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**THE ITALIAN PARLIAMENTARY  
INTELLIGENCE OVERSIGHT COMMITTEE**

*An analysis in the light of international legal standards and best practices*

**STEFANIA DUCCI**

(Free-lance OSINT analyst, a security studies researcher and the deputy chairman of the Mediterranean Council for Intelligence Studies (MCIS, [www.rieas.gr](http://www.rieas.gr), [www.mcisitalia.net](http://www.mcisitalia.net)).

**RESEARCH INSTITUTE FOR EUROPEAN AND AMERICAN STUDIES**

**(RIEAS)**

**# 1, Kalavryton Street, Alimos, Athens, 17456, Greece**

**RIEAS url: [www.rieas.gr](http://www.rieas.gr)**

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**Dr. John M. Nomikos**  
**Director**

**RESEARCH INSTITUTE FOR EUROPEAN AND AMERICAN STUDIES**

**(RIEAS)**

**Postal Address:**

**# 1, Kalavryton Street**

**Athens, 17456, Greece**

**Tel/Fax: + 30 210 9911214**

**E-mail: [rieas@otenet.gr](mailto:rieas@otenet.gr)**

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***ABSTRACT***

*The new reform law (124/2007) of the Italian intelligence system has introduced important innovations, including strengthening and expanding the oversight powers of the Parliamentary Committee for the Security of the Republic (Co.Pa.Si.R.). The purpose of this research is to verify the compliance of the Co.Pa.Si.R.'s organisation and powers with internationally recognised legal standards and best practices on parliamentary oversight of intelligence. To this end, an analysis is carried out over the committee's mandate, composition and criteria for appointing its members, the staff, the obligation of secrecy, the powers of investigation, the advisory function, and the reporting to Parliament. Following this methodology, some observations are made in order to implement the committee's activities and ensure a more effective and efficient oversight, particularly, by including all the intelligence activities carried out by public bodies separate from the intelligence system within Co.Pa.Si.R.'s jurisdiction, by providing the committee with subpoena powers and by eliminating cases for which confidentiality or the state secret have to be invoked against the committee.*

## INTRODUCTION

The history of the Italian parliamentary intelligence oversight committee is fairly recent. Indeed, it was established with the acronym Co.Pa.Co. (Parliamentary Oversight Committee), by the Law n. 801 of 24 October 1977, which was the first parliamentary act regulating the intelligence and security services. Just as it happened in other countries, the reasons that led to the establishment of the committee can be found in the involvement in unclear matters of former services, firstly the SIFAR (Armed Forces Information Service, 1949-1965) and then the SID (Defence Information Service, 1965-1977). During the Cold War the above services were in fact suspected of having created illegal dossiers against politicians and common citizens, and of having supported or covered terrorist and subversive activities.<sup>i</sup> Nevertheless, the Law n. 801 received criticism since its entry into force, but after only thirty years it was replaced with the new reform Law n. 124 of 3 August 2007.<sup>ii</sup> One of the main reasons for innovation was the need to provide the parliamentary oversight body, now known as Co.Pa.Si.R. (Parliamentary Committee for the Security of the Republic), with more penetrating and incisive powers.<sup>iii</sup> In fact, the former law did not give the committee any power to acquire documents authoritatively or inspect facilities for the pursuit of its own institutional purposes. As highlighted in the explanatory report of the bill (A.C. 2070) presented by the members of Co.Pa.Co. belonging to the Chamber of Deputies, under the Law 801/1977,

Co.Pa.Co.'s oversight ability depended on the good will and sincere cooperation of the intelligence community under scrutiny; apart from the report submitted twice a year to the Parliament, there are no other periodic communications that must be provided to Co.Pa.Co. by the government or the intelligence and security services . The requests that Co.Pa.Co. can direct to the government (which it is politically obliged to satisfy), can cover only

limited and general aspects of the information and security policy. As for the directors of the intelligence and security services, they are not legally bound to tell the whole truth during hearings.

Therefore, the purpose of the reform is to address the issue of efficiency and transparency, so as to have at the same time efficient and accountable intelligence and security services<sup>iv</sup>, where an increase of their power is accompanied by a corresponding enhancement of the committee's oversight powers.<sup>v</sup>

#### **THE MANDATE**

Subject to parliamentary oversight is the whole “system of information for the security of the Republic”, composed of the Prime Minister, who is in charge of the high direction and is responsible for intelligence and security policy, the delegated authority where established<sup>vi</sup>, the Inter-ministerial Committee for the Security of the Republic (CISR), the Department of Information for Security (DIS), the Foreign Information and Security Agency (AISE) and the Internal Information and Security Agency (AISI). The Italian intelligence community is thus composed of two agencies (AISE and AISI) and a coordinating body (DIS).

In this context, the Co.Pa.Si.R. has the function of ensuring, in a systematic and continuous way, that the activity of the intelligence system is carried out in accordance with the constitution and laws and, exclusively, for the defence of the Republic and its institutions. As stressed by Deputy Gianpiero D'Alia,

the committee finally exercises a democratic oversight over all of the activities of the intelligence system. It operates with far more pervasive and effective powers than those performed to date, which not only refers to the government regulatory activity in this sector

and the scrutiny over financial activity, budgets, and public and private resources - allocated and used for intelligence operations - but also and especially with regard to the activity of verifying the operational strategies of each agency to guarantee that they are being used to serve the nation and not this or that political party. This is the fundamental element of novelty, supported by everyone, that characterizes the new configuration of the committee<sup>vii</sup>, which therefore has a broad mandate covering all areas of intelligence activities, including operational, managerial and accounting.<sup>viii</sup> It is also worth noting that the criteria of order and continuity expressly stated by law, which must inspire the parliamentary oversight, by codifying "police-patrolling" to prevent the possibility of falling into a "fire-fighting" monitoring modality<sup>ix</sup> does not necessarily guarantee its effectiveness, which mostly depends on a reactive rather than proactive attitude of Co.Pa.Si.R. members, who are normally affected by the responsiveness of the committee's president.<sup>x</sup>

