EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMPARATIVE REPORT
ON THRESHOLDS AND OTHER FEATURES
OF ELECTORAL SYSTEMS WHICH BAR PARTIES
FROM ACCESS TO PARLIAMENT

Adopted by the Council for Democratic Elections
at its 26th meeting
(Venice, 18 October 2008)
and the Venice Commission
at its 77th plenary session
(Venice, 12-13 December 2008)

on the basis of a contribution by
Mr Klemen JAKLIC (Member, Slovenia)

Introduction

1. Further to Recommendation 1791 (2007) of the Parliamentary Assembly of the Council of Europe on the state of human rights and democracy in Europe, and to the conclusions of the 2007 Forum on the future of democracy, the Advisory Committee of the Forum was in favour of a more detailed examination of the issue of the threshold of parliamentary representation being made by the Venice Commission., Mr Jaklic prepared a report on the "Thresholds and Other Features of the Electoral System which Bar Parties from Access to Parliament in the Member States of the Venice Commission". In consultation with the Secretariat it was agreed that this would probably take several stages. The first stage is about delineation of various mechanisms that have the same effect of limiting party's access to parliament, and about exposing different comparative contexts in which the mechanisms appear within particular electoral systems. Such a contextual comparative approach at the initial stage is understood to be an indispensable precondition to any sound further assessments of the situation across the Member States (possible second stage), which would then ideally lead to a potential elaboration of common European standards in this area (possible third stage).

2. The present report was adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and by the Venice Commission at its 77th plenary session (Venice, 12-13 December 2008).

1.   General remarks

3. Unless otherwise noted, the term "threshold" is used, in this report, in the broader sense: as any mechanism affecting parties' access to parliament. By the term "threshold" we usually understand the threshold in the formal sense: the legally prescribed minimum number of votes needed for a party to take part in distribution of parliamentary seats. However, while this is one of important mechanisms for barring parties from access to parliament, the legal threshold is but one of several mechanisms that can result in the same, or at least very similar, effect of restricting/enhancing opportunities for access. When measuring the issue of access contextually it would thus be insufficient to focus solely on legal thresholds; while keeping a legal threshold low, the same result of high level of exclusion could be achieved through many other mechanisms. They all are relevant, and are especially important from the perspective of inclusion/exclusion of minor and new parties. This report is thus concerned with all these mechanisms – the threshold in the broader sense.

4. It is also important to note that this initial report is not (yet) about value judgment. It is not claimed that more inclusive systems are better. In order to be able potentially to make a normative value judgment and elaborate any common standards in this area one must first clarify facts: different degrees of inclusiveness/exclusiveness of different systems. The following contextual analysis of different types of thresholds is thus the initial step towards this first goal.

2.   The Choice of a Type of an Electoral System

5. The natural starting point of any analysis of electoral systems' effect on inclusion/exclusion of parties from access to parliament is the "Duverger's law". It states that majority/plurality system "tends to party dualism" while "proportional representation tend to multipartyism".[1] The law is not without exceptions and can be understood only as a probabilistic generalization.[2] Sometimes significant disparities exist within one and the same system-family. Nonetheless,

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[1] M. Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Wiley, NY 1954).
[2] M. Duverger, "Duverger's Law: Forty Years Later" in B. Grofman and A. Lijphart (eds), *Electoral Laws* (Agathon, NY 1986); M. Gallagher and P. Mitchell (eds), *The Politics of Electoral Systems* (OUP, Oxford 2007) 545-46. P. Norris, *Electoral Engineering* (CUP, Cambridge 2004) 81.

the choice of a type of electoral system (majority/plurality, combined, proportional) is an important general threshold; it is itself a mechanism with an important general impact on minor party exclusion/inclusion and, consequently, party fragmentation. Party systems will be more competitive and fragmented in proportional systems (PS), whereas majority/plurality systems (MS) will usually restrict opportunities for minor parties. Thus, a study of electoral systems worldwide found that "the mean number of parliamentary parties (based on the simplest definition of parties holding at least one seat) was 5.22 in the countries using majority/plurality systems, 8.85 in combined (or mixed) systems, and 9.25 in societies with proportional representational electoral systems."[3] Similarly, "the mean number of *relevant* parties [] (holding over 3% of parliamentary seats) was 3.33 in all majority/plurality systems, 4.52 for combined systems, and 4.74 for all proportional systems".[4]

