

Alleged transportation and illegal detention of prisoners in European countries by the CIA

European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report (2012/2033(INI))

The European Parliament,

- having regard to the Treaty on European Union (TEU), in particular Articles 2, 3, 4, 6, 7 and 21 thereof,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 1, 2, 3, 4, 18 and 19 thereof,
- having regard to the European Convention on Human Rights and the protocols thereto,
- having regard to the relevant UN human rights instruments, in particular the International Covenant on Civil and Political Rights of 16 December 1966, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the relevant protocols thereto, and the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006,
- having regard to Article 5 of the North Atlantic Treaty of 1949,
- having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment¹,
- having regard to the ‘Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens’² and to the Commission communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 on ‘Delivering an area of freedom, security and justice for Europe’s citizens: Action Plan Implementing the Stockholm Programme’ (COM(2010)0171),
- having regard to the Guidelines to EU Policy Towards Third countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the EU Guidelines on the Death Penalty,
- having regard to the Declaration of Brussels of 1 October 2010, adopted at the 6th Conference of the Parliamentary Committees for the Oversight of Intelligence and Security Services of the European Union Member States,
- having regard to the UN Joint study on global practices in relation to secret detention in the context of countering terrorism, prepared by: the Special Rapporteur on the promotion

¹ OJ L 200, 30.7.2005, p. 1.

² OJ C 115, 4.5.2010, p. 1.

and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention, represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on Enforced and Involuntary Disappearances, represented by its Chair, Jeremy Sarkin¹,

- having regard to the UN Human Rights Council Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, focusing on commissions of inquiry in response to patterns or practices of torture or other forms of ill-treatment²,
- having regard to the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, entitled ‘Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight’³,
- having regard to the contributions from the Council of Europe, in particular the work of the former Commissioner for Human Rights, Thomas Hammarberg, and of the European Committee for the Prevention of Torture (CPT), as well as to the relevant resolutions of the Parliamentary Assembly of the Council of Europe, in particular those entitled ‘Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states’⁴, and ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’⁵, and to the report of the Parliamentary Assembly’s Committee on Legal Affairs and Human Rights entitled ‘Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations’⁶,
- having regard to the European Court of Human Rights cases *al-Nashiri v. Poland*, *Abu Zubaydah v. Lithuania*, *Abu Zubaydah v. Poland* and *el-Masri v. ‘the former Yugoslav Republic of Macedonia’*, which was heard by the Grand Chamber on 16 May 2012,
- having regard to its resolution of 25 November 2009 on the Commission communication to Parliament and the Council entitled ‘An area of freedom, security and justice serving the citizen – Stockholm programme’⁷,
- having regard to its resolutions of 14 February 2007⁸ and 19 February 2009⁹ on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners,

¹ A/HRC/13/42, 19.2.2010.

² A/HRC/19/61, 18.1.2012.

³ A/HRC/14/46, 17.5.2010.

⁴ Resolution 1507 (2006).

⁵ Resolution 1562 (2007).

⁶ Doc. 12714, 16.9.2011.

⁷ OJ C 285 E, 21.10.2010, p. 12.

⁸ OJ C 287 E, 29.11.2007, p. 309.

⁹ OJ C 76 E, 25.3.2010, p. 51.

- having regard to its resolutions on Guantánamo, in particular those of 9 June 2011 on ‘Guantánamo: imminent death penalty decision’¹, of 4 February 2009 on the return and resettlement of the Guantánamo detention facility inmates² and of 13 June 2006 on the situation of prisoners at Guantánamo³, and to its recommendation to the Council of 10 March 2004 on the Guantánamo detainees’ right to a fair trial⁴,
- having regard to its resolution of 15 December 2010 on ‘the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon’⁵,
- having regard to its resolution of 14 December 2011 on ‘the EU counter-terrorism policy: main achievement and future challenges’⁶,
- having regard to the speech given by Jacques Barrot, Vice-President of the Commission, in Strasbourg on 17 September 2008⁷,
- having regard to the statements made by the Commission on the need for the Member States concerned to conduct investigations into allegations of involvement in the CIA rendition and secret detention programme, and to the documents communicated to the rapporteur by the Commission, including four letters sent to Poland, four to Romania and two to Lithuania between 2007 and 2010,
- having regard to the Commission communication to the Council and Parliament of 15 October 2003 on ‘Article 7 of the Treaty on European Union: Respect for and promotion of values on which the Union is based’ (COM(2003)0606),
- having regard to the letter of 29 November 2005 from the EU Presidency to US Secretary of State Condoleezza Rice, requesting any ‘clarification the US can give about these reports [on the alleged detention or transportation of terrorists suspects in or through some EU Member States] in the hope that this will allay parliamentary and public concerns’,
- having regard to the 2748th/2749th meeting of the General Affairs and External Relations Council of 15 September 2006, which debated the item ‘Fight against terrorism – Secret detention facilities’,
- having regard to the EU statement made on 7 March 2011 at the 16th session of the Human Rights Council regarding the aforementioned UN joint study on secret detention,
- having regard to the article entitled ‘Counter-terrorism and human rights’ by Villy Sovndal, Gilles de Kerchove and Ben Emmerson, published in the 19 March 2012 issue of *European Voice*,

¹ Texts adopted, P7_TA(2011)0271.

