



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

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**The Electoral Reform of
the European Parliament:
composition, procedure
and legitimacy**

In-Depth Analysis for the AFCO Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CONSTITUTIONAL AFFAIRS

**The Electoral Reform of the European
Parliament: composition, procedure and
legitimacy**

IN-DEPTH ANALYSIS

Abstract

Two papers included in this compendium reflect on the electoral reform of the European Parliament. First, written by Andrew Duff, EP's rapporteur on the electoral reform (2004-2014), discusses the ways on how the EP should reform itself in order to contribute to a strengthening of the democratic legitimacy of the European Union. Second paper by Friedrich Pukelsheim and Kai-Friederike Oelbermann suggests using a double-proportional method for the translation of the votes in the European elections in to the seats, a method that would be most congruent with EU's constitutional framework.

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Democratic legitimacy in the European Union: taking a new look at the composition and electoral procedure of the European Parliament

by Andrew Duff

This paper reflects on what the European Parliament should now do to reform itself in order to contribute to a strengthening of the democratic legitimacy of the European Union. It argues that Parliament should make a quick start to drawing up a catalogue of reforms in terms of both primary and secondary law: these will include a uniform electoral procedure, a method of seat apportionment and a revised voting system in the Council.

Parliaments find it difficult to reform their electoral procedures. The vested interests of serving deputies in terms of jobs and pensions provide an in-built bias towards preserving the status quo. In this respect, the European Parliament is no different to other parliaments. Despite the fact that the Treaty of Rome and all subsequent Treaties have given the Parliament the right to initiate a 'uniform electoral procedure', MEPs have rarely agreed among themselves on quite how uniform to be. To ease the pain, the Treaty of Amsterdam added the qualification that the electoral procedure could be either uniform 'or in accordance with principles common to all Member States'.¹ Commonality proved an easier goal to reach than uniformity.

1. PROPORTIONAL REPRESENTATION

Over the years the Constitutional Affairs Committee and its predecessors have appointed a number of eminent Members as rapporteur for electoral reform: **their main purpose was, in the first place, to establish direct elections and, secondly, to ensure proportional representation**, so that seats won in the House would match broadly votes cast in the ballot box. The first goal was achieved in 1976 with the Act introducing direct elections by universal suffrage, and the first election took place in 1979.² The second took the form of a 2002 Council Decision which codified the change that had occurred in Great Britain in time for the 1999 elections when proportional representation (PR) was – with great difficulty – brought in by the Blair government.³ Consequently, a PR system on regional lists was introduced in France in time for the 2004 elections. The 2002 Decision modified the 1976 Act so as to insist on PR, to allow explicitly the use of the Single Transferable Vote (STV) and preferential voting, to cater for territorial constituencies, to fix a maximum threshold of 5 per cent, to phase out the dual mandate of MEPs and MPs, and to let national law apply to the withdrawal of mandates and the filling of vacancies. Basic common electoral principles are at least, and at last, achieved.

¹ To follow the trajectory, compare Article 138 of the original Treaty establishing the European Community (TEC), Article 190 of the Amsterdam TEC, Article III-330 of the Draft Treaty establishing the Constitution for Europe, and Article 223(1) of the Lisbon Treaty on the Functioning of the European Union (TFEU).

² Council Decision 2002/772/EC, Euratom (of 25 June 2002 and 23 September 2002) amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage; OJ L 283, 21-10-2002. For Parliament's resolution (Anastassopoulos Report), see OJ C 292, 21-09-1998.

³ European Parliamentary Elections Act 1999 which, under an exceptional constitutional procedure, passed into law by the House of Commons alone having been rejected six times by the House of Lords.

2. SEAT APPORTIONMENT

In parallel to the evolution of the debate over electoral procedure has been the issue of seat apportionment. The two matters are intimately connected not only with each other but also with the Treaty definition of the mandate of the MEP. From the Treaty of Paris onwards, the deputies were 'representatives of the peoples of the states brought together in the Community'.⁴ The Treaty of Lisbon, following the Convention's suggestion, now designates MEPs as 'representatives of the Union's citizens'.⁵ Lisbon also accorded to the Parliament the duty to initiate the decision establishing the composition of the Parliament.

So Parliament now has two obligations to fulfil: the duty under Article 223(1) TFEU to 'draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States'; and the duty under Article 14(2) TEU to propose to the European Council a draft decision on the apportionment of seats in a House of 751 Members with a minimum of six seats per Member State and a maximum of ninety six.

