

## OPAL Country Reports

# The Spanish Parliament and EU Affairs

*Mario Kölling, García Pelayo Fellow at the Center of Political and Constitutional Studies (CEPC)*

*Ignacio Molina, Prof. at the Universidad Autónoma de Madrid*

**To cite this report:** M. Kölling & I. Molina (2012), *OPAL Country Reports: The Spanish Parliament and EU Affairs*, weblink

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

Mario Kölling, *García Pelayo Fellow at the Center of Political and Constitutional Studies (CEPC) and Ignacio Molina, Prof. at the Universidad Autónoma de Madrid*

<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)
	The form of government in Spain is a parliamentary monarchy.
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	The Spanish Parliament (Cortes Generales) is an asymmetrical bicameral assembly, constituted by the Congreso de los Diputados (the lower house) and the Senado (the upper house). Although both share legislative power, the Congress holds the power to ultimately override any decision of the Senate by a sufficient majority (usually absolute majority or three-fifths majority).
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	The system is known as the “state of autonomies”, a highly decentralized system of administration based on asymmetrical devolution to the “nationalities and regions”.
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	Members of the Congress are directly elected by universal suffrage, elected in 50 multi-member districts using the D'Hondt method, with Ceuta and Melilla electing one member each using plurality voting.  Members of the Senate are partly directly elected (four senators per province as a general rule) and partly appointed (by the legislative assemblies of the autonomous communities, one for each community and another one for every million inhabitants in their territory).
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)
	The Spanish constitution entrusts the government with the leading role in foreign affairs and the fulfilment of international obligations. The Parliament has been frequently labelled as Informal Influencer, since it focuses on informal dialogue with the government within personal networks and seeks to have a certain influence through parliamentary debates which provide

<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.

	<p>domestic support for the government’s negotiation position at the EU level. Furthermore the role of the Parliament in EU affairs has been traditionally barely conflictive and visible to the public mainly due to the rigidity of the parties and their strong position over individual MPs, as well as the weak position of the Parliament vis-à-vis the Government in the EU decision-making process.</p> <p>Consultative referenda can be held on political decisions of far-reaching consequences by proposal of the Prime Minister and the approval of the parliament. (Art. 92 ConstSpain)</p>
--	--

**2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors**

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?		
	After the most recent national elections Spain has a single party government.		
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 in the LOWER HOUSE:	The last Spanish general election took place on 20 November 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)
	People's Party	44.6% of the vote and 186 seats	Christian democrat
	Spanish Socialist Workers' Party (PSOE)	28% of the vote and 110 seats	Socialist
	United Left (IU)	6.9% of the vote and 11 seats	Left wing
	Union, Progress and Democracy (UPyD)	4.7% of the vote and 5 seats	Left liberal
	Convergence and Union (CiU)	4.1% of the vote and 16 seats	conservative regionalist party
	Amaiur	1.4% of the vote and 7 seats	left regionalist party
	Basque Nationalist Party (PNV)	1.3% of the vote and 5 seats	conservative regionalist party
	Latest election in the UPPER HOUSE:		
	Name of the party	No. and percentage of seats in	Ideological position (if not

		parliament (if applicable)	mentioned above)
	People's Party	136 seats	Christian democrat
	Spanish Socialist Workers' Party (PSOE)	54 seats	socialist
	United Left (IU)	1 seats	left
	Convergence and Union (CiU)	9 seats	conservative regionalist party
	Amaiur	3 seats	left regionalist party
	Basque Nationalist Party (PNV)	4 seats	conservative regionalist party
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	<p>The referendum on the European Constitution was held in 2005 (Yes 76.73%; No 17.24%; Turnout 42.32%). Izquierda Unida and Esquerra Republicana de Catalunya promoted the 'No' vote.</p> <p>The parliamentary ratification of the Lisbon Treaty was held on the 26.06.2008 in the lower house (322 votes in favour, 6 against and 2 abstentions out of the 330 present) and on the 15.07.2008 the upper chamber voted overwhelmingly in favour of the Treaty. (232 votes in favour, 6 against and 2 abstentions). Again, Izquierda Unida and Esquerra Republicana de Catalunya promoted the 'No' vote.</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> <li>d. Other (please specify)</li> </ul> <p>Is this process complete or ongoing?</p>
Lower house	<p>After the entry into force of the Treaty of Lisbon, Act 24/2009 was approved. The reform included the internal regulation of the CMUE; the development of a new sifting mechanism; and the creation of the post of the permanent representative of the Spanish Parliament in Brussels.</p> <p>Firstly, there are substantial improvements related to the ex-ante control of the government's</p>
Upper house	

