

## Scrutiny Procedure of European Initiatives in the Assembleia da República

### 1. Background and objectives

The procedure for scrutinising European initiatives in place in the *Assembleia da República* was established pursuant to Article 6(3) of Law No. 43/2006, of 25 August, amended by Law No. 21/2012, of 17 May – based on the work done by Members of Parliament Carlos Costa Neves (PSD) and Alberto Costa (PS) – and approved at the European Affairs Committee (CAE) meeting of 8 January 2013.

Almost three years after being implemented, it seems appropriate to analyse and reflect on how the procedures adopted have evolved, by identifying, on the one hand, the factors that were presented as limitations on the purpose of the current scrutiny system and suggesting, on the other hand, improvements in order to enhance the effective participation of the Portuguese Parliament in the monitoring of EU affairs in general and European decision-making in particular<sup>1</sup>.

It should be recalled that the scrutiny of European initiatives falls within the framework of the political dialogue launched by the European Commission in 2006, in order to ‘increase the participation of national parliaments in European affairs and improve the parliamentary and democratic dimension of the EU’<sup>2</sup>. In this context, the European Parliament adopted a resolution in 2014 on national parliaments, in which it praises them for taking measures to ‘improve their guidance and scrutiny procedures with a view to achieving greater consistency’<sup>3</sup>, a process it now proposes to deepen in the *Assembleia da República*.

It should be recalled that following a review of the said Law No. 43/2006 of 25 August, and the need detected to review the methodology as part of the debate in the CAE, one of the proposals presented by the aforementioned Rapporteurs approved in the CAE meeting argued that ‘*the number of initiatives to be scrutinized and opinions to be issued (...) should be reduced to 30/40 (...) in order to create better conditions for more qualified pronouncements (...)*’.

Another of the proposals presented by the Member rapporteurs to which they gave particular emphasis refers to ‘*(...) the importance of the evaluation processes and resulting pronouncements being based on*

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<sup>1</sup> Maintaining the number of parliamentary staff who provide support to the CAE in the current organisational structure of the *Assembleia da República* Services was also taken into account.

<sup>2</sup> See [ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/political\\_dialogue\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/political_dialogue_en.htm)

<sup>3</sup> In [Resolution of the European Parliament, of 16 April 2014](#), on Relations between the European Parliament and the national parliaments



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*hearings and other forms of participation, in which the contributions and positions of civil society entities, and the government as well, are identified and taken into account*. In this regard, the annual report relating to 2014 from the European Commission on the relations between the Commission and national parliaments should be recalled, in which the Commission *'encourages national parliaments to participate in the pre-legislative stage, whether responding to public queries or presenting their views on policy-setting documents, such as Green Papers and White Papers*. However, until now there have been very few assemblies that have presented their views before the adoption of a legislative proposal'.<sup>4</sup>

Considering the need to improve the performance of the Portuguese Parliament in monitoring European affairs, we must broaden the perspective it has of the voting system, including government contributions and analysis of European institutions, participation in interparliamentary meetings and exchanges of good practice between Members of national and various Member States parliaments, as well as evaluating the political importance of the pronouncements of the European Affairs Committee and the relevant parliamentary committees on the matters involved in the screening process

Thus, at the beginning of a new Legislature, and considering the importance of national parliaments in the EU and their relations with their respective governments and with European institutions, the European Affairs Committee, on a proposal from its President, Member of Parliament Regina Bastos, decided to promote an in-depth reflection on the scrutiny process of European initiatives in force in the Assembleia da República, in particular as regards the assessment of the methodology approved in January 2013 and its associated procedures.

There was a consensus for the creation of an informal working group, limited in time, consisting of a representative from each parliamentary group on the Committee, in order to give greater political importance to the scrutiny and monitoring of European initiatives, and the evaluation procedures under consideration would take place in January and February of this year.

To this end, the informal working group was comprised of the Members of Parliament Eurico Brilhante Dias (PS), Coordinator, Carlos Costa Neves (PSD), Isabel Pires (BE), Pedro Mota Soares (CDS-PP) and Paula Santos (PCP).

The core objectives of the informal working group focused, on the one hand, on the need for the Assembleia da República to increase its ability to influence the process of European and/or Government decision making, under European legislation, by introducing improvements in the quality of reports produced by the

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<sup>4</sup> Annual report 2014 on relations between the European Commission and national parliaments [[COM\(316\)2015](#)]



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relevant parliamentary committees and the Written Opinions of the European Affairs Committee on the assessment of European initiatives and impact studies. On the other hand, more active participation in terms of results was considered necessary, to take advantage of the various sources of information and mechanisms available, and become familiar with decision-making processes and policy formulation at the earliest possible phase, through the scrutiny of Green Papers and White Papers.

