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Future European Parliament Elections: Ten Steps Towards Uniform Procedures

FUTURE EUROPEAN PARLIAMENT ELECTIONS: TEN STEPS TOWARDS UNIFORM PROCEDURES

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Procedural steps for the European Parliament elections are proposed so as to achieve more uniformity among the national electoral provisions of the 27 Member States. The steps include the creation of a European Electoral Authority, the enhancement of the European party system, and the consolidation of the many diverse seat apportionment methods into the single equality-oriented divisor method with standard rounding (Webster/Sainte-Laguë). The introduction of semi-open list systems is addressed, as is the formation of a single European constituency for the election of an additional twenty-five MEPs. In the long run the translation of votes into seats could be carried out using the biproportional variant of the divisor method with standard rounding, in order to better mirror the structure of the European Union.

1. Introduction.   Assessing the post-war European integration process Wirsching (2006) illuminates the contraposition of *Wille und Vorstellung.* The antagonisms that went along with the process are reflected by the enigmatic character of the European Parliament (EP) and its predecessor, the Common Assembly. Of all institutions of the European Union, the EP is the one veering most between *Sein und Schein.* With a view towards the poor coverage of European issues in the campaign for the 4–7 June 2009 EP elections and the low voter turnout, Huber (2009) proposes a strengthening of the political parties at European level to further develop the legitimizing powers of the EP.

The OSCE/ODIHR (2009) report describes the 2009 EP elections to be *essentially 27 separate national elections to a supra-national body ... characterized by a considerable diversity of national rules, procedures, and practices.* The report predicts that *the debate about the EP's electoral framework is likely to continue during the next legislature.* Indeed, the EP is determined to deal with the topic. Its Constitutional Affairs Committee has appointed the Member of the EP (MEP) Andrew Duff rapporteur on this initiative. An explanatory statement was issued in April 2010, and a draft report in July 2010. We refer to these documents as Duff (2010a) and Duff (2010b).

The elections to the EP are regulated in the *1976 Elections Act*, as amended in 2002. Duff (2010a) reviews its history to date. We quote the consolidated version appended as Annex II to Duff (2010b), and refer to it as EA. The OSCE/ODIHR (2009) and Duff (2010b) reports offer a great many suggestions for the amendment of the EA. The present paper aims at raising the level of uniformity among the 27 national electoral provisions, leaving aside the problem of how the 751 seats are allocated to the 27 Member States.

A brief overview of the paper is as follows. Section 2 seconds Duff (2010a) in his plea to set up a European Electoral Authority. In Section 3 we suggest to give the European parties a functional role in the elections. As proposed by Schleicher (2011) ballot sheets should show the names of the European parties, and the electoral threshold should be evaluated only relative to how European parties perform at Union level.

Section 4 distinguishes between the establishment of multiple constituencies, and the subdivision of an electoral area into several districts. The terms *constituency* and *district* are interpreted in the distinct sense of Oelbermann/Palomares/Pukelsheim (2010), henceforth referred to as OPP (2010). Section 5 sets the stage to advance the uniformity level of the electoral procedures. We replace the (non-visible) European parties by the (visible) Political Groups in the EP. For the translation of vote counts into seat numbers we solely employ the divisor method with standard rounding (Webster/Sainte-Laguë). With these prerequisites, Section 6 presents a prototype evaluation of the 2009 EP elections.

Sections 7 and 8 address two specific proposals from Duff (2010b), the introduction of a semi-open list system, and the creation of a single European constituency. In the light of our simulated evaluation of the 2009 elections we conclude that both proposals call for further specification before their prospective merits can be assessed. Section 9 points out that the biproportional variant of the divisor method with standard rounding would conform particularly well with the constitutional character of the European Union. Section 10 enumerates ten steps which, in the light of this article, seem to be called for to move the EA in the direction of more uniformity.

Article 223 TFEU[1] calls upon the EP to draw up a proposal for the election of its Members in accordance with *a uniform procedure*, or in accordance with *principles common to all Member States*. The ten steps do not suffice to define *a uniform procedure* in the singular. They aim to increase the degree of uniformity among the plurality of procedures used by the Member States, and to carry the *principles common to all Member States* to a level enabling a unionwide view of future EP elections.

2. European Electoral Authority.   The biggest obstacle to progress is ignorance. When compiling the 2009 EP elections overview in OPP (2010), we found that the national provisions governing the elections in Member States are widely dispersed and hard to get hold of. Authoritative facts on the elections are not even available on the EP websites. The information offered is incomplete, nor is it evident whether it is truly reliable. We get the impression that Parliament itself lacks a firm knowledge on how it gets elected, and how

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[1] *Official Journal of the European Union* C 83 (30.3.2010) 47–199 [149].

seats are allocated. After all, the European Union admits twenty-three official languages and operates with three alphabets, Latin, Greek, and Cyrillic. Some Member States make their national provisions accessible in their mother tongues only. Others provide unofficial translations into English, occasionally with an irritating lack of proficiency when it comes to describing the calculations of converting votes into seats. The OSCE/ODIHR (2009) report is flawed by factual errors, as is the survey of the national electoral provisions provided by Lehmann (2009), and the annex on current electoral practices in Member States in Duff (2010a). In all likelihood, so is the overview OPP (2010).

