



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 December 2006

17087/06

**PE 413
USA 108
COHOM 203**

NOTE

from :	General Secretariat of the Council
to	Delegations
Subject :	Meeting of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, held in Brussels on 18 and 19 December 2006

The meeting was chaired by Mr COELHO (PPE-DE, PT).

I. Announcements from the Chair

Mr COELHO told the Committee that he had received an e-mail with a copy of the letter to Mr Borrell from Mr Solana, declining the invitation to appear before the Committee again. He regretted that Mr Solana had not seen fit to attend the Committee a second time. The letter from Mr Solana would be discussed in the coordinators' meeting. Mr Coelho also regretted that Mr Tuomioja had not accepted the invitation to appear before the Committee, especially since he would be attending the meeting of the Committee on Foreign Affairs (AFET) on the second day of the Temporary Committee's meeting. Mr Coelho encouraged the members who wished to do so to attend the AFET meeting and raise the matter.

II. Exchange of views on the mission of the delegation to Portugal

Mr COELHO criticised the former Foreign Minister and the former Minister for Home Affairs for

declining the invitation to meet with the delegation over lunch. The Committee had met the Minister for Foreign Affairs, Luis Amado, and representatives of the civil aviation authorities and the borders and frontiers service. Furthermore, it had met with the chairs of all political groups in the Portuguese Parliament and with the Chair of the Committee on Legal Affairs. The members of the delegation had agreed that there were still issues that needed to be clarified.

Baroness LUDFORD (ALDE, UK) considered that the visit had been useful, although it had raised a lot of questions. In her opinion, it was likely that Porto had been a staging point for renditions. She was supported by Ms GOMES (PSE, PT) on this point. Mr KREISSL-DÖRFLER (PSE, DE) was critical of the statement by the Portuguese Foreign Minister that there had been no illegal activities in Portugal in connection with CIA rendition flights.

Mr ROMEVA I RUEDA (Verts/ALE, ES) considered that what had not been said to the delegation might be more interesting than the information it had actually obtained. He had seen a reluctance to cooperate with the Committee, and wanted the Committee to be a lot tougher on the Portuguese government. He was happy about the fact that the current government had received the delegation, but underlined that the Committee's investigation should also cover the previous government and regretted that the former ministers had declined the invitation to meet with the delegation. As regards the role of the Council and its High Representative /Secretary General, Mr Romeva i Rueda stressed that a distinction should be made between the Council and the Member States. While regretting that Mr Solana had not been as cooperative as the Committee would have liked, he wanted members of the Committee to bear in mind that it was governments that impaired the work of the Committee and that Mr Solana could only act under the mandate given to him.

Ms GOMES said that flights had not been properly monitored. While she thought that failing control mechanisms were a part of the problem, she did not think that it could all be attributed to a lack of competence. According to her, there had been an intention to cooperate with the rendition programme, although the extent of the cooperation was unclear. Most of the flights in question were military flights. While they did not have approval from the civil aviation authorities, they did have political approval from the Foreign Ministry. Ms Gomes had obtained information according to which British and French military flights had stopped over in Portugal and gone to Guantánamo Bay. The new information differed from the data from Eurocontrol, which made the picture even more worrying.

Mr CATANIA (GUE/NGL, IT) considered that Mr Barroso, who was the Prime Minister of Portugal at the time of the events under investigation should, be invited to appear before the Committee before the end of its mandate.

III. Exchange of views with Mr Frattini, Vice-President of the Commission

Mr COELHO publicly expressed his thanks to Commissioner Frattini for the excellent cooperation from him and from the Commission and noted a clear difference between the Commission and the Council in this regard.

