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Institut für Mathematik der Universität Augsburg

27. November 2014

Danuta Hübner MEP, The President  
Committee on Constitutional Affairs  
European Parliament

Via email to:  
AFCO-Secretariat@Europarl.EU

Subject: Memo for the public hearing on the “Reform of the European electoral law”  
on 4 December 2014, Brussels, Espace Simone Veil

**F. Pukelsheim / K.-F. Oelbermann**

**Reinforcing uniformity in the Election Act:  
Gentle interim arrangements in 2019  
towards systematic double-proportionality in 2024**

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In recent decades the European Parliament has become a vital pillar of the democratic structure of the European Union, its Members being elected by the Union’s citizens in direct universal suffrage. The election glass is half-full and not half-empty, to an extent that it is tempting to try and fill-in the missing half. Our attempt—in parts A, B, C—places a particular emphasis on operational aspects whether prospective procedures conform to political aims. To this end our main sources are past documents produced by this Committee and by Parliament. We also make use of the literature, even though in view of its abundance such an endeavor is bound to be eclectic. And, of course, we rely on our own work on the mathematical analysis of electoral systems.

### **A. What is the problem? Misdirection of the electorate**

The biggest defect of the current electoral system<sup>1</sup> is that it misdirects the electorate. The election campaign focuses on political leaders who shape the political scene of a Member State, but who are known not to compete for a seat in the European Parliament. Voters are handed ballot sheets listing political parties that are part of the domestic sphere of a Member State, but that are virtually invisible in the political work of the European Parliament. The 160 or so domestic parties that are presented to the Union’s electorate eventually boil down to a handful of Political Groups that shape Parliament’s daily routine, but that are *not* presented to the electorate. To quote but one source from the literature: *There is a “mismatch” between the institutional role the European Parliament is asked to play in the European Union’s separation of powers—the voice of European citizens about European Union politics—and the level of party competition at which European Parliament elections are contested.*<sup>2</sup>

Therefore, if the European Parliament desires to inject more uniformity into its Election Act, then an indispensable necessary prerequisite is the establishment of “unionwide parties” to play a proper role in elections, or so it would seem to us. There is an abundance of literature on the subject, by political scientists, by constitutional lawyers, and by practising politicians.<sup>3</sup> Being mathematicians it is beyond our competence to comment upon how to create a unionwide party system. Instead we assume that unionwide political parties will come into existence and will be ready to contest elections. Under this assumption we propose a scheme of translating votes into seats that fits the Union’s constitutional frame perfectly, double-proportionality.

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<sup>1</sup> The elections are governed by the 1976 Election Act, as amended in 2002. A consolidated version of the Election Act is included as Annex II in: Report (A7-0176/2011, 28.7.2011) on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 (2009/2134(INI)). Rapporteur: Andrew Duff. European Parliament 2009–2014, RR\865675EN.doc, PE440.210v04-00.

<sup>2</sup> David Schleicher: What if Europe held an election and no one cared? Harvard International Law Journal, 52 (2011) 109–161 [110]. – Schleicher corroborates his “mismatch thesis” in detail and at length with lots of persuasive arguments. As a remedy he proposes a re-design of ballot sheets and the introduction of unionwide thresholds; these proposals are followed up in our Part C.

<sup>3</sup> We quote but three: Simon Hix: What’s Wrong with the European Union and How to Fix It. Wiley, New York, 2008. Peter Michael Huber: Demokratische Legitimation in der Europäischen Union. Zeitschrift für Staats- und Europawissenschaften – Journal for comparative Government and European policy, 7 (2009) 364–380. Julian Priestley: European Political Parties – The Missing Link. Notre Europe Policy Paper 41, 2010.