A shortcoming, however, should be noted: the Information and Security Unit (RIS) of the Defence general staff, which performs every type of intelligence activity helpful in the protection of armed forces' operations and infrastructures abroad, who acts in close liaison with the AISE, is not part of the intelligence system described above. Therefore, it does not fall within Co.Pa.Si.R.'s mandate and it is not subject to any other form of specific and permanent oversight by the Parliament<sup>xi</sup>, which can only exercise ordinary and temporary means such as queries, interrogations and fact-finding committees. For this reason, it would be desirable that the law expressly state that RIS, and all the other public departments conducting intelligence activities, fall under the parliamentary oversight exercised by Co.Pa.Si.R. or by the respective standing committees of the two chambers of Parliament<sup>xii</sup>, even if the first solution would be preferable

and in compliance with the “functional approach”.

To avoid possible gaps, it would be appropriate for all the cases of international cooperation between Italian intelligence and security agencies and those of other states to have a parallel collaboration between their respective oversight bodies. In this connection, *ad hoc* coordination committees for supranational oversight can be envisaged by cooperative agreements.

Finally, since Italian agencies cannot officially and formally give intelligence activities out by contract to the Private Military Firms (PMFs) due to the exclusivity of the formers' functions<sup>xiii</sup>, Co.Pa.Si.R. should verify that they do not outsource part of their business to knowingly escape to the system of “functional warranties”<sup>xiv</sup> and parliamentary oversight.

#### **COMPOSITION AND APPOINTMENT OF MEMBERS**

With regard to the composition of the committee, it has passed from eight members, consisting of four deputies and four senators, to a total of ten, five deputies and five senators, including the chairman. The appointment is made by the presidents of both chambers of Parliament within twenty days of the beginning of each legislature and in proportion to the number of members of parliamentary groups, ensuring equal representation of the majority and opposition and taking into account the specific tasks of the committee. The dual need to enhance the committee's mandate and oversight powers and, consequently, to ensure a broader political representation, has highlighted the necessity to increase the number of its members without making it a bloated body; having ten members allows for balancing the needs when working with confidentiality and dispatch on one side and with representativeness on the other.

In accordance with the international legal standards, the committee itself appoints a chairman by an absolute majority, among the members belonging to the opposition.<sup>xv</sup> The chairman has a

crucial role since he/she directs the activities of the committee, determining the agenda and how it will exercise its prerogatives, thus ensuring Parliament's ownership of the committee.<sup>xvi</sup>

According to the best practices, it is also essential that the committee members do not come from the controlled bodies so that the oversight is impartial and effective.<sup>xvii</sup> However, there is no rule that prevents members of the committee from being appointed among parliamentarians who have previously served in the intelligence community, though it is expressly provided for an incompatibility between the function of parliamentarian and that of employee, collaborator or consultant of DIS, AISE and AISI. There is also no general rule providing for the functional incompatibility between the office of Minister and membership of the committee.<sup>xviii</sup> As for the former Ministers responsible for the intelligence and security services (such as the Ministry of Interior for SISDe and the Ministry of Defence for SISMi, on the basis of the previous Law 801/1977), rather than an absolute incompatibility, the inability to fill that role until a certain period after the termination of the previous office should be foreseen. Always to ensure the total independence from government, the incompatibility should be true even more so for those who have held the post of Prime Minister or delegated authority.

#### **STAFF OF THE COMMITTEE**

Co.Pa.Si.R. is composed of staff from both the House and Senate, and relies on their respective administrations, which makes the premises and other logistical support available, as well as equally sharing the cost for running the committee. The staff currently consists of two officers and four archivists that, if necessary, may take advantage of external collaborations, and can count on the scientific support from centres for study and research. Because of the enhancement of the committee's tasks, powers and number of members, an increase of

supporting staff, which must be present in an adequate number to facilitate the work of the members, would be desirable.

#### **THE OBLIGATION OF SECRECY**

The obligation of secrecy envisages that Co.Pa.Si.R.'s members, staff and collaborators, and everyone with knowledge of the committee's activities due to their function, are bound to secrecy regarding the information acquired, even after termination of their post. Transgressors of this obligation are punished for breach of official secrecy or for the more serious crime of revealing state secrets; when the offender is a parliamentarian, penalties are increased from one third to half. In the case of a breach of secrecy, the chairman of the committee is required to give notice to the judicial authority and to the presidents of both the chambers of Parliament. Once receiving this notification, the president of the chamber to which the member concerned belongs shall appoint a fact-finding commission. If the commission finds there has actually been a secrecy breach by the parliamentarian, the president of the interested chamber replaces him/her. Therefore, when the breach is committed by a member of the committee, he/she will not only be subject to a criminal penalty, but also to a disciplinary punishment consisting in the removal from office.

With regard to this mechanism, however, it has been rightly noted during the preparatory works that it would create an anomalous situation in case the violation is committed by the chairman of the committee, who would be required to denounce himself/herself to the judicial authority and give a communication to the presidents of the chambers of Parliament.<sup>xix</sup> In this case, I think this impasse can be easily overcome by giving the reporting obligations to the deputy chairman of the committee, since the chairman would be in a situation of impediment.<sup>xx</sup>

However, it is important to note that in the first year of the committee's operation, no incidents of non-compliance with rules of confidentiality were reported and no public statements were ever made that could, even indirectly, lead to the dissemination of confidential news or information acquired by the committee. This is 'indicative of a climate of institutional collaboration and fruitful debate among political forces up to now headed by the collective interest rather than by contingent and party-led manipulations'.<sup>xxi</sup>

### **THE OVERSIGHT POWERS**

The increased importance of Co.Pa.Si.R.'s tasks was accompanied by a broadening range of oversight powers: the Law 124/2007 in fact provides expressly that the committee may hold hearings, conduct inspections and visits to intelligence and security agencies' premises, acquire documents and information deemed of interest.

