



Spotlight on Parliaments in Europe

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Member States: No special constitutional provisions for the withdrawal from the EU

On 11 November 2016, the Slovenian National Assembly submitted to the ECPRD network a request (Nr 3235) concerning the national regulatory frameworks for the withdrawal from the European Union. The request referred on one side to the procedures and acts foreseen by the national legislation to initiate the withdrawal from the EU (e.g. a constitutional act; a law; other act or guidelines; or perhaps a court decision, etc.). On the other side, it referred to which state authorities would have the competence to take decisions on the withdrawal from EU membership and which to implement such decisions. (e.g. what would be the role of the parliament, the Government, who would negotiate on withdrawal).

The outcome of the survey shows that there are no specific constitutional provisions for the withdrawal of a Member State from the EU. Only Poland, out of the 24 respondents, has specific rules concerning the EU. Most of the respondents refer to general provisions concerning international treaties. Powers and specific competences of the National Parliaments vary considerably. This summary is based on the replies given by the Parliaments.

The results of last June Referendum on the exit of the UK from the EU and the subsequent uncertainty as far as the role of the UK Parliament in the institutional procedures linked to the activation of article 50 of the TUE inspired a request from the Slovenian National Assembly to the ECPRD network as to the different national regulatory frameworks for initiating the process under Article 50. All in all 24 Parliaments responded, most of them underlining the theoretical nature of the question.

With the exception of Poland, where specific provisions concerning the withdrawal from the EU were added to the Act of 14 April 2000 r. on International Treaties, the possible exit from the EU is not regulated by national legislation nor constitutional clauses.

According to the Polish legislation, the competent authority or minister (in the case of the withdrawal: the minister for foreign affairs), by common accord with other ministers, submits to the Council of Ministers a request to withdraw from the EU. Consequently, the Council of Ministers decides to present the request to the President. According to Article 22a of the Act, before being submitted to the President, the draft decision concerning the withdrawal has to be approved by an act of the Parliament. The same procedure applies in case of an extension of the two-year period indicated in article 50 paragraph 3 of the TUE.

Many of the other responding Chambers, while insisting that their replies were “speculative”, referred to the constitutional provisions defining their country’s integration into and dissociation from international organisations or multilateral conventions. For example, Belgium, Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Latvia, the Netherlands, Portugal would refer to the procedures dealing with the ratification of Treaties. Croatia and Slovakia could refer to the constitutional provisions concerning alliances or unions with other countries.

Several Parliaments/Chambers stated that in the event of a proposal or decision to withdraw from the EU, the procedures would seemingly take a reverse path to the one that had led to the EU accession (this was the reply of Austria, Estonia, Greece, Hungary, Lithuania, Sweden).

As for the role of national parliaments, it varies from the final ratification of the withdrawal (Cyprus, Czech Republic, Greece, Hungary, the Netherlands) to the power of denouncing international treaties (Estonia, Finland¹) or that of approving any decision to activate a withdrawal procedure from any international agreement (Belgium², Denmark, Finland, Romania, UK³). In Croatia, according to its constitution, the association into and dissociation from alliances with other states may be initiated by at least one-third of the members of the parliament, the President of the republic and the Government. After that, any association or dissociation shall first be decided upon by the Parliament and final decision shall be made in a referendum.

Some of the responding Chambers mentioned constitutional or other legal provisions that generally or specifically define the country's integration in the EU. That has a great importance for the power to activate article 50 of the TUE. In some cases that would require amendments to the constitution before the possibility of activating article 50. It is the case for France, where such a revision could be made either by the Congress (the joint meeting of National Assembly and Senate) or by referendum. As far as the obligation of revising the constitution was concerned, that seemed a likely precondition also in the case of Germany and Ireland where the constitutional courts would have to examine the legal effects of their constitutional commitment to the EU. This might possibly lead to denial of the governments' autonomous power to activate article 50⁴. According to the Latvian Constitution, substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the Saeima. In the case of Lithuania, a referendum on withdrawal from the EU would be an ultimate prerequisite for initiating the procedures. The referendum would be followed by a law of the Seimas on withdrawal negotiations in accordance with Article 50 of the TUE. In Portugal, a referendum, proposed either by the Assembly, by the Government or by a citizen's initiative, could also activate withdrawal procedures, after the President took the final decision. In the case of Slovakia, the decision on withdrawal and therefore to start appropriate processes has to be made in form of a constitutional law adopted by the Council of the Slovak Republic, confirmed by a referendum.

In Sweden, Chapter 10, Article 6 of the Constitution on transfer of sovereign rights implies that the obligation flowing from a membership are valid if the transfer of decision-making power has taken place. Consequently the obligations expire if the Riksdag decides to withdraw the transferred powers.

Not surprisingly, in most cases, withdrawal negotiations would be the sole responsibility of national governments, with national parliaments playing mostly consultative roles. Some Parliaments would nevertheless exert concrete guidance or supervision powers (Denmark, Finland, Sweden among them). Due to its special constitutional and institutional configuration, in France, the President of the Republic would play a role in the negotiations.



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¹ The Eduskunta would either vote the confidence after a Statement by the Government announced the plan to withdraw from the EU, or vote on a report indicating what the Government intended to do.

² Taking into account the institutional framework of Belgium, this could fall under the competence of all federal and regional governments and parliaments.

³ On 24 January 2017, the UK Supreme Court ruled that the Government could not activate art. 50 without the Parliament's backing.

⁴ In both cases, if the respective Constitutional courts do not uphold the obligation to change the Constitution before activating article 50 of the TUE, the Parliaments would have a consultative role, and activation would be responsibility of the Government.