Mr FRATTINI opened his statement by saying that cooperation with the Committee was not only a part of his institutional duty, but also something that he considered to be a moral duty. He had encouraged Eurocontrol and SATCEN to provide information to the Committee and had called on the Ministers for Justice and Home Affairs to cooperate with the Committee. He had done the same with regard to the inquiries carried out by the Council of Europe and considered that the cooperation between the European Parliament Temporary Committee and the Council of Europe on the matter was a good example of interinstitutional cooperation. He did not intend to make a complete estimation of the draft report at this meeting, but was willing to share his first analysis of the draft report with the Committee. The report should be regarded as a stage in a broader search for the truth. The process was not completed with this report. Member States which had not started inquiries should do so. Member States had a duty not only not to hamper inquiries, but to cooperate with bodies carrying out investigations. While magistrates could not be forced to act, it was possible to make a political appeal for inquiries to continue. The rights of victims must be taken account of. Member States would have to answer questions regarding the persons allegedly abducted by force, such as whether they were released or still in jail, and if it were possible to hold a trial in the country where they resided before they were abducted. With regard to how to prevent anything similar from happening in the future, Mr Frattini stressed the need to apply certain existing legislative provisions and to strengthen certain rules which had proved to be inadequate. The EU-US agreements on extradition and mutual legal assistance were important legal instruments and should be taken into account. Mr Frattini wanted the report to include an appeal to all Member States to ratify these agreements. He also hoped that Member States would ratify the newly adopted UN Convention for the Protection of all Persons from Enforced Disappearance. The Commission would carry out an analysis of the application of national counter-terrorism legislation with respect

to fundamental rights. As regards the matter of discipline in security and intelligence services, Mr Frattini stressed that the security and intelligence services were at the core of national sovereignty and outside the competence of the EU. However, that did not exclude the possibility of having a political debate on the aims and goals of such services. Mr Frattini underlined that secret services could not be covered by the same rules as police services. Denying that would be to deny the very task of these services, which had a crucial role in the fight against terrorism. As regards air traffic rules, Mr Frattini raised the matter of application of civil aviation rules to aircraft used for non-civilian aims, and stressed the need for a clear qualification of the notion of “state aircraft”. While the Commission did not have competence as regards state aircraft, it would be able to make a practical contribution by proposing a better definition of the concept of civil aviation, aiming at a clearer distinction between civil and state aircraft. Mr Frattini expressed his willingness to work with Commissioner Barrot for this purpose. Once the report of the Committee had been adopted, a public consultation could be launched as a basis for a Commission communication which would deal with one of the points in the report in a concrete manner. In conclusion, Mr Frattini underlined the need to carry out further work in cooperation with the Council of Europe. In this context he mentioned the framework agreement with the Council of Europe that would be in place when the Fundamental Rights Agency started its activities. He encouraged the European Parliament to continue to engage in this sort of interinstitutional cooperation.

Several members thanked Mr Frattini for his cooperation, and compared it with the perceived lack of cooperation from the Council. Reacting to comments and questions from members, Mr Frattini stressed the importance of relaunching transatlantic relations with relation to harmonised rules regarding security and the fight against terrorism and the guarantee of fundamental rights. These matters had been raised with the US in connection with discussions on the protection of personal data. It was important that the EU and the US remained allies in the fight against terrorism and that human rights were respected in that fight. Mr Frattini noted that the Committee did not act as a “super tribunal” or a prosecutor. While the Committee could make political points about Member States, it was up to judges to establish any legal responsibility. Addressing Mr KREISSL-DÖRFLER, Mr Frattini said that if it turned out that government claims regarding the allegations under investigation were untrue, the legal responsibility could be established by the competent courts. To Ms GOMES’ comment that there had been military flights of British and French nationality flying to Guantánamo Bay, Mr Frattini said that there had to be investigations as well as a continued political debate. Addressing Baroness LUDFORD who had expressed her doubts about Member States allowing the Commission to make an evaluation of the application of

