

## OPAL Country Reports

# The Portuguese Parliament and EU Affairs

*Davor Jančić, British Academy Newton Fellow, London School of Economics and Political Science*

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# OPAL Country Report on the Portuguese Parliament<sup>1</sup>

Davor Jančić, Newton Fellow, London School of Economics\*

<b>I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors</b>	
This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.	
1.1	What is the type of government in the political system of your member state? (i.e. parliamentary or semi-presidential)
	Portugal's type of government has been described in various ways in the literature. Although it is most commonly referred to as semi-presidential, <sup>2</sup> it has also been termed premier-presidential, <sup>3</sup> parliamentary-presidential, <sup>4</sup> mixed parliamentary-presidential, <sup>5</sup> or, imbued with French symbolism, rationalised parliamentarism ( <i>parlamentarismo racionalizado</i> or <i>parlamentarismo mitigado</i> ). <sup>6</sup> Compared to France as the most well-known example of a semi-presidential EU Member State, the type of government in Portugal appears more parliamentary, due to stronger constitutional prerogatives of the French President of the Republic and the more predominant position of the Portuguese Prime Minister.
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	The Portuguese Assembly ( <i>Assembleia da República</i> ) is a unicameral parliament. It consists of a minimum of 180 and a maximum of 230 members. Members of Parliament (MPs) are not allowed concomitantly to be members of the Government. <sup>7</sup>
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?

<sup>1</sup> This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C. Heffler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

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<sup>2</sup> See among many publications on this topic: Martins, Ana. "The Portuguese semi-presidential system: about law in the books and law in action," *European Constitutional Law Review*, Vol. 2, No. 1, 2006: 81-100; Vitorino, António. "O sistema de governo na Constituição portuguesa de 1976 e na Constituição espanhola de 1978," *Revista Jurídica*, No. 3, 1984: 49; Pereira, André Gonçalves. *Semipresidencialismo em Portugal*, Lisbon: Ática, 1984; Sousa, Marcelo Rebelo de. "Sistema semipresidencial: definição e perspectivas," *Nação e Defesa*, No. 3, 1977: 5-15; Sousa, Marcelo Rebelo de. *O sistema de governo português*, Lisbon: Associação Académica da Faculdade de Direito de Lisboa, 1992: 8 and 104; Pires, Francisco Lucas. "O sistema de governo: sua dinâmica," in *Portugal: o sistema político e constitucional 1974-1987*, by Mário Baptista Coelho (ed.), Lisbon: Instituto de Ciências Sociais da Universidade de Lisboa, 1989: 295.

<sup>3</sup> Roper, Steven D. "Are all semipresidential regimes the same? A comparison of premier-presidential regimes," *Comparative Politics*, Vol. 34, No. 3, 2002: 253-272.

<sup>4</sup> Lunshof, Hans. "The Portuguese Republic," in *Constitutional law of 15 EU Member States*, by Lucas Prakke and Constantijn Kortmann (eds), Deventer: Kluwer Law International, 2004: 668.

<sup>5</sup> Canotilho, Gomes. *Direito constitucional e teoria da constituição*, Coimbra: Almedina, 2002: 594.

<sup>6</sup> Miranda, Jorge. *Manual de direito constitucional, Tomo I*, Coimbra: Coimbra Editora, 1997: 361.

<sup>7</sup> Article 154(1) of the Constitution.

	<p>The Constitution lays down that Portugal shall be a unitary state.<sup>8</sup> Transformation to a federal system is precluded, since statutes aimed at constitutional revision must respect <i>inter alia</i> the “unity of the state”.<sup>9</sup> Nevertheless, the Constitution recognises the decentralisation of public administration and the autonomy of the regions and local authorities. The two autonomous regions are the archipelagos of Madeira and the Azores, which possess their own political and administrative statutes and institutions of self-government. The principle of subsidiarity governs the relations between the central government and local authorities.</p>
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	<p>Portuguese MPs (<i>deputados</i>) are directly elected by universal suffrage for a period of four years according to the proportional electoral system.<sup>10</sup> There are a total of 22 electoral constituencies: (a) 18 administrative districts;<sup>11</sup> (b) two autonomous regions (the archipelagos of the Azores and Madeira) and (c) two constituencies called “Europe” and “Outside Europe”, into which Portuguese citizens residing outside Portugal are grouped and which each yield two seats in the Assembly. The Constitution prohibits the setting of an electoral quota for the conversion of votes into seats,<sup>12</sup> which is favourable to the participation of small parties in the Portuguese political life. Once elected, MPs represent the whole country and not the constituencies in which they were elected.<sup>13</sup></p> <p>The Constitution ensures fair elections by guaranteeing the observance in electoral campaigns of the following principles: (a) the freedom of propaganda; (b) equal opportunities and treatment for all candidatures; (c) the impartiality of public bodies towards all candidatures; and (d) the transparency and scrutiny of electoral accounts.<sup>14</sup> The Constitution furthermore enshrines the right of minorities to democratic opposition and the right of opposition parties to be regularly and directly informed by the Government about the situation and progress of the main matters of public interest.<sup>15</sup></p>
1.5	What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)
	<p><i>A. Referendums</i></p> <p>According to the Constitution, referendums in general may only be organised on important issues of national interest upon which the Assembly or the Government must decide by approving an international agreement or by passing legislation.<sup>16</sup> It is specifically foreseen that referendums may be held on important issues of national interest that arise from international agreements to which Portugal is a signatory, except those relating to peace and the rectification of borders.<sup>17</sup> Most importantly, since the amendment of 2005,<sup>18</sup> the Constitution explicitly guarantees the possibility of holding a referendum on the approval of a treaty aimed at constructing or deepening the European Union.<sup>19</sup></p> <p>Thanks to these provisions, the Fiscal Compact could have been put to referendum despite the</p>