	<p>actions in the Council via hearings with the relevant Ministers and Secretary of States before Council meetings. The Act 38/2010 specifies that taking into account the meeting calendar of the EU, the CMUE can organise much more frequent hearings with government representatives on specific questions before their respective Council meetings. Additionally, Act 38/2010 defines the obligation of the Minister of Foreign Affairs or the Secretary of State for the EU to appear before the CMUE at the end of each semester to explain the main progress of the presidency. The CMUE can also organise debates on a specific proposal for EU legislation and request the Speaker of either or both Chambers to debate the proposal in the Plenary of the respective House, with the Government's participation in both cases. These hearings with government members and other authorities have become the most significant after the reform.</p> <p>Secondly, the CMUE may also table reports on any matters relating to the activities of the EU that it considers of interest, including legislative proposals of the European Commission.</p> <p>Thirdly, the establishment of a representative in Brussels for the Spanish Parliament was a further effort to adapt the Parliament to the new requirements and to enhance the direct contact with EU Institutions</p> <p>Nevertheless the reform of the scrutiny process is still ongoing. A legislative reform proposal, which includes the possibility of meeting on a weekly basis, in order to facilitate ongoing analysis of the positions defended by Government in EU Council meetings, has been submitted. These changes are positive but for them to be effective the administrative support of the European Affairs Committee will need to be increased. The parliament will also need to develop its resources to obtain independent information. Although the creation of the office in Brussels improved the situation in many ways, there are still deficits with regard to the direct contact with EU Institutions.</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
Lower house	<p>The dialogue with the European Commission is managed bilaterally between the Commission and the National Parliament. The involvement of the Spanish Parliament in the political dialogue with the Commission is still very limited. Until 2011 the CMUE sent the European Commission two opinions (political dialogue) and two reasoned opinions.</p> <p>Traditionally the Spanish Parliament has not been very active in inter-parliamentary cooperation but since 2009 we can find a new tendency. In this sense the Cortes signed a cooperation agreement with the parliaments of Hungary and Belgium. The attitude towards COSAC has also been changing. The nature of this change is reflected on the agreement of the CMUE of 24 March 2009 which allows the Spanish Parliament to take part in the COSAC pilot projects on the scrutiny of subsidiarity. On the other hand, currently the Cortes has two members at the permanent secretariat of COSAC and during the Spanish EU presidency the Parliament has played an active role in COSAC.</p>
Upper house	
3.2 ii	The Early Warning Mechanism (EWM)
Lower house	<p>According to the Act 24/2009 the CMUE is the competent body to elaborate and adopt reasoned opinions on behalf of the Cortes Generales. Nevertheless both chambers retain the possibility to take over the debate and final adoption of any resolution related to the compliance of the draft legislative acts with the subsidiarity principle. According to the adopted procedure, the legislative proposals are submitted to the Bureau and the Spokespersons of the CMUE for a preliminary scrutiny. The Bureau may then refer the proposal to the CMUE and appoint a subcommittee (ponencia) to draft a reasoned opinion. Two parliamentary groups or a fifth of the members of the CMUE may also initiate the</p>
Upper house	