To complicate matters, whereas the Amsterdam treaty had spoken of the need for seat apportionment to ensure 'appropriate representation', Lisbon prescribes that 'representation of citizens shall be degressively proportional'. Parliament tried to elaborate on this rather cryptic injunction by defining degressive proportionality in the Lamassoure-Severin Report of 2007, but not entirely successfully, thus: 'the ratio between the population and the number of seats of each Member State must vary in relation to their respective populations in such a way that each Member from a more populous Member State represents more citizens than each Member from a less populous Member State and conversely, but also that no less populous Member State has more seats than a more populous Member State'.⁶ In any case, the Lisbon IGC immediately disregarded the degressive principle by awarding Italy an extra seat in the 2009 Parliament, with the result that an Italian MEP represented fewer people than a Spanish colleague, despite the fact that Spain is less populous than Italy.⁷

It is certainly deplorable that, over the years, decisions on the apportionment of seats in the European Parliament between EU states have been haphazard, unfair and inexplicable. Even the casual observer can notice that parliamentary seats have been traded between states, usually in the last hours of an IGC, to square ostensibly more important deals.

The fact that there were at least five deviations from a strict reading of degressive proportionality (even ignoring pairings) in the 2009 Parliament, led AFCO to conduct an enquiry into **how best to establish an arithmetical formula for seat apportionment which would be transparent, explicable, equitable and durable**. The result is known as the Cambridge Compromise (CamCom) and has generated much and broadly favourable comment in the academic literature.⁸

⁴ Article 20 Treaty of Paris; Article 137 TEC (Rome); Article 189 TEC (Amsterdam).

⁵ Article 14(2) Treaty on European Union (TEU).

⁶ Paragraph 6 of the Lamassoure-Severin Report, adopted 11 October 2007; OJ C 227 E, 04-09-2008.

⁷ The political agreement on the redistribution of seats was confirmed by the European Council on 14 December 2007 (paragraph 5 of the Presidency Conclusions).

⁸ Geoffrey R. Grimmett et al, *The allocation between the EU Member States of the seats in the European Parliament*, European Parliament Studies PE432.760, 2011; and Jean-François Laslier, Guest Editor, Special Issue,

The CamCom method apportions seats in the Parliament according to an arithmetical formula that gives each state a base of five seats plus an allocation in proportion to the size of their population (subject to rounding upwards, and capping at the maximum). A divisor (d) adjusts the outcome to fit the overall size of the House (currently at 751 seats), where (P) is the population and (A) is the allocation function, rendered mathematically as:

$$T(d) = \sum_i [Ad(Pi)]$$

A variant of the formula, shown in Annex One, would introduce the full CamCom in two stages so that no state loses more than two seats at the next elections in 2019.

The rising mobility of populations within the Union (notably the Western migration of workers), the rather dramatic demographic changes (such as the decline of Germans), and the possibility not only of the future accession of new member states but also of the splitting of existing member states into two (or more) separate states, all require the Parliament to take very seriously its duty to re-apportion seats during each mandate.

Even the comparatively straightforward recent decision – a ‘pragmatic solution’ – to award Croatia 11 seats, although consonant with the logic of CamCom, was only achieved by hard bargaining inside Parliament and between Parliament and Council.⁹ So it should be emphasised that **the 2013 European Council decision on the apportionment of seats for the present term commits the legislature to finding a durable arithmetical formula in good time before 2019.**¹⁰ In agreeing the arrangement for the 2014 elections, the European Council announced:-

‘This decision will be revised again before the 2019-2024 parliamentary term upon an initiative of the European Parliament to be presented before the end of 2016. The aim will be to establish a system which will in the future make it possible, before each new election to the European parliament, to allocate seats between member states in a fair, objective and transparent manner, taking into account any potential change in the number, as well as any demographic trends, in the respective populations of member states.’¹¹

3. CRITICISM IN THE COURTS

Another element in the equation is the **criticism levelled at the present composition of the European Parliament by the Bundesverfassungsgericht**. In its landmark judgment on the constitutionality of the Treaty of Lisbon, the Karlsruhe Court dealt with the complaint that a German MEP represents twelve times as many people as a Maltese MEP. In their *obiter dicta*, the judges cast doubt on the legitimacy of a parliament whose members are not elected by a uniform system.¹² If each MEP does not have an equal vote, is each citizen equally represented at the European Union level, as the Treaty requires?¹³

Around the Cambridge Compromise: Apportionment in Theory and Practice, in *Mathematical Social Sciences*, vol. 63, no. 2, March 2012.

⁹ Report on the composition of the European Parliament with a view to the 2014 elections (2012/2309(INI)), (Gualtieri-Trzaskowski Report), A7-0041/2013.

