

# **Request for the constitution of a temporary committee of inquiry**

**(by virtue of article 151 of the Rules of Procedure)**

**concerning the EU funding in the Middle East**

## **Grounds**

The European Union has supported the peace process in the Middle East with approximately 1.4 billion Euro since the Oslo accords in 1993.

Beginning in November 2000, the European Commission has authorised payments to the Palestinian Authority (PA) to help it meet urgent current expenses such as salaries for public sector employees.<sup>1</sup> The payments are made under a special fund set up in 1998 to provide funding in the form of refundable advances to the Palestinian Authority in cases where the Israeli authorities did not transfer tax receipts on time to the PA.

Since June 2001, the EU has provided on a continuous basis €10 million per month in direct budgetary assistance to the PA. The main objective of this assistance has been to help the PA to deal with the short-term liquidity problems encountered by the interruption of monthly transfers of tax receipts (VAT and customs duties) by the Government of Israel following the outbreak of the "Al-Aqsa Intifada" at the end of September 2000. This direct budgetary assistance amounts to approximately 10% of the PA's general budget.

Besides this direct budgetary assistance, the EU has granted financial and technical co-operation to the Palestinian territories through various measures, including the MEDA programme<sup>2</sup>, community actions connected with the Oslo agreement amounting to €60 million for the years 2000-2001<sup>3</sup>, aid to the "United Nations Relief and Works Agency for Palestinian Refugees in the Near East" (UNRWA) amounting to at least 42% of its annual budget (at least 25% of UNRWA's budget is paid by EU member states, at least 17% by the European Commission)<sup>4</sup>, food aid<sup>5</sup>, humanitarian aid<sup>6</sup>, NGO co-financing and co-operation<sup>7</sup>, and funds under the Common Foreign and Security Policy budget.<sup>8</sup>

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<sup>1</sup> Press release by the European Commission, IP/00/1272, 8.11.2000, see:

[http://www.europa.eu.int/comm/external\\_relations/news/11\\_00/ip\\_00\\_1272.htm](http://www.europa.eu.int/comm/external_relations/news/11_00/ip_00_1272.htm)

<sup>2</sup> Total payments for 2000-2001 amount to more than €102 million under Budget Line B7-4100 (MEDA). €130 million are projected for 2002. Middle East Peace Projects are included in this budget line.

<sup>3</sup> Budget Line B7-4200.

<sup>4</sup> The EU spent over €94 million in 2000-2001 on the budget of the Relief Agency and forecasts another €47 million for 2002 under Budget Line B7-4210 (UNRWA).

<sup>5</sup> A total amount of €22.9 million was spent in 2000-2001 under Budget Line B7-2000 (Food Aid). €15 million are projected for 2002.

<sup>6</sup> The EU committed and paid €44.4 million through the European Commission's Humanitarian aid Office under Budget Line B7-2100 (ECHO) for the years 2000-2001. Another €15 million are forecast for 2002.

<sup>7</sup> In 2000-2001, a total sum of €3.7 million was paid under Budget Lines B7-6000 (NGO co-financing), B7-6002 (Development Co-operation), and B7-7050 (EIDHR).

<sup>8</sup> Amounting to over €3.4 million in 2000-2001 under Budget Line B8-012/3 (CFSP).

During the past two years (2000-2001), the total amount of EU aid actually paid in the Palestinian Territories is at least €330 million. The EU paid most of this in the form of budgetary support to the PA, UNRWA assistance and humanitarian aid.<sup>9</sup>

Political conditions for this financial support have been the peaceful resolution of all conflicts with Israel and the development of democratic institutions in the West Bank and Gaza, as have been postulated in the Declaration of Principles in September 1993.<sup>10</sup>

In May 2001, the long-standing EU demand for a peaceful resolution of the conflict has again been stressed by the Mitchell Commission. One of its members was the EU Co-ordinator for the Common Foreign and Security Policy (CFSP), Javier Solana. While no answer was found concerning the question if the PA has deliberately started the "Al-Aqsa Intifada", the final commission report called on both sides to "immediately implement an unconditional cessation of violence". The Mitchell Commission recommended in particular that "the PA should make clear through concrete action to Palestinians and Israelis alike that terrorism is reprehensible and unacceptable, and that the PA will make a 100 percent effort to prevent terrorist operations and to punish perpetrators. This effort should include immediate steps to apprehend and incarcerate terrorists operating within the PA's jurisdiction."<sup>11</sup>