In Duff's (2010b) list of amendments a prominent item is the creation of a European Electoral Authority. We suggest that such an office should also serve as a center of documentation. The EP will soon lose its memory on how it got elected in previous legislative periods unless legal acts are archived in a central office. Member States ought to be obliged to deposit their electoral provisions with the Electoral Authority. As it is equally laborious and challenging to locate final vote counts, Member States should also be obliged to deposit their final vote counts with the Electoral Authority.

3. European party system.   Another obstacle for a move towards more uniformity is the lack of visibility of the European party system. This is not to say that European parties do not exist. In 2009 nine of them cashed-in more than ten million Euros from the Union's general budget.[2] However, European parties seem to function like astronomical black holes. They absorb the money without emanating any political messages. In order to enhance their visibility Schleicher (2011) puts forward two proposals. The *Schleicher plan* proposes to have European parties visibly appear on ballot sheets, and to introduce a threshold directly aiming for their electoral performance. Before getting to this in greater detail, we need to be more explicit what we mean by the term *European party.*

There already exists a precise definition of the meaning of the term *political parties at European level.*[3] In essence, for a party to qualify as a political party at European level, it must already be firmly established in the EP, or in national or regional parliaments of at least a quarter of the Member States. This requirement may be too restrictive for newcomers to join upcoming EP elections. Therefore we widen the meaning of *European parties* to also include political organizations at European level that observe the principles on which the European Union is founded and that campaign in the prospective EP elections in at least a quarter of the Member States. European parties, in the wide sense, can be

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[2] www.europarl.europa.eu/tenders/subventions_2009.htm.
[3] *Official Journal of the European Union* L 297 (15.11.2003) 1–4 [2].

expected to contribute to forming European awareness and to expressing the will of citizens of the Union, as demanded by Article 10(4) TEU.[4] With this wide meaning of European parties we return to the discussion of the Schleicher plan.

Firstly, European parties should be given a place on the ballot sheets. Current ballot design is such that domestic parties are listed without indicating any affiliation with a European party. The Schleicher plan assumes that a domestic party seeks membership with a European party, and that the affiliation is prominently exhibited on the ballot sheets by printing the emblem and the name of the European party ahead of the name of the domestic party. This would provide at least some clue for voters to see a European perspective when casting their votes. It would be a start to overcome the current mismatch that the information on the ballot sheets is restricted to the domestic sphere.

Secondly, the Schleicher plan proposes an electoral threshold at the level of European parties, by requiring them to attract at least three percent of the valid votes in each of at least a quarter of the Member States. For the sake of brevity we refer to this stipulation as the 3-*in*-7 *threshold*. When a European party passes the 3-in-7 threshold, all votes cast for the party anywhere in the 27 Member States become effective and enter into the seat apportionment calculations. A European party passing the 3-in-7 threshold automatically the qualifies as a political party at European level according to the Union's regulation.

Schleicher accepts further thresholds in national electoral provisions, in addition to the 3-in-7 threshold. We feel that multiple layers of thresholds are too confusing. After all, in 2009 the handling of thresholds turned out to be quite diverse, see OPP (2010, Table 1). A single 3-in-7 threshold would cut back on the creative threshold diversity. We would rather bar additional domestic thresholds, and make do with the 3-in-7 threshold.

4. Electoral region, area, constituency, and district. In electoral systems the terms region, area, constituency, and district are not standardized. For EP elections we define their meanings as follows. The *electoral region* comprises all of the European Union. Since the organization and the evaluation of the elections are particular to each Member State, we take a Member State to function as an *electoral area*. According to Article 2 EA it is up to a Member State whether to establish multiple constituencies, or whether to subdivide its electoral area in a different manner.

We give the *establishment of constituencies* the following meaning. In the presence of constituencies, the seat contingent of a Member State is apportioned among constituencies

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[4] *Official Journal of the European Union* C 83 (30.3.2010) 13–45 [20].

prior to the election as stipulated in the national electoral provisions. Constituencies are established in Belgium (3 constituencies), France (8), Ireland (4), and the United Kingdom (12). For instance, in Belgium the three constituencies are formed by the French, Dutch, and German-speaking parts of the country. The establishment of constituencies is a *bottom-up* approach, in that the geographical entities are joined to form the electoral area.