3.   Restrictions on Ballot, Funding, and Media Access

6. Another set of mechanisms flows from statutory or constitutional provisions designed to limit or prevent parties from either registering, nominating candidates for office, or otherwise gaining official ballot access, as well as to unequally restrict access to campaign funds and media airtime.[5] As in the previous section, here, too, the logic is straightforward. On the one hand, "minor parties seeking to break into office [] are generally expected to perform well in political systems which facilitate more egalitarian conditions of party competition, for example where all parties are equally entitled to ballot access, free campaign media, direct public funds, and indirect state subsidies."[6] On the other hand, "minor parties face a harsher environment where such public resources are allocated in a 'cartel' arrangement biased toward established parties already in the legislature, thereby protecting incumbent politicians… Minor challengers face even more serious limitations in regimes holding manipulated elections, where the rules for the allocation of public resources, such as media airtime, are grossly biased toward the ruling party."[7]

3.1. Registration Requirements

7. This is a precondition to getting access to the ballot. Only in a few countries (among them, in France, Sweden, and Ireland) there is no requirement for political parties to register before appearing on the ballot.[8] In most countries there *are* such requirements, and they have generally been increased over the recent years due to the increasing regulation of public campaign funds as well as due to detailed bureaucratic requirements to register legally.[9] The requirements differ across different countries, but the common demands are deposition with electoral authorities of a written statement of the party's principles and constitution, statutes and rulebooks, an organizational structure, a list of officers, a list of minimum membership or signatures, or sometimes even a minimum number of candidates or a particular regional distribution of candidates.[10] When the burden of restrictions is generally heavy this does "represent a barrier for all new challengers and minor players [and does] deter some contenders".[11] Moreover, the more specific requirements, such as those that parties must not oppose certain principles or that they have to have a minimum number of contenders, and the like, affect minor parties on the extremes of the political spectrum.[12]

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[3] P. Norris, *Radical Right: Voters and Parties in the Electoral Market* (CUP, Cambridge 2006) 107.
[4] Id.
[5] P. Norris (footnote 3), 87.
[6] Id 83.
[7] Id; see also R. Katz and P. Mair, "Changing models of party organization and party democracy: The emergence of the cartel party" in *Party Politics* 1 (1995) pp 5-28, arguing that established democracies have been heading toward a cartelised system.
[8] P. Norris (footnote 3), 88.
[9] Id.
[10] Id; Election Process Information Collection (EPIC), http://archive.idea.int/ideas_work/02_electoral_epic.htm.
[11] Id.
[12] Id.

3.2. Ballot Access

8. After restrictions regarding party registration there are then also restrictions on access to ballot, such as the requirement of paying an official deposit prior to election and the collection of a particular number of signatures per candidate or party list.

9. In some states the deposit is relatively low (for instance, according to a comparative study from 2003, the deposit in France was $180, and in Ireland $350), but this does reach less modest rates in others (UK, $735).[13] Deposits are usually returnable if a candidate/party gets some minimal share of votes (for instance, 5% in the UK). Nonetheless, when high deposits are combined across several candidacies such a requirement may work as a significant deterrent, or threshold, for serious contenders with limited financial resources. Norris thus exemplifies: "if they lost every deposit by falling below the minimum 5% threshold, it would cost the greens almost half a million dollars to contest every seat in a UK general election".[14]

10. The situation is similar with respect to the required minimum number of signatures per candidate or party list. In some states they are fairly modest (e.g. 200-500 signatures per district in Austria and Belgium), but not so in all states or across all different context. Thus, when Italy used a mixed system, it required 500 signatures for candidates in single member districts, but 1500-1400 for party lists. The requirement sometimes becomes quite fierce: in Norway, for instance, 5,000 signatures are required per party.[15] This may function as an important threshold barring minor parties from access to the ballot and, therefore, parliament.