² OJ C 67 E, 18.3.2010, p. 91.

³ OJ C 300 E, 9.12.2006. p. 136.

⁴ OJ C 102 E, 28.4.2004, p. 640.

⁵ OJ C 169 E, 15.6.2012, p. 49.

⁶ Texts adopted, P7_TA(2011)0577.

⁷ SPEECH/08/716, ‘Une politique visant à assurer l’effectivité des droits fondamentaux sur le terrain’.

- having regard to US Secretary of State Condoleezza Rice’s reply of 5 December 2005 to the EU Presidency’s letter of 29 November 2005, stating that ‘[...] rendition is a vital tool in combating terrorism. Its use is not unique to the United States, or to the current administration’, denying allegations of direct US involvement in torture and emphasising that the ‘purpose’ of rendition was not that the person rendered be tortured, and to US Secretary of State Condoleezza Rice’s statements confirming that ‘we [the United States] are respecting the sovereignty of our partners’¹,
- having regard to former US President George W. Bush’s acknowledgement, in his speech from the East Room of the White House of 6 September 2006, of the existence of a CIA-led programme of rendition and secret detention, including overseas operations,
- having regard to George W. Bush’s memoirs, which were published on 9 November 2010,
- having regard to the unclassified version, released in August 2009, of CIA Inspector General John Helgerson’s 2004 report on the CIA’s Bush-era interrogation operations,
- having regard to the 2007 report of the International Committee of the Red Cross on the treatment of 14 high-value detainees in CIA custody, which became publicly accessible in 2009,
- having regard to the various initiatives at national level to account for Member States’ involvement in the CIA rendition and secret detention programme, including the ongoing inquiry in Denmark and past inquiries in Sweden, the ongoing criminal investigations in Poland and the United Kingdom, past criminal proceedings in Italy, Germany, Lithuania, Portugal and Spain, the all-party group parliamentary investigation in the United Kingdom and past parliamentary investigations in Germany, Lithuania, Poland and Romania,
- having regard to the two-year Portuguese judicial inquiry, which was suddenly closed in 2009,
- having regard to the conclusions of the national inquiries already conducted in some Member States,
- having regard to the numerous media reports and acts of investigative journalism, in particular – but not limited to – the 2005² and 2009³ ABC News reports and the 2005⁴ *Washington Post* reports, without which the acts of rendition and detention would have remained truly secret,

¹ ‘Remarks en route to Germany’, Press Q&A with Condoleezza Rice, Berlin, 5 December 2005, and ‘Press Availability at the Meeting of the North Atlantic Council’, Brussels, 8 December 2005.

² ‘Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons’, ABC News, 5.12.2005.

³ ‘Lithuania Hosted Secret CIA Prison to Get “Our Ear”’, ABC News, 20.8.2009.

⁴ ‘CIA Holds Terror Suspects in Secret Prisons’, 2.11. 2005, and ‘Europeans Probe Secret CIA Flights’, *Washington Post*, 17.11.2005.

- having regard to the research and investigations carried out, and the reports produced, by independent researchers, civil society organisations and national and international non-governmental organisations since 2005, most notably by Human Rights Watch¹, Amnesty International and Reprieve,
 - having regard to the hearings of its Committee on Civil Liberties, Justice and Home Affairs (LIBE) held on 27 March 2012 and of its Subcommittee on Human Rights held on 12 April 2012, the LIBE delegation's visit to Lithuania of 25-27 April 2012, the rapporteur's visit to Poland of 16 May 2012 and all the written and oral contributions received by the rapporteur,
 - having regard to the joint request for flight data submitted to the Director of Eurocontrol by the Chair of the Committee on Civil Liberties, Justice and Home Affairs and the rapporteur on 16 April 2012 and to the comprehensive response received from Eurocontrol on 26 April 2012,
 - having regard to the DG IPOL note entitled 'The results of the inquiries into the CIA's programme of extraordinary rendition and secret prisons in European states in light of the new legal framework following the Lisbon Treaty',
 - having regard to Rules 48 and 50 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0266/2012),
- A. whereas Parliament has condemned the US-led CIA rendition and secret detention programme involving multiple human rights violations, including unlawful and arbitrary detention, torture and other ill-treatment, violations of the non-refoulement principle, and enforced disappearance; whereas its Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (hereinafter the 'Temporary Committee') has documented the use of European airspace and territory by the CIA, and whereas Parliament has since repeated its demand for full investigations into the collaboration of national governments and agencies with the CIA programme;
- B. whereas Parliament has repeatedly called for the fight against terrorism fully to respect human dignity, human rights and fundamental freedoms, including in the context of international cooperation in the field, on the basis of the European Convention of Human Rights, the EU Charter of Fundamental Rights and national constitutions and fundamental rights legislation, and whereas it reiterated this call most recently in its report on EU counter-terrorism policy, in which it also stated that respect for human rights is a precondition for ensuring the policy's effectiveness;
- C. whereas Parliament has repeatedly and strongly condemned illegal practices including 'extraordinary rendition', abduction, detention without trial, disappearance, secret prisons