As for the hearings - a total of 47 from the date of the committee's establishment in the 16<sup>th</sup> legislature (22 May 2008) to 1 July 2009 - they are both periodical and unscheduled. The hearings of the Prime Minister, delegated authority, Ministers members of CISR, and directors of DIS, AISE and AISI are periodic.<sup>xxii</sup> 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. 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.<sup>xxiii</sup> This faculty is intended to ensure that the committee may receive alternative and further points of view other than the government's perspective in order to preserve its autonomy.

All the persons heard are required to report, with fairness and completeness, the information in their possession relating to matters of interest for the committee. Nevertheless, no penalty is prescribed by law for any breach of that duty, even if there is no doubt that any reticence, denial of the truth or the provision of false information can result in disciplinary sanctions for public employees or the denial or revocation of security clearance. In any case they will not be punished for perjury, since Co.Pa.Si.R. lacks the powers of fact-finding parliamentary committees, the latter having the same powers and limitations of the judicial authority.<sup>xxiv</sup> The bill from Hon. Cossiga (A.C. 2125), which permanently conferred the same powers of the judicial authority to Co.Pa.Si.R., was indeed dismissed for alleged unconstitutionality because, while the fact-finding committees have a temporary nature and can only be created on matters of public interest, the committee is a permanent body and the subjects it treats are outside the aforementioned area. Nevertheless, Co.Pa.Si.R. has the power of investigation, like the fact-finding committees, making it a hybrid body. Therefore, I think that it is not only possible but also necessary to provide the committee with at least some of the powers of the judicial authority, such as the subpoena powers in order to ensure the punishment for perjury, if not all of the powers. However, it must be pointed out that the personnel of the intelligence and security agencies who declined to reveal sources and methods to safeguard the needs of counter-intelligence should not be punished for their refusal. The above-mentioned powers, which are necessary to give effective authoritativeness to the functions performed by the committee, may be assigned to carry out specific inquiries also through a resolution of the presidents of both the chambers of Parliament.<sup>xxv</sup> Indeed, to always overcome the doubts of unconstitutionality, I think the exercise of these powers by the committee may be temporally restricted, limiting it to inquiries on the behaviour of intelligence and security services' personnel and compliance with their mandate, as

well as to intelligence failure cases.

Besides the power to conduct hearings, the committee can request and obtain, also in derogation from the confidentiality of preliminary investigations, copies of documents related to on-going proceedings and inquiries carried out by the judicial authority or other investigating bodies, 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. The judicial authority is required to promptly forward the documents required by the committee, except when it's necessary to delay the transmission for the needs of preliminary proceedings by a renewable motivated decree, which loses its effectiveness after they end, when the investigation secrecy ceases. This provision appears to mitigate the cognitive powers of the committee, to which this kind of secret should not be opposable, given that the committee has a legal power to undertake inquiries and investigations and that, at all events, neither the official secrecy, 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. However, confidentiality and state secrets can still be invoked against the committee by the intelligence system and other public bodies<sup>xxvi</sup>, although, except in the case of inquiries, disposed by Co.Pa.Si.R. with a unanimous vote, on the behaviour of intelligence and security services' personnel and their compliance with their mandate. It helps to correct the imbalance in favour of the executive, albeit partially, if the committee deems to insist in its request to receive information or a copy of a document for which the recipient has opposed the need for confidentiality to the committee; the request is submitted to the Prime Minister, who decides within thirty days if the opposed need for

confidentiality actually exists. Whenever the committee deems the confirmation of the Prime Minister groundless, or no communication is received within that time-frame, it may report to Parliament for political considerations - as also suggested by the best practices<sup>xxvii</sup> - that may result in a decreased consensus towards the government, or in the approval of a motion of no confidence. Moreover, the need for confidentiality in no case can be opposed or confirmed in relation to matters for which the state secret cannot be invoked.<sup>xxviii</sup> In any case, the committee should at least have access, also through the Prime Minister, to the essential elements of the confidential information or state secret, which are fundamental for carrying out its oversight role.

Finally, another power of the committee is to enter the DIS' central archive in order to perform a direct inspection on expenditures related to concluded operations, and to visit the intelligence system's premises, upon notice to the Prime Minister, who may defer the access where there may be a danger of interference with on-going operations.<sup>xxix</sup>

Passive oversight powers have to be added to the aforementioned active ones. In fact, the committee receives obligatory communications and periodical reports coming from the Prime Minister, DIS and the Ministers of Internal Affairs, Defence and Foreign Affairs, in accordance with the best practices.<sup>xxx</sup>

In particular, the head of government transmits a confidential report on the activities of the intelligence and security agencies every six months to Co.Pa.Si.R., containing: a) an analysis of the situation and menaces to national security; b) the trend of financial management of DIS and intelligence and security agencies related to the same semester; c) the criteria for the collection of personal data to pursue their mandate; d) the number of staff and recruitment of personnel during the semester; e) essential information on the use of covering identities during the previous year. To the date of publication of its first annual report<sup>xxxi</sup>, Co.Pa.Si.R. received two reports on

the activities of the intelligence and security agencies.