On May 6, 2002, the European Commission received a dossier prepared by the Israeli Government which claims to show that the PA administration and its Chairman Yasser Arafat used budgetary support provided by the EU (along with Arab states, Norway and others) to finance supporters of terrorism, or even to support acts of terrorism. According to this report, documents captured by the Israeli Defence Forces (IDF) in the PA headquarters during Operation Defensive Shield "prove that the PA is making cynical and bad use of this financial aid, and instead of channelling it to the needs of its citizens and for the maintenance of the administration and public order, the PA uses some of the money in order to finance terrorist activities."<sup>12</sup>

Two thirds of the PA's monthly budget (which in total amounts to US-\$ 90 million) are devoted according to PA declarations to the payment of salaries.<sup>13</sup> Following IDF information, this section of the PA budget might also have been used for accumulation of surplus funds and their diversion to other purposes. The PA claims to the aid entities that it requires about \$60 million a month. However, from documents presented by the Israeli government it can be learned that the PA needs only 55-65% of this sum. The mechanisms used to cover up these activities are described in the report as

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<sup>9</sup> European Commission and EIB Assistance to the Palestinians and the peace Process since Oslo, paper distributed by the European Commission to the members of the European Parliament's Budget Control Committee, 14.3.2002. See also the Commission web site: [http://europa.eu.int/comm/external\\_relations/gaza/news/me02\\_90.htm#0001](http://europa.eu.int/comm/external_relations/gaza/news/me02_90.htm#0001)

<sup>10</sup> In the first paragraph of the declaration, both sides agreed to "recognise their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process". Declaration of Principles on Interim Self-Government Arrangements, signed at Washington, D.C., on September 13, 1993 ("the Declaration of Principles") ; United Nations document A/48/486-S/26560 (Annex) of 11 October 1993; (1993) 32 I.L.M. 1525; (1994) 28 Is. L.R. 442

<sup>11</sup> The Mitchell Commission's report - officially the Sharm-el-Sheikh Fact Finding Committee Final Report: <http://usinfo.state.gov/regional/nea/mitchell.htm>, 30.4.2001.

<sup>12</sup> See particularly chapter II of the report: Naveh, Dani (2002): The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel, Corruption and Crime, Report prepared by a team headed by Dani Naveh, Minister of Parliamentary Affairs, Government of Israel: <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0lom0>

<sup>13</sup> Other sources say up to 80% of the PA budget are spent on salaries of approximately 120'000 employees, among which 20'000 are not civil servants. See: Katja Ridderbusch / Andreas Middel (2002): EU erzwingt Einstellungsstopp bei Arafats Behörde, in: Die Welt, 17.6.2002. <http://www.welt.de/daten/2002/06/18/0618au338988.htm>

- a) transmitting false reports to the supervising bodies regarding an exaggerated quantity of employees;
- b) formation and handling of a black budget;
- c) manoeuvres with manipulated currency exchange rates and
- d) forcefully deducting 1,5-2% of paid salaries as "Fatah membership fees".

All in all, the report claims that more than 10% of the PA's budget is deducted from the official budget and spent on intransparent activities.

Other documents have been presented to the EU Commission by Dani Naveh, Israeli Minister of Parliamentary Affairs. They seem to show that PA Chairman Yasser Arafat has signed bank transfer orders to activists involved in terrorist attacks. Among these activists were members of the Fatah linked Al-Aqsa Martyrs' Brigade, which is on the EU list of terrorist organisations since 18 June 2002.<sup>14</sup>

The dossier also claims widespread corruption and intransparent deduction of funds from the official budget.<sup>15</sup>

In a letter to the EU foreign ministers dated May 7, 2002 Commissioner Chris Patten admitted that "with large-scale financial assistance packages, it is impossible to eliminate all risks, even with the most rigid of control measures". He continued to say that he was satisfied nonetheless with the controls of the monthly payments carried out by the IMF at Commission request. According to the research done by journalists the IMF controller in East-Jerusalem, Karim Nachachibi, seems to be unable to control the PA budget.<sup>16</sup> He admitted not to know how each Euro is spent and that it was impossible to do an effective audit. Karim Nachachibi explained that the IMF only verifies if the sums of the PA's budget are going to the respective department in the correct amounts.<sup>17</sup>

Thomas C. Dawson, Director of the External Relations Department of the IMF confirms this view: "The IMF does not 'monitor foreign assistance' to the Palestinian Authority. It simply provides the EU with information about broad developments related to its budget. It does not monitor or control every item in the budget."<sup>18</sup>

The IMF therefore only provides technical aid, assists with the formation of the budget, checks the budget execution of the PA and checks if the accounting is done correctly. Everything else - especially financial controls and auditing of accounts - is not part of the mandate of the IMF. That means so far no independent institution has checked whether the EU budgetary assistance has been spent properly.<sup>19</sup>

Following these allegations, it might be the case that

- a) EU funding has been used in an illegal way that amounts to corruption and
- b) EU funding has been used to support terrorist activities.

