



S. R.
REPRESENTAÇÃO PERMANENTE
DE PORTUGAL
JUNTO DA UNIÃO EUROPEIA
BRUXELAS

001672

Senhor Deputado,

Tenho a honra de junto enviar a V. Exa. uma carta que lhe foi dirigida por S. Exa. o Ministro de Estado e dos Negócios Estrangeiros, Prof. Doutor Diogo Freitas do Amaral.

Queira aceitar, Senhor Deputado, os protestos da minha mais elevada consideração.

pel' O Representante Permanente

Exmo Senhor
Deputado Carlos Coelho
Grupo do Partido Popular Europeu
Parlamento Europeu
Rue Wiertz
1047 Bruxelas

ARL/DPD

1. Copy to the TDIP Members.
2. Only the documents sent to the Council of Europe came with the minister's letter.

Bruxelas, 7 de Julho de 2006

So the other documents are missing.

I am going to send a letter to the Portuguese Minister asking for the missing documents.

2006.08.28



Ministério dos Negócios Estrangeiros
Gabinete do Ministro de Estado e dos Negócios Estrangeiros

Exm.º Senhor
Dr. Carlos Coelho
Deputado ao Parlamento Europeu

26.06.06

Prezado Sr. Deputado:

ASSUNTO: Alegações sobre voos da CIA

Junto envio, para conhecimento de V.Ex^a, na qualidade de Presidente da Comissão de Inquérito do Parlamento Europeu sobre as alegadas acções ilegais da CIA em solo europeu, cópia de uma carta e respectivos anexos, por mim dirigida à Senhora Deputada ao Parlamento Europeu Ana Gomes, sobre o assunto em epígrafe, em resposta a um pedido de informação adicional efectuado por aquela parlamentar. Em anexo seguem também as respostas do Estado Português às questões colocadas pelo Secretário-Geral do Conselho da Europa, no âmbito do inquérito que levou a cabo sobre esta matéria.

A defesa dos Direitos Humanos, do Estado de Direito e do Direito Internacional assume um papel central na política do Governo Português. Neste contexto, para além da exaustiva investigação interministerial que efectuámos sobre as alegadas acções ilegais da CIA em território português e que, como é do conhecimento de V.Ex^a, serviu de base à minha intervenção na

Ministério dos Negócios Estrangeiros
O Ministro

Assembleia da República, no passado mês de Dezembro, todos os contributos que nos permitam, se possível, um maior esclarecimento deste assunto são apreciados e contam com o nosso apoio. Assim, gostaria igualmente de transmitir a total disponibilidade deste Governo, bem como a minha pessoal, em colaborar com V.Ex^a nesta matéria, como em outras de interesse nacional e europeu.

Com os melhores cumprimentos, *também pessoais*

Diogo Freitas do Amaral

Diogo Freitas do Amaral
Ministro de Estado e dos Negócios Estrangeiros

**Portuguese explanations to the Secretary General of the Council of Europe in
accordance with Article 52 of the European Convention
on Human Rights**

The Portuguese Government hereby provides information and clarifications requested by the Secretary General in accordance with article 52 of the European Convention on Human Rights regarding the effective enforcement of all the provisions of the European Convention on Human Rights with a view to fully clarifying the issue of the alleged existence of detention centres or illegal CIA flights in Europe.

This answer is based on information gathered through the Ministry of Home Affairs, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of National Defence, the Ministry of Justice and the Ministry of Public Works, Transport and Communications.

The request from the Secretary General was particularly pertinent since the international media has referred insistently some time ago to the alleged existence of secret facilities, somewhere in Europe, which would be used for the detention of individuals at the request of the United States in conditions that would violate international law. The international media also referred to the alleged use of aircraft by the Central Intelligence Agency of the United States (CIA) for the transportation of these individuals, in breach of international law.