3.3. Funding and Media Access

11. After party registration and access to ballot, there is also regulation of access to campaign funding and media (public funding, indirect state subsidies, access to broadcasting). This, too, may function as an important threshold for parties' access to parliament. It is well established that "access to money and television are two of the most important factors that help parties in conveying their message and mobilizing potential supporters."[16] Particular regulation in these fields could lead either to a "political cartel", reinforcing the relative power of parties already in parliament, or, alternatively, generate a more level playing field, thereby boosting opportunities for minor/new parties.[17] For instance, when resources are distributed based on percentage of seats in the current parliament, as in Switzerland or the Netherlands, then such provisions can, other things being equal, act more as a cartel allocating public goods to current parliamentary parties. The threshold for access to parliament by minor/new parties is relatively higher in these circumstances. By contrast, minor/new parties have grater chance when these resources are allocated on a more egalitarian basis, whether the allocation is based on the percentage of votes cast in the previous or current elections (e.g. Spain) on the number of candidates running (e.g. allocation of airtime in UK), or equally across all registered parties (e.g. Russia). The most minimal allocation of campaign funding and free broadcasting access are found in states like Austria, Finland, Iceland, Switzerland, and the most equitable ones in states like Russia, Italy and Spain.[18]

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[13] S. Bowler et al, "Changing Party Access to Elections" in B. Cain et al (eds) *Democracy Transformed?* (OUP, Oxford 2003). A. Blais and A. Yoshinaka, *Establishing the Rules of the Game* (UTP, Toronto), table 2.1.
[14] P. Norris (footnote 3), 90.
[15] Id.
[16] Id. 95.
[17] Id. 95, 103; S. Bowler et al, "Changing Party Access to Elections" in B. Cain et al (eds) *Democracy Transformed?* (OUP, Oxford 2003).
[18] P. Norris (footnote 3), table 4.1, listing 24 European countries on the scale from the least to the most equitable, judging on the cumulative basis of the following 8 criteria: 1.) Is there a system of regulation for financing parties? 2.) Is there provision for disclosure of contributions to parties? 3.) Is there a ceiling on contributions to parties? 4.) Is there a ceiling to party election spending? 5.) Do parties receive direct public funds? 6.) Are parties entitled to free media access? 7.) Are parties entitled to tax exempt status? 8.) Do parties receive indirect public subsidies?

12.   This being said, it should be cautioned that funding and media access could serve as a useful guide to assessing the threshold issue in practice only if, in addition to these *formal* requirements, one takes into account also the *factual* functioning of these formal rules in different states. That is, one would also need to take into account the intensity with which the formal rules are being implemented (by the courts and election commissions) in the different states. Thus, while it is true, for instance, that in Russia all registered parties are entitled to equal access to free campaign broadcasting, there is such a multiplicity of parties, and thus campaigning adds, that the practical mobilizing support is automatically diluted. Each party, regardless of size, gets no more than its "thirty-second moment of fame".[19] Moreover, some official observers have reported a heavy pro-government bias on all main channels during successive Russian elections in the past.[20] All these, and other, contextual specificities must be taken into account when measuring and comparing this particular threshold across different states.

4.   The Legal Threshold

13.   The next threshold for parties' access to parliament is the threshold in the narrower, literal, sense of the word. It has also been called the "threshold of exclusion".[21] No electoral system can be perfectly proportional in practice: according to the principle of representation a larger body (whole electorate) is always translated into a much smaller one (members of parliament). There will thus always be a certain minimum amount of votes needed to qualify a party for representation (distribution of seats) in the parliament. The threshold of exclusion is about that percentage of votes. On the one hand, it is generally true that MS are more restrictive to minor/new parties in this respect. This is, however, not so when a minor party's support is concentrated within a specific region that corresponds to one or more of the electoral districts. On the other hand, even though PS and combined systems (CS) are considered generally to be more favourable to minor/new parties when it comes to the threshold of exclusion, there are still significant degrees of exclusion possible in those systems as well.