The activities of this working group were developed during meetings held for the purpose, resulting in the respective summaries (**Annex 1**), during which hearings were held before the current Permanent Representative of the Assembleia da República at the EU and the Permanent Representative from the previous two mandates – with delivery of specific documentation (**Annex 2**) – and before the policy adviser who provides support to the Commission, followed by periods of discussion and exchange of views, which culminated in the presentation of proposals on the political aspect, contained herein.

### **2. Analysis of the situation**

The analysis of the informal working group focused primarily on compliance with Law No. 43/2006, of 25 August - on monitoring, assessment and pronouncement by the Assembleia da República in the context of the EU construction process - as amended by Law No. 21/2012 of 17 May. The approval of this law was intended to give greater prominence to European affairs, introducing new debates in plenary; clarifying the information and documents to be provided by the Government to the Assembleia da República and those that the Assembleia da República receives under the provisions of the Treaty of Lisbon; consecrating the express competence of the European Affairs Committee to approve the methodology for the scrutiny of European initiatives by the Assembleia da República; and provide the possibility for the European Affairs Committee to hold meetings with government officials on European initiatives and raise debates in plenary or in committee, on all issues and positions under discussion in the European institutions involving matters within its competence.

As mentioned at the beginning of this document, following the aforementioned Law No. 21/2012 of 17 May, a working paper was prepared by Members of Parliament Carlos Costa Neves (PSD) and Alberto Costa (PS) for the purpose of framing and organising a new methodology for scrutinising initiatives that would allow the adoption of opinions from the Assembleia da República of a higher quality, by reducing the number of them and the priority to be given to their policy content. In addition, they proposed scrutiny of issues and documents produced by the Council of Europe, as well as suggesting that the proposals and conclusions reached in the opinions could be clarified and highlighted as part of the political dialogue, in order to give concrete content to the scrutiny.



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Implementation of the new scrutiny methods over the course of the XII Legislature would, however, reveal positive results in some cases, but unsatisfactory ones in others, which would remove it from the proposed initial goal, whether in terms of quality of reports/opinions, or in terms of quantity produced. Using statistical information, it is possible to assess the evolution of the number of scrutiny cases sent to the European institutions that, while having fallen, have far exceeded the proposed goal (30 to 40 per year) - for example, in comparative terms, of all EU national parliaments, the Assembleia da República, according to statistics released, has been the most active Parliament in sending opinions on political dialogue with the European Commission (in 2013, 192 pronouncements and 1 reasoned opinion on breach of the principle of subsidiarity, of a total of nearly 600 opinions received by the European Commission; in 2014, 118 pronouncements, a total of 506 opinions received by the European Commission; in 2015, 55 pronouncements, a total of 350 opinions received by the European Commission).

Echoes from various European institutional information sources have noted the contents of such scrutiny processes. For each scrutiny process, the committee responsible for the matter draws up a report and the CAE produces an opinion on it. In this case, it is clear that in most cases its content has added no value to the previous report, since it has confirmed the grounds presented by the committee on the matter and concluded by ending the process and submitting it to the European institutions. There are also cases where the committee report adds no substantive changes to the initiative under review, and it is the responsibility of the CAE to analyse the substance.

Therefore, it is for the working group to analyse the procedures missing in relation to the implementation of legal regulations in force and the new methodology, such as:

The practice of hearings in the CAE with government officials before or after the formation of the Council of Ministers, inviting the Committee(s) responsible in the matter; information by the Government and the request for Opinion, when falling within initiatives on matters which are the exclusive legislative competence of the Assembleia da República, sending, in timely fashion information containing a summary of the project or proposals, an analysis of its implications and the position that government intends to adopt, if it is already set; monitoring of legislation transposed into national law has not been made - which calls for coordination of the CAE with the General Directorate of the Government responsible for this matter, (attending the AR in the regular meetings, or having access to the information produced) as well as the availability of a table on the Commission page containing the 'state of art' (transposition of current policies in matters within the exclusive legislative competence of the Assembleia da República, the deadline for completion of the process and type of legislative process adopted ), setting the objective of enhancing coordination among the various

organs of sovereignty involved in the legislative process. This matter of monitoring assumes particular importance, especially for the dossiers that the Assembleia da República has selected as a priority.