¹ Among others: Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe, 6.11.2005; Amnesty International Europe report entitled 'Open secret: Mounting evidence of Europe's complicity in rendition and secret detention', 15.11.2010; Reprieve report entitled 'Rendition on Record: Using the Right of Access to Information to Unveil the Paths of Illegal Prisoner Transfer Flights', 15.12.2011.

and torture, and has demanded full investigations into the alleged degree of involvement of some Member States in collaboration with US authorities, notably the CIA, including involvement on EU territory;

- D. whereas the purpose of this resolution is to ‘follow up politically the proceedings of the Temporary Committee and to monitor the developments, and in particular, in the event that no appropriate action has been taken by the Council and/or the Commission, to determine whether there is a clear risk of a serious breach of the principles and values on which the European Union is based, and to recommend to it any resolution, taking as a basis Articles 6 and 7 of the Treaty on European Union, which may prove necessary in this context’¹;
- E. whereas the EU is founded on a commitment to democracy, the rule of law, human rights and fundamental freedoms, respect for human dignity and international law, not only in its internal policies, but also in its external dimension; whereas the EU’s commitment to human rights, reinforced by the entry into force of the EU Charter of Fundamental Rights and the process of accession to the European Convention on Human Rights, must be reflected in all policy areas in order to make EU human rights policy effective and credible;
- F. whereas a proper accountability process is essential in order to preserve citizens’ trust in the democratic institutions of the EU, to protect and promote human rights effectively in the EU’s internal and external policies, and to ensure legitimate and effective security policies based on the rule of law;
- G. whereas no Member State has so far wholly fulfilled its obligations to protect, preserve and respect international human rights and prevent violations thereof;
- H. whereas the instruments governing the EU’s Common Foreign and Security Policy (CFSP) include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the two Optional Protocols thereto, the Convention Against Torture (CAT) and the Optional Protocol thereto, the European Convention on Human Rights, the EU Charter of Fundamental Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which together not only mandate an absolute ban on torture but also entail a positive obligation to investigate allegations of torture and provide remedies and reparation; whereas the guidelines to EU policy on torture provide the framework for the EU’s efforts ‘to prevent and eradicate torture and ill-treatment in all parts of the world’;
- I. whereas, in order to ensure the promotion of international law and respect for human rights, all association, trade and cooperation agreements contain human rights clauses, and whereas the EU also engages in political dialogues with third countries on the basis of human rights guidelines, which include combating the death penalty and torture; whereas, in the framework of the European Instrument for Democracy and Human Rights (EIDHR), the EU supports civil society organisations that fight torture and provide support for the rehabilitation of victims of torture;
- J. whereas secret detention, which is a form of enforced disappearance, may amount, if widely or systematically practised, to a crime against humanity; whereas states of

¹ Paragraph 232 of Parliament’s aforementioned resolution of 14 February 2007.

emergency and the fight against terrorism constitute an enabling environment for secret detention;

- K. whereas, although the EU has demonstrated its commitment to avoiding collusion in torture through Council Regulation (EC) No 1236/2005¹, most recently amended in December 2011², which prohibits any export or import of goods that have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, more work still needs to be done to ensure comprehensive coverage;
- L. whereas relying on diplomatic assurances alone to authorise the extradition or deportation of a person to a country where there are substantial grounds for believing that individuals would be in danger of being subjected to torture or ill-treatment is incompatible with the absolute prohibition of torture in international law, EU law and the national constitutions and laws of the Member States³;
- M. whereas the Council admitted on 15 September 2006 that ‘the existence of secret detention facilities where detained persons are kept in a legal vacuum is not in conformity with international humanitarian law and international criminal law’, but has so far failed to recognise and condemn the involvement of Member States in the CIA programme, even though the use of European airspace and territory by the CIA has been acknowledged by the political and judicial authorities of Member States;
- N. whereas there are enduring human rights violations due to the CIA programme, as evidenced in particular by the ongoing administrative detention in Guantánamo Bay of Abu Zubaydah and Abd al-Rahim al-Nashiri, who have been granted victim status in the Polish criminal investigation into CIA secret prisons;
- O. whereas research by the UN, the Council of Europe, national and international media, investigative journalists and civil society has brought to light new, concrete information on the location of secret CIA detention sites in Europe, rendition flights through European airspace and the persons transported or detained;
- P. whereas the commission of illegal acts on EU territory may have developed in the context of NATO multilateral or bilateral agreements;
- Q. whereas national inquiries and international research prove that members of the North Atlantic Treaty Organisation (NATO) agreed to commit themselves to measures in the campaign against terrorism which enabled secret airline traffic and use of EU Member States' territory in the CIA-led programme of rendition, indicating collective knowledge of the programme by Member States which are also members of NATO;
- R. whereas the UN Joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), prepared by the Special Rapporteur on

¹ OJ L 200, 30.7.2005, p. 1.

² OJ L 338, 21.12.2011, p. 31.

³ Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights (ECHR) and the related case law, and Article 4 of the Charter of Fundamental Rights of the European Union.

the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, detailed the use of secret detention sites on EU Member States' territory as part of the CIA programme, and whereas follow-up letters were sent to Member States requesting additional information as detailed in the communications reports of the Special Procedures, including that of 23 February 2012¹;

- S. whereas the 2011 Council of Europe report states that the data obtained from the Polish agencies in 2009 and 2010 'provide definite proof' that seven CIA-associated aircraft landed in Poland, and whereas Polish media reported that charges had been brought against former Polish intelligence chiefs, and revealed possible contacts between intelligence officers and the Polish Government concerning the use of a CIA detention facility on Polish territory; whereas in 2011 Romanian investigative journalists sought to demonstrate the existence of a 'black site' in the Romanian national registry office for classified information², on the basis of information provided by former CIA employees; whereas the existence of this 'black site' has been denied by the Romanian authorities and was not demonstrated by the inquiry conducted by the Romanian parliament; whereas former Libyan dissidents have started legal proceedings against the UK for the direct involvement of MI6 in their own and their family members' rendition, secret detention and torture;
- T. whereas the Lithuanian authorities have endeavoured to shed light on Lithuania's involvement in the CIA programme by carrying out parliamentary and judicial inquiries; whereas the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the CIA on Lithuanian territory established that five CIA-related aircraft landed in Lithuania between 2003 and 2005 and that two tailored facilities suitable for holding detainees in Lithuania (Projects Nos 1 and 2) were prepared at the request of the CIA; whereas the LIBE delegation thanks the Lithuanian authorities for welcoming Members of the European Parliament to Vilnius in April 2012 and allowing the LIBE delegation access to Project No 2; whereas the layout of the buildings and installations inside appears to be compatible with the detention of prisoners; whereas many questions relating to CIA operations in Lithuania remain open despite the subsequent judicial investigation conducted in 2010 and closed in January 2011; whereas the Lithuanian authorities have expressed their readiness to re-launch investigations if other new information were to come to light, and whereas the Prosecutor's Office has offered to provide further information on the criminal investigation in response to a written request from Parliament;
- U. whereas the Portuguese authorities have yet to provide clarification of the substantial number of elements indicating that many flights, identified inter alia by the Temporary Committee, served to carry out transfers between Bagram, Diego Garcia, secret prisons and Guantánamo;
- V. whereas research and court findings on the logistics involved in covering up these illegal operations, including dummy flight plans, civil and military aircraft classified as state

¹ A/HRC/19/44.

² 'Inside Romania's secret CIA prison', *The Independent*, 9.12.2011.

flights and the use of private aviation companies to conduct CIA renditions, have further revealed the systematic nature and the extent of European involvement in the CIA programme; whereas an analysis of the new data provided by Eurocontrol supports in particular the argument that, in order to conceal the origin and destination of transfers of prisoners, contractors operating renditions missions switched from one plane to another mid-route;

- W. whereas the EU has developed internal security and counter-terrorism policies based on police and judicial cooperation and the promotion of intelligence-sharing; whereas these policies should be grounded in respect for fundamental rights and the rule of law and effective democratic parliamentary oversight of intelligence services;
- X. whereas, according to the CPT, ‘the interrogation techniques applied in the CIA-run overseas detention facilities have certainly led to violations of the prohibition of torture and inhuman and degrading treatment’¹;
- Y. whereas EU-US relations are based on a strong partnership and cooperation in many fields, on the basis of common shared values of democracy, the rule of law and fundamental rights; whereas the EU and the US have strengthened their engagement in the fight against terrorism since the terrorist attacks of 11 September 2001, notably through the Joint Declaration on Counter-terrorism of 3 June 2010, but whereas it is necessary to ensure compliance in practice with declared commitments and to overcome divergences between EU and US policies in the fight against terrorism;
- Z. whereas in December 2011 the US authorities passed the National Defence Authorisation Act (NDAA), which codifies in law the indefinite detention of persons suspected of engaging in terrorist actions within the US and undermines the right to due process and a fair trial; whereas the scope of the NDAA is the subject of a legal challenge;
- AA. whereas, on 22 January 2009, President Obama signed three executive orders banning torture during interrogations, establishing an inter-agency task force to conduct a systematic review of detention policies and procedures and review all individual cases and ordering the closure of the Guantánamo Bay detention facility;
- AB. whereas, however, the Guantánamo Bay detention facility has yet to be closed on account of strong opposition from the US Congress; whereas, in order to hasten its closure, the US has called on EU Member States to host Guantánamo detainees; whereas the UN High Commissioner for Human Rights has expressed deep disappointment at the failure to close the Guantánamo Bay detention facility and at the entrenchment of a system of arbitrary detention;
- AC. whereas Guantánamo detainees are still subjected to trials by military tribunals, notably following the US President’s decision of 7 March 2011 to sign the executive order lifting a two-year freeze on new military trials and the law of 7 January 2012 barring transfers of Guantánamo detainees to the US for trial;

General

1. Recalls that counter-terrorism strategies can be effective only if they are conducted in

¹ Report of the CPT of 19 May 2011 on its visit to Lithuania from 14 to 18 June 2010.