14.   There are two types of thresholds of exclusion. In some electoral systems the threshold is set artificially, by law. This is known as the *legal* (or artificial, or formal) threshold. Parties that do not obtain the legally prescribed minimum number of votes do not get any seat. This is an obvious limitation to minor parties, one that often also proves fatal to the survival of such parties. States with legal threshold differ according to the chosen percentage. For the member states of the Venice Commission this range is between the lowest 0.67% (in the Netherlands) to the highest 10% (in Turkey). Based on an analysis of electoral legislation and other sources a list of different legal thresholds across several of the European states was prepared. The list (table) appears at the end of this subsection. However, it also follows from the analysis that any sound conclusions as to the comparative merits of these numbers would have to take into account a complex set of different contexts associated with the numbers. Most obviously, we would have to take into account the thresholds' *different levels of application* as appear across different states. Thus, some laws prescribe that a certain amount of votes needs to be obtained at the constituency/district level (e.g. Spain). Others require nation-wide legal thresholds (e.g. Germany), and still other thresholds are meant to apply at both these levels (e.g. Sweden). It is impossible, without further and detailed measurements/calculations of the type used in political science, to assess which of these systems, other things being equal, is at the end more/less favourable to parties' access, and what the actual degree of that inclusiveness/exclusiveness is. Moreover, there are differences between the countries as to the *stage of the threshold's application*: whether the legal threshold is applied to the first, second, or any subsequent

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[19] Id. 101.
[20] Id.
[21] D. Nohlen, "Threshold of Exclusion" in R Rose (ed), *The Encyclopedia of Electoral Systems* (CQ Press, Washington DC) 2000.

rounds of seat allocations. Furthermore, there is the problem of the "*graduation of the threshold*": the thresholds differ also in the sense that some numbers apply to parties and others to party coalitions; for example 5 % per parties, 8% per two-party coalitions, 10 % for larger party-coalitions.[22] All these circumstances further complicate a potential comparative assessment of our question (the relative openness/closure of a given system to parties' access). The same is true of the fact that some states (e.g. Germany) prescribe alternative legal thresholds determined by *seats, not percentage*. These usually (as in the case of Germany, where winning 3 direct (plurality) seats also suffices to take part in the distribution at the national level) appear in addition to the thresholds determined by percentage. On top of this, there are *other details of each system* that make the comparative assessment of the threshold effects even more difficult. For instance, in Germany the 5% national threshold plays an important role while the threshold of 3% in Greece has little effect: there, minor parties fail to get elected due to a different cause – the use of fifty-six districts for party lists.[23] Similarly, the 3% legal threshold in multimember districts in Spain may be nearly insignificant. It's has been reported that it is already the magnitude of the districts in Spain that "does not permit the representation of parties with a share of votes lower than 5 percent".[24] Another example of the different functioning of the thresholds, due to specificities of each system in which they appear, is this: "a national legal threshold (as in Germany) applied across the whole country limits minor parties such as the Party of Democratic Socialism (PDS), who are strongest in the east but who fell below the 5% level nationally in the 2002 Bundestag election, whereas a district-level legal threshold (e.g. the one used in Spain) will not affect small parties such as the Basque Nationalists, who are returned in their regional strongholds".[25]

Legal Threshold in Majority/Plurality Systems

Country	Legal Threshold
Belarus	None
France	Either 12.5% support of registered electorate in a district, or to finish in top two (in first round) to qualify for second round
UK	None

Legal Threshold in Combined Systems

Country	Legal Threshold
Albania	2,5% for parties and 4 % for coalitions (before the constitutional revision)
Germany	Either 5% nationwide or 3 district seats
Hungary	5% of votes in proportional representation tier needed to qualify for any seats from proportional representation tier or national tier
Italy	4%
Lithuania	5%

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[22] Id; P. Norris, (footnote 3), 119.

[23] Id.

[24] D. Nohlen, id.

[25] P. Norris (footnote 3), 119.

