

ITALIAN INTELLIGENCE SERVICES AND ACCOUNTABILITY

Stefania Ducci

(Researcher on Security Studies)

Copyright: www.rieas.gr

Before discussing accountability of the Italian intelligence System, a brief introduction is necessary, detailing the recent reform of the intelligence sector, adopted with the Act dated 3 August 2007, n. 124, “Information System for the Security of the Republic and New Regulation disciplining official secret”¹, which replaced the preceding Act of 1977.²

The new Act, which entered into force on the 12th of October 2007 and will be implemented through fourteen regulations³, was adopted during the 15th parliament⁴ and voted by most majority and opposition members in both Chambers. It is therefore a true bipartisan Act, considering also that reform bills have already been presented in the course of the preceding parliaments without any success. The main mainsprings that drove Parliament to reform the intelligence System have been, on the one hand, the changed scenario of threats to national security, which began with the end of the “Cold War” and the defeat of national terrorism in the '70s-'80s and, on the other, the need to ensure more effective and incisive oversight activity.⁵

According to the new Act, the Italian Republic's intelligence System is made up of the Prime Minister, who is in charge of high level policies and is responsible for information and security policy; the Interministerial Committee for the Security of the Republic (*Comitato Interministeriale per la Sicurezza della Repubblica – CISR*); the delegated Authority; the Department of Information for Security (*Dipartimento delle Informazioni per la Sicurezza - DIS*); the Foreign Information and Security Agency (*Agenzia Informazioni e Sicurezza Esterna - AISE*) and the National Information and Security Agency (*Agenzia Informazioni e Sicurezza Interna - AISI*) (Art. 2 par. 1).

The oversight regimen on the Italian intelligence System is three-fold:

- Parliamentary oversight;
- Administrative controls;
- Auditing.

The first is carried out by an *ad hoc* body, namely, the Parliamentary Committee for the Security of the Republic (*Comitato Parlamentare per la Sicurezza della Repubblica – COPASIR*)⁶, whose purpose is to systematically and continuously monitor the activities of the security information System, ensuring that they are carried out in compliance with the Constitution and the laws, in the exclusive interest and for the defence of the Republic and its institutions (Art. 30 par. 2).⁷ The

1 The full text is available here (Italian only): <http://www.camera.it/parlam/leggi/071241.htm>.

2 Act dated 24 October 1977, n. 801, “Establishment and Code of the Information and Security Services and Regulation of Official Secret”. The full text is available here (Italian only): <http://www.camera.it/bicamerale/sis/norme/1801-77b.htm>.

3 For a full list of the regulations, please visit (Italian only): http://www.camera.it/cartellecomuni/leg15/RapportoAttivitaCommissioni/testi/01/01_cap27.htm.

4 Lasted from April 28, 2006, to April 28, 2008: <http://leg15.camera.it/>.

5 See: Carlo Mosca et al., *I servizi di informazione e il segreto di Stato (Legge 3 agosto 2007, n. 124)*, Giuffrè, Milan, 2008, xxiii-xxiv.

6 The COPASIR's internal regulation, adopted at the session of November 22, 2007, is available here (Italian only): <http://legxv.camera.it/dati/lavori/bollet/200711/1122/pdf/25.pdf>.

7 A Parliamentary Intelligence Oversight Committee was created for the first time with the Act 801/1977, and it was

criteria of orderliness and continuity established by the above-mentioned rule, as well as the entire framework assigned to the accountability regimen by the new legislation, prevent a possible “fire-fighting” oversight modality while codifying “police-patrolling”⁸, even if this does not necessarily guarantee its incisiveness and efficacy.

The Committee is made up of five deputies and five senators, representing equally the majority and the opposition, and its President, who is chosen among the members of the latter. COPASIR acts as System supervisor. To this end, the new Act extended the Committee's oversight capacities over every aspect of intelligence activity, including operative, managerial and accounting⁹, endowing it with wide cognitive powers.¹⁰

Moreover, in order to perform its oversight role, COPASIR has the power to hold both periodical and unscheduled hearings. Periodical hearings involve the Prime Minister, the delegated Authority, the Ministers members of CISR¹¹, the DIS Director-General and the Directors of AISE and AISI (Art. 31 par. 1). As to unscheduled hearings, in exceptional cases and with a motivated resolution the Committee can request a hearing of the intelligence System's personnel. The Prime Minister has the faculty to object to such hearings on the basis of justified motivations (Art. 31 par. 2). Moreover, the Committee can hear any other person, not belonging to the intelligence System, who can provide elements of information or evaluation that are considered of value for the exercise of parliamentary oversight (Art. 31 par. 3).