The subdivision into districts appears as a *top-down* approach. Districts, too, are subareas, but the electoral system handles them differently. Firstly, every party is allocated a statewide seat number in proportion to its statewide vote counts. Secondly, for each party a subapportionment calculation is carried out allocating the party's statewide seats among its district lists, again in proportion to vote counts. Three Member States make use of the subdivision into districts, Germany (16 districts), Italy (5), and Poland (13).

The number of seats available for apportionment in a constituency is called the *constituency magnitude*. The number of seats eventually ending up within a district is called the *district magnitude*. The two concepts differ in that constituency magnitudes are pre-specified *ex ante*, while district magnitudes emerge *ex post*, relative to election day. Our distinction of an establishment of multiple constituencies, and of a subdivision into several districts is not generally shared in the literature. Article 2 EA reads as follows:

> In accordance with its specific national situation, each Member State may establish constituencies for elections to the EP or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

Duff (2010b) amends Article 2 by breaking it into three phrases involving the term constituencies only, and deleting any reference to a subdivision in a different manner:

> 1. Each Member State may establish constituencies for elections to the EP on a territorial basis. 2. States with a population of at least twenty million shall subdivide their electoral area into a number of regional constituencies. 3. The establishment of constituencies must not generally affect the proportional nature of the voting system.

Neither Duff (2010a) nor Duff (2010b) indicate whether the focus on the establishment of constituencies, and the omission of a subdivision in a different manner is intentional. Is it meant to restrict the margin of discretion which Member States enjoy under the auspices of the common principles of the EA? The second phrase forces the seven largest Member States to subdivide their electoral area into constituencies. While Germany is composed of federal states, its *Grundgesetz* embodies a rather unitary character. It would seem to us that the second phrase forces Germany to rewrite its basic law. In Member States such as Spain the establishment of constituencies might constitute a Herculean task.

The third phrase sounds innocuous, but may give rise to unwanted questions. We illustrate its consequences by the Member States that in 2009 made use of the establishment of constituencies, Belgium, France, Ireland, and United Kingdom. In Belgium, the *Deutschsprachiges Wahlkollegium* constituency has a single seat available for apportionment. As one seat is not enough to achieve any proportionality whatsoever, the third phrase is violated. Evidently the constituency is established for reasons of minority representation. However, exceptions in favor of minority representation are absent from the amendment. In France, the *Outre-Mer* constituency commands just three seats. Not much proportionality can be achieved with so few seats. Here it is not minority representation that is decisive, but the particularities of the territorial structure of the constituency.

The other constituencies are void of minority considerations or geographical peculiarities. Still the French *Massive Central/Centre* constituency commands only five seats, and all Irish constituencies and the British *North-East* constituency are allocated a mere three seats. Not much proportionality can be achieved with so few seats, raising the question why voters in these constituencies are deprived of their right to proportional representation.

As for the EP's composition, there is a great brouhaha in Parliament that Member States must be allocated at least six seats in order to represent the diversity of their political spectrum. When Member States make use of their margin of discretion they draft constituencies so small that there is no hope of representing the political spectrum. We propose to reword the amendment in a more confirmatory manner: *3. The establishment of constituencies must be such that there are at least six seats available for proportional representation, unless sufficient reason justifies a smaller constituency magnitude.*

Even a constituency magnitude of six seats entails severe limitations in achieving proportional representation. The problem is the range of vote shares needed to obtain representation in Parliament. The range begins with the *threshold of representation*, and ends with the *threshold of exclusion* (Gallagher/Mitchell 2008 [607]). Below the threshold of representation it is impossible for a party to win a seat. Above the threshold of exclusion a party is guaranteed a seat. Inbetween the likelihood of winning a seat varies depending on how the other parties perform. With only a few seats available the range comes to lie way above five percent of the valid votes.

In the sequel we rely on the divisor method with standard rounding (Webster/Sainte-Laguë).[5] For this method, with six seats available and four parties campaigning, the

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[5] For the divisor method with standard rounding (Webster/Sainte-Laguë), the threshold of representation is $1/(2h+\ell-2)$, and the threshold of exclusion is $1/(2h-\ell+2)$, with h signifying the constituency magnitude ("house size"), and ℓ the number of competing lists (Palomares/Ramírez, 2003).

threshold of representation amounts to $1/14 = 7$ percent, while the threshold of exclusion is $1/10 = 10$ percent. Hence with a vote share below seven percent representation is plainly impossible. A party needs at least ten percent voter support to be certain to gain a seat. A threshold of ten percent defies the current five percent threshold in Article 3 EA. Moreover it is viewed rather critically by the European Court of Human Rights (2008).

With a constituency magnitude of twelve seats and six parties campaigning, the threshold of representation falls to $1/28 = 4$ percent. The threshold of exclusion amounts to $1/20 = 5$ percent. In 2009 all Member States, except the six smallest, had twelve or more seats at their disposal. These Member States should be invited to establish constituencies with magnitude twelve or more, so that the threshold of exclusion does not grow too large.