Russia	5% (when the combined system was applied)
Ukraine	4% (when the combined system was applied)

Legal Threshold in Proportional Systems

Country	Legal Threshold
Austria	1 seat in a lowest-tier district, or 4% nationwide, needed to qualify for middle or national tier seats
Belgium	5% of votes needed within a constituency to qualify for seats there
Bosnia and Herzegovina	None
Bulgaria	4%
Croatia	5%
Czech Republic	5%
Denmark	Parties do not qualify for share of higher tier seats unless they win a lower tier seat, win the equivalent of the Hare quota in two of the three regions, or win 2% of national vote
Estonia	5%
Finland	None
Greece	3%
Iceland	None
Ireland	None
Latvia	5%
Luxembourg	None
Moldova	6%
Netherlands	0.67%
Norway	4%
Poland	5%
Portugal	None
Romania	5 %
Russia	7 %
Slovakia	5%
Slovenia	4%

Spain	3% of votes needed within a district to qualify for a seat there
Sweden	Either 4% national or 12% district
Switzerland	None
"the former Yugoslav Republic of Macedonia"	None
Turkey	10%
Ukraine	3 %

5.   The Natural Threshold

15.   In the previous subsection it was mentioned that there are two types of thresholds of exclusion. Our attention then moved to the one set artificially, by law (*legal* threshold). But this is only the first threshold of exclusion. The second one is the so-called *natural* (or hidden, or effective, or informal) threshold. This one is present in any electoral system, regardless of whether or not the system also has any legal threshold. Even when there is no legal threshold at all, small parties can thus still face considerable natural thresholds for access to parliament. The natural threshold is the percentage of votes needed to get one seat at a district level, and is mainly dependent on the mean district magnitude (the average number of legislators returned per district, spanning from one in the UK to 150 in the Netherlands. The other factors affecting the natural threshold (but with a much less force than the first) are, the seat allocation formula (d'Hondt, Saint-Laguë, LR-Droop, Hare), the number of contestant political parties, and size of an assembly. Generally speaking, a system with small district magnitudes thus requires a relatively high percentage of votes per district to return a legislator. Conversely, the more seats there are to fill in the districts, the lower its natural threshold.[26]

16.   While the concept of national threshold is clearly different from the legal, or formal, threshold, it is obvious that depriving minor/new parties of accurate or any representation "can be done just as well by low district magnitude as by imposing a formal threshold".[27] As to the measurement of a country's natural district threshold (average number), there is no formula that would work in all circumstances. Nonetheless, there is consensus that the following formulas [$t=75\%/(m+1)$, or $m = (75\%/t) -1$], where "t" is the threshold" and "m" is the magnitude (number of seats per district), result in sufficiently accurate estimations of the natural threshold. To take an example, when seats are to be allocated through fourteen-seat districts, the natural threshold is $75\%/(14+1)$, that is, 5%. This means that it is as difficult for a party to get into parliament in such circumstances as if there were a formal district threshold of 5%.[28] Moreover, if there was a legal threshold of 5%, or lower, prescribed at the district level, such a legal threshold would be quite irrelevant: a party with fewer votes than 5% could not get a seat regardless of whether or not there was the legal threshold. The following are some examples of natural thresholds (average numbers) as calculated for some of the countries (source: P. Norris, note 3, pp 110-11):

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[26] On this issue, see P. Martin, *Les systèmes électoraux et les modes de scrutin* (Montchrestien, Paris 2006) 84-85.
[27] M. Gallagher and P. Mitchell (eds), *The Politics of Electoral Systems* (OUP, Oxford 2007) 607.
[28] Id.