¹⁰ European Council Decision 2013/312/EU, OJ L 181, 29-06-2013.

¹¹ European Council press release 28 June 2013.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/137648.pdf

¹² Federal Constitutional Court Judgment of 30 June 2009, especially paragraphs 279-297; BVerfG, 2 BvE 2/08.

¹³ Article 9 TEU.

The Court points out that the change made by the Lisbon treaty to the mandate of MEPs – becoming ‘representatives of the Union’s citizens’ rather than, as previously, ‘representatives of the peoples of the States’ – is flatly contradicted by the fact that seats are still apportioned entirely per member state.

Moreover, the Bundesverfassungsgericht does not believe that the vague federalist concept of degressive proportionality amounts to a serious method of distributing seats. In the Court’s view, in spite of the Union’s pretensions to European citizenship, the European Parliament is in fact made up of national contingents. Unlike the Bundestag, the European Parliament is not an assembly of equals. The Parliament is not, then, the supreme authority of the European sovereign people. Germany’s representation elsewhere in the system of governance of the Union compensates for what might in other circumstances be considered its unfair treatment in the Parliament. In later cases the German Court has tackled the vexed question (for Germany) of thresholds in elections to the European Parliament, adding to the sense that **unless and until a uniform electoral system is put in place the democratic legitimacy of the European Parliament, and of the Union as a whole, is founded on shifting sands.**

It is a pity that the German federal judges seem reluctant to acknowledge that the constitutional order of the European Union is and has to be a large compromise between the international law principle of the equality of states and the democratic principle of ‘one man one vote’. They also underestimate the importance of national delegations in the House relative to the party political groups. Nevertheless, one does not have to agree with the judgments of the Bundesverfassungsgericht to acknowledge that its critical scrutiny of the composition and election of the Parliament should be a spur to the Parliament to accelerate the move to reform. The objective should be to agree on a methodical approach to seat apportionment which, being applied every five years, removes the worst anomalies, is fairer than the present distribution, and respects the principle of degressive proportionality.

4. BALANCE OF POWER

If the apportionment of seats in the Parliament is to become more proportional it follows that **the weighting of votes in the second chamber of the legislature needs also to be reviewed.** The entry into force of the Lisbon system from 1 November 2014 – that is, a QMV formed of 55% of states representing 65% of the population – favours both the larger states (in terms of population) and the smaller states (in terms of the number of states needed to reach a majority). It would be natural if the middling size states, which stand to lose their over-weight in the Parliament under any reformed system of seat apportionment, would be anxious to be compensated in a reformed voting system in the Council.

Fortunately, there is **a scheme based on the square root of population which fits the requirement of boosting the relative clout of medium-sized states**. The square root formula accords voting power in inverse proportion to size. A scheme from academics in Cracow, named the Jagiellonian Compromise (JagCom) was submitted to the Convention on the Future of Europe but not taken up. It deserves to be considered again.¹⁴ The current outcome of JagCom is shown in Annex Two. **A combination of CamCom and JagCom would adjust the balance of power between the states in the Union's legislature in an equitable, transparent and durable manner.**

5. ELECTORAL PARTICIPATION AND THE EUROPEAN DIMENSION

Nobody who wishes Europe well can be proud of the ever-declining overall turnout at European Parliamentary elections. The 13% turnout in Slovakia in May 2014 is nothing short of scandalous. It has long been the contention of the author, who was privileged to be Parliament's rapporteur on these matters in recent mandates, that there is an urgent need to galvanise the election campaigns for the European Parliament by raising the European dimension and accentuating the choices put before the electorate. The main missing link, in his view, between the EU voter and the supranational authorities is the absence of credible, discernible political parties. Whereas national parties have almost given up the effort to support European integration, federal parties have not yet emerged to take their place. European democracy is in a risky stage of transition between national and post-national politics. For that reason AFCO in the last Parliament strongly supported the rapporteur's proposal **to create a pan-European seat from which 25 MEPs would be elected from transnational party lists.**¹⁵

For reasons of interest to historians, that proposal did not pass through plenary in 2011. Yet a variant of the proposal was published in 2013 which has commanded, along with CamCom and JagCom, significant academic interest: it is reproduced here in Annex Three.¹⁶ Note that the 1976 Act is here transformed into a Protocol to the Treaty giving it visibility without changing its status in primary law. A properly revised definition of degressive proportionality is included in Article 3. Article 4 gives the legal base for the arithmetical formula. Article 5 establishes the pan-European constituency and creates an EU electoral authority for conducting the transnational election. Article 5(4) makes it clear that the elector will have two votes, one for his or her national or regional constituency, and the other for the EU wide one.