If both of these allegations would be proven right, they meant a serious violation of EU legislation.

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<sup>14</sup> OJ L 160/26 of 18.6.2002.

<sup>15</sup> See particularly chapter II of the report: Naveh, Dani (2002): The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel, Corruption and Crime, Report prepared by a team headed by Dani Naveh, Minister of Parliamentary Affairs, Government of Israel: <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0lom0>

<sup>16</sup> Kleine-Brockhoff, Thomas/ Schirra, Bruno (2002): Arafat bombt, Europa zahlt, in: Die Zeit, No. 24/ 2002, 6.6.2002.

<sup>17</sup> Bares für Fatah-Getreue, in: Der Spiegel, No. 22/ 2002, Hamburg, 27.5.2002.

<sup>18</sup> Dawson, Thomas C.: Letter To The Editor: The IMF Resonds, in: The Wall Street Journal, 17.6.2002

<sup>19</sup> Kleine-Brockhoff, Thomas (2002): Von unbeugsamer Gutgläubigkeit, in: Die Zeit, No. 34/2002, 15.8.2002.

An alleged funding of terrorist activities by the Palestinian Authority using EU funding would amount to the breach of a number of specifications in Community law, in particular in the field of human rights obligations, but also in the field of legal measures against terrorism.

In order to investigate if there have been any instances of mischief in terms of absent or reluctant action on the part of the EU Commission to take effective measures against illicit funding and misuse of EU budgetary assistance to the PA, a number of EU legislative texts must be considered:

## **Community and International Law**

The EU Treaty includes clear legislation on the respect of human rights and condemns all acts threatening these rights including terrorist acts.

Title 1 (Common Provisions), Article 6

*(1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.*

Moreover, article 6.2 of the European Union Treaty stipulates that *the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms [...].* This Convention in particular recognises the respect of the right to life.

Article 11 of the EU Treaty can also be invoked (Title V, CFSP):

*1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:*

*- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter [...];*

*2. [...] The member states shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The council shall ensure that these principles are complied with.*

The EC Treaty includes clear legislation to combat fraud (Part 5, Title II, Financial Regulations, Article 276):

*2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.*

Article 280 clearly demands measures to counter fraud, that might not apply to third country authorities, but whose standards should at least be respected by EU institutions in international relations and international budgetary assistance:

*1. The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States.*

*2. Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.*

*3. Without prejudice to other provisions of this Treaty, the Member States shall co-ordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they*

*shall organise, together with the Commission, close and regular co-operation between the competent authorities.*

Moreover, the relevant international human rights law as set out in the European Convention of Human Rights grants every person the right to live (Article 1) and the right to freedom and security (Article 5). Although not yet community law as codified in the relevant EU Treaties, the EU Charter of Fundamental Rights reflects this spirit under articles 2 and 3 (the right to live) and article 6 (the right to freedom and security).

In addition, specific EU legislation is relevant in the fight against terrorism or corruption. Article 2 of the Council Regulation (EC) No. 1488/96<sup>20</sup> on the MEDA programme sets out support measures that shall be implemented taking account of objectives listed in Annex II, Point II, indent 10. This article asks that the support of economic and social development shall be "*strengthening democracy and respect for human rights*".<sup>21</sup>

Furthermore, the European Community and the PLO, for the benefit of the Palestinian Authority both stressed "*the importance which the Parties attach to the principles of the United Nations Charter, particularly the observance of human rights [and] democratic principles*" as formulated in the preamble of the Euro-Mediterranean Interim Association Agreement.<sup>22</sup>

European Union law with regard to the fight against terrorism is very explicit and calls for the setting up of an independent investigation into alleged involvement of the Palestinian Authority and its Chairman Yasser Arafat in terrorist activities.

The Council's Common Position on combating Terrorism (2001/930/CFSP)<sup>23</sup> states in article 3 that "*funds, financial assets or economic resources or financial or other related services shall not be made available, directly or indirectly, for the benefit of:*

- persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts;
- entities owned or controlled, directly or indirectly, by such persons; and
- persons and entities acting on behalf of or under the direction of such persons."