In a timely fashion, the Prime Minister has to transmit other communications to the committee regarding: a) the establishment of the archives of DIS, AISE and AISI<sup>xxxii</sup> - the creation of archives whose existence has not been communicated to the committee is indeed forbidden; b) the requests that the head of government obtained from the judicial inquiry about the existence of the state secret with regard to work-related communications among employees of DIS and intelligence and security agencies, acquired through eavesdropping, and related decisions<sup>xxxiii</sup>; c) the interception of communications or conversations, authorized by the Attorney General of the Court of Appeals with territorial jurisdiction, motivated by the need to prevent terrorist activities, the subversion of the constitutional system or Mafia-type organized crime<sup>xxxiv</sup>; d) the operations conducted by the intelligence and security agencies during which criminal offences, covered by the functional warranties, have been committed upon authorization of the Prime Minister<sup>xxxv</sup>; e) the head of government's confirmation to the judicial authority about the existence of such endorsement.<sup>xxxvi</sup> In the penultimate two cases, communication has to be made within thirty days after the conclusion of the operations. In my opinion, the carrying out of covert actions should also be added to these cases, which conducts do not necessarily constitute crimes (covered by the functional warranties), but should be subject to compulsory notification to the committee within thirty days after their ending, together with any related failures. This will prevent the Prime Minister, who has authorized the covert actions, from subsequently denying that he/she had been aware (plausible denial), under penalty of immediate information of the committee to the Parliament for the necessary evaluations.

Other disclosure requirements are upon DIS, which is required to notify the committee of all the Prime Minister's regulations and directives regarding matters within the competence of the

committee. Furthermore, the Ministers of Interior, Defence and Foreign Affairs are required to submit the regulations issued by them in relation to the activities of the intelligence system.<sup>xxxvii</sup>

As noted in the course of the preparatory works, ‘this provision is aimed to expand the capacity of the committee to have the complete legal framework of national intelligence’.<sup>xxxviii</sup>

In addition to this documentation, the committee also receives three periodic publications edited by the intelligence and security bodies (DIS, AISE and AISI), which include analyses on the major threats to national security.<sup>xxxix</sup>

Of course, the committee also receives reports and requests from individuals who are sometimes useful for providing new ideas for research.<sup>xl</sup>

#### **THE POWER OF THE PURSE**

In this regard, the committee is informed<sup>xli</sup> about the annual amount of financial resources for secret services and DIS, over which the Prime Minister has exclusive jurisdiction, and the resulting division among DIS, AISE and AISI of the appropriation, as well as of any changes during the year. The DIS and secret services budget is uncoupled from the public budget, the latter being under the oversight of the whole Parliament.

The Prime Minister is also compelled to inform the committee about the financial management of DIS and secret services through the half-yearly report that has already been discussed above. Summarized in this statement are, in aggregate form for homogeneous categories of expenditure, the budget forecasts for DIS, AISE and AISI and related outlays.

Apart from that, the book-keeping system of DIS and secret services is contained into a specific regulation, which must be in compliance with the delegation criteria stated in the Law 124/2007 where they are in line with the international legal standards.<sup>xlii</sup> Specifically, it is

foreseen that the balance sheet is sent to an Office of the Court of Auditors seconded to DIS for a control of legitimacy and regularity of management<sup>xliii</sup>, together with the annual report of the internal controlling body<sup>xliv</sup>. The court, which acts as a subsidiary body of the Parliament, draws up a report that is then forwarded to Co.Pa.Si.R. together with the balance sheet related to the financial management of ordinary expenses.<sup>xlv</sup> The committee also receives, through the government's biannual report, a statement on the essential elements of the financial management of private expenditures, which documentation is preserved, without any name mentioned, in the historical archives of the DIS' Central Office for the Archives (UCA). Furthermore, the appropriation account of the exercise of simulated economic activities is attached to the balance sheet of the private expenditure. However, it has been correctly pointed out that the statement for essential elements about private expenses, regarding their allocation, weakens the oversight of the parliamentary committee over them.<sup>xlvi</sup>

Moreover, the committee has access to DIS' central archive to exercise a direct control over the documentation of expenditures related to concluded operations. Nevertheless, it has been noted that, according to this rule, it would be denied access to documents not yet transmitted from the archives of the agencies, who can only store documents related to current affairs, to DIS' historical archives.<sup>xlvii</sup> This seems to delay the possibility of such a control and impair its effectiveness, especially considering the current uncertainty about the determination of the *dies a quo* for the transmission of records related to info-operational activities to the aforementioned archives; though not implemented by the government, the committee expressed a condition on the regulation governing the archives.<sup>xlviii</sup> However, it has been noted that 'the possibility of direct access to the book-keeping records is extremely effective, since - apart from the actual exercise of that power - it has a "deterrence" effect: knowing there is the risk of direct

verification, the officers will be induced to the utmost care in keeping the accounts'.<sup>xlix</sup>

#### **THE OVERSIGHT ON THE POWER OF CLASSIFICATION OF THE EXECUTIVE**

Like Co.Pa.Co., Co.Pa.Si.R. has to perform its oversight functions in a exclusive way, not only with regard to the activity and organization of the agencies, but also to state secrets. Precisely, it is a post-classification oversight, which verifies whether the opposition and the subsequent confirmation of the existence of a state secret has been made according to law, namely that it covers 'deeds, documents, news, activities and everything else where disclosure is likely to harm the integrity of the Republic, also in relation to international agreements, the defence of the institutions posed by the Constitution as its foundation, the independence of the state towards other states and the relationships with them, the military preparation and defence of the state.' Moreover, this kind of oversight is aimed at checking that the opposition and confirmation do not relate to hypothesis for which the invocation of the state secret is forbidden.<sup>1</sup>

The new legal framework provides that the Prime Minister must give notice of any confirmed opposition of state secrets to the committee, stating the essential reasons.<sup>ii</sup> If the committee considers the opposition groundless, it informs each chamber in Parliament for the appropriate evaluations.<sup>iii</sup> Therefore, the committee doesn't have the right to know the contents of the opposed and confirmed state secret. However, it would be desirable, in order to allow an effective verification of the confirmation's lawfulness, to permit the committee to know the contents of the secret, even if only in its essential aspects.