¹⁴ Wojciech Słomczyński & Karol Życzkowski, *Voting in the European Union: The square root system of Penrose and a critical point*, 2004; and Friedrich Pukelsheim, *Proportional Representation: Apportionment Methods and Their Applications*, 2014.

¹⁵ Duff Report, 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)), A7-0176/2011.

¹⁶ Spinelli Group, Bertelsmann Stiftung, *A Fundamental Law of the European Union*, 2013, pp. 273-280 [EN/FR]. www.spinelligroup.eu

6. SPITZENKANDIDATEN

Given the failure to introduce transnational lists in 2014, it was right to rescue at least one element of the proposal – namely, the wish that the EU level political parties should play a leading part in the election campaign. This idea found its expression in what came to be known as the *Spitzenkandidat* experiment, first advanced by AFCO, taken up by Commission Vice-President Reding and President Barroso and then advanced officially by the Parliament and the mainstream political parties.¹⁷ There are different views about the relative success of the experiment, but at least the heads of government have now learned what it is they signed up to at Lisbon. They also seem impelled to return to the matter of how the Commission President is to be appointed in 2019, and Parliament should, in the view of this ex-rapporteur, exploit that opportunity **to follow the logic of Lisbon by putting the next batch of European party champions on top of transnational lists for election to the Parliament.**¹⁸ Such a reform would transmit to the wider electorate the admittedly rather élite project of *Spitzenkandidaten*.

Agreement on transnational lists for 2019 would also allow for making progress on other related issues. First, it would go some way to meet the objections of the Bundesverfassungsgericht to the wholly national and state-based nature of the present election and composition of the Parliament. Second, it would trigger another and more serious attempt **to draft a statute for the organisation and financing of the EU level political parties**, relieving them of the present – and blatantly absurd – prohibitions on political campaigning. Third, it would resolve the controversial question of whether **to allow candidates for the European Parliament to stand in more than one constituency or more than one state at any given election.** Parliament would be wise to continue to try to extend the franchise to as many people who live in the EU as possible for parliamentary elections at as many levels as possible. Previous efforts have been frustrated by the Council but also by the limitations of EU primary law in this respect.¹⁹ The EU's imminent accession to the ECHR accentuates **the need to extend the rights of EU citizens to vote and stand at elections.**²⁰ The gift of a second vote to electors for the European Parliament is surely wise and may even be a popular democratic stimulus, courtesy of the EU.

7. NATIONALITY AND CITIZENSHIP

The extension of the franchise leads the argument on to the question of who exactly should be able to vote and who should be counted where (and how often) when official calculations are made. The European Council appears to be concerned about the issue. In making their commitment in 2013 to a future formulaic method of seat apportionment, the heads of government said:-

¹⁷ Resolution of 22 November 2012 on the elections to the European Parliament in 2014 (P7_TA(2012)0462).

¹⁸ European Council Conclusions 26-27 June 2014, para. 27.

¹⁹ See Duff Report (A6-0267/2007) on the Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals; OJ C 219 E, 28.8.2008. And then Duff Report (A7-0352/2012) on the Right to stand in elections to the European Parliament for EU citizens residing in a Member State of which they are not nationals (P7_TA(2012)0417).

²⁰ Note in particular Article 3 of the First Protocol to the ECHR which commits signatories to ensuring the 'free expression of the opinion of the people in the choice of the legislature'.

“The total population of the member states will be calculated by the Commission (Eurostat) on the basis of data provided by the member states, in accordance with a method established by means of a regulation of the European Parliament and of the Council.”²¹

There have been suggestions that the Lisbon treaty has shifted the basis on which Parliament should be composed from that of population to that of citizens. The implication is that many nationals who now live outside the territory of their state should be permitted to vote in their homeland constituency. Indeed many are so permitted while others are prohibited. Moreover, **very few EU citizens resident in another EU state choose to exercise their right to register and vote where they live**, and many mainly bureaucratic obstacles still impede the growth of this practice. Little progress seems to have been made at the 2014 elections in getting people to use their voting rights as EU citizens despite the considerable efforts made by the Commission.

The other side of the coin is how to count how many people live in a state for the purposes of Council voting weights. According to Eurostat, it is impossible to be so precise about figures, especially at this time of large-scale movement of people across the internal frontiers of the EU. And Eurostat continues to argue, in accordance with UN conventions, that **total resident population is the most reliable demographic comparator**. Parliament would be wise to support the Commission when it comes to legislate on the promised regulation.