<sup>8</sup> Article 6 thereof.

<sup>9</sup> Article 288(a) of the Constitution.

<sup>10</sup> Articles 147, 148, 113(5), 114(1) and 149(1) of the Constitution.

<sup>11</sup> These are: Aveiro, Beja, Braga, Bragança, Castelo Branco, Coimbra, Évora, Faro, Guarda, Leiria, Lisboa, Portalegre, Porto, Santarém, Setúbal, Viana do Castelo, Vila Real and Viséu.

<sup>12</sup> Article 152(1) thereof.

<sup>13</sup> Article 152(2) of the Constitution.

<sup>14</sup> Article 113(3) thereof.

<sup>15</sup> Article 114(2)-(3) thereof.

<sup>16</sup> Article 115(3) thereof.

<sup>17</sup> Article 115(5) of the Constitution.

<sup>18</sup> *Lei Constitucional no. 1/2005* of 12 August 2005.

<sup>19</sup> Article 295 of the Constitution.

	<p>explicit prohibition of holding a referendum on issues and acts with a budgetary, tax-related or financial content.<sup>20</sup> Yet the Fiscal Compact was ratified on 13 April 2012 by means of parliamentary approval and Presidential assent (see answer to the question 6.5).</p> <p><i>B. The Constitutional Court</i></p> <p>The Portuguese Constitutional Court (<i>Tribunal Constitucional</i>) may perform control over Portuguese legislation that pertains to both primary and secondary EU law. Namely, an <i>ex ante</i> review of the constitutionality of the provisions laid down in a statute (<i>lei</i>), executive statute (<i>decreto-lei</i>) or international treaty to which Portugal is a signatory is conducted at the initiative of the President of the Republic.<sup>21</sup> In the event of an organic statute (<i>lei orgânica</i>), besides the President of the Republic, the initiative also belongs to the Prime Minister and one fifth of the MPs.<sup>22</sup></p> <p>Nonetheless, the position of the Assembly is most severely affected by the constitutional provision that allows unconstitutional provisions of properly ratified international treaties to apply in the Portuguese legal system if they are as such applied in the legal system of the other party to a given treaty and if they do not breach a fundamental provision of the Constitution.<sup>23</sup> In addition, the Constitutional Court verifies the constitutionality of referendums.<sup>24</sup></p>
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<b>2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors</b>		
This section is about the basic political factors which might influence parliament's strength in relation to the government.		
2.1	What is the type of government after the most recent elections e.g. single party, minority, coalition, oversized coalition government?	
	Since the parliamentary election of 5 <sup>th</sup> June 2011, which was provoked by the resignation of the Socialist Prime Minister José Socrates, Portugal has been ruled by a coalition government formed by the Social Democrats ( <i>Partido Social Democrata: PSD</i> ) and the Centrists ( <i>Centro Democrático e Social – Partido Popular: CDS-PP</i> ).	
2.2	When were the most recent general elections and what were the results? Could you please give a short list of the parliamentary groups, their no. of seats in parliament and ideological position?	
	Latest election:	5 <sup>th</sup> June 2011
	Name of the party	No. and percentage of seats in parliament Ideological position (e.g. Communist, left liberal, socialist, liberal, right liberal, conservative, Christian democrat, extreme right, ethnic minority or regionalist party)
	The Left Bloc ( <i>Bloco de Esquerda: BE</i> )	8 (5,17%) Left
	Communist Party ( <i>Partido Comunista Português: PCP</i> )	14 These two parties ran together as a coalition and won Communist

<sup>20</sup> Article 115(4)(b) of the Constitution.

<sup>21</sup> Article 278(1) of the Constitution.