national counter-terrorism legislation, Mr Frattini acknowledged that the Commission did not have any formal powers under the third pillar. However, the Commission would have a right to analyse the situation under the framework of the Hague Programme. An analysis of national legislation was necessary for a complete picture of the situation. Mr Frattini reiterated that there had to be a clear distinction between intelligence services and police services. Addressing Mr FAVA and Mr CATANIA, Mr Frattini said that he did not think that Member States would accept the idea of a code of conduct for the secret services. Furthermore, there were questions about who would monitor the respect of such a code. Commenting on a question by Mr LAMBRINIDIS (PSE, EL) regarding civil and state aircraft, Mr Frattini repeated that the work to make necessary modifications to clarify the qualification of a plane as state or civil aircraft would begin in 2007 with a public consultation. The matter of cooperation between Europol and the US intelligence services was raised by Mr GUARDANS CAMBÓ (ALDE, ES). Mr Frattini said that there was no such cooperation, but that there was cooperation between Europol and the FBI. There were Europol liaison officers in Washington and FBI liaison officers in the Hague. Asked by Mr ROMEVA I RUEDA about the state secrecy imposed by the Italian government on certain information linked to the Abu Omar case, Mr Frattini recalled that the state secrecy had been imposed by the Berlusconi government and maintained by the Prodi government. He stressed that he did not have a right to know about matters covered by state secrecy. He did not want to comment any further on this.

Baroness LUDFORD took the opportunity during the exchange of views to express her surprise at “the Council’s desire” to keep the records of the meeting of 3 May 2006 with the US administration confidential, since these records actually put the Council in a good light.

Mr TANNOCK (PPE-DE, UK) objected to the Chair having closed the list of speakers and, with one exception, only giving the floor to members of the political groups on the left (in which he included the ALDE group).

IV. Continued exchange of views on the draft report

Mr GAWRONSKI (PPE-DE, IT) considered the draft report too long, but short with regard to the useful points, i.e. what measures to take in the future. He noted that the Committee was more divided than any other Committee that he had been on, and objected to the tendentiousness of the draft report. He was particularly opposed to paragraph 140 regarding Poland, which he felt was like a “detective novel” and misplaced in a report of this kind. He noted that, despite the long list of

thanks to various people, including journalists that had appeared before the Committee, a Polish journalist whose testimony was considered “awkward” since he doubted the existence of secret prisons, had not received any thanks. Mr Gawronski noted that figures regarding aircraft linked to Italy changed all the time. He asked the rapporteur whether the CIA had the right to fly wherever it wanted, in chartered planes if it so wished, as long as it did not break the law, and whether the rapporteur agreed that secret services had to act in secrecy. Mr Gawronski did not see a problem with the stop-overs per se, but with the itineraries. He found it absolutely absurd however that an aircraft which at one point had had a "suspicious" itinerary should be "tainted" forever.

Ms BREPOELS (PPE-DE, BE) noted that there was no reference to Belgium in the draft report, although there had been a hearing with Ms Lizin, President of the Parliamentary Committee in charge of the follow-up of the activities of the Permanent Committee Monitoring the Intelligence Services. She wanted the Belgian authorities to explain the shortcomings of the Belgian secret services. She considered that the European Parliament should be informed as soon as possible about any negotiations concerning a rendition agreement between the US and the EU and called for clarification of the role of certain third countries.

Mr TANNOCK (PPE-DE, UK) said that there was nothing new in the report and no hard evidence, with the exception of the Abu Omar case. He considered that the Committee’s work was a duplication of the work of the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly, the investigation of which was also based on hearsay and press clips. Mr Tannock objected to the anti-American tone of the report. He considered paragraph 65 on the unwillingness of the UK Government to provide consular assistance to persons who were not UK citizens unacceptable, and said that there was no obligation in international law to give protection to non-citizens. He objected to paragraph 157 on access to information related to the fight against terrorism, stressing that not even national parliaments had access to that kind of information, and was opposed to the definition of "secret detention facility" given in paragraph 120.

Mr SALAFRANCA (PPE-DE, ES) stressed that opinions must not be seen as facts and wanted adjustments in the draft report to that effect. It was important that it should be clear in the part of the report thanking people for their contribution that many of these persons had in fact not provided any additional information. The most positive part of the report was that dealing with how to close the current gaps in legislation to prevent any similar events in the future. He noted the lack of power of the High Representative/Secretary General of the Council on the matter. He stressed that the

Committee must not state anything that did not have corroborating evidence and underlined that if there was a big division between the political groups the report would not achieve the initial objectives of the Committee.