Article 4 consequently calls for measures to be taken to suppress any form of active or passive support of such entities or persons involved in terrorist acts.

Following the Council Common Position 2001/931/PESC of December 27, 2001, "*acts of terrorism*" are defined in article 3.i among other offences as "*grave intimidation of a population*", which is certainly the case with the ongoing terrorist campaign against civilians inside Israel.

Under the recently updated EU list of terrorist organisations and individuals (Council Decision 2002/460/CE<sup>24</sup> and Council Common Position 2002/462/PESC<sup>25</sup>), the Al-Aqsa Martyrs' Brigade, which is supposedly a branch of Arafat's Fatah movement, the Popular Front for the Liberation of Palestine (PFLP) and the Palestine Liberation Front (PLF), which are of two of the groups constituting the Palestine Liberation Organisation (PLO), whose current President is Yasser

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<sup>20</sup> OJ L 189, 30.7.1996, Regulation as last amended by regulation (EC) No 780/98 (OJ L 113, 13.4.1998) and by Regulation (EC) No. 2698/2000 (OJ L311, 12.12.2000).

<sup>21</sup> OJ L 189, 30.7.1996, Regulation as last amended by regulation (EC) No 780/98 (OJ L 113, 13.4.1998) and by Regulation (EC) No. 2698/2000 (OJ L311, 12.12.2000).

<sup>22</sup> OJ L 187, 16.7.1997.

<sup>23</sup> OJ L 344/90, 28.12.2001.

<sup>24</sup> OJ L 160/26, 18.6.2002.

<sup>25</sup> OJ L 160/32, 18.6.2002.

Arafat, are listed as terrorist organisations. Council Regulation (EC) No. 2580/2001<sup>26</sup> demands in article 2 that all funds or other financial assets including economic resources of the organisations on the European list of terrorist organisations shall be frozen.

## Conclusions

It should be noted that article 151 of the Regulation of the European Parliament, relating to the constitution of a committee of inquiry, mentions "alleged contraventions of Community law or alleged maladministration in the application of Community law which would appear to be the act of an institution or body of the European Communities."

Therefore the task of the requested Committee of inquiry shall be:

- a) to investigate whether the described allegations about the contravention of Community Law are true or false;
- b) to investigate whether there is evidence for the allegations about maladministration in the application of Community law mentioned in this request.

Moreover, and following the allegations listed above, it appears to us not only legitimate but also indispensable, in the light of protecting human rights and fighting terrorism, that an investigative inquiry should be set up to distinguish truth from falsehood, and, where applicable, to use the necessary legal and technical means to provide for effective protection for fundamental rights and to obtain full respect for Community law.

In February 2001, EU Commissioner Chris Patten warned that a direct budgetary assistance might involve considerable risks, since a misuse of funds could not be completely ruled out.

In August 2002, Chris Patten, declared to take "any allegation regarding misuse of funding extremely seriously". He stated that "the EU examined the allegations that have been made by the Israeli authorities on the misuse of EU funds. The EU also invited the International Monetary Fund and the Palestinian Authority to comment on the allegations." So far "the EU, on the basis of the material it has examined, has not found any evidence of EU funds being used for purposes other than those agreed between the EU and the PA."<sup>27</sup>

By installing an inquiry Committee the European Parliament could help the Commission to investigate these allegations, which the EP also takes extremely seriously. Nonetheless to fulfil its obligations to and the expectations of the European citizens, the House must absolutely ensure that the European tax payers' money is not misused. To maintain and enlarge the confidence in the European institutions and in the European democracy, the European Parliament cannot ignore this peril for the trust of the European citizens in good governance.

To this end, it is therefore proposed that a committee of inquiry be constituted which will also enable us to distinguish the various responsibilities involved and to highlight any possible gaps and shortcomings. This committee of inquiry shall investigate the allegations of corruption and budget manipulations within the PA and shall also shed light on the question if EU financial assistance to the PA has been applied in strict accordance with Community Law. The Committee shall investigate allegations concerning the time after the beginning of the direct budgetary assistance in June 2001.

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<sup>26</sup> OJ L 344/72, 28.12.2001.

<sup>27</sup> See Chapter 2 in, The EU & the Middle East: Position & background:  
[http://europa.eu.int/comm/external\\_relations/mepp/faq/index.htm#2](http://europa.eu.int/comm/external_relations/mepp/faq/index.htm#2)

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