Parliament should also pay heed to the criticisms levelled at the conduct of its own election from the OSCE/ODIHR observation mission. The exploratory report was made after the 2009 elections, but its conclusions and recommendations remain valid.²² The OSCE/ODIHR found a lack of harmonization of candidacy requirements, including provision for independent candidates, a lack of provisions on voting rights particularly for prisoners and for EU citizens resident in another state, and a lack of possibility to appeal to a court decision regarding election results. The OSCE/ODIHR recommended stronger awareness-raising campaigns, more latitude in national legislation for the activities of European-level political parties, the unifying of polling days, and measures to ensure independent media monitoring of the campaign.

Many of the issues raised by the OSCE/ODIHR in 2009 continue also to be the subject of numerous petitions to the Parliament. To add to those items, a European Parliament ambitious for reform might decide to take a line on the questions of preferential voting, minimum age thresholds for voting and candidacy, and gender balance. A truly uniform electoral procedure would cater for these issues at the EU level.

8. PRIVILEGES AND IMMUNITIES

There is more **unfinished business concerning the Protocol on Privileges and Immunities**, which dates back to 1965 at a time when MEPs were also national MPs, and when it was no doubt appropriate that national authorities were responsible for deciding when and how MEPs should be exempted from national law. The European Parliament has taken the view that the Protocol should be revamped to accord with the Parliament's contemporary status as an independent, directly elected and fully responsible assembly.

²¹ European Council press release 28 June 2013, op cit.

²² OSCE/ODIHR Expert Group Report, *Elections to the European Parliament, 4-7 June 2009*, Warsaw, 22 September 2009.

Above all, Parliament should now be enabled to take action against the withdrawal of a mandate of an MEP by a state where and in so far as national law is in conflict with the law of the Union.

As an integral part of the negotiated agreement on the Members' Statute in 2005, Council agreed to review any consequences the Statute might have in terms of primary law. Parliament has asked that its resolution of June 2003 which proposed new provisions on the privileges and immunities of MEPs should be used as a basis for that review.²³ To date, there has been no progress on this matter.

9. A THIRD CONVENTION

The European Parliament has long since passed the point when it was merely an aggregation of the different national parliamentary cultures of the states. In the last decade, it has survived the shock of enlargement, become a credible and efficient legislator and made itself an indispensable player in the constitutional evolution of the Union. Internally Parliament has been an innovator. What it lacks is an affinity with the people it exists to serve, which leads to some doubts about its democratic legitimacy and symptoms of a mid-life identity crisis. **Electoral reform will do wonders for Parliament's public profile and self-confidence.** It should be attempted.

A change in the voting system in the Council or a reform of the privileges system requires treaty change. The modernisation of the 1976 Act to introduce a transnational element to the European elections requires a similar change in EU primary law, involving unanimity in the Council and ratification by national parliaments. Even agreement on a formula for seat apportionment needs no less than unanimity at the level of the European Council and the consent of national parliaments. Extension of the franchise treads on sensitive issues of national citizenship. As the controversy over the *Spitzenkandidaten* shows, assertiveness by the EU level political parties and European Parliamentary groups provokes in some countries a counter reaction from their national counterparts. All these reforms will be subject to the close scrutiny of constitutional courts.

Such constitutional developments are too important to evade the deliberations of a Convention. Indeed, they will be part of a much larger package deal involving the completion of banking and fiscal union, a revision of the system of 'own resources', a settlement of the British problem and a rectification of some of the less good features of the Treaty of Lisbon.²⁴ A Convention which engages all the stakeholders, including national parliaments, is the only place in which to confront a shift in the balance of power between the EU institutions and among the states. The European Parliament dedicated its own reform should aim to play a leading role in this Convention, in the closest collaboration with the Commission. **Parliament is strongly recommended to start now to prepare its own agenda for the Convention,** using to the full all its powers of initiative, and to playing a big role in the reflection period which surely should precede the opening of the formal Convention itself.

²³ See OJ C 068E, 18-03-2004, pp. 115-126 and OJ C 303E, 13-12-2006, pp. 830-831. A modified Protocol is proposed by the Spinelli Group in the *Fundamental Law*, op cit, pp. 281-282.

²⁴ For a fuller discussion of these possibilities, see the author's forthcoming *Pandora, Penelope, Polity: How to Change the European Union* to be published by John Harper in January.