strict compliance with human rights obligations, in particular the right to due process;

2. Reiterates that effective counter-terrorism measures and respect for human rights are not contradictory, but are complementary and mutually reinforcing aims; points out that respect for fundamental rights is an essential element in successful counter-terrorism policies;
3. Highlights the extremely sensitive nature of anti-terrorism policies; believes that only genuine grounds of national security can justify secrecy; recalls, however, that in no circumstance does state secrecy take priority over inalienable fundamental rights and that therefore arguments based on state secrecy can never be employed to limit states' legal obligations to investigate serious human rights violations; considers that definitions of classified information and state secrecy should not be overly broad and that abuses of state secrecy and national security constitute a serious obstacle to democratic scrutiny;
4. Stresses that special procedures ought not to be applied to persons suspected of terrorism; points out that everyone must be able to benefit from all the guarantees included in the principle of a fair trial as laid down in Article 6 of the European Convention on Human Rights;
5. Reiterates its condemnation of the practices of extraordinary rendition, secret prisons and torture, which are prohibited under domestic and international legislation stipulating respect for human rights and which breach *inter alia* the rights to liberty, security, humane treatment, freedom from torture, non-refoulement, presumption of innocence, a fair trial, legal counsel and equal protection under the law;
6. Stresses the need to provide guarantees in order to avoid, in the future, any infringement of fundamental rights when anti-terrorism policies are implemented;
7. Considers that Member States have stated their willingness to abide by international law, but until now have not properly fulfilled the positive obligation incumbent upon all Member States to investigate serious human rights violations connected with the CIA programme, and regrets the delays in shedding full light on this case in order to afford full redress to victims as quickly as possible, including apologies and compensation where appropriate;
8. Believes that the difficulties encountered by Member States in conducting inquiries result in a failure to comply fully with their international obligations, which undermines mutual trust in fundamental rights protection and thus becomes the responsibility of the EU as a whole;
9. Reiterates that the commitment of Member States and of the EU to investigate European involvement in the CIA programme is in line with the principle of sincere and loyal cooperation enshrined in Article 4(3) of the TEU;

Accountability process in the Member States

10. Expresses concerns regarding the obstacles encountered by national parliamentary and judicial investigations into some Member States' involvement in the CIA programme, as documented in detail by the 2011 Council of Europe report on abuse of state secrecy and national security, including lack of transparency, classification of documents, prevalence

of national and political interests, narrow remits for investigations, restriction of victims' right to effective participation and defence, and lack of rigorous investigative techniques and of cooperation between investigative authorities across the EU; calls on the Member States to avoid basing their national criminal proceedings on such legal grounds, which enable and lead to the termination of criminal proceedings by invoking clauses of the statute of limitations and lead to impunity, and to respect the principle of international customary law, which recognises that the statute of limitations cannot and should not be applied to cases of serious human rights violations;

11. Urges those Member States which have not fulfilled their positive obligation to conduct independent and effective inquiries to investigate human rights violations, taking into account all the new evidence that has come to light; calls in particular on Member States to investigate whether there are secret prisons on their territory or whether operations have taken place whereby people have been held under the CIA programme in facilities on their territory;
12. Notes that the parliamentary inquiry carried out in Romania concluded that no evidence could be found to demonstrate the existence of a secret CIA detention site on Romanian territory; calls on the judicial authorities to open an independent inquiry into alleged CIA secret detention sites in Romania, in particular in the light of the new evidence on flight connections between Romania and Lithuania;
13. Encourages Poland to persevere in its ongoing criminal investigation into secret detention, but deplores the lack of official communication on the scope, conduct and state of play of the investigation; calls on the Polish authorities to conduct a rigorous inquiry with due transparency, allowing for the effective participation of victims and their lawyers;
14. Notes that the parliamentary and judicial inquiries that took place in Lithuania between 2009 and 2011 were not able to demonstrate that detainees had been secretly held in Lithuania; calls on the Lithuanian authorities to honour their commitment to reopen the criminal investigation into Lithuania's involvement in the CIA programme if new information should come to light, in view of new evidence provided by the Eurocontrol data showing that plane N787WH, alleged to have transported Abu Zubaydah, did stop in Morocco on 18 February 2005 on its way to Romania and Lithuania; notes that analysis of the Eurocontrol data also reveals new information through flight plans connecting Romania to Lithuania, via a plane switch in Tirana, Albania, on 5 October 2005, and Lithuania to Afghanistan, via Cairo, Egypt, on 26 March 2006; considers it essential that the scope of new investigations cover, beyond abuses of power by state officials, possible unlawful detention and ill-treatment of persons on Lithuanian territory; encourages the Prosecutor-General's Office to substantiate with documentation the affirmations made during the LIBE delegation's visit that the 'categorical' conclusions of the judicial inquiry are that 'no detainees have been detained in the facilities of Projects No 1 and No 2 in Lithuania';
15. Notes the criminal investigation launched in the UK on renditions to Libya, and welcomes the decision to continue the wider inquiry into the UK's responsibility in the CIA programme once the investigation has been concluded; calls on the UK to conduct this inquiry with due transparency, allowing the effective participation of victims and civil society;

