

## CIA renditions and secret detention programme

The CIA's extraordinary rendition and secret detention programme has again come under the scrutiny of the European Parliament, which will ask the Commission and the Council during the June plenary about the measures taken to implement Parliament's recommendations on the matter.

### The CIA Detention and Interrogation Programme

Following the September 11 terrorist attacks in 2001, the US President granted – through a [covert action](#) Memorandum of Notification – the Central Intelligence Agency (CIA) broad authority to capture and detain individuals who 'pose continuing or serious threats of violence or death to US persons or interests or who are planning terrorist attacks'. The CIA [programme](#) involved illegal abductions or arrests of individuals suspected of belonging to Al-Qaida or the Taliban, who were subsequently transferred through extraordinary rendition operations by military or CIA flights to the Guantánamo Bay prison or to secret detention sites ('black sites') located in partner countries. Growing evidence also pointed to the passive or active involvement of 12 European countries in the CIA's programme. Suspects were typically held incommunicado and subjected to '[enhanced interrogation techniques](#)' (EITs), which many believe amounted to torture and other ill-treatment. The CIA Detention and Interrogation (D&I) Program was publicly acknowledged by President George W. Bush on 6 September 2006, although by that time the [programme](#) had effectively come to an end due to unauthorised press disclosures, reduced cooperation from other countries, and legal and oversight concerns. Although it formally continued until 2009, by March 2006 the programme was operating in only one country, and 117 of the 119 known [detainees](#) had already entered CIA custody.

In January 2009, President Barack Obama signed Executive Order 13491 restricting the interrogation techniques used by any US government agency to those listed in the [Army Field Manual](#), and setting [Common Article 3](#) of the Geneva Conventions as a 'minimum baseline' (the previous administration rejected the application of Common Article 3 and the protection afforded to prisoners of war by the Geneva Conventions to the detention of suspected Al-Qaida and Taliban terrorists). Moreover, an amendment included in the National Defence Authorization Act (NDAA) for Fiscal Year 2016 [signed](#) by the President in November 2015 expressly limits the interrogation techniques to those in the Army Field Manual, and grants access to the International Committee of the Red Cross to individuals detained by any entity of the US government or *under its effective control*. Finally, President Obama sent the US Congress a plan to close the Guantánamo Bay prison where 80 [prisoners](#) are still held, [including](#) 29 of the 39 prisoners transferred to Guantánamo from the CIA programme. Of these, 16 are CIA '[High-Value Detainees](#)'.

### The US Senate Select Committee on Intelligence report

In December 2014, the US Senate Select Committee on Intelligence (SSCI) made public a 500-page [report](#) representing the executive summary of a classified study of over 6 500 pages which documents the abuses under the CIA's D&I programme between 2001 and 2009 and includes a review of 119 individuals known to have been detained by the CIA. However, the study [did not review](#) the broader CIA renditions programme as it excluded from its remit, due to lack of information, individuals 'not ultimately detained by the CIA'.

The report concludes that the CIA's EITs amounted in some cases to inhumane and brutal treatment of prisoners, while they were not an 'effective means of obtaining accurate information or gaining detainee cooperation'. The report also pointed to the lack of corrective action against those involved, following the 'death and injury of CIA detainees, the unlawful detention of individuals and the provision of inaccurate information on the CIA program'. Furthermore, while all CIA prisoners can be considered 'wrongfully detained', 26 were [considered](#) not even to meet the CIA's own detention 'standards' under the 2001 Memorandum on which the entire programme was based.