Natural Threshold in Majority/Plurality Systems

Country	Natural Threshold
Belarus	50%
France	50%
UK	35%

Natural Threshold in Combined Systems

Country	Natural Threshold
Hungary	11.3%

Natural Threshold in Proportional Systems

Country	Natural Threshold
Belgium	9.2%
Finland	5%
Iceland	10.8%
Ireland	15%
Luxembourg	4.8%
Portugal	6.7%
Spain	9.7%
Switzerland	9%

17.   An important caveat needs to be mentioned here. While the natural threshold may be an important general indicator of the threshold at the district level it could not, of course, be equated with nation-wide natural threshold, or compared with the legal nation-wide threshold. For instance, while the average natural threshold (district level) for Spain is 9.7% (see above) a party can actually get into the Spanish Cortes by winning just one seat in any district. In the Madrid district (with 34 seats and thus only 2.1% natural threshold in 2000 elections) a party would thus, in the absence of the district legal threshold of 3% in Spain, need only 2.1% of the national vote. Applying the additional legal district threshold of 3% this still meant only 0.38% of the national vote.[29]

18.   Similarly, with 165 elected legislators an average district magnitude in Ireland is 4.0 (2002 elections). The average natural threshold at the district level is thus 15% (75%/5). Again, it is quite clear that this cannot possibly be the same as the nation-wide natural threshold; it would have to mean that a party with 14.9% support would not get into the Parliament. In fact, while

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[29] Id, 609.

within an individual three-seat district a party would get a seat only at approximately 18.7% of votes (75%/(m+1)), this is only about 0.3% of the votes on the national level.[30]

19.   Indeed, the natural district threshold cannot be automatically projected to the national level and directly compared with, say, the nationwide legal threshold. Some have tried to devise a formula and calculate the nationwide natural thresholds (see the tables at the end of this subsection).[31] However, such calculations cannot be fully precise; any such calculation would remain approximation because, among others, the real force with which the thresholds curtail access depends heavily upon particular distribution of party support, the number of districts, and the number of legislators returned within each district.[32] These characteristics may vary significantly, and some average reflection on the national level (or to some extent even the average district level) might not fully capture the exclusionary force already at work within some specific districts. Moreover, even if sufficiently approximate, the nationwide natural threshold is a concept that does not have all the properties of the legal threshold while it has some unique properties of its own.[33] Furthermore, "whereas natural thresholds tend to widen the proportionality gap between the share of votes and seats, favouring especially the biggest party, legal thresholds foster a more proportional distribution of seats among those parties that passed the threshold".[34] Hence, the two thresholds, when translated to the national level, could not be directly compared as if they were one and the same thing.

20.   The following three variables are relevant for calculating the approximation to the nationwide natural threshold: M (average district magnitude), S (total assembly size), and E (number of electoral districts). The formula is this: $T = 75\% / ((M + 1) * \sqrt{E})$ or, which is the same, $T = 75\% / (((S/E) + 1) * \sqrt{E})$, or $75\% / (((S + E)/E) * \sqrt{E})$.[35] To illustrate with our examples of Spain and Ireland: in Spain, where S=350, and E=52, the nation-wide natural threshold (T) is 1.35%, while in Ireland, where S=165 and E=42, T amounts to 1.85%.[36] The following are some additional calculations of the nationwide natural threshold (source: Gallagher and Mitchell, footnote 27, Taagepera, footnote 31):

[30] Id.

[31] A. Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies*, 1945-1990 (OUP, Oxford 1994); R. Taagepera and M. Soberg, *Seats and Votes: The Effects and Determinants of Electoral Systems* (Yale University Press, New Haven 1989); R. Taagepera, "Effective Magnitude and Effective Threshold" 17 Electoral Studies (1998), 393-404; R. Taagepera, "Nationwide Threshold of Representation" 21 Electoral Studies (2002) 383-401. R. Taagepera, *Predicting Party Sizes* (OUP, Oxford 2007).

[32] Id; see also P. Norris (footnote 3), 120; also M. Gallagher and P. Mitchell (footnote 27), 607.

[33] M. Gallagher and P. Mitchell (footnote 27), 610-11; R. Taagepera, *Predicting Party Sizes* (footnote 31), 252. Thus, when it comes to the property of the "threshold of representation" (the minimum percentage of the vote that allows a party to earn a seat under the most favourable circumstances) the two thresholds (legal and natural) do seem to share sufficient similarity. However, when it comes to the properties of disproportionality and fragmentation, they "clearly do not". For instance, "in a country that applies a PF formula in constituencies averaging fourteen MPs, such as Finland, we can be confident that we will encounter low disproportionality and a multiparty system". At the same time, "in a country that uses only SMDs, such as the UK, we expect high disproportionality and low fragmentation even if there are several hundred constituencies". Therefore, "however well it serves as an estimate of the nationwide threshold of representation, [the nation-wide natural threshold] formula understates the importance of average district magnitude and overstates the importance of the number of constituencies when it comes to disproportionality and the effective number of parties… Nonetheless, the number of constituencies is a variable that does make some difference". M Gallagher and P Mitchell, id.