16. Acknowledges that Member States' investigations have to be based on solid judicial evidence and on respect for national judicial systems and EU law, not just on media and public speculation;
17. Calls on Member States such as Finland, Denmark, Portugal, Italy, the United Kingdom, Germany, Spain, Ireland, Greece, Cyprus, Romania and Poland, which were mentioned in the Temporary Committee's report, to disclose all necessary information on all suspect planes associated with the CIA and their territory; calls on all Member States to respect the right to freedom of information and to respond appropriately to requests for access to information; expresses concern, in the light of this, that most Member States, with the exception of Denmark, Finland, Germany, Ireland and Lithuania, have failed to respond appropriately to requests from Reprieve and from Access Info Europe for access to information for the purposes of their investigations into extraordinary rendition cases;
18. Urges the Member States to revise any provisions or interpretations that are sympathetic to torture, such as Michael Wood's legal opinion (referred to in Parliament's aforementioned resolution of 14 February 2007), which, in defiance of international case law, argues that it is legitimate to receive and use information obtained by torture as long as there is no direct responsibility for it (thereby motivating and justifying the outsourcing of torture);
19. Calls on all Member States to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
20. Calls on the Member States, in the light of the increased cooperation and exchange of information between their secret intelligence and security agencies, to ensure full democratic scrutiny of those agencies and their activities through appropriate internal, executive, judicial and independent parliamentary oversight, preferably through specialised parliamentary committees with extensive remits and powers, including the power to require information, and with sufficient investigative and research resources to be able to examine not only issues such as policy, administration and finances, but also the operational work of the agencies;

Response of the EU institutions

21. Regards it as essential that the EU condemn all abusive practices in the fight against terrorism, including any such acts committed on its territory, so that it can not only live up to its values but also advocate them credibly in its external partnerships;
22. Recalls that the Council has never formally apologised for having violated the principle enshrined in the Treaties of loyal cooperation between the Union institutions when it incorrectly attempted to persuade Parliament to provide deliberately shortened versions of the minutes of the meetings of COJUR (the Council Working Group on Public International Law) and COTRA (the Council Working Party on Transatlantic Relations) with senior North American officials; expects apologies from the Council;
23. Expects the Council finally to issue a declaration acknowledging Member States' involvement in the CIA programme and the difficulties encountered by Member States in the context of inquiries;
24. Calls on the Council to give its full support to the truth-finding and accountability

processes in the Member States by formally addressing the issue at JHA meetings, sharing all information, providing assistance to inquiries and, in particular, acceding to requests for access to documents;

25. Calls on the Council to hold hearings with relevant EU security agencies, in particular Europol, Eurojust and the EU Counter-terrorism Coordinator, to clarify their knowledge of Member States' involvement in the CIA programme and the EU's response; also calls on the Council to propose safeguards so as to guarantee respect for human rights in intelligence-sharing, and a strict delimitation of roles between intelligence and law-enforcement activities so that intelligence agencies are not permitted to assume powers of arrest and detention, and to report to Parliament within a year;
26. Calls on the Council to encourage Member States to share best practice with regard to parliamentary and judicial supervision of intelligence services, involving national parliaments and the European Parliament in this effort;
27. Reiterates its call on the Council and Member States to exclude, as a basis for the extradition or deportation of persons deemed to threaten national security, reliance on unenforceable diplomatic assurances where there is a real risk of subjection to torture or ill-treatment or of a trial using evidence thus extracted;
28. Calls on the relevant authorities not to invoke state secrecy in relation to international intelligence cooperation in order to block accountability and redress, and insists that only genuine national security reasons can justify secrecy, which is in any case overridden by non-derogable fundamental rights obligations such as the absolute prohibition on torture;
29. Urges the relevant authorities to ensure that a strict distinction is made between the activities of intelligence and security services, on the one hand, and law enforcement agencies, on the other, so as to ensure that the general principle of *nemo iudex in sua causa* is upheld;
30. Stresses that the Temporary Committee which conducted the investigation underpinning Parliament's resolutions of 14 February 2007 and 19 February 2009 exposed the ways in which the procedures for authorisation and control of civilian aircraft overflying the Member States' airspace or landing in their territory were extremely flawed, thus not only lending themselves to being abused in the CIA's 'extraordinary renditions', but also to being easily evaded by operators of organised crime, including terrorist networks; also recalls the Union's competence in the field of transport security and safety and Parliament's recommendation to the Commission that it regulate and monitor the management of EU airspace, airports and non-commercial aviation; calls on the EU and its Member States, therefore, to delay no longer a thorough review of their implementation of the Convention on International Civil Aviation (the Chicago Convention) as regards authorisation and inspections of civilian aircraft overflying the Member States' airspace or landing in their territory, in order to make sure that security is enhanced and checks systematically exercised, requiring anticipated identification of passengers and crews and ensuring that any flights classified as 'state flights' (which are excluded from the scope of the Chicago Convention) are given prior and proper authorisation; also recalls Parliament's recommendation that the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft be effectively enforced by Member States;