Regarding the specific explanations requested on the 21st of November, concerning the guarantees enshrined in the national legislation regarding the effective enforcement of all the provisions of the European Convention on Human Rights (ECHR) and the involvement of any official or person exercising official functions in the deprivation of freedom or the transportation of individuals by a foreign agency or in the service thereof, the Portuguese Government informs that the ECHR, as an international treaty duly ratified by the Portuguese State, binds all Portuguese public authorities (article 8 n° 2 of the Constitution of the Portuguese Republic – CPR).

National courts, as the authorities entrusted with the administration of justice on behalf of the people, as well as with the competence to ensure the defence of the rights and legally protected interests of the citizens, the competence to repress breaches of the democratic rule of law and to settle conflicts between public and private interests, have, in a last analysis, the competence to assure that the ECHR is applied. Considering that the rules of the ECHR grant individual rights or recognize legitimate interests, those rules can be directly invoked by the national courts.

Regarding the question of knowing how the internal law ensures that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls, it is important to notice that the Portuguese law on international co-operation in criminal matters (Law 144/99, of 31st August) foresees mechanisms that allow foreign officials to act in Portuguese territory.

In fact, article 145 of this law foresees different forms of mutual judicial assistance in criminal matters, determining that the assistance comprises, namely, the notification of deeds and the service of documents; the procuring of evidence; searches, seizure of property, experts examination and analysis; the service of writs to and hearing of suspects, accused persons, witnesses or experts; the transit of persons; and the communication of information. The number 5 of this article specifies that the Minister of Justice shall be empowered to authorise the participation of foreign judicial authorities and foreign criminal police authorities in criminal proceedings that take place on Portuguese territory, in particular within the framework of joint criminal investigation teams made up of both national and foreign members.

However, the law imposes that investigations in national territory are carried out under the authority and in the presence of Portuguese authorities. The n° 7 of article 145 clarifies that the participation of a foreign official is admitted when its purpose is to assist a Portuguese or foreign judicial authority or a Portuguese or foreign criminal police authority under the authority and in the presence of Portuguese authorities with respect for the provisions of the Portuguese criminal procedure law.

Regarding the question of *how the internal law ensures that adequate safeguard exist to prevent unacknowledged deprivation of liberty of any person (...), whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty*, it is important to mention article 27 of the CPR, clearly inspired on article 5 of the ECHR, that gathers the rights to freedom and security. The freedom here mentioned is physical freedom, freedom of movements – the right to not be detained, imprisoned or in anyway physically restrained within a determined space or impeded from moving. This same article determines the cases in which the freedom may be limited and how it can be done. The cases of deprivation of freedom are exceptions to a constitutional principle and therefore must obey to strict requirements. In this framework, article 28 CPR determines that within at most forty-eight hours, all detentions shall be submitted to judicial scrutiny with a view to either the detainee's release or the imposition of an appropriate coercive measure. This same article reinforces the exceptional nature of preventive detention shall have exceptional nature and shall not be ordered or maintained whenever it is possible to grant bail or apply another, more favourable measure foreseen by law.

Following the above-mentioned constitutional principles, the Criminal Procedure Code (CPC) contains rules that ensure the exceptional character of detention and preventive imprisonment. If the Constitution or the CPC' rules considering detention and imprisonment are not respected, it is possible to require "habeas corpus" against the abuse of power by the authorities (article 31º PRC and CPC). The article 220º of the CPC ("*habeas corpus*" in cases of illegal detention) determines that all detained persons by order of any authority may present a request to the investigating judge of that geographical area to order the immediate presentation of the detained before a judge, based on one of the following elements:

- a) When the legal time in which the detained should be delivered to judicial authorities has been exceeded;
- b) When the detention is kept out of the places legally admitted;



- c) When the detention was performed or ordered by an incompetent authority;
- d) If the detention is based on a fact for which the law does not allow detention.

This requirement may be signed by the detained person or by any other citizen enjoying the exercise of his political rights. The same rule determines that the conduct of raising an illegitimate obstacle to the presentation of the above-mentioned requirement or to its delivery to the judge is punishable with imprisonment until 3 years or fine.