The Committee can also request and obtain copies of documents related to on-going proceedings and inquiries carried out by the judicial authority or other investigating bodies, and those related to parliamentary investigations and enquiries, as well as copies of documents and elements of information considered of value and retained by the intelligence System, the public administration, or fact-finding parliamentary committees (Art. 31 par. 5, 7, 12). Whenever COPASIR, with a unanimous vote, predisposes an inquiry on the behavior of intelligence Services¹² personnel and their compliance with their mandate, neither Confidentiality nor Official Secret can be invoked (Art. 31 par. 9). At all events neither the status of classified information, banking secrecy or professional privilege can be invoked against the committee, with the exception of client /attorney privilege within the limits of the mandate of the case, nor the functional secret that covers the activities of the fact-finding parliamentary committees (Art. 31 par. 11 and 12).

Finally, the Committee can access the intelligence System's offices, upon notice to the Prime Minister, and can enter the DIS' central archive in order to perform a direct inspection of expenditures related to concluded operations (Art. 31 par. 14 and 13).

Passive oversight powers have to be added to the active ones, due to the fact that the Committee receives obligatory communications and periodical reports coming from the Prime Minister, DIS and the Ministers of Internal Affairs, Defence and Foreign Affairs (Art. 33).

When, on the basis of the investigations carried out, illegal or irregular conducts have been discovered, the Committee informs the Prime Minister and reports to the Presidents of both the Chambers of Parliament (Art. 34), thus allowing the adoption of political sanctions by the Parliament itself.

As well as the annual Report with which the Committee informs the Parliament about activities

known with the acronym “COPACO” or “COPASIS”. Its aim was to verify the application of the principles contained in the Act (Art. 11) and it was endowed with limited powers.

8 For an examination of the two modalities see: Loch K. Johnson, *A Shock Theory of Congressional Accountability over America's Intelligence Agencies*, in *Handbook of Intelligence Studies*, edited by Loch K. Johnson, Routledge, New York, 2007.

9 See at page 7 of the *Relazione sulla politica dell'informazione per la sicurezza - 2008 (Information for Security Policy Report – 2008)*, available (in English) at: http://www.ansa.it/documents/1236688838515_relazione sicurezza 2008.pdf.

10 See: Chamber of Deputies, *XV Legislatura Comitato parlamentare per la sicurezza della Repubblica - Nota introduttiva – Competenze, composizione e funzionamento*, <http://www.camera.it/bicamerale/leg15/sis/nintrod.htm>.

11 CISR is chaired by the Prime Minister and is composed of the delegated Authority and by the following Ministers: Foreign Affairs, Internal Affairs, Defence, Justice, and the Minister for Economic Affairs and Finance (Art. 5 par. 3).

12 «For the purpose of this Act, “information for security services” shall mean AISE and AISI» (Art. 2 par. 2).

carried out and submits proposals and recommendations, COPASIR can also submit information or urgent reports (Art. 35).

COPASIR's sessions and documents are kept secret, unless the Committee itself decides otherwise (Art. 37 par. 2). Nevertheless, on the basis of the few reports available to the public¹³, it can be said that the policy followed is one of serious and in-depth oversight without causing breaks in the relationship with the intelligence System, thus ensuring its collaboration.

As for the administrative control, it is more an evaluation of the respect of legality and of outcome rather than of legitimacy and efficiency. Therefore, it is focused on the activities of the intelligence Services rather than on the related documents.¹⁴ The inquiries on operations and non-operative activities, both on-going and concluded, are made by DIS through its Inspection Office. However, the control over on-going operations is allowed only in exceptional cases and with the prior approval of the Prime Minister or delegated Authority (Art. 4 par. 8 lit. b)). The Inspection Office's investigations are carried out either by individual inspectors or by an inspection board, and consist in inquiries and inspections. While inspections are aimed at ascertaining that the activities of the intelligence Services comply with the laws and regulations, as well as to the Prime Minister's directives and orders, internal inquiries are about specific cases and behaviours that occurred in the framework of the intelligence Services' activities (Art. 4 par. 3 lit. i)). Furthermore, a control is envisaged over the information collected by the intelligence System, and it is exercised by three different bodies: 1) DIS through its Inspection Office and the Directors of AISE and AISI, who verify the legitimacy of data collection and processing, or rather that they are finalised exclusively to the pursuit of the intelligence System's mandate (Art. 26 par. 1 and 2); 2) DIS through its Central Office of the Archives (*Ufficio Centrale degli Archivi - UCA*), which monitors the security, storage and management of DIS, AISE and AISI's archives (Art. 10 par. 1 lit. c)); 3) Privacy Warrantor Authority, on the basis and within the boundaries of its mandate, as defined by the Legislative Decree 30 June 2003, n. 196, "Personal Data Protection Code."¹⁵