31. Notes the Commission's initiatives in response to Parliament's recommendations; considers it regrettable, however, that they have not been part of a wider agenda and strategy to ensure accountability for human rights violations committed in the context of the CIA programme and the necessary redress and compensation for victims;
32. Calls on the Commission to investigate whether EU provisions, in particular those on asylum and judicial cooperation, have been breached by collaboration with the CIA programme;
33. Calls on the Commission to facilitate and support human-rights-compliant mutual legal assistance and judicial cooperation between investigating authorities and cooperation between lawyers involved in accountability work in Member States, and in particular to ensure that important information is exchanged and to promote the effective use of all available EU instruments and resources;
34. Calls on the Commission to adopt within a year a framework, including reporting requirements for Member States, for monitoring and supporting national accountability processes, including guidelines on human-rights-compliant inquiries, to be based on the standards developed by the Council of Europe and the UN;
35. Calls on the Commission, in the light of the institutional deficiencies revealed in the context of the CIA programme, to adopt measures aimed at strengthening the EU's capacity to prevent and redress human rights violations at EU level and to provide for the strengthening of Parliament's role;
36. Calls on the Commission to consider proposing measures for permanent cooperation and exchange of information between the European Parliament and parliamentary committees for the oversight of intelligence and security services of the Member States in cases which indicate that joint actions by Member States' intelligence and security services have been undertaken on EU territory;
37. Calls on the Commission to put forward proposals for developing arrangements for democratic oversight of cross-border intelligence activities in the context of EU counter-terrorism policies; intends to make full use of its own parliamentary powers to scrutinise counter-terrorism policies, in line with the recommendations drawn up by Parliament's study department (PE453.207);
38. Calls on the European Ombudsman to investigate the failures of the Commission, the Council and the EU security agencies, notably Europol and Eurojust, to respect fundamental rights and the principles of good administration and loyal cooperation in their response to the TDIP recommendations;
39. Calls on the EU to ensure that its own international obligations are wholly honoured and that EU policies and foreign policy instruments, such as the guidelines on torture and the human rights dialogues, are implemented fully, so that it is in a stronger position to call for the rigorous implementation of human rights clauses in all the international agreements it signs and to urge its major allies, including the US, to comply with their own domestic and international law;
40. Reaffirms that the international fight against terrorism and bilateral or multilateral international cooperation in this area, including as part of NATO or between intelligence

and security services, must be conducted only with full respect for human rights and fundamental freedoms and with appropriate democratic and judicial oversight; calls on the Member States, the Commission, the European External Action Service (EEAS) and the Council to ensure that these principles are applied in their foreign relations, and insists that they should make a thorough assessment of their counterparts' human rights records before entering into any new agreement, notably on intelligence cooperation and information-sharing, review existing agreements where those counterparts fail to respect human rights, and inform Parliament of the conclusions of such assessments and reviews;

41. Urges that foreign special services' interference in the affairs of sovereign EU Member States must not recur in the future and that the fight against terrorism must be conducted with full respect for human rights, fundamental freedoms, democracy and the rule of law;
42. Recalls that the Optional Protocol to the CAT requires the setting-up of monitoring systems covering all situations of deprivation of liberty, and stresses that adhering to this international instrument adds a layer of protection; strongly encourages EU partner countries to ratify the Optional Protocol, to create independent national preventive mechanisms that comply with the Paris Principles and to ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
43. Reiterates its call, in accordance with international law, in particular Article 12 of the CAT, for all states faced with credible allegations to make every effort to provide the necessary clarification and, if the indications persist, to conduct thorough investigations and inquiries into all alleged acts of extraordinary rendition, secret prisons, torture and other serious human rights violations, so as to establish the truth and, if necessary, determine responsibility, ensure accountability and avoid impunity, including by bringing individuals to justice where there is evidence of criminal liability; calls on the VP/HR and the Member States, in this connection, to take all the necessary measures to ensure proper follow-up to the UN Joint study on global practices in relation to secret detention in the context of countering terrorism, in particular with regard to the follow-up letter sent to 59 states by the Special Procedures mandate-holders on 21 October 2011, asking their respective governments to provide an update on the implementation of the recommendations contained in that study;
44. Calls on the EU to ensure that its Member States, associates and partners (in particular those covered by the Cotonou Agreement) which have agreed to host former Guantánamo detainees actually afford them full support as regards living conditions, efforts to facilitate their integration into society, medical treatment including psychological recovery, access to identification and travel documents, the exercise of the right to family reunification and all other fundamental rights granted to people holding political asylum status;
45. Is particularly concerned by the procedure conducted by a US military commission in respect of Abd al-Rahim al-Nashiri, who could be sentenced to death if convicted; calls on the US authorities to rule out the possibility of imposing the death penalty on Mr al-Nashiri and reiterates its long-standing opposition to the death penalty in all cases and under all circumstances; notes that Mr al-Nashiri's case has been before the European Court of Human Rights since 6 May 2011; calls on the authorities of any country in which Mr al-Nashiri was held to use all available means to ensure that he is not subjected to the death penalty; urges the VP/HR to raise the case of Mr al-Nashiri with the US as a matter of priority, in application of the EU Guidelines on the Death Penalty;