Mr FAVA did not think that the Committee was divided and stressed that the report was the outcome of joint efforts. The Committee was not there to judge, but to come up with a description of the facts. According to Mr Fava, everything stated in the report was factual. He objected to the idea of the report being anti-American and stressed that there was not a single sentence in the draft report that implied such a thing. He did not consider it appropriate to thank the Polish journalist for his contribution and recalled the information given to the Committee by a former director of the Szymany airport. He stressed the importance of making sure that the report did not just become a dead letter but that it should be an element for future political thought. No-one would now be able to say that he or she was not aware of the events.

V. Other business

(a) Visit to Mannheim by Vice-Chair, Mr ÖZDEMİR (Verts/ALE, DE)

Mr ÖZDEMİR told the members about his visit to Mannheim, regarding possible mistreatment of detained persons in the American so called “Coleman Barracks”. Mr Özdemir had met the peace activist Peter Wright, who had been told by a US soldier called John Pierce that three Arab-speaking prisoners had been tortured with electric shocks during their detention in the Coleman Barracks. Locals had told him about detainees who had been subjected to mistreatment and claimed to have seen prisoners in orange overalls, with their hands and feet bound. They had heard cries from the barracks. According to the federal prosecutor, there were no evidence apart from what Mr Wright had said. Mr Pierce was nowhere to be found. Mr Özdemir acknowledged that there were no hard facts, but considered these things to be serious claims that should be included in the Committee’s report. He wanted the Bundestag committee of inquiry to be asked to look into the matter and considered that the competent national authorities should carry out a proper investigation.

Mr KREISSL-DÖRFLER underlined that a distinction had to be made between reports from local people and clear evidence, but agreed with Mr Özdemir that the national authorities should look into the matter.

(b) Cooperation by Member States and the Council with the Committee

Mr COELHO announced that he was “most concerned and dissatisfied” with the lack of cooperation from Member States’ governments and from the Council as regards the Committee’s work. Less than half of the 29 Member States and accession/candidate countries which had been invited to send representatives to the Committee had replied to the invitation. Out of 12 invitations to specific persons, only two had accepted (Spanish and Irish Foreign Ministers, Mr Moratinos and Mr Ahern). Mr Coelho was critical of the late replies given by the Austrian and the Finnish Presidencies to their respective invitations, as well as of their declining to meet the Committee. As regards the Council, he reminded the members of the Committee that while Mr Solana had declined to appear before the Committee a second time, he had appeared before it on 2 May, and also recalled that Mr De Vries had appeared before the Committee on 20 April. According to Mr Coelho, Mr De Vries had been a bit hesitant on whether or not to accept the invitation.

Mr KREISSL-DÖRFLER and Ms GOMES were very critical of the Presidency's non-acceptance of the invitation. Several members called for a clear position to be taken by the Council on the matter. Ms GOMES called on the upcoming German Presidency to “come clean” and “restore credibility”. According to Mr CATANIA, “the Council was aware of the rendition programme”. He was very critical of Mr Solana and Mr De Vries stating before the Committee that they were unaware of it. Baroness LUDFORD had found an error in the Annual report on Human Rights 2006¹, where the inquiry by the European Parliament Temporary Committee had been mixed up with the investigation by Mr Marty on behalf of the Council of Europe Parliamentary Assembly. Baroness LUDFORD considered that this mix-up was a clear sign of disrespect from the Council and showed its complete lack of interest in the work of the Committee. She also assumed that there had to be some kind of collusion between Member States regarding the rendition programme. She considered that there was a “big failure by the Member States and Council to give this matter the seriousness that it deserved”. Mr COELHO suggest that an annex be added to the report, with a list of who had been invited to the Committee and who had accepted or declined the invitation.

¹ 13522/1/06 REV 1, see page 17

VI. Administrative information

Time and place of next meeting: 15 January 2007 in Strasbourg