ANNEX I

SEAT APPORTIONMENT IN THE EUROPEAN PARLIAMENT

Member State	Population (2014)	2014 Current MEPs	2019 CamCom phase one	2024 CamCom final
Germany	80780000	96	96	96
France	65856609	74	82	83
United Kingdom	64308261	73	80	82
Italy	60782668	73	76	77
Spain	46507760	54	60	61
Poland	38495659	51	50	51
Romania	19942642	32	30	29
Netherlands	16829289	26	25	25
Belgium	11203992	21	19	19
Greece	10992589	21	19	19
Czech Republic	10512419	21	19	18
Portugal	10427301	21	19	18
Hungary	9879000	21	19	17
Sweden	9644864	20	18	17
Austria	8507786	18	16	16
Bulgaria	7245677	17	15	14
Denmark	5627235	13	12	12
Finland	5451270	13	12	12
Slovakia	5415949	13	12	12
Ireland	4604029	11	11	11
Croatia	4246700	11	10	11
Lithuania	2943472	11	9	9
Slovenia	2061085	8	8	8
Latvia	2001468	8	8	8
Estonia	1315819	6	7	7
Cyprus	858000	6	7	7
Luxembourg	549680	6	6	6
Malta	425384	6	6	6
<i>Total</i>	507416607	751	751	751

In the first phase, in 2019, no state loses more than two seats.

ANNEX II

SQUARE ROOT VOTING IN THE COUNCIL

Member State	Population (2014)	Square Root value
Germany	80780000	8988
France	65856609	8115
United Kingdom	64308261	8019
Italy	60782668	7796
Spain	46507760	6820
Poland	38495659	6204
Romania	19942642	4466
Netherlands	16829289	4102
Belgium	11203992	3347
Greece	10992589	3316
Czech Republic	10512419	3242
Portugal	10427301	3229
Hungary	9879000	3143
Sweden	9644864	3106
Austria	8507786	2917
Bulgaria	7245677	2692
Denmark	5627235	2372
Finland	5451270	2335
Slovakia	5415949	2327
Ireland	4604029	2146
Croatia	4246700	2061
Lithuania	2943472	1716
Slovenia	2061085	1436
Latvia	2001468	1415
Estonia	1315819	1147
Cyprus	858000	926
Luxembourg	549680	741
Malta	425384	652
<i>Total</i>	<i>507416607</i>	<i>98776</i>

JagCom proposes a QMV formula made up of half the total population plus half the total weights, so that the quota is 60651.

ANNEX III

Protocol No. 3 on Seat Apportionment and Electoral Procedure of the European Parliament

[published by the Spinelli Group & Bertelsmann Stiftung, 'A Fundamental Law of the European Union', 2013, pp. 273-280]

Article 1 (ex-Article 1 Electoral Act)

1. Members of the European Parliament shall be elected *as representatives of the citizens of the Union* on the basis of proportional representation, using the list system or the single transferable vote.
2. States may authorise voting based on a preferential list system in accordance with the procedure they adopt.
3. Elections shall be by direct universal suffrage and shall be free and secret.

Article 2 (ex-Article 2 Electoral Act)

Each State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

Article 3

1. *For the purpose of the apportionment of seats among States in accordance with the principle of degressive proportionality pursuant to Article 14(2) TEU, the ratio between the population and the number of seats of each State before rounding to whole numbers shall vary in relation to their respective populations in such a way that each Member elected in a more populous State represents more citizens than each Member elected in a less populous State and also, conversely, that no less populous State has more seats than a more populous State.*
2. *Where a State accedes to the Union during a parliamentary term, it shall be allocated seats which will be added to the number of seats provided for in Article 14(2) on a transitional basis for the remainder of that parliamentary term.*

Article 4

The European Parliament and the Council, acting in accordance with the special legislative procedure, shall establish a fair, durable and transparent system for the apportionment of the seats in the Parliament per State. The system will take account of demography, the principle of degressive proportionality as set forth in Article 3(1), and the election of a certain number of Members in accordance with the provisions of Article 5.

Article 5

1. *Pursuant to Article 14(2)(a) TEU (new), there shall be one additional constituency formed of the entire territory of the Union from which shall be elected a certain number of Members. The number of such Members to be elected from the single European seat at the*

next elections shall be determined before the end of the fourth calendar year of the parliamentary term.

This decision on the number of such Members shall be taken on a proposal of the Parliament by the Council, acting by qualified majority, and with the consent of Parliament, which shall act by a majority of its component Members.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish a European electoral authority to conduct and verify the electoral process of the European Union constituency.

3. The transnational lists of candidates for election in the European Union constituency shall be registered with the European electoral authority by the European political parties. The lists shall be admissible only if composed of candidates resident in at least one third of the States.