Finally, the committee receives, without delay, the motivated measures by which the Prime Minister orders one or more respites of the state secret, following the request for access by anyone interested in the information, documents, deeds, activities, things and places covered by

the state secret.<sup>liii</sup>

### **THE ADVISORY FUNCTION**

This feature is unprecedented in the Reform Act, which states that the committee gives its opinion on the draft regulations envisaged by that law, and on any other model of decree or regulation concerning the organization and status of the personnel assigned to DIS, AISE and AISI. These regulations, which are indispensable for the practical implementation of the Reform Act, have to be adopted by decree of the Prime Minister, who also acquires the opinion of CISR. ‘The legislator intended thereby to expand the oversight by Parliament, no longer limited to the time of the assessment of the intelligence bodies’ activities, but extended it to an essential phase for the full realization of the principles, some of which are particularly innovative, contained in the law, which is the adoption of the implementing rules thereof’.<sup>liv</sup> However, the opinion expressed by the committee in its advisory function, for which exercise hearings may be held, is mandatory but not binding. The government is indeed obliged to ask, but is not compelled to implement it and this severely limits the oversight scope of the advisory function, especially considering that the government may disregard the acquisition of the opinion and proceed with the adoption of the regulation if the committee has not provided it within the initial one month term from the receipt of the draft regulation, or before the expiration of the fifteen day extension. Therefore, the committee has no direct powers to enforce the compliance with the principles stated in the Law 124/2007 in case of their breach, except of course the power to report to Parliament.

At the date of approval for the first annual report, the committee received thirteen out of fourteen draft regulations from the delegated authority, still lacking the one governing the

relationship between RIS and AISE. The committee has followed some guidelines in the exercise of its advisory activities: 'while examining the draft regulations, it has verified that the implementing rules of the law ensure the pursuit of a greater functionality and efficiency of the intelligence and security services, even through a rationalization of their organizational structures'. Moreover, it has emphasized the necessity that 'the regulations should also strengthen the committee's oversight role through an enhancement of the information flow from the intelligence system to Co.Pa.Si.R'.<sup>lv</sup>

The fact that the Law 124/2007 does not envisage an analogue opinion by the committee with regard to the appointment of the heads of DIS, AISE and AISI, of which the Prime Minister is obliged to inform the chairman of the committee in advance, it appears in conformity with the power of the government to appoint, in a exclusive way, the high officers of the state's administration. 'The possibility of exercising the oversight function is thus ensured, even on these sensitive choices, without placing any inappropriate form of co-management between the Executive and Parliament'.<sup>lvi</sup> These appointments, in fact, fall under the committee's scrutiny to ensure the political neutrality of the intelligence bodies, without adopting the solution proposed by the best practices<sup>lvii</sup>, inappropriate in my opinion, of direct involvement of the committee or the opposition in Parliament.

## **REPORTING TO PARLIAMENT**

In accordance with best practices<sup>lviii</sup> Co.Pa.Si.R. is required to submit an annual report to Parliament - not classified - communicating the activities carried out and presenting proposals or reports on matters within its competence. The Parliament is also directly informed by the government, which is required to submit yearly - by the month of February - a written report on

the policy followed and the results obtained during the preceding year.

The first Co.Pa.Si.R. annual report from the adoption of the Reform Act was sent to the presidents of the chambers on 30 July 2009, and relates to the committee's work during the period from 22 May 2008 - the date of its constitution in the 16<sup>th</sup> legislature – to 21 May 2009. The report is divided into three parts dealing respectively with the oversight activities, the advisory function and the acquisition of knowledge about specific issues. In fact, next to that obligation, the committee has the authority to submit urgent reports to Parliament during the year. In this regard, the committee has addressed issues of paramount importance for national security, such as the activity of sovereign wealth funds, the global economic crisis, the security of energy supply, maritime piracy, the kidnapping of Italians abroad and the trends of legal and illegal migration. Of these, two reports have been submitted by the committee to the chambers: one on the acquisition and non-destruction of sensitive data for the security of the Republic and another one on trafficking in human beings, which contains a number of concluding remarks and recommendations addressed to the intelligence system.

## **CONCLUSIONS**

In conclusion, in order to further implement the committee's activities and ensure a more robust and effective scrutiny, the following observations are necessary.

First of all, it seems appropriate to subject intelligence activities performed by RIS and other public bodies to the parliamentary oversight as well as there must be a collaboration between the different national supervisory bodies of those countries with which cooperative agreements in the intelligence field have been signed by the government, even creating supranational supervisory coordination committees established *ad hoc*. Of course, Co.Pa.Si.R. must also ensure that the

intelligence and security services do not give activities of dubious legality and legitimacy out of contract to private companies, and thus escaping controls.

A functional incompatibility between the office of Minister and that of member of the committee should be also introduced, while for the former Ministers responsible for the secret services under the Law 801/1977, a rule providing for the inability to fill this role until a certain period after the termination of the previous post would be opportune. Incompatibility that is all the more so for those who have served as Prime Minister or delegated authority. Another absolute incompatibility should then be envisaged for the former employees of DIS, AISE and AISI, or their counterparts under the previous law (CESIS, SISMi and SISDe).

Committee members should then be assisted by an adequate number of support staff who must be vetted and in possession of a security clearance.

Both members and staff personnel must receive adequate training in the fields of intelligence and oversight to make them able to ask the right questions during hearings and visits to the premises of the intelligence system.

With regard to the obligation of secrecy, the anomaly that would occur if the breach is committed by the chairman of the committee should be removed, simply by giving, in this case, the reporting obligations to the deputy chairman.