## EU Member States' involvement in the CIA programme

[Twelve European countries](#) have been accused of passive or active involvement with the CIA extraordinary renditions and secret detentions programme, and consequently of serious breaches of their human rights obligations under international and EU law: Denmark, Finland, Germany, Italy, the former Yugoslav Republic of Macedonia, Lithuania, Poland, Portugal, Romania, Spain, Sweden and the UK. Following several [inquiries](#) – by the [European Parliament](#), the [Council of Europe](#) and the [UN Human Rights Council](#), for example – and in particular after the US SSCI report and a series of landmark European Court of Human Rights (ECtHR) [judgments](#), European [cooperation](#) with the CIA programme between 2001 and 2005 was effectively recognised. European states' [complicity](#) ranged from allowing transit in national airspace for rendition flights; providing intelligence to the CIA leading to the capture of suspects elsewhere; involvement in the initial detention of suspects on European soil, to hosting CIA secret prisons on their territory, collaborating in the use of EITs and failing to prevent detainees' transfer to other locations where they were to face other ill-treatment or the death penalty. Among EU Member States, Poland, Romania and Lithuania were [identified](#) as having hosted CIA secret 'black sites' on their territory. As concerns the UK, arguably the US' most important ally in the global 'war on terror', there are serious allegations of direct involvement in torture, arbitrary detention and renditions of terrorist suspects, including through the use of the British Indian Ocean territory of [Diego Garcia](#) as a transit/detention site.

### *ECtHR judgments*

In its four judgments issued so far in connection to the CIA programme, the ECtHR held that the treatment of 'high-value detainees' for the purposes of the CIA's extraordinary rendition programme was to be classified as torture within the meaning of Article 3 of the Convention. The first 'rendition case' decided by the ECtHR was [El-Masri v. FYR Macedonia](#) (2012): FYR Macedonia was held responsible for the torture and ill-treatment of the applicant, a German citizen, both in the country itself and after his transfer to US authorities in the context of an extrajudicial rendition. The Court found FYR Macedonia in violation of several articles of the [European Convention on Human Rights](#), including on the prohibition of torture and inhuman or degrading treatment, the right to liberty and security and right to an effective remedy. In 2014, the ECtHR issued judgments in two cases brought against Poland ([Al Nashiri v. Poland](#) and [Husayn \(Abu Zubaydah\) v. Poland](#)), the first EU Member State to be held responsible by the ECtHR in connection with the CIA programme. In February 2016, the ECtHR also ruled in the case of [Nasr and Ghali v. Italy](#), finding that Italy had violated the Convention and that 'Italian authorities were aware that the applicant (Nasr) had been a victim of an extraordinary rendition operation'. Two other cases are currently pending before the ECtHR, against [Lithuania](#) and [Romania](#).

### *National political inquiries, investigations and judicial proceedings in EU Member States*

All states concerned have yet to unequivocally admit their involvement with the CIA programme, and to ensure accountability and effective remedy for the victims. Some [political inquiries](#) and criminal investigations have been initiated (some still pending), but most were [dismissed](#) with no authorities held responsible. An exception is Italy which convicted *in absentia* 22 [CIA officials](#) and three other individuals to prison sentences, while in the UK the government resorted to out-of-court [settlements](#) for victims of rendition. It is assessed that effective investigations in Member States have been hindered by government intervention, as well as the invocation of the 'state secrets doctrine' to prevent disclosure of information.

The **European Parliament** has been one of the most active institutions in investigating and bringing to public attention the allegations concerning Member States' participation in the CIA programme. Since 2005, the EP has adopted several [resolutions](#) condemning the programme. In particular, in 2006, the EP established a [Temporary Committee](#) (TDIP) to investigate the alleged involvement of European countries in the programme. The TDIP [report](#) (2007) concluded that at least 1 245 flights operated by the CIA flew into European airspace or stopped at European airports between 2001 and 2005. In 2012, another [resolution](#) raised concerns about the challenges to pursuing accountability in Europe, and made recommendations to the Council, Commission and national authorities. In its [resolution](#) on the US Senate report on the use of torture by the CIA (11 February 2015), the EP called on the US and EU Member States to **investigate** the human rights violations resulting from the CIA programme **and prosecute** those involved. The EP also instructed the LIBE Committee to resume **its inquiry** into the 'alleged transportation and illegal detention of prisoners in European countries by the CIA' and report to plenary in 2016. As a follow-up to its 2015 resolution, the EP will ask the [Council](#) and the [Commission](#) to present the measures taken to implement the EP recommendations. In this context, a recent [study](#) held that neither the Commission nor the Council have properly followed up on the Parliament's calls.