The Supreme Court of Justice grants, under request, the “*habeas corpus*”, in cases of illegal imprisonment, to any person who is illegally arrested (article 222 CPC). The request may be based on the fact that the imprisonment was performed or ordered by an incompetent authority; on the fact that the imprisonment had an illegal ground; or when the imprisonment is maintained over the term imposed by law or by judicial decision.

Regarding the question of how internal law provides an adequate response to any alleged infringements of the Convention rights of individuals within their jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies, in particular how internal law ensures the existence of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims, it is important to notice that the investigation and pursuit, in national territory, of the alleged offenders are competence, accordingly to the Constitution and the law, of the Public Prosecutor’s Office.

The Public Prosecutors’ Office possesses its own statute and autonomy, as laid down by law (article 219 nr 2 of the Constitution). The autonomy of the Public Prosecutor’s Office is characterized by the obedience to strict legal and objectivity criteria and by the exclusive subjection to its own statute.

The officials of the Public Prosecutors' Office are accountable judicial officers, form part of and are subject to a hierarchy and shall not be transferred, suspended, retired or removed from office except in cases provided for by law (article 219 nr4 of the Constitution).

The Public Prosecutors' Office is responsible for promoting penal action (article 219 nr 1 of the Constitution and article 3 b) of the Public Prosecutor's Office Statute), for participating in the implementation of the criminal policy defined by the bodies that exercise sovereign power (article 3 a) of its Statute), conducting criminal investigation even when performed by other entities (article 3 h) of its Statute) and for supervising the activity of the criminal police acting regarding procedural exigencies (article 3 n) of its Statute).

The State and all other public bodies have civil liability for such actions or omissions in the performance of their functions as result in a breach of rights, freedoms or guarantees or in any loss to others, accordingly to article 22 of the Constitution. Therefore, any person who is injured by an illegal act of the State (in the exercise of legislative, executive or judicial power) or of any other public entity, for acts or omissions in the exercise of their functions, has the right to be compensated for the amount of the suffered damages. Article 22 grants a fundamental right to compensation for damages, being directly applicable not only *contra legem* but also in the absence of law.

The Constitution foresees, in particular, the obligation for compensation in cases of illegal deprivation of freedom (article 27 nr 5 of the Constitution). The CPC concretizes this obligation of the State, granting the right to request compensation to those who have suffered manifestly illegal detention or imprisonment for the damage caused.

Whenever, in criminal international cooperation, the criminal investigation teams composed of agents with different nationalities, acting in Portuguese territory, cause damages to anyone, the Portuguese State ensures the compensation to the injured person, without prejudice of being reimbursed by the responsible State.

The extradition procedure, the European Arrest Warrant or the European Convention on the transfer of Sentenced Persons are the only ways of transfer of detained persons. However, no one shall be extradited or handed over under any circumstances for political reasons, or for crimes which are punishable under the applicant state's law by death or by any other sentence that results in irreversible damage to a person's physical integrity (article 33 nr. 6 of the Portuguese Constitution).

These constitutional rules have direct application and are concretized through law nr 65/03, of 23rd August (European Arrest Warrant) and law nr. 144/99, of 31st August. The first one does not apply to this case and the second one is applicable to:

- a) Extradition;
- b) Transfer of proceedings in criminal matters;
- c) Enforcement of criminal judgements;
- d) Transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty;
- e) Supervision of conditionally sentenced or conditionally released persons;
- f) Mutual legal assistance in criminal matters.

The international cooperation in criminal matters request is denied:

- a) Where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;
- b) Where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;



- c) Where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;
- d) Where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;
- e) Where any of the facts in question is punishable with the death sentence or with a sentence resulting in any irreversible injury of the person's integrity;
- f) Where any of the offences in question carries a life-long or indefinite sentence or measure.

Finally, the Portuguese Government reiterates that, until now, no cases were reported to the Portuguese authorities of public officials or other person acting on an official capacity being involved in any manner – whether by action or omission - in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.