Before continuing we briefly digress and specify the term “unionwide party”, for our purposes. We give it a less restrictive meaning than the term “political parties at European level” that appears in the regulation regarding party funding.<sup>4</sup> Our notion of a “unionwide party” is to indicate a political organization that observes, in particular in its programme and in its activities, the principles on which the European Union is founded and that has participated or intends to participate in elections to the European Parliament. This is all we require. In most cases a unionwide party will be active in two or more Member States, at best in all of them. However, the definition admits a unionwide party to be present in just a single Member State. The reason is that the system should also accommodate newly emerging parties which cannot but start small.

## **B. What is the solution? Double-proportionality, starting 2024**

Double-proportionality apportions parliamentary seats with regard to two dimensions, how the electorate is divided by political parties and how it is partitioned into territorial districts. What does double-proportionality look like when applied to the European Parliament? The political dimension captures the performance of the unionwide parties, of course. The territorial dimension consists of the allocation of Parliament’s seats between the Member States of the Union. In the jargon of the Union’s primary law this is referred to as the “composition of the European Parliament”.<sup>5</sup> Double-proportionality is manageable no matter how the composition is brought about, whether it emerges from a negotiated political fix as in the past, or whether it is obtained by a durable and transparent formula. Double-proportionality requires some set of seat contingents for the Member States to be preordained, but any set will do.

Double-proportional apportionment methods proceed in two steps, called super-apportionment and sub-apportionment. The super-apportionment reflects the political dimension of the division of the electorate: all disposable seats are apportioned in proportion to the vote totals of the unionwide parties. A sample super-apportionment is shown in Table 1, re-evaluating the 2009 elections in a double-proportional manner.<sup>6</sup> Since unionwide parties did not exist in 2009, we replace them by the Political Groups that were formed at the beginning of the legislative period. The “vote total of a Political Group” is taken to be the aggregation of the votes cast for the domestic parties that joined this Group. The non-attached Members are assembled in a pseudo-group “NA”. Thus Table 1 encompasses all 144 244 444 votes that effectively entered into the 2009 seat allocation calculations.

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<sup>4</sup> Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at the European level and the rules regarding their funding. Official Journal of the European Union, L297 (15.11.2003) 1–4.

<sup>5</sup> Article 14(2) TEU-Lisbon, see: Consolidated Version of the Treaty on European Union. Official Journal of the European Union, C83 (30.3.2010) 13–45.

<sup>6</sup> This is Table 14.5 in Friedrich Pukelsheim: *Proportional Representation – Apportionment Methods and Their Applications*. With a Foreword by Andrew Duff MEP. Springer International Publishing, Cham (CH), 2014. For the aggregation of the Political Groups’ vote counts see Section VI in Kai-Friederike Oelbermann, Friedrich Pukelsheim: *Future European Parliament elections – Ten steps towards uniform procedures*. *Zeitschrift für Staats- und Europawissenschaften – Journal for comparative Government and European policy*, 9 (2011) 9–28.

EP2009DP Super-apportionment	Votes	Quotient	DivStd
EPP	52 324 413	272.2	272
S & D	36 776 044	191.3	191
ALDE	16 058 094	83.55	84
GREENS/EFA	12 070 029	62.8	63
ECR	7 610 712	39.6	40
EFD	7 153 584	37.2	37
GUE/NGL	6 280 876	32.7	33
NA	5 970 692	31.1	31
Sum (Union divisor)	144 244 444	(192 200)	751

**TABLE 1** *Sample 2009 double-proportional seat apportionment: Super-apportionment of 751 seats among eight Political Groups.* Calculations are based on the unionwide votes for the 2009 Political Groups, in lieu of the non-existing votes for unionwide parties. Normally the group of non-attached seats (NA) would require a separate handling. Sample calculation: The EPP votes (52 324 413) are divided by the union divisor (192 200). The quotient 272.2 justifies 272 seats.