The committee should then be able to hear the employees of the intelligence system without the Prime Minister's possible veto. Moreover, the committee should be provided with subpoena powers to be able to issue orders for witnesses appearances and to receive affidavits, even through a resolution of the presidents of both the chambers of Parliament, for the purpose of conducting single enquiries. Specific safeguards and security procedures should be put in place for the intelligence system's personnel to reveal abuses and unlawful acts (the whistle-blowers).

In any case, neither confidentiality nor the state secret should be invoked against the committee, or at least it should be granted the possibility to know the essential elements of confidential information or state secrets, even through the Prime Minister. The parliamentary body should be able to know the contents of the state secret, even only in its essential aspects, also when it has to verify the legitimacy of the confirmation of the opposed secrecy. It also follows that the possibility for the judicial authority to delay, for the needs of investigative secrecy, the transmission of what is required by the committee should be excluded.

Regarding the compulsory communications of the Prime Minister to the committee, they should include all the concluded intelligence operations and their outcomes, even the covert actions, together with any related failures, thereby preventing the occurrence of cases of wilful ignorance on the part of the government.

The committee should be able to acquire more detailed information with regard to power of the purse on private expenditure, and it is also necessary to accurately determine the *dies a quo* for the transmission of records related to info-operational activities to DIS' historical archives and state's central archive, so as not to delay the direct oversight of the committee on the documentation of the expenditure related to concluded operations.

Finally, the opinions expressed by the committee on the implementation of draft regulations should be binding on the government, the parliamentary body being the sole guarantor of compliance with the principles contained in the Law 124/2007.

**Footnotes:**

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<sup>i</sup> See: Claudio Scajola, 'La discussione in Parlamento. Servizi Segreti verso la riforma', *Gnosis* 1 (2007)

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pp. 43-52, and the speech by the Rapporteur, Hon. Luciano Violante, in Chamber of Deputies' Acts, 1st Standing Committee, Minutes of the session of 28 November 2006.

- ii Entered into force on 12 October 2007.
- iii In this sense the speech by Deputy Andrea Papini, in Chamber of Deputies' Acts, 4th Standing Committee, Minutes of the session of 1 February 2007.
- iv 'For the purposes of this Act "intelligence and security services" means AISE and AISI' (Article 2 paragraph 2 Law 124/2007).
- v See the speech by Deputy Minister of Interior, Hon. Marco Minniti, at the inauguration of the Academic Year 2006/2007 of the Training School of SISDe (Rome, 28 February 2007), in *Gnosis* 1 (2007) pp. 13-17.
- vi The post of delegated authority, who shall perform the duties delegated from the Prime Minister, is currently covered by Senator Gianni Letta.
- vii Speech by Deputy Gianpiero D'Alia during the debate on Article 30 of Law 124/2007, Verbatim Report of session n. 108 of 13 February 2007, p. 72.
- viii In this sense, see: DIS, *Relazione sulla politica dell'informazione per la sicurezza*, (Rome: DIS 2008) p. 7.
- ix For a description of the two different modalities, see: Loch K. Johnson, 'A Shock Theory of Congressional Accountability over America's Intelligence Agencies', in L. K. Johnson (ed.) *Handbook of Intelligence Studies* (New York, NY: Routledge 2007) pp. 343-60.
- x In this sense see: Hans Born, Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, (Oslo: Publishing House of the Parliament of Norway 2005) p. 85, according to whom: 'The chairman of an oversight body will invariably have an important role in leading it and determining how it conducts its business as well as directing liaison with the services outside formal committee meetings'.
- xi In this sense, for example, the speech by Senator Gianni Nieddu, according to whom 'the exclusion of

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RIS from the intelligence system is likely to put it out of reach by parliamentary scrutiny, and this is in contrast with the rationale of the measure which pushes instead towards a strengthening of oversight' (in Senate's Acts, 4<sup>th</sup> Standing Committee in its advisory capacity, Summary of the Minutes of session n. 71 of 7 June 2007).

<sup>xii</sup> The first hypothesis was advanced during the preparatory works by Senator Luigi Ramponi and endorsed in the opinion expressed by the Defence Commission, while the second was proposed by Senator Rosa Maria Villecco Calipari, who suggested that the activity of RIS should be under the oversight of the 4<sup>th</sup> (Defence) Standing Committees of the House and Senate (in Senate's Acts, 4<sup>th</sup> Standing Committee in its advisory capacity, Summary of the Minutes of the sessions n. 71 and 72 respectively of 7 and 12 June 2007). By analogy, the intelligence activity carried out by police forces could be subject to the oversight of the 1<sup>st</sup> (Constitutional and Internal Affairs) Standing Committees of both chambers of Parliament. It should be noted in this connection that, if the latter option is chosen, a similar collaboration between Co.Pa.Si.R. and the respective standing committees of the House and Senate should be envisaged for all cases of cooperation between the intelligence and security services, armed forces and police forces, also by creating an *ad hoc* coordination committee, just as the Integrated National Security Review Coordinating Committee (INSRCC) proposed by the Canadian Commission of Inquiry on the Maher Arar case, for the supervision of the oversight on the integrated activities for ensuring national security.

<sup>xiii</sup> Article 8 paragraph 1 Law 124/2007 provides that 'The functions conferred by this Act to DIS, AISE and AISI cannot be performed by any other institution, body or office'. The rationale of the rule is to avoid that other entities can actually engage in similar activities without being subject to any form of control enacted by Law 124/2007.

<sup>xiv</sup> This is a special justification cause under Article 17 of Law 124/2007, which makes lawful certain criminal offences committed by intelligence agencies' personnel, when their acts were lawfully authorized as essential to pursue their institutional scope.