Finally, in order to enhance the perceived relevance of monitoring European affairs in the Assembleia da República, the CAE should encourage the presentation of current European issues for debate in plenary, thereby checking and reinforcing their content and visibility.

### **3. What to scrutinise?**

Considering the importance of the Assembleia da República in having and issuing a timely position before the European institutions, it should be emphasized that it participates in political dialogue and monitors selected scrutiny processes, without prejudice to the exercise of the powers set out in Protocol on the role of national parliaments in the European Union and in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the treaties governing the European Union.

Control by national parliaments of compliance with the principle of subsidiarity, as enshrined in the Lisbon Treaty, is fundamental, together with the principles of attribution and proportionality for European decision making, determining the situations in which the European Union is competent to legislate and helping decisions to be taken as closely as possible to citizens.

As a result of discussions that took place at the headquarters of the working group, the list of materials selected for scrutiny by the Assembleia da República - taking into account the difference between the documents to be preselected and documents to be scrutinised - consists of the following:

- The European Commission's Work Programme - selecting as an indication 5-7 legislative packages;
- Green Papers, White Papers, the legislative proposals for public consultation and other proposals for public consultation;
- The themes in the programme of the Presidency and the trio of Presidencies, identifying the areas in which it is important to carry out a more concrete follow-up over the semesters;
- The themes that constitute and inform current policy. In this context, regular monitoring of events in the European Parliament is particularly important, both in plenary sessions and in the Commission weeks, as well as a more detailed preparation of the Council of Europe meetings - for example, own-initiative reports to be allocated according to the D'Hondt Method, in order to register subjects in the present and to enable the CAE to substantially contribute to European debates (e.g.



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the referendum in the UK and the future role of national parliaments or documents such as the Five Presidents' Report).

- European Parliament own-initiative reports, especially those on matters relevant to national parliaments.

The set of priorities mentioned does not exclude the possibility of a Parliamentary Group or Parliamentary Groups, or a Member of Parliament or Members of Parliament scrutinising one or more European initiatives or documents which they consider to be relevant to the Assembleia da República.

#### **4. How to scrutinise?**

The working group, pronouncing on the way in which the scrutiny process is covered, has chosen the following approach:

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- Create a permanent working group of the CAE, responsible for analysing the pre-selection of European initiatives to be submitted for scrutiny, in order to incorporate the political input of the parliamentary groups;
- Pre-selected initiatives should be subject to the preparation of a technical note (**Annex 3**) by the CAE support team in conjunction with the Permanent Representative of the Assembleia da República (AR) at the EU, including the background of the subjects covered and the legal aspects, to be disclosed by the relevant committees on the matter;
- The pre-selection of the initiatives should be based also on the information to be provided by (a) the Permanent AR representative at the EU, either through weekly information about the EU, or through a note sent specifically on the scrutiny in progress in other national parliaments;
- Without prejudice to the pre-selection of the working group, it is necessary to provide for the disclosure of non-selected initiatives, making them available for consultation to the Parliamentary Groups, the parliamentary standing committees, the Legislative Assemblies of the Autonomous Regions and to (a) the Permanent AR Representative at the EU on the 'Parliamentary activity'

database on the intranet page of the Assembleia da República, through the 'listings' option, which is periodically updated with information introduced by the CAE onto the European initiatives portal;

- Define the Written Report-type to be approved in the CAE (**Annex 4**): Simplified report, with text, containing 4 to 5 paragraphs, focusing on the substance of the matter and excluding duplication of content contained in the Report drawn up by the Commission;
- Create the role of permanent rapporteurs on the CAE<sup>5</sup> for a period of two years, in order to monitor key issues for which would be designated: one to two permanent rapporteurs (including all the parliamentary groups on the Committee) to allocate the following dossiers, without prejudice to others selected by the CAE for scrutiny:
  - Common Foreign and Security Policy and Common Security and Defence Policy
  - Refugees, asylum, migration, external borders, Schengen;
  - European Semester (Structural reforms centred on promoting growth and employment in line with the Europe 2020 strategy; fiscal policies to ensure the sustainability of public finances in line with the Stability and Growth Pact, and prevention of excessive macroeconomic imbalances) ;
  - International trade, in particular the Transatlantic Trade and Investment Partnership (TTIP);
  - Monitoring Portugal 2020 (programming and implementation of Portugal 2020), as well as the Juncker Plan and other EU funds not affected by Member State;
  - Institutional reforms and agendas of the European institutions;
  - Internal market, particularly in services, energy and digital.
- To consider the publication of a flow chart that reflects the proposed procedures (**Annex 5**).