	<p>proceedings by tabling a draft reasoned opinion to the CMUE. Then if the CMUE's Bureau decides to hold a debate, a representative of the Government will explain the basic content of the proposal and debate it with the different parliamentary groups in the CMUE. After this point, the parliamentary groups have two days to table draft resolutions, which will be examined and put to a vote before the CMUE. The draft resolution may include a request for a debate in the Plenary or for the Committee to draw up a report.</p> <p>Due to the early-warning mechanism the number of meetings of the CMUE has increased considerably. Since 11 May 2010, day of the first debate in the committee on a report on the compliance of a legislative proposal with the subsidiarity principle, until March 2013 the subsidiarity check was carried out on 58 legislative proposals of the total received of 136. On 6 occasions, the rapporteur submitted a reasoned opinion stating that the draft in question did not comply with the principle of subsidiarity. In these cases, the government had previously sent a negative opinion on the breach of the subsidiarity principle. In this sense the opinions on the compliance with the subsidiarity principle of the draft legislative acts reflected the government's position.</p> <p>With regard to the procedure at the subnational level, in the first step, the CMUE sends all draft European legislative acts by email to the regional assemblies, regardless of the existence of an ACs competence concerned by the draft act. This is a wide provision that put on the hands of each regional parliament the decision of intervening.</p> <p>Once the regional parliaments receive the draft act, they may draw up a report if they consider that, firstly, the principle of subsidiarity has been violated and secondly, their competences are affected. The report shall be submitted to the CMUE within four weeks. In case the subnational parliaments send a reasoned opinion and if the CMUE approves a reasoned opinion on the same draft act, the list of opinions of the regional parliaments will be attached to the national Parliament's opinion. The CMUE may also ignore these reports. In this case, no justification or motivation has to be provided. If the CMUE decides not to prepare a report, the regional reports have no relevance at all.</p>
3.2 iii	The "Passarelle clause"
Lower house	According to Article 8, Section 1 of the Act 24/2009, of 22 December, the procedure for the Passarelle clause is:
Upper house	1. The opposition of the Cortes Generales to the initiatives taken by the European Council authorising the Council to pronounce by qualified majority in place of unanimity or to adopt legislative acts by the ordinary legislative procedure instead of by a special procedure, in the exercise of the authorisation established in Article 48.7 of the Treaty of the European Union, will correspond to the Plenary Sessions of the Congress of Deputies and of the Senate at the proposal of the Mixed Commission for the European Union. If the Plenary Sessions of the Congress of Deputies and of the Senate ratify the proposal of opposition to the initiative of the European Council, the said decision will be transferred to the Government for its knowledge.
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?)
Lower house	The CMUE is also granted the power to request the Government to bring actions before the Court of Justice against a European legislative act due to a breach of the principle of subsidiarity, a power that must be exercised within six weeks of the official publication of the European legislative act. However, the Government may rule out, in reasoned form, the bringing of the action requested by either one of the Chambers or the CMUE for the European Union, a decision for which reasons must be given via the appearance of the Government before the Mixed Commission for the European Union when the latter so requests.
Upper house	
3.2 v	Accession of new member states to the EU
Lower house	The Parliament maintained its control over major EU constitutional decisions through its role in the ratification process of international treaties, which has also become an important and

	useful device to foster the government's negotiation position in Brussels. Indeed, on a number of occasions the Cortes has threatened to veto enlargements. (Closa; Heywood 2004).
Upper house	
3-3	How actively does the parliament engage in the political dialogue and "early warning mechanism" with the Commission?
Lower house/ Upper house	Since 11 May 2010, day of the first debate in the committee on a report on the compliance of a legislative proposal with the subsidiarity principle, until March 2013 the subsidiarity check was carried out on 58 legislative proposals of the total received of 136. On 6 occasions, the rapporteur submitted a reasoned opinion stating that the draft in question did not comply with the principle of subsidiarity.
3-4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?
Lower house	No
Upper house	
3-5	If applicable to your member state, how does parliament proceed on the ratification of: a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012 b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012
Lower house	a. 17 May 2012 Congress of Deputies, in favour: 292 against: 17 ; Abstentions: 7 b. 21 Jun 2012 Congress of Deputies, in favour: 309 against: 19 ; Abstentions: 1
Upper house	a. 6 Jun 2012 Senate, in favour: 234 against 1 Abstentions: 0 b. 18 Jul 2012 Senate, in favour: 240 against 4 Abstentions: 1