Furthermore, with regard to Portugal, the hypothetical existence of secret detention centres has never been raised by the national or international media. The Portuguese authorities, nonetheless, have carried out an investigation and both the Ministry of Home Affairs and the Ministry of Justice guarantee that they are not aware of any such situation taking place within the Portuguese territory, either in the present or in the past. The Ministry of Justice, which exercises oversight over prison services, has certified that no such secret detention centres exist and guarantees that, since 11 September 2001, no person arrested in circumstances of the type described by the media has been admitted to any Portuguese prison.

The second allegation concerns – as referred to above – the landing in Portuguese airports of planes that, in breach of international law, were transporting prisoners to locations where they were, or could be, subjected to torture, cruel or degrading treatment, or even death.

In light of the foregoing, the following conclusions can be drawn:

- a) Apart from the usual overflight and landing authorisations issued to all the aircraft operators who request them, under the terms of the bilateral agreements or the international conventions in force, including those with the United States, in particular for the operations under the aegis of the United Nations presently taking place in Afghanistan and Iraq, the Portuguese authorities never issued, nor received any request for any overflight or landing authorisation for an aircraft of the type alleged in the press, which would violate national legislation and/or international law;
- b) After contacting the national technical services and having all the relevant documentation checked, the Portuguese Government can officially state that it has no evidence that any aircraft of the type described by the press, which would violate national legislation and/or international law, used Portuguese airspace;
- c) The United States has, with regard to this matter, assured the Portuguese Government that there was never in our national territory any offence whatsoever against the sovereignty of the Portuguese state or any violation of bilateral agreements or international law. The Portuguese authorities have no reason to doubt the veracity of the declarations of the US authorities;
- d) Portugal is a country firmly committed to the respect for Human Rights and to the values of the Council of Europe. In this sense, Portugal has ratified the European Convention on Human Rights on 9 November 1978 and has signed and ratified all the major Council of Europe and United Nations instruments in the field of Human Rights. However, in the light of the Portuguese authorities commitment to the protection of Human Rights, should at any time, any fact or facts be discovered which fully or partially contradict the contents of these account, the Portuguese Government will immediately inform the Council of Europe.



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Portuguese supplementary explanations to the Secretary General of the Council of Europe in accordance with Article 52 of the European Convention on Human Rights

The Portuguese Government hereby provides supplementary explanations requested by the Secretary General in accordance with article 52 of the European Convention on Human Rights regarding the effective enforcement of all the provisions of the European Convention on Human Rights with a view to fully clarifying the issue of the alleged existence of detention centres or illegal CIA flights in Europe.

This supplementary explanations are based on information gathered through the Ministry of Home Affairs, the Ministry of Foreign Affairs, the Ministry of National Defence, the Ministry of Justice and the Ministry of Public Work, Transport and Communications.

Regarding the specific supplementary explanations requested on the 7th March, concerning control mechanisms (administrative, judicial, parliamentary or other) in respect of activities of foreign intelligence services within jurisdiction of Portugal, and whether they are conducted in co-operation with national agencies or not, the Portuguese Government informs the following:

The Portuguese Constitution (CRP) establishes that our democratic State is governed by the rule of law and based upon the dignity of the human person and on respect and effective guarantees for fundamental rights and freedoms.

In international relations, Portugal is governed by the principles of national independence, respect for human rights, equality between States, the peaceful settlement of international disputes and non-interference in the internal affairs of other states, the rules and principles of general or customary international law being considered an integral part of Portuguese law.

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Bearing in mind the provisions of Article 16 of the CRP, stating that the fundamental rights contained in the Constitution shall not exclude any other fundamental rights provided for in the laws or resulting from applicable rules of international law, reaffirming the uphold of the Universal Declaration of Human Rights, the Portuguese Fundamental Law also guaranties the absolute rights to life, personal integrity – where the denial of torture is enshrined – and identity, civil capacity, and citizenship, of the person, the non-retroactivity of criminal law, the defence rights of accused persons and the freedom of conscience and religion, even in times of a declaration of a state emergency or state of siege. Furthermore, Article 25 of the CRP states unequivocally that the moral and physical integrity of the person is inviolable, forbidding the subjection of whomever human being to torture or to cruel, degrading or inhuman treatment or punishment.