46. Reiterates that full application of the human rights clause of agreements with third countries is fundamental in relations between the EU and its Member States and those countries, and considers that there is real momentum to revisit the way European governments have cooperated with dictatorships' apparatus of repression in the name of countering terrorism; considers, in this connection, that the newly revised European Neighbourhood Policy must provide strong support for security sector reform, which must, in particular, ensure a clear separation between intelligence and law enforcement functions; calls on the EEAS, the Council and the Commission to step up their cooperation with the CPT and other relevant Council of Europe mechanisms in the planning and implementation of counter-terrorism assistance projects with third countries and in all forms of counter-terrorism dialogue with third countries;
47. Calls on the Government of the former Yugoslav Republic of Macedonia (FYROM) to ascertain responsibility and ensure accountability for the abduction, apparently through mistaken identity, of Khaled el-Masri, which led to his illegal detention and alleged torture; deplores the lack of action by the Skopje Prosecutor's Office with a view to conducting a criminal investigation into Mr el-Masri's complaint; notes that the European Court of Human Rights has taken up this case and that the Grand Chamber held its first hearing on 16 May 2012; considers that the FYROM Government's alleged conduct in this case is inconsistent with the EU's founding principles of fundamental rights and the rule of law and must be duly raised by the Commission in connection with the FYROM's candidacy for EU accession;
48. Calls on NATO and the US authorities to conduct their own investigations, to cooperate closely with EU and Member State parliamentary or judicial inquiries on these issues¹, including, where relevant, by responding promptly to requests for mutual legal assistance, to disclose information on extraordinary rendition programmes and other practices that violate human rights and fundamental freedoms and to provide suspects' legal representatives with all the necessary information to defend their clients; calls for confirmation that all NATO agreements and NATO-EU and other transatlantic arrangements respect fundamental rights;
49. Pays tribute to US civil society initiatives to set up an independent bipartisan taskforce in 2010 to examine the US Government's policy and actions relating to the capture, detention and prosecution of 'suspected terrorists' and US custody during the Clinton, Bush and Obama administrations;
50. Calls on the US, given the cardinal role of the transatlantic partnership and of the United States' leadership in this area, to investigate fully, and secure accountability for, any abuses it has practised, to ensure that relevant domestic and international law is applied fully with a view to ending legal black holes, to end military trials, to apply criminal law fully to terrorist suspects and to restore review of detention, habeas corpus, due process, freedom from torture and non-discrimination between foreign and US citizens;
51. Calls on President Obama to honour the pledge he made in January 2009 to close the Guantánamo Bay detention facility, to allow any detainee who is not to be charged to return to his or her home country or to go to another safe country as quickly as possible, to try Guantánamo detainees against whom sufficient admissible evidence exists without

¹ See inter alia Parliament's aforementioned resolution of 9 June 2011.

delay in a fair and public hearing by an independent, impartial tribunal and to ensure that, if convicted, they are imprisoned in the US in accordance with the applicable international standards and principles; calls, similarly, for an investigation into human rights violations in Guantánamo and for clarification of responsibility;

52. Calls for any detainees who are not to be charged but cannot be repatriated owing to a real risk of torture or persecution in their home country to be given the opportunity of resettlement in the US under humanitarian protection and afforded redress¹, and urges the Member States also to be willing to host such former Guantánamo detainees;
53. Calls on the US authorities to repeal the power of indefinite detention without charge or trial under the NDAA;
54. Calls on the Conference of Delegation Chairs to ensure the initiation of parliamentary dialogues on the protection of fundamental rights while countering terrorism, on the basis of the findings of the UN Joint study on global practices in relation to secret detention in the context of countering terrorism and the follow-up thereto, and of the UN Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight;
55. Undertakes to devote its next joint parliamentary meeting with national parliaments to reviewing the role of parliaments in ensuring accountability for human rights violations in the context of the CIA programme, and to promoting stronger cooperation and regular exchange between national oversight bodies in charge of scrutinising intelligence services, in the presence of the relevant national authorities, EU institutions and agencies;
56. Is determined to continue fulfilling the mandate given to it by the Temporary Committee, pursuant to Articles 2, 6 and 7 TEU; instructs its Committee on Civil Liberties, Justice and Home Affairs, together with the Subcommittee on Human Rights, to address Parliament in plenary on the matter a year after the adoption of this resolution; considers it essential now to assess the extent to which the recommendations adopted by Parliament have been followed and, where they have not been followed, to analyse why this is the case;
57. Requests the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, of the candidate states and of the associated countries, the Council of Europe, NATO, the United Nations and the Government and two Houses of Congress of the United States to keep Parliament informed of any development that may take place in the fields falling within the remit of this report;

o

o o

58. Instructs its President to forward this resolution to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, of the candidate states and of the associated countries, and to the Council of Europe, NATO, the United Nations and the Government and two Houses of Congress of the United States.

¹ See paragraph 3 of Parliament's aforementioned resolution of 4 February 2009.