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- <sup>xv</sup> Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., pp. 85-86; Hans Born, Thorsten Wetzling, 'Intelligence Accountability. Challenges for Parliaments and Intelligence Services', in L. K. Johnson (ed.) *Handbook of Intelligence Studies* (New York, NY: Routledge 2007) pp. 315-28, p. 319.
- <sup>xvi</sup> Hans Born, 'Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices', *Connections - Quarterly Journal* 3/4 (2004) pp. 1-12, p. 9.
- <sup>xvii</sup> Hans Born, 'Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices', cit., p. 9.; Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., p. 85; Hans Born, Thorsten Wetzling, 'Intelligence Accountability. Challenges for Parliaments and Intelligence Services', cit., p. 319; DCAF, *Parliamentary Oversight of Intelligence Services*, (Geneva: DCAF 2006) p. 4.
- <sup>xviii</sup> For this incompatibility see: Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., p. 87; Hans Born, Thorsten Wetzling, 'Intelligence Accountability. Challenges for Parliaments and Intelligence Services', cit., p. 319; DCAF, *Parliamentary Oversight of Intelligence Services*, cit., p. 4.
- <sup>xix</sup> See in this sense the speech by Deputy Marco Boato, held during the debate on Article 36 of Law 124/2007, Verbatim Report of session n. 109 of 14 February 2007, p. 77.
- <sup>xx</sup> This solution would thus be in compliance with Article 4 paragraph 2 of Co.Pa.Si.R. Internal Regulation, which states that 'the deputy chairman collaborates with the chairman and replaces him/her when absent or unable'.
- <sup>xxi</sup> Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, (Rome: Co.Pa.Si.R. 2009) p. 8.
- <sup>xxii</sup> The delegated authority (Under-Secretary of State Gianni Letta) has been heard four times, the General Director of DIS (Prefect Giovanni De Gennaro) four times, the Director of AISE (Admiral Bruno Branciforte) four times, the Director of AISI (General Giorgio Piccirillo) five times, the Minister of Foreign Affairs (Hon. Franco Frattini) three times, the Minister of Interior (Hon. Roberto Maroni) once, for a total of 21 hearings (source: Comitato Parlamentare per la Sicurezza della Repubblica,

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*Relazione Annuale*, cit., pp. 30-36, and the historical record of the hearings from 3 June 2008 to 1 July 2009).

<sup>xxiii</sup> Precisely, during the first year of Co.Pa.Si.R.'s activity, these people were heard: members of the judicial authority and a judicial consultant, a prefect, police personnel, representatives of the Privacy Warrantor Authority, the Director of UNICRI (United Nations Interregional Crime and Justice Research Institute), a member of the Executive of the European Central Bank and representatives of telecommunications companies, for a total of 26 hearings (source: Comitato Parlamentare per la Sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 37-39 and the historical record of the hearings, cit.).

<sup>xxiv</sup> Article 82 paragraph 2 of the Italian Constitution. During the preparatory works, Senator Massimo Brutti had highlighted that 'the current parliamentary oversight committee's powers are not adequately penetrating since it does not possess powers similar to those of the fact-finding committees. Instead, he considers it appropriate to provide the committee with more invasive tools to avoid the embarrassing phenomenon, which happened repeatedly over the years, of reticent and sometimes baseless communications released during hearings by personnel from both the civilian and military secret services.' (Senate's Acts, 2<sup>nd</sup> Standing Committee in its advisory capacity, Summary of the Minutes of session n. 95 of 4 July 2007). In that sense, see also Senators Felice Casson and Alfredo D'Ambrosio, who foreboded 'a possible criminal penalty against the persons heard who conceal some required information or those who speak falsely.' (Senate's Acts, 2<sup>nd</sup> Standing Committee in its advisory capacity, Summary of the Minutes of session n. 96 of 5 July 2007).

<sup>xxv</sup> In this sense see the speech by Deputy Gianpiero D'Alia with regard to the attribution to Co.Pa.Si.R. of the powers of inquiry under Article 82 of the Constitution (Chamber of Deputies' Acts, 1<sup>st</sup> Standing Committee, Minutes of the session of 19 December 2006).

<sup>xxvi</sup> The need for confidentiality may be opposed to the committee by the addressee of the request when the communication of information or the transmission of a copy of a document can affect the security

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of the Republic, the relationships with foreign states, the conduct of on-going operations or the safety of information sources, collaborators or employees of the intelligence and security services (Article 31 paragraph 8 Law 124/2007). The state secret instead covers deeds, documents, news, activities and anything else the disclosure of which is likely to harm the integrity of the Republic, also in relation to international agreements, the defence of the institutions posed by the Constitution as its foundation, the independence of the state towards the others and the relationships with them, the military preparation and defence of the state (Article 39 paragraph 1 Law 124/2007). During preparatory works, Senator Roberto Centaro said that it is a paradox that the state secret cannot be invoked against the anti-Mafia Commission (and the Constitutional Court [author's note]), according to its establishing law, while it is opposable to Co.Pa.Si.R. (in Senate's Acts, 2<sup>nd</sup> Standing Committee in its advisory capacity, Summary of the Minutes of session n. 83 of 30 May 2007).

<sup>xxvii</sup> Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., p. 93.

<sup>xxviii</sup> The following cannot be covered by state secret: a) facts, news or documents relating to crimes aimed at subverting the constitutional system, the crime of devastation, pillage and slaughter, that of Mafia association and political-Mafia electoral exchange, and that of massacre; b) facts, news or documents relating to the conducts of secret services' members held in violation of the rules concerning the special justification cause envisaged for their activities; c) the state secret cannot be opposed or confirmed at the sole protection of the classification of secrecy or exclusively by reason of the nature of the document, act or thing classified.

<sup>xxix</sup> The committee, during its first year of activity, carried out two visits at the premises respectively of AISI and AISE (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 40-41).