It would be redundant to recall how repeatedly and vehemently has Portugal upheld before the European Council the non negotiable principle of non extradition for crimes that carry either the penalty death or any other penalty causing irreversible damage to the physical integrity of the person under the law of requesting State. As it would be to remind that Portugal has long ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 1987¹, (text amender according to the provisions of Protocols No. 1 – ETS No. 151 – and No. 2 – ETS No. 152² - which entered into force on 1 March 2002).

This commitment is also adopted in the Portuguese Criminal Code, under the chapter of crimes against Humanity. Articles 243 and 244 (as Article 240 in times of war) severely punish torture or ill treatment related with investigatory practices of whatever crime.

¹ See the Portuguese Republic Assembly Resolution n.º 3/90, n.º 25/90, S-I, on the 30th January 1990, ratified by the Presidential Decree on the 20th February 1990.

² See the correspondent Resolutions and Decrees at the Official Journal, both of the 5th May 1997 and of the 30th April 1997.

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On the other hand the Procedural Criminal Code forbids admission of proof obtained by such methods.

Concerning the intelligence Community, the Parliament organic law n° 4/2004, of the 6th November, that establishes the general basis for the Portuguese Republic Intelligence System (SIRP), determines that it is entrusted with the task of assuring and upholding the Portuguese Constitution and the Rule of Law, while producing intelligence in order to safeguard national independence and to ensure internal security.

As such, under no circumstances could any Portuguese Intelligence Agency cooperate with a foreign agency outside these boundaries.

International cooperation is subject to Prime-Minister guidance, but must comply with International Customary Law and Human Rights Principles, as referred above.

Portuguese intelligence agencies activities are overviewed by several entities. Firstly, they are monitored by an independent Council, elected by a majority in Parliament, apart from its own powers of overview and control over the Government's activity (questions, interpellations, debates and inquests).

The Internal Security Act sets out in Article 7 that the opposition parties represented in Parliament must be heard and informed regularly by the Government over the major issues concerning security policy matters.

Apart from that, Article 7 of the Internal Security Act lays down that the Government should deliver to Parliament each year, up to the 31st of March a report on internal security and on the security forces and services activity. Intelligence agencies are also subject to judicial control in accordance with the Constitution and the law.

Finally, Intelligence Data Centers are controlled by a SIRP Data Supervisory Commission composed by three judges from the Justice Department.

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According to Article 250 of the Criminal Procedures Code and Article 1 of Law no.5/95 of 21st February, only the organs of the criminal police may identify persons suspected of having committed an offence.

It is paramount to state that Security Intelligence agency's agents and servants may not execute any law enforcement measure (namely house and body searches).

Article 3 (2) of the Security Intelligence Service (SIS) Organic Law expressly forbids agents and servants to arrest any person. SIS servants and agents may not interrogate or initiate criminal proceedings (Article 3 (3) of the SIS Organic Law), for the very same reason: they are not members of a criminal police force.

The control of the Portuguese Republic Intelligence System is ensured by the Oversight Council, which is elected by the Parliament, notwithstanding this sovereign organ's oversight powers, within constitutional terms.

The above-mentioned Council will be composed by three citizens of recognised integrity and in the full fruition of their civil and political rights, elected by the Parliament under a secret ballot, by a majority of two-thirds of the Parliamentary members present, which can not be inferior to the majority of the Parliamentary members in effective use of their functions.

The Oversight Council follows up and supervises the Secretary-General's and the intelligence services' activities, ensuring the fulfilment of the Constitutional and legal provisions, in particular those regarding the fundamental rights, freedoms and guarantees of the citizens.