<sup>22</sup> Article 278(4) of the Constitution.

<sup>23</sup> Article 277(2) of the Constitution.

<sup>24</sup> Article 223(2)(f) of the Constitution.

	The Greens ( <i>Partido Ecologista "Os Verdes": PEV</i> )	2	a total of 7,9%	Left, Green
	Socialist Party ( <i>Partido Socialista: PS</i> )	74 (28,05)		Socialist
	Social Democratic Party ( <i>Partido Social Democrata: PSD</i> )	108 (38,66%)		Social Democrat
	Democratic and Social Centre – People’s Party ( <i>Centro Democrático e Social – Partido Popular: CDS-PP</i> )	24 (11,71%)		Centrist, Christian Democrat
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?			
	<p>Following the Assembly’s approval of 23 April 2008 and the Presidential assent of 9 May 2008, Portugal ratified the Lisbon Treaty on 17 June 2008.<sup>25</sup> Parliamentary approval was secured with the votes in favour by the Socialist Party, the Social Democratic Party and the Centrists (total: 208 votes), whereas the Communists, the Greens and the Left Bloc voted against (total: 21 votes).<sup>26</sup> Given that less than 10% of the MPs opposed the ratification of the Lisbon Treaty, it can be held that there was a large consensus in favour of the Lisbon Treaty. In fact, the key bone of contention during the ratification process was the mode of ratification rather than the contents of the Treaty. Namely, while four opposition parties – the Communists, the Left Block, the Centrists and the Greens – requested a referendum, the then ruling Socialist Party and the main opposition party, Social Democrats, rejected it.<sup>27</sup> An analysis of the plenary debates reveals that the parliamentary discussion of the contents of the Lisbon Treaty was to a great extent tarred by the bickering between the Government and the opposition over the necessity of a referendum.<sup>28</sup></p>			

### 3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 3.3 to 3.5 investigate in how far these procedures have been used.

3-1	<p>Have there been any regulations adopted by your member state to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:</p> <ul style="list-style-type: none"> <li>a. Constitutional provisions</li> <li>b. Legal provisions - Statutory provisions</li> <li>c. Parliamentary Standing Orders</li> </ul>
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<sup>25</sup> See: [http://europa.eu/lisbon\\_treaty/countries/index\\_en.htm](http://europa.eu/lisbon_treaty/countries/index_en.htm), accessed on 12 October 2010.

<sup>26</sup> *Diário da Assembleia da República, Reunião plenária de 23 de abril de 2008, I Série, No. 75, 24 April 2008, p. 43.* To wit, one member of PSD and an independent MP voted against too.

<sup>27</sup> *Assembleia da República, Comissão de Assuntos Europeus, "Parecer sobre a Proposta de Resolução no. 68/X – Aprova o Tratado de Lisboa", rapporteurs Ana Catarina Mendes (PS) and Mário David (PSD), p. 49.*

<sup>28</sup> See, for instance, the debates in: *Diário da Assembleia da República, I Série, No. 99, 28 June 2007; No. 12, 20 October 2007; No. 26, 14 December 2007; and No. 45, 8 February 2008.*

	d. Other (please specify) Is this process complete or ongoing?
	<p>a. <i>Constitutional provisions</i>: There has been no constitutional amendment since the entry into force of the Lisbon Treaty. The last such amendment was in 2005.</p> <p>b. <i>Statutory provisions</i>: On 17 May 2012 the Assembly passed an amendment to the European Scrutiny Act, which was originally adopted in August 2006.</p> <p>c. <i>Rules of Procedure</i>: The Assembly amended its Rules of Procedure (<i>Regimento</i>) on 14 October 2010, but the changes did not refer to the new Lisbon powers.</p> <p>d. <i>Other</i>: There was an informal scrutiny reform in the European Affairs Committee in January 2010, which introduced two new scrutiny procedures – the ‘enhanced’ scrutiny procedure and the ‘urgent’ scrutiny procedure.</p> <p>These reform processes have been completed.</p>
3.2	What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament’s involvement, cooperation in bicameral systems) for...
3.2 i	The “Political Dialogue“ with the Commission
	No specific rules or procedures are prescribed for the so-called Barroso Initiative. The process of assessing the EU initiatives received from the Commission therefore functions in the same way as for all other EU documents.
3.2 ii	The Early Warning Mechanism (EWM)
	<p>The rules related to the early warning mechanism are laid down in the European Scrutiny Act.<sup>29</sup> This statute entrusts the task of subsidiarity policing to the European Affairs Committee, without prejudice to the roles of the plenary and sectoral committees.<sup>30</sup> This Committee is also in charge of crafting a method for appraising subsidiarity compliance.<sup>31</sup></p> <p>When the European Affairs Committee adopts a reasoned opinion that concludes that a draft EU legislative act has violated the principle of subsidiarity, this reasoned opinion is sent to the plenary in the form of a draft resolution for the purposes of deliberation and voting. Once approved by the plenary, the reasoned opinion takes the form of a resolution of the entire Assembly.</p> <p>It is important to note that, unlike the situation before the 2012 amendment of the European Scrutiny Act,<sup>32</sup> the reasoned opinion of the European Affairs Committee no longer suffices in the case of urgency and it does not represent the view of the Assembly. Instead, the involvement of the plenary is required also in the event of urgency.</p>
3.2 iii	The “Passerelle clause”
	There are no rules or procedures for this.
3.2 iv	The action of annulment before ECJ on breach with the subsidiarity principle (What quota of MPs is needed to enforce the action of annulment?)
	The 2012 amendment of the European Scrutiny Act implements Article 8 of the Subsidiarity Protocol, which introduces the possibility for each national parliament, or a chamber thereof, to