5. Hypothetical uniformity.   The Schleicher plan cannot be directly applied to the OPP (2010) data for the reason that about twenty domestic parties in the EP are not affiliated with any European party. For the purposes of a hypothetical uniform evaluation we identify the affiliation of domestic parties to Political Groups in the EP, as do Rose and Bernhagen (2010). We are aware that Political Groups in the EP are not identical to, nor exchangeable with, European parties. Yet, the simulation is instructive to clarify the roles of domestic and European parties.

At the beginning of the 2009–2014 legislative period there were seven Political Groups in the EP, complemented by an eighth pseudo-group, NA, embracing the MEPs not attached to any of the seven proper Political Groups:

Acronym	Political Group in the EP	Seats
EPP	European People's Party	265
S&D	Progressive Alliance of Socialists and Democrats	184
ALDE	Alliance of Liberals and Democrats for Europe	84
Greens/EFA	European Greens / European Free Alliance	55
ECR	European Conservatives and Reformists	54
GUE/NGL	European United Left / Nordic Green Left	35
EFD	Europe of Freedom and Democracy	32
NA	Non-attached MEPs	27
Total		*736*

In OPP (2010) we exhibit the name of a domestic party and, separated by a colon ":", the name of the Political Group to which the party is affiliated. Each of the eight Political Groups passes the 3-in-7 threshold. Hence their votes enter into the apportionment processes in all Member States where they campaign. The eight Political Groups and the votes they draw provide the database for the unionwide evaluation in Table 1.

Two kinds of problems come to light. Firstly, in Slovakia three domestic parties are affiliated with the Political Group EPP. From a Union viewpoint the EPP submits three lists to the Slovak electorate. There are more instances where two or more domestic parties merge their MEPs into the same Political Group. Proportional representation systems do not admit parties to campaign with two or more lists because this would secure an undue advantage over their competitors. The EA should demand that, when in a Member State several domestic parties belong to the same European party, they must submit a single, joint candidate list within each constituency and within each district.

Secondly, the 2009 elections feature another complication. Two or more parties register an alliance (also known as list apparentement), yet the MEPs so elected join different Political Groups. For instance, in Denmark Alliance 1 consists of three parties. The four MEPs of the first party join S&D, the two MEPs of the second party go along with Greens/EFA, and the third party sends no MEP into the EP. So what does it mean when a citizen casts a vote for a partner of Alliance 1? Is the vote going to help the party of the voter's choice win a seat, or another partner of the alliance, or does it fail to account for a seat? The disorientation deprives voters of their right to a direct election. We opt to exclude the formation of party alliances from EP elections. In fact, party alliances become superfluous as soon as a seat apportionment method is adopted that is neutral towards size and treats smaller parties as fairly as larger parties.

Democratic representation usually builds on the principle of equal elections, as captured by the motto *one person, one vote.* In handling this principle the European Union proves to be a political body *sui generis*, torn between degressivity, progressivity, and proportionality. Degressive representation prevails for the composition of the EP, the allocation of the 751 seats to the 27 Member States. Degressivity means that a human being's worth decreases when seen as a citizen of larger Member States, and increases for citizens of smaller Member States. Progressive representation emerges when the same individuals are seen as voters of political parties. Progressivity means that a human being's worth increases for citizens who vote for larger parties, and decreases for voters of smaller parties. The seat apportionment method manifestly serving progressivity is the divisor method with rounding down (Jefferson/D'Hondt/Hagenbach-Bischoff), employed in 16 of the 27 Member States in 2009. As far as the translation of vote counts into seat numbers is concerned, we believe that degressive representation and progressive representation lose out against proportional representation, as expressed by the one person, one vote principle.

The seat apportionment method harmonizing most convincingly with the one person, one vote principle is the divisor method with standard rounding (Webster/Sainte-Laguë).

This is the central message of the seminal monograph of Balinski/Young (2001) who corroborate their findings with a plethora of arguments. In particular, the method is neutral towards size. Whether larger or smaller in terms of vote counts, every party gets on average as many seats as it deserves on the grounds of the theoretical Rule of Three. There is absolutely no need for parties to fake a larger size by registering alliances.

Furthermore, the divisor method with standard rounding (Webster/Sainte-Laguë) comes with the most transparent calculations. Each vote count is divided by a common divisor, and the resulting quotient is rounded in a standard fashion to obtain the seat numbers. That is, quotients with a fractional part less than a half are rounded down to the previous integer. With fractional parts larger than a half, quotients are rounded up to the next integer. In other words, all quotients get rounded to the whole numbers nearest to them. The divisor plays the role of an *electoral key* specifying the number of voters accounting for "about" (that is, up to rounding) one seat. Thus, in