TFEU.

We respectfully invite the addressees to raise, in the appropriate fora, the question of the evidentiary basis on which the Council has acted in each individual case; to examine whether the conduct of identified PA officials warrants designation under the same regime; and, with particular urgency, to reconsider the listing of Regavim and Meir Deutsch, whose maintenance in the form in which it has been published establishes a precedent that the European Union, as a community of values founded on the rule of law, has a direct interest in not allowing to stand. The listed persons retain, of course, the right of action under Article 263, fourth paragraph, TFEU. But judicial control of restrictive measures is not, and cannot be, a substitute for the institutional self-discipline that the EU institutions are expected to exercise at the moment of adoption.

Sincerely,

Adv. Sarah Scialom

Prof. Eugene Kontorovich

Adv. Avraham Russell Shalev

[30] Article 49 CFR (principle of legality); Article 7 ECHR. Article 215(3) TFEU requires that acts adopted thereunder "include necessary provisions on legal safeguards". See Court of Justice, Case C-130/10, Parliament v Council, judgment of 19 July 2012, ECLI:EU:C:2012:472, paras. 75–85.