<sup>xxx</sup> Hans Born et al., *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, (Geneva: IPU-DCAF 2003) pp. 68 e 81; Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., p. 93; DCAF Intelligence Working Group, *Intelligence Practice and Democratic*

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*Oversight – A Practitioner's View*, Occasional Paper No 3 (Geneva: DCAF 2003) p. 50.

<sup>xxx</sup>i On 30 July 2009 (date of its submission to the presidency of both the chambers of Parliament).

<sup>xxx</sup>ii This communication has not found a practical implementation yet because, in the period covered by the first annual report of the committee, the regulation on the archives referred to in Article 10 of the law had not been definitively approved (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 16-17).

<sup>xxx</sup>iii There have been no announcements so far about such requests (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 16).

<sup>xxx</sup>iv There have been many communications concerning such conducts (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 15).

<sup>xxx</sup>v In this regard the committee has been informed of two operations conducted by AISI under the functional legal warranties (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 15).

<sup>xxx</sup>vi No communication in this regard has been forwarded to the committee at the date of publication of its first annual report (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 18).

<sup>xxx</sup>vii On the date of publication of the committee's first annual report, while DIS has transmitted normative acts, the mentioned Ministers hadn't communicated any regulations, which presumably were not issued (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 15).

<sup>xxx</sup>viii In this sense the speech by Deputy Claudio Scajola, in Chamber of Deputies' Acts, 1<sup>st</sup> Standing Committee, Minutes of the session of 9 January 2007.

<sup>xxx</sup>ix Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 12-14.

<sup>xl</sup> Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 19.

<sup>xli</sup> Communications received on 7 July 2009.

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- <sup>xlii</sup> Hans Born et al., *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, cit., pp. 137-140; Hans Born, 'Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices', cit., p. 10; Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., pp. 113-118; Hans Born, Ian Leigh, *Democratic Accountability of Intelligence Services*, Policy Paper No 19 (Geneva: DCAF 2007) pp. 18-20; DCAF Intelligence Working Group, *Intelligence Practice and Democratic Oversight – A Practitioner's View*, cit., p. 45.
- <sup>xliii</sup> The control of legitimacy is a *ex-post* control that can result in the approval or rejection of the deed, the latter determining the requirement for the administration to review it. That of regularity is instead an additional check from that of legitimacy, which seems to be a management audit that aims to verify the correspondence of the outcome of the administrative activity to the goals established by law, benchmarking costs, modalities and timing of the administrative function. The role of the Court of Auditors is therefore to identify possible organizational and functional wants of the administration in order to induce it to improve its performance (source: Andrea Baldanza, 'Funzioni di controllo della Corte dei Conti', in V. Tenore (ed.) *La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli* (Milan: Giuffrè 2004) pp. xxxvi-1224, pp. 1096, 1102.
- <sup>xliv</sup> It verifies the effectiveness, efficiency and cheapness of the administrative action in order to optimize the relationship between costs and results, also through appropriate corrective actions.
- <sup>xlv</sup> For reasons related to the procedure for approving the regulations implementing the Law 124/2007 there have not been transmissions of such documents yet.
- <sup>xlvi</sup> In this sense the speeches of Hon. Graziella Mascia and of Deputy Minister of Interior Hon. Marco Minniti, in Chamber of Deputies' Acts, 1<sup>st</sup> Standing Committee, Minutes of the session of 29 January 2007.
- <sup>xlvii</sup> Carlo Mosca et al., *I servizi di informazione e il segreto di Stato (Legge 3 agosto 2007, n. 124)*, (Milan: Giuffrè 2008) p. 384.
- <sup>xlviii</sup> Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 54-55.

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<sup>xlix</sup> In this sense the speech of Deputy Claudio Scajola, in Chamber of Deputies' Acts, 1<sup>st</sup> Standing Committee, Minutes of the session of 9 January 2007.

<sup>i</sup> See note 28.

<sup>ii</sup> At the date of its first annual report the committee received only one communication [in January 2009], stating the main reasons of a case of confirmation of state secrets, opposed during the process on the “Abu Omar affair” (a case of extraordinary rendition) by two witnesses already employed by SISMi, with attached ordinances for suspending the examination of the witnesses (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 18-19, 22).

<sup>iii</sup> This rule has already received an initial application.

<sup>iiii</sup> Since the beginning of the legislature, the committee got five of these communications (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 85). The request for access can be made fifteen years after the expiration of the affixing or, lacking that, the confirmed opposition of the state secret, which cannot have a total length beyond thirty years.

<sup>lv</sup> Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., p. 48.

<sup>lv</sup> The Government has implemented almost all the conditions and observations made by the committee, confirming the excellent working relationship (source: Comitato parlamentare per la sicurezza della Repubblica, *Relazione Annuale*, cit., pp. 50-51, 56).

<sup>lvi</sup> Claudio Scajola, ‘La discussione in Parlamento. Servizi Segreti verso la riforma’, cit., p. 51

<sup>lvii</sup> Hans Born et al., *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, cit., pp. 65 and 68; Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., p. 35; Hans Born, Thorsten Wetzling, ‘Intelligence Accountability. Challenges for Parliaments and Intelligence Services’, cit., p. 324.

<sup>lviii</sup> Hans Born et al., *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, cit., p. 67; Hans Born, Ian Leigh, *Making Intelligence Accountable*, cit., pp. 94-95; Hans Born, Thorsten Wetzling, ‘Intelligence Accountability. Challenges for Parliaments and Intelligence

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Services', cit., p. 319; DCAF, *Parliamentary Oversight of Intelligence Services*, cit., p. 4.

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### **About the author**

***Ms. Stefania Ducci is a free-lance OSINT analyst, a security studies researcher and the deputy chairman of the Mediterranean Council for Intelligence Studies (MCIS, [www.rieas.gr](http://www.rieas.gr), [www.mcisitalia.net](http://www.mcisitalia.net)). She regularly teaches intelligence and security-related themes at several master courses in Italy.***

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