EP2009DP	EPP	S & D	ALDE	GRE/EFA	ECR	EFD	GUE/NGL	NA	State
Sub-apportm.	272	191	84	63	40	37	33	31	divisor
DE 96	9968153-41	5472566-23	2888084-12	3194509-13			1969239-7		251000
FR 85	4799908-30	2838160-18	1455841-9	2803759-16		257437-2	915634-5	891847-5	169000
UK 82		2460249-16	2080613-13	1767218-11	4131386-18	2498226-17	126184-1	1181845-6	162000
IT 80	12966334-39	7997770-24	2476695-7			3125418-10			350000
ES 62	6670377-28	6141784-25	808246-3	689062-3			294124-1	451866-2	253000
PL 52	3787998-33	908765-8			2017607-11				121000
RO 31	2074019-14	1504218-10	702974-5					419094-2	150000
NL 26	913233-6	548691-4	1034065-6	412537-2	155270-1	169882-1	323269-2	772746-4	163500
EL 19	1655722-7	1878982-8		178987-1		366637-1	669212-2		261800
BE 19	1288422-4	1259998-4	1485854-4	1319341-4	296699-1			647170-2	350000
PT 18	1427300-8	946475-6					761718-4		178000
CZ 18	180451-2	528132-6			741946-6		334577-4		87000
HU 18	1632309-11	503140-3			153660-1			427773-3	151000
SE 17	744851-5	773513-5	603799-3	575029-3			179182-1		172700
AT 16	858921-5	680041-4		284505-2				870299-5	170000
BG 14	832510-5	476618-3	569343-4					308052-2	160000
DK 12	297199-2	503439-3	474041-2	371603-2		357942-2	168555-1		200000
SK 12	324081-6	264722-4	74241-1			45960-1			61530
FI 12	455874-3	292051-2	418251-3	206439-2		162930-1	98690-1		136050
IE 11	532889-4	254669-2	525375-3	34585-0		99709-1	256123-1		158000
LT 9	147756-3	102347-2	88870-2		46293-1	67237-1			50000
SI 8	200429-4	85407-2	98450-2						50000
LV 8	245288-3	77447-1	59326-1	76436-1	58991-1		77447-1		80000
EE 7	48492-1	34508-1	164383-3	116830-2	8860-0	2206-0			60000
CY 7	109209-3	67794-2	12630-0				106922-2		40000
LU 6	62202-2	38641-2	37013-1	33387-1					26000
MT 6	100486-3	135917-3		5802-0					41000
Party div.	0.9575	0.9563	1	1.0114	1.45	0.934	1.085	1.13	

**TABLE 2** *Sample 2009 double-proportional seat apportionment: Sub-apportionment by Political Groups and Member States.* Seats are allocated to the Political Groups in the Member States using the double-proportional divisor method with standard rounding. The divisors guarantee each Member State its preordained seat contingent, and each Political Group its party-seats from the super-apportionment. Sample calculation: The German EPP votes (9 968 153) are divided by the DE divisor (251 000), and by the EPP divisor (0.9575). The quotient 41.48 (not shown) justifies 41 seats.

The super-apportionment in Table 1 handles all unionwide votes simultaneously and treats them equally, with no regard to Member State provenance. Every 192 200 votes justify roughly one seat. The prime benefit of the unionwide seat apportionment is that it secures electoral equality among all Union citizens when votes are taken to express political preferences.<sup>7</sup> At present, electoral equality is strangely absent in the Union’s primary law.<sup>8</sup> However, the Treaties are full of promises to observe equality among Union citizens, all Member States subscribe to electoral equality being one the five principles underlying Europe’s electoral heritage,<sup>9</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms to which the Union shall accede<sup>10</sup> values electoral equality highly. We propose that the Union grants its citizens “a free, equal, and secret ballot”. This is our only plea for a change to the Treaties.