4. Each elector shall have two votes, one that may be cast for the election of Members in the State and one supplementary vote that may be cast for the European Union-wide list. Seats shall be allocated from the European lists in accordance with the Sainte-Laguë method.

Article 6
(ex-Article 3 Electoral Act)

States may set a minimum threshold for the allocation of seats. At national level this threshold may not exceed 5 per cent of votes cast.

There shall be no minimum threshold for the allocation of seats from the European Union constituency.

Article 7
(ex-Article 4 Electoral Act)

The limitation of campaign expenses of candidates and political parties shall be laid down in delegated acts.

Article 8
(ex-Articles 5, 10 & 11 Electoral Act)

1. Elections to the European Parliament shall be held in May; for all States this date shall fall within the same period starting on a Saturday morning and ending on the Sunday. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall determine the date of the polling days of the next election before the end of the fourth calendar year of the parliamentary term.

2. States may not officially make public the results of their count until after the close of polling in the State whose electors are the last to vote within the polling period.

3. The five-year term for which Members of the European Parliament are elected shall begin at the opening of the first session following each election. The Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the polling period.

The powers of the Parliament shall cease upon the opening of the first sitting of the new Parliament.

Article 9
(ex-Article 6 Electoral Act)

1. Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.

2. Members of the European Parliament shall *have the rights and obligations laid down in the Members' Statute and the Protocol on the privileges and immunities of the European Union*.

Article 10
(ex-Article 7 Electoral Act)

1. The office of Member of the European Parliament shall be incompatible with that of:
 - *member of a State or of a regional parliament or assembly with legislative powers,*
 - member of the government of a State,
 - member of the European Commission,
 - Judge, Advocate-General or Registrar of the European Court of Justice,
 - member of the Board of Directors of the European Central Bank,
 - member of the Court of Auditors,
 - Ombudsman,
 - member of the Economic and Social Committee,
 - member of the Committee of the Regions,
 - active official or servant *of an institution, agency or body of the European Union*.

2. Members of the European Parliament to whom paragraph 1 becomes applicable in the course of the five-year period referred to in *Article 8* shall be replaced in accordance with *Article 15 or 16*.

Article 11
(ex-Article 8 Electoral Act)

Subject to the provisions of this Protocol, the electoral procedure shall be governed in each State by its *own* provisions.

These provisions shall not affect the essentially proportional nature of the voting system.

Article 12
(ex-Article 9 Electoral Act)

Without prejudice to Article 5(4), no one may vote more than once in any election of members of the European Parliament.

Article 13
(ex-Article 12 Electoral Act)

The European Parliament shall verify the credentials of *the Members of Parliament on the basis* of the results declared officially by the *European electoral authority and by the States, respectively*. It shall rule on any disputes which may arise.

Article 14
(ex-Article 13(1) Electoral Act)

A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.

Article 15
(ex-Article 13(2-4) Electoral Act)

1. In the case of the Members elected in the States, and subject to the other provisions of this Protocol, each State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 8 for the remainder of that period.

2. Where the law of a State provides for a temporary replacement of a member of its State Parliament on maternity leave, that State may decide that such provisions are to apply mutatis mutandis to the Members of the European Parliament elected in that State.

3. Where the law of a State makes explicit provision for the withdrawal of the mandate of a Member of the European Parliament elected in that State, that mandate shall end pursuant to those legal provisions. Such legal provisions shall not be adopted with retroactive effect. The competent State authorities shall inform the European Parliament thereof.

4. Where a seat of a Member elected in the States falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the State concerned thereof.

Article 16

1. In the case of the Members elected for the European Union constituency, and subject to the other provisions of this Protocol, appropriate procedures for the filling of any vacancy for the remainder of the five-year term of office referred to in Article 8 shall be laid down in delegated acts.

2. Where the law of the Union makes explicit provision for the withdrawal of the mandate of a Member of the European Parliament elected on the European Union-wide list, that mandate shall end pursuant to those legal provisions. The electoral authority shall inform the European Parliament thereof.

3. Where a seat of a Member elected for the European Union constituency falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the electoral authority thereof.

Reinforcing uniformity in the European election act: gentle interim arrangements in 2019 Towards systematic double-proportionality in 2024

by Friedrich Pukelsheim and Kai-Friederike Oelbermann

Part A argues that the fatal defect of current European Parliament elections, the misdirection of the electorate, will only be overcome provided unionwide political parties emerge to contest the election and to carry the electoral campaign. Parts B and C assume that such a European party system comes into being. Part B describes a double-proportional method for the translation of votes into seats that fits the Union's constitutional frame perfectly. Double-proportionality is illustrated by means of the 2009 election results, in Tables 1 and 2. Due to the lack of unionwide parties in 2009, the illustrations necessitate some practically unrealistic alignments. Part C proposes three interim arrangements for 2019 that might pave the way to introduce systematic double-proportionality in 2024.