Thirdly, we should also mention auditing, which is carried out by bodies both inside and outside the intelligence System. Internal auditing is carried out by DIS through its Inspection Office, checking expense declarations for activities where functional guarantees¹⁶ have been authorized (Art. 18 par. 7). In other words, its purpose is to ascertain that the above-mentioned expenses are documented regularly and actually refer to the activities carried out.¹⁷ Conversely, external auditing is both a prior and post check. Prior checks focus on management activities for ordinary expenditure and are carried out by an office seconded to DIS from the Budget and Accounting Office of the Prime Minister's Office (Art. 29 par. 3 lit. d)). Post checks are carried out by an office of the Court of Auditors seconded to DIS, for checking the appropriation account to verify the legality and lawfulness of management (Art. 31 par. 3 lit. c)).

Finally, a specific regulation is covered by the Act 124/2007 to the controls regimen for applying Official Secrets status and Confidentiality classification (Art. 39-42).

13 For a list of them see (Italian only):

<http://www.parlamento.it/Bicamerale/sicurezza/5352/5429/sommario.htm>.

14 See: Carlo Mosca et al., *I servizi di informazione e il segreto di Stato* (Legge 3 agosto 2007, n. 124), cit., 340-341.

15 For the full text (in English) see: <http://www.garanteprivacy.it/garante/document?ID=1219452>.

16 These are waivers for exceptional cause which make legal illegal activities on the part of intelligence Services' personnel when legitimately authorized as essential to the pursuit of their mandate (Art. 17 par. 1).

17 See: Carlo Mosca et al., *I servizi di informazione e il segreto di Stato* (Legge 3 agosto 2007, n. 124), cit., 350.

References:

Act 24 October 1977, n. 801, “*Istituzione e ordinamento dei servizi per le informazioni e la sicurezza e la disciplina del segreto di Stato*”, <http://www.camera.it/bicamerali/sis/norme/1801-77b.htm>

Act 3 August 2007, n. 124, “*Sistema di informazione per la sicurezza della Repubblica e nuova disciplina del segreto*”, <http://www.camera.it/parlam/leggi/071241.htm>

Regolamento interno del Comitato Parlamentare per la Sicurezza della Repubblica, 22 novembre 2007, <http://legxv.camera.it/dati/lavori/bollet/200711/1122/pdf/25.pdf>

Legislative Decree 30 June 2003, n. 196, “*Personal Data Protection Code*”, <http://www.garanteprivacy.it/garante/document?ID=1219452>

Chamber of Deputies, *Servizi di informazione per la sicurezza*, edited by the Study Service, http://www.camera.it/cartellecomuni/leg15/RapportoAttivitaCommissioni/testi/01/01_cap27.htm

Chamber of Deputies, *XV Legislatura Comitato parlamentare per la sicurezza della Repubblica - Nota introduttiva – Competenze, composizione e funzionamento*, <http://www.camera.it/bicamerali/leg15/sis/nintrod.htm>

Letta Gianni, *La riforma dell'intelligence un anno e mezzo dopo*, in *Gnosis* n.1/2009, <http://www.sisde.it/Gnosis/Rivista18.nsf/ServNavig/59>

Mosca Carlo et al., *I servizi di informazione e il segreto di Stato (Legge 3 agosto 2007, n. 124)*, Giuffr , Milan, 2008

Johnson K. Loch, *A Shock Theory of Congressional Accountability over America's Intelligence Agencies*, in *Handbook of Intelligence Studies*, edited by Loch K. Johnson, Routledge, New York, 2007

Presidency of the Cabinet, *Relazione sulla politica dell'informazione per la sicurezza - 2008*, edited by Dipartimento Informazioni per la Sicurezza, http://www.ansa.it/documents/1236688838515_relazionesicurezza2008.pdf