The double-proportional seat apportionment concludes with the sub-apportionment of seats by unionwide parties and Member States. This second step is more laborious since it must verify two conditions: the party-seats from the super-apportionment must be met, as must be the preordained seat contingents of the Member States. Table 2 shows the sample re-evaluation of the 2009 elections. The party names and their overall seats are copied from the super-apportionment into the table’s top row, the left column exhibits Member States and their seat contingents.<sup>11</sup> The seats of a State’s party are obtained via double division: the pertinent vote count is divided by the associated state divisor and by the associated party divisor. It may be checked that the resulting seat numbers sum columnwise to the party’s overall seats and rowwise to the State’s seat contingent, as desired. In summary, double-proportionality appears to suit the Union’s needs perfectly. The task is to find ways and means to get there.

While the main obstacle remains the creation of a system of unionwide parties, other issues also require attention when ballots are aggregated across the whole Union: the varied ballot structures that are entertained by the twenty-eight Member States. Most of the required harmonization can be achieved at low cost. However, ballot sheets from single transferable vote systems constitute a problem. These systems put a particular emphasis on the personalization aspects of an election, as opposed to focusing on political parties. A common denominator with the proportional representation systems used by other Member States might be the introduction of open lists (where not in use already).<sup>12</sup> The issue needs careful consideration, but we do not pursue it here further. Moreover any re-design of ballot sheets should foster e-voting which will become indispensable in future elections in view of the ever increasing mobility of society.

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<sup>7</sup> An added benefit is the facilitation for a State to subdivide its area into electoral districts, compare Iain McLean: Don’t let the lawyers do the math: Some problems of legislative districting in the UK and the USA. *Mathematical and Computer Modelling*, 38 (2008) 1446–1454.

<sup>8</sup> Article 14(3) TEU-Lisbon (FN 5) reads: *The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.*

<sup>9</sup> Council Of Europe, European Commission for Democracy through Law (Venice Commission): Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report. Council of Europe, CDL-AD (2002) 23 rev, Opinion no. 190/2002. Strasbourg, 23 May 2003.

<sup>10</sup> Article 6(2) TEU-Lisbon (FN 5).

<sup>11</sup> These contingents total 751 seats and result from the Cambridge Compromise, see Section 14.9 in Pukelsheim: Proportional Representation (FN 6). They differ from actual 2009 seat contingents.

<sup>12</sup> Simon Hix, Sarah Hagemann: Could changing the electoral rules fix European Parliament elections? *Politique européenne*, 28 (2009) 27–41.

## C. How to get there? Three interim arrangements for 2019

The establishment of unionwide parties that competently and attractively contest European Parliament elections may need more time than provided by a legislative period of five years. Ten years should suffice though. Therefore we suggest decreeing double proportionality now, to start in 2024. The European Parliament would join the company of many other parliaments that are used to pass significant electoral amendments with the proviso that these take effect, not in the current legislative periode, but in the next.

For the next election in 2019 we propose three interim arrangements that will encourage the formation of unionwide parties. The three proposals could be incorporated into the Election Act. The first two, a europeanized ballot design (C.1) and the introduction of unionwide thresholds (C.2), would continue to apply in the long run. The third item, transnational lists (C.3), is a transitional measure for 2019 only, because it becomes redundant once double-proportionality is adopted.

### C.1. Ballot design

The first proposal is that *ballot sheets must exhibit the emblem and name of the unionwide party to which a domestic party is affiliated ahead of the emblem and name of the domestic party itself*. Presumably the existing political parties at European level serve as germs from which unionwide parties will grow. Hence many domestic parties know already now to which unionwide party they will become affiliated, and could comply with the proposal quite readily. Non-affiliated parties will have a ballot box preceded by white space and thus expose their missing European outlook. In this way information on the ballot sheets will no longer be restricted to the domestic sphere. During the election campaign parties will advertise their ballot boxes to inform their supporters. The new design will spread and induce voters to sense a European perspective. Altogether it will be easier than now for voters to develop a clear and consistent opinion of their European options.