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 and 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—divided into 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.

1. WHAT IS THE PROBLEM? MISDIRECTION OF THE ELECTORATE

The biggest defect of the current electoral system²⁵ 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.*²⁶

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 practicing politicians.²⁷ 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.

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.²⁸ 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.

²⁵ 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.

²⁶ *Schleicher, D.*: 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.

²⁷ We quote but three: *Hix, S.*: What's Wrong with the European Union and How to Fix It, Wiley, New York, 2008. *Huber, P.M.*: Demokratische Legitimation in der Europäischen Union, *Zeitschrift für Staats- und Europawissenschaften*, 7 (2009), 364-380. *Priestley, J.*: European Political Parties – The Missing Link, Notre Europe Policy Paper 41, Paris, 2010.

²⁸ 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, L 297 (15.11.2003), 1-4.

2. 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*.²⁹ 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.³⁰ 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.

²⁹ Article 14(2) EU Treaty, see: Consolidated Version of the Treaty on European Union. Official Journal of the European Union, C 83 (30.3.2010), 13-45.

³⁰ This is Table 14.5 in *Pukelsheim, F.: Proportional Representation – Apportionment Methods and Their Applications*, with a Foreword by Andrew Duff MEP, Springer International Publishing, Cham (CH), 2014. For the unionwide aggregation of the Political Groups' vote counts see Section VI in *Oelbermann, K.-F./Pukelsheim, F.: Future European Parliament Elections – Ten Steps Towards Uniform Procedures*, *Zeitschrift für Staats- und Europawissenschaften*, 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.*

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.³¹ At present, electoral equality is strangely absent in the Union's primary law.³²

However, the Treaties are full of promises to observe equality among Union citizens, all Member States subscribe to electoral equality being one of the five principles underlying Europe's electoral heritage,³³ and the European Convention for the Protection of Human Rights and Fundamental Freedoms to which the Union shall accede³⁴ 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.

³¹ An added benefit is the facilitation for a State to subdivide its area into electoral districts, compare *McLean, I.: 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.

³² Article 14(3) EU Treaty 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.*

³³ Council of Europe, European Commission for Democracy through Law (Venice Commission): *Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report*, Opinion no. 190/2002, CDL-AD (2002) 23 rev. Strasbourg, 23 May 2003.

³⁴ Article 6(2) EU Treaty.

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.

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.³⁵ The seats of a State's party are obtained via double division and rounding: The pertinent vote count is divided by the associated state divisor and by the associated party divisor, and then the resulting quotient is rounded to the nearest whole number. It may be checked that the seat numbers thus obtained 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.

³⁵ These contingents total 751 seats and result from the Cambridge Compromise, see Section 14.9 in *Pukelsheim: Proportional Representation* (note 6). They differ from the actual 2009 seat contingents.

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).³⁶ 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.

3. 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 period, 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.

3.1. 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.

3.2. 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

³⁶ Hix, S./Hagemann, S.: Could Changing the Electoral Rules Fix European Parliament Elections? *Politique européenne*, 28 (2009), 27-41.

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*

- *five percent of the valid votes in one Member State;*
- *or four percent of the valid votes in each of two Member States;*
- *or three percent of the valid votes in each of four Member States;*
- *or 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.

3.3. 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.³⁷ 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.³⁸ When compared to the sitting Parliament's composition it transpires that about 25 or 26 seats need to be re-allocated.³⁹ 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.

³⁷ Item 2 on page 7 of the Report (note 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; ...*

³⁸ *Grimmett, G.R./Laslier, J.-F./Pukelsheim, F./Ramírez González, V./Rose, R./Słomczyński, W./Zachariassen, M./Życzkowski, K.*: 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 (note 6).

³⁹ 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 (note 6), and Annex One in *Duff's* contribution to the hearing.

In essence, most of the transnational list seats will eventually be filled with nominees from the bigger Member States.⁴⁰ 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.

⁴⁰ To evade this imbalance the votes for transnational lists could be evaluated using double-proportionality, see Section 1.3 in *Oelbermann, K.-F.: Biproportionale Divisormethoden und der Algorithmus der alternierenden Skalierung*, Logos Verlag, Berlin, 2013.

NOTES

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