[34] D. Nohlen (footnote 21), 311.

[35] M Gallagher and P Mitchell (footnote 27), 610; R Taagepera (footnote 31).

[36] Id.

Nation-wide Natural Threshold in Majority/Plurality Systems

Country	Nation-wide Natural Threshold
France	1.56%
UK	1.48%

Nation-wide Natural Threshold in Combined Systems

Country	Nation-wide Natural Threshold
Germany	0.13%
Hungary	1.77%
Russia (when the combined system was applied)	1.67%

Nation-wide Natural Threshold in Proportional Systems

Country	Nation-wide Natural Threshold
Austria	0.41%
Belgium	1.93%
Denmark	0.43%
Finland	1.32%
Ireland	2.34%
Italy	1.48%
Netherlands	0.5%
Spain	1.35%

6.   Other Mechanisms With the Threshold Effect

21.   There are, moreover, still other mechanisms that can have the same effect as the described thresholds of exclusion and other thresholds. Thus, restriction on minor parties' access can be achieved by partisan manipulation of the electoral rules. Examples of the latter are malapportionment (producing constituencies containing different sized electorates) and gerrymandering (intentional drawing of electoral boundaries for partisan advantage).[37]

22.   Moreover, factors such as particular administration of voting facilities, frequency of elections, citizenship franchise qualification, as well as the institute of compulsory voting, can also lead to the same effect of restricting/enhancing opportunities for access. It has been suggested, for example, that under a compulsory voting regime (at the level of national

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[37] P. Norris, *Electoral Engineering* (footnote 2), 82.

parliamentary elections it occurs, for instance, in Belgium, Greece, Luxembourg, Italy, while in Austria and Switzerland it is used in some of the Länder/cantons) voters who are otherwise not inclined to vote might, out of their dissatisfaction with the major parties, "cast a protest vote". This often goes to a radical (usually a minor) party.[38]

Conclusions

23.   In order to be able potentially to make a normative value judgment and elaborate any common European standards with respect to the inclusiveness/exclusiveness of parties' access to parliament, one must first clarify how inclusive/exclusive the different electoral systems across Europe actually are. However, the degree of inclusiveness/exclusiveness is dependent on several features, or mechanisms, which are either explicit or implicit components of these electoral systems. Since the same effect of excluding parties from parliament can be achieved through any of those, it would be insufficient, when measuring the degree of inclusiveness/exclusiveness, to focus solely on the legal threshold. Any contextual and sound comparative analysis of the issue would take into account also the mechanisms discussed above – the thresholds in the broader sense. At the same time, this brings significant difficulties. While all those mechanisms affect inclusiveness/exclusiveness of electoral systems, not all could be compared in a straightforward way. The analysis of the natural threshold showed, for instance, that this mechanism is not exactly the same as the nation-wide legal threshold. Yet, it is crucial for measuring the openness and cannot be, without jeopardizing sound conclusions, excluded from the analysis. It needs to be calculated for each member-state at the district as well as national level, and then the comparison of the issue of openness could perhaps proceed through these parallel and different routes until, ideally, estimations could at the end perhaps also be made as to the overall degree of openness. Crucially, none of these further steps could proceed without a detailed and in-depth political-science type of investigation into the issues.

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[38] P. Norris (footnote 3), 122. Norris reports that "radical right did fare slightly better in the eight nations which use compulsory voting" and that "this evidence is suggestive", but concludes that, due to the limited number of cases under scrutiny, we need further studies to fully prove the relation between compulsory voting and successful access of minor parties from the extremes.