In particular, the Portuguese Republic Intelligence System Oversight Council has the following competencies:

1. To examine each intelligence service' activity report;

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2. To receive, from the SIRP Secretary-General, on a bimonthly basis, a complete list of the current processes, having the possibility to request and obtain explanations and complementary information that it may deem necessary for the accurate exercise of its oversight powers;
3. To be informed, through the Prime Minister, about the governmental guidelines' criteria for intelligence collection, as well as to obtain, from the Higher Council for Intelligence, clarifications on operational issues regarding the Portuguese Republic Intelligence System;
4. To undertake inspections in order to collect elements on the way they carry out their functions and on the Secretary-General's and the intelligence services' activities;
5. To request elements filed in data centers that may be deemed necessary for the exercise of its competencies or for the detection of possible irregularities or violations of the law;
6. To issue opinion statements, on a minimum yearly basis, about the Portuguese Republic Intelligence System, in order to submit them to the Parliament;
7. To recommend to the Government on the eventual need to undertake inspections, inquests or sanction procedures whenever they are justified by the seriousness of events;
8. Pronounce upon any legislative initiative concerning the Portuguese Republic Intelligence System, as well as upon the organisation models and the administrative, financial and personnel management of the respective services.

It is important to notice that the Oversight Council supervenes and is acquainted with the allowed modalities of intelligence exchange between services, **as well as with the kinds of relationship of the services with other entities**, especially law enforcement ones, in charge of ensuring legality and subject to the collaboration duty.

The provisions in the SIRP organic Law are not detrimental to the intelligence activities carried out by the Armed Forces, necessary to the accomplishment of their specific missions and to the safeguard of military security. Therefore, the provisions regarding

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the powers of the Oversight Council and of the Data Oversight Commission apply to the Armed Forces intelligence production activities.

Regarding the specific supplementary explanations requested by the Secretary General concerning control mechanisms regarding transiting aircraft which may be used for rendition purposes by foreign agencies and whether and to what extent the Portuguese Government may exercise jurisdiction over such aircrafts, it is important to give a clear idea system for flyover or landing authorisations in the national territory by foreign aircraft and, in this particular case, US aircraft. Two types of aircraft have to be distinguished: state or military aircraft and civil aircraft.

a) The procedure for flyover or landing authorisations in the national territory falls under the control of the Ministry of Foreign Affairs and covers only **state or military aircraft**.

Diplomatic flyover and landing authorisations for military or state aircraft are requested by Diplomatic Note to the Ministry of Foreign Affairs, which forwards the request to the Ministry of National Defence. Once the authorisation is granted and a number is attributed by the Air Force, the Ministry of Foreign Affairs communicates the authorisation, also by Diplomatic Note, to the embassy in Lisbon of the requesting country, in this case the USA. Diplomatic authorisations are granted for the types of flights specified in the formal request. It is not the responsibility of the Ministry of Foreign Affairs to confirm if the cargo or other aspects relating to the flight are in accordance with what was stated.

At the airport, the civilian or military police authorities are responsible for the security of the aircraft and the control of the disembarked passengers. Should there be no disembarked passengers, the Portuguese authorities do not have the right to control the passengers on board. The name of the passengers is not referred to in the requests and even the final destination of the flight is not the responsibility of the Portuguese authorities.

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In practice, there are two types of diplomatic flyover and landing authorisations for US aircraft. In the current terminology, there are one-time diplomatic clearances and blanket diplomatic clearances: one-time diplomatic clearances are used for aircraft whose mission requires a case-by-case authorisation and are, therefore, issued sporadically, whereas blanket diplomatic clearances are usually issued for a period of one year for 11 types of mission:

1. Transportation of special visitors (VIPs);
2. General transportation;
3. Overflight of Portuguese air space;
4. Flights to Rota/Gibraltar, involving the military bases in Beja and Montijo;
5. Service and maintenance at the Portuguese aircraft maintenance company OGMA (Alverca);
6. Medical evacuation services;
7. Military training;
8. Air operations from vessels in navigation;
9. Missions of the Air Mobility Command (AMC) carrying passengers or non-dangerous cargo to support US embassies in Africa (in transit only at the Lajes Base);
10. Operation “Enduring Freedom”, in Afghanistan;
11. Operation “USA 10/05”, in Iraq.