### C.2. Threshold cascade

The second proposal intends to award domestic parties for their efforts to acquire the status of a unionwide party and to expand into several Member States. The idea is to lower the maximum five percent threshold of Article 3 of the Election Act depending on how a party's support spreads across the Union. By way of example the "threshold cascade" may take the following form: *Throughout the Union valid votes for a party become effective (that is, enter into the seat apportionment calculations) only when the party attracts at least*

- (a) *five percent of the valid votes in one Member State, or*
- (b) *four percent of the valid votes in each of two Member States, or*
- (c) *three percent of the valid votes in each of four Member States, or*
- (d) *two percent of the valid votes in each of eight Member States.*

The threshold cascade does not apply to votes for independent candidates; effectiveness of these votes could be left to be settled in domestic provisions.

### *C.3. Transnational lists*

The third proposal offers unionwide parties a concrete reward to strive for, namely seats contested at Union level rather than contested within the Member States' domains. Transnational lists, having been present in the discussion for quite some time, figure prominently in this Committee's 2011 Report.<sup>13</sup> We elaborate on the idea with the understanding that it will become outdated as soon as double-proportionality takes over for good. In view of the transitional nature of the measure its one-time implementation in 2019 ought to leave the Treaties alone and comply with current primary law. We sketch an approach how this could be achieved.

Our approach is contingent on the composition of the European Parliament being derived from a durable and transparent formula as afforded by the Cambridge Compromise or one of its variants.<sup>14</sup> When compared to the sitting Parliament's composition it transpires that about 25 or 26 seats need to be re-allocated.<sup>15</sup> Most of these seats are transferred from middle-sized Member States to bigger States. We propose that these seats are not handed out to the target States. Instead, they are set aside to be apportioned via transnational lists, as outlined in the 2011 Report.

At first glance the proposal seems to put an undue burden on the (mostly bigger) Member States that would profit from the transfer. On second thoughts the burden may well be softened by the outcome of the transnational seat apportionment. For when composing their transnational lists, unionwide parties will have to reach out for their prospective voters. Three quarters of the Union's citizens live in the seven biggest Member States. Transnational lists cannot but feature plenty of nominees from the big Member States, perhaps not three quarters of all candidates, but certainly not much less than half of them. In essence, most of the transnational list seats will eventually be filled with nominees from the bigger Member States.<sup>16</sup> This looming imbalance makes us doubt whether transnational lists, while promising to be an expedient measure in 2019, would stand the test of time in the long run. They certainly cannot compete with the perfect solution offered by double-proportionality.

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<sup>13</sup> Item 2 on page 7 (FN 1) reads: [The European Parliament] *Proposes that an additional 25 MEPs be elected by a single constituency formed of the whole territory of the European Union; transnational lists would be composed of candidates drawn from at least one third of the States, and may ensure an adequate gender representation; each elector would be enabled to cast one vote for the EU-wide list in addition to their vote for the national or regional list; voting for the EU constituency would be in accordance with the closed list proportional system; [...]*

<sup>14</sup> G.R. Grimmett, J.-F. Laslier, F. Pukelsheim, V. Ramírez González, R. Rose, W. Słomczyński, M. Zachariassen, K. Życzkowski: The allocation between the EU Member States of the seats in the European Parliament. European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizen's Rights and Constitutional Affairs, Note 23.03.2011 (PE 432.760). See also Section 12.9 in Pukelsheim, *Proportional Representation* (FN 6).

<sup>15</sup> The limited-loss variant of the Cambridge Compromise affects 25 seats with 2013 QMV-populations, and 26 seats with 2014 population figures. See Table 12.5 in Pukelsheim, *Proportional Representation* (FN 6) and Annex One in Andrew Duff's Contribution to this hearing.

<sup>16</sup> To evade this imbalance the votes for transnational lists could be evaluated using double-proportionality, see Section 1.3 in Kai-Friederike Oelbermann: *Biproportionale Divisormethoden und der Algorithmus der alternierenden Skalierung*. Logos Verlag, Berlin, 2013.