<sup>29</sup> Article 3 thereof. The Rules of Procedure of the Assembly (*Regimento*) only mention the task of subsidiarity monitoring in Article 261 but contain no further concretisation thereof.

<sup>30</sup> Article 6(2)(d) of the European Scrutiny Act.

<sup>31</sup> Article 6(3) of the European Scrutiny Act.

<sup>32</sup> See former Article 3(2) thereof.

	<p>request the Government to file an action before the Court of Justice when an infringement of the subsidiarity principle has been committed by a draft EU legislative act. The amendment only transposes this possibility and does not specify the procedure any further.</p> <p>The Assembly's request for the Government to transmit its subsidiarity action to the Court of Justice is made in the form of a resolution, for whose adoption the votes of a simple majority of the MPs are required.<sup>33</sup></p> <p>While draft resolutions are debated in the relevant sectoral committee, including the European Affairs Committee, such a debate will be held in the plenary instead whenever a parliamentary group requests so.<sup>34</sup> This gives considerable room to the opposition parties to give publicity to salient and controversial EU matters.</p>
3.2 v	Accession of new member states to the EU
	<p>Though there is no specific provision for this, the general rule applies according to which the approval of the Assembly is required for the ratification of the treaties that deal <i>inter alia</i> with Portugal's participation in international organisations.<sup>35</sup> Approval is given in the form of a resolution.<sup>36</sup> As mentioned above (see answer to the question 1.5), the Constitution permits the organisation of a referendum on the approval of a treaty aimed at constructing or <i>deepening</i> the EU. It is plausible therefore those referendums could be held on the approval of EU accession treaties.</p>
3.3	How actively does the parliament engage in the political dialogue and "early warning mechanism" with the Commission?
	<p>The Portuguese Assembly is the most active participant in the political dialogue with the Commission. From September 2006 until the end of 2011, it sent a total of 422 reasoned opinions and it currently firmly occupies the first place on the scoreboard.<sup>37</sup> The trend of an intensified involvement in the Barroso Initiative is tangible. Namely, while the Assembly sent no reasoned opinion in 2006, it sent 19 in 2007, 65 in 2008, 47 in 2009, 106 in 2010, and 185 in 2011.<sup>38</sup> These figures include the reasoned opinions sent within the framework of the early warning mechanism, although these form a rather small part of the overall number of reasoned opinions sent to the Commission.</p>
3.4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?
	No.
3.5	<p>If applicable to your member state, how does parliament proceed on the ratification of:</p> <p>a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012</p> <p>b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012</p>
	<p>a. This Treaty was approved by Resolution no. 80/2012 of 13 April 2012.<sup>39</sup></p>

<sup>33</sup> Article 92(1) of the Rules of Procedure of the Assembly.

<sup>34</sup> Article 128 of the Rules of Procedure of the Assembly.

<sup>35</sup> Article 161(i) of the Constitution.

<sup>36</sup> Article 166(5) of the Constitution.

<sup>37</sup> See more on these issues in: Jančić, Davor. "The European Union in the Portuguese Assembly: the primary and secondary EU decision making scrutinised," *Paper prepared for the international conference "Portugal and International Organisations", New University of Lisbon, 10-11 November 2011*; Jančić, Davor. "The Barroso Initiative: window dressing or democracy boost?," *Utrecht Law Review*, Vol. 8, No. 1, 2012: 78-91.

<sup>38</sup> Based on the Commission's reports on relations with national parliaments for the respective years.

<sup>39</sup> *Diário da Assembleia da República, I Série, No. 117*, 19 June 2012, p. 3025.

	b. This Treaty was approved by Resolution no. 84/2012 of 13 April 2012. <sup>40</sup>
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<sup>40</sup> *Diário da Assembleia da República, I Série, No. 127, 3 July 2012, p. 3379.*