Among blanket diplomatic clearances, exceptions to the concession of a one-year authorisation are the missions in Afghanistan and Iraq, called “Enduring Freedom” and “USA 10/05” respectively, both at present under the aegis of the United Nations, authorisations which have been requested and renewed every three months.

The “Enduring Freedom” authorisation (Afghanistan) was granted for the first time on 20 September 2001 and has been renewed every three months by the Ministry of National Defence. In contrast, the general authorisation “USA 10/05” (Iraq) was first granted in February 2003 and has been renewed every three months by order of the

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Ministry for Foreign Affairs, with subsequent information to the Ministry of National Defence.

It should be noted that from 8 June 2004 the special mission in Iraq has been covered by Resolution 1546 of the UN Security Council, which was unanimously adopted.

Overflights and landings of US aircraft in Portuguese territory amount to about 350 each month, whereof around 25% are bound for Afghanistan and Iraq.

b) Authorisations for flyover or landing on **civilian flights** are granted by the National Institute for Civil Aviation, which is supervised by the Ministry of Public Works, Transport and Communications. The Ministry of Foreign Affairs is not informed of the granting of this authorisation or involved in the consideration of the request.

When a military aerodrome is requested, the National Institute for Civil Aviation asks for a technical opinion from the Portuguese Air Force. In general, the Air Force only grants authorisation for the use of military bases in duly justified cases. However, considering that the Lajes Base is the sole airport on Terceira Island, the Portuguese Air Force opinion necessary for the National Institute for Civil Aviation to authorise civilian flights is generally positive, provided that the airport has a space in the area designated for civil use.

The conditions governing the exercise of traffic rights regarding overflights as well as technical and commercial stopovers are provided for in the relevant bilateral and multilateral Conventions and Agreements signed by Portugal.

The requests for authorisation submitted by non-Community air operators are only granted after a favourable opinion by the Operations Directorate of the National Institute for Civil Aviation regarding compliance with technical and operational requirements as laid down by the applicable international law, namely those of the Joint Aviation Authorities (JAA), the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO).



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The requests for a flight authorisation submitted to the National Institute for Civil Aviation must include the full course, the timetable of the operation, the type of flight (passengers and/or cargo) and the type and registration of the aircraft. In the case of non-scheduled air services (charters), the request must also include the respective charterer and, in the case of cargo flights, the type of cargo to be carried as well as the consignor and consignee of the cargo.

The National Institute for Civil Aviation analyses the Air Operator Certificate of the operator and the Airworthiness and Registration Certificates of the aircraft; these certificates must include the name of the aircraft owners (which are most often international leasing companies). If the operation involves an international airport, the embarkation and disembarkation of passengers and cargo is controlled by the competent bodies (Aliens and Frontiers Department/Directorate-General for Customs).

If the operation involves aerodromes that are not open to international traffic and the flight originates from or heads to a non-Schengen destination, air operators must submit, with the request, the crew and passenger list, with the respective passport numbers. The list is forwarded to the Aliens and Frontiers Department and the Directorate-General for Customs for prior assessment, and the flight is only authorised by the National Institute for Civil Aviation after favourable opinion by these entities.

Under its powers, the National Institute for Civil Aviation can carry out inspections of the aircraft interior, in accordance with applicable international law, namely SAFA inspections (Safety Assessment of Foreign Aircraft – security audits to third-country aircraft) aimed exclusively at assessing the technical and operational aspects of aircraft.

In accordance with the Chicago Convention on International Civil Aviation, and respective annexes, signed in 1944, when an aircraft lands in an airport on national territory, the aircraft interior falls within the jurisdiction of the state whose flag is displayed on the aircraft: it is a case, among others, of extraterritoriality.



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If the aircraft opens its doors and passengers are disembarked, they are controlled by the Aliens and Frontiers Department, the Fiscal Brigade or the Directorate-General for Customs. Moreover, these services are allowed to check the aircraft interior.

However, still under the terms of the Chicago Convention, if there is no opening of doors and, therefore, no disembarkation of passengers, as happens in a technical stopover for refuelling, the Portuguese authorities are not allowed to check the aircraft interior.