### **Plenary**

Considering the multiplicity of debates on European issues and the fact that the preparatory discussions of the European Council coincide with the fortnightly debates, in practice, this has not helped to dignify these matters.

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<sup>5</sup> The creation of the role of permanent rapporteurs on CAE did not receive a favourable vote from the Parliamentary Group of the PCP.



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From this perspective, it is for the Board of the CAE to take the steps necessary for information gathering purposes and assessment of the debates in plenary provided for in Law No. 43/2006, of 25 August, amended by Law No. 21/2012, of 17 May: with the participation of the Prime Minister, initiated by his intervention, to be held before each Council of Europe, without prejudice to the legal and regulatory provisions; with the participation of the Government at the beginning of each Presidency of the Council of the European Union on the respective priorities, and the 2nd semester debate may also include the discussion and adoption of the annual report submitted by the Government, pursuant to Article 5(4); with the participation of the Government, on the State of the Union, after appropriate discussion in the European Parliament to be held in the last quarter of each year; with the participation of the Government, on the different instruments of economic governance of the European Union, which are part of the European Semester, in particular, on the Stability and Growth Programme, in the 2nd quarter.

### ***Permanent Representative of the Assembleia da República at the EU***

- Coordination of CAE with (a) the Permanent Representative of AR at the EU, by sending a note after the Monday Morning Meetings (MMM) and, where appropriate, noting the initiatives that are to be scrutinised by other national parliaments and the relevant information for scrutiny.

### **5. How to monitor?**

In terms of monitoring scrutiny processes, the working group reviewed and converged in the following ways:

- i. Ensure the monitoring of the CAE activity plan;
- ii. Incorporate indication of themes by the Parliamentary Groups and the Permanent Representative of AR to the EU;
- iii. Ensure continuity in the analysis of issues with the preparation of technical notes;
- iv. The Written Opinion of the CAE should include an indication of the need to follow up the matter under consideration;
- v. The CAE should follow the process of transposing directives, after hearing the member of the Government responsible, and keep the relevant committees informed on the matter;
- vi. In addition, ask all ministries to send information to the CAE and the Committee responsible for the matter, after each meeting of the various configurations of the European Council;
- vii. Without prejudice to having considered the appointment of permanent rapporteurs on CAE for the purposes of scrutinising the selected files, the importance should be noted of considering the appointment of a permanent rapporteur to monitor the issues listed in paragraph 4 and of





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the European Council, tasked with being the focal point of the Commission, with a view to supporting the preparation of the debates (e.g. the discussion of the annotated agenda of the Council of Europe, on the Tuesday prior to its implementation, and at the same time that the GAC also debates this agenda to be provided by Government).

### **6. How to publicise?**

The members of the working group shall converge in making decisions on the publication/presentation of the new methodology with the following agencies:

- Conference of Leaders;
- Conference of Parliamentary Committee Chairpersons;
- Parliamentary Standing Committees;
- Legislative Assemblies of the Autonomous Regions of the Azores and Madeira

The Working Group is required to promote:

- This document by submitting, using graphic presentation software, before the bodies mentioned above;
- The CAE institutional relationships with other parliamentary standing committees, particularly through the respective Boards:

As part of the Conference of Parliamentary Committee Chairperson, (a) the CAE Chair shall promote the teaching of the new methodology adopted in Parliament, to reinforce the involvement of those in the European integration process;

### **7. Human Resources**

Considering the need to implement the previously formulated activities, in particular as regards introducing the preparation of the technical note accompanying the European initiative and support for the aforementioned pre-selection process, and in compliance with the provisions of Law No. 43/2006 of 25 August, amended by Law No. 21/2012 of 17 May, which establishes that the *Assembleia da República* endows the CAE with the human, technical and financial resources indispensable to the exercise of its powers under this law, the working group reiterates the necessity of having the appropriate human resources for the introduction of the new methodology.



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In this regard, it considers submitting a proposal for allocating the technical support team to the CAE, with three technical officers, two of which are dedicated to preparing the technical note on European initiatives, while the Members of Parliament and policy advisers and two officials with administrative management functions are reserved for the policy approach to the issues.

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São Bento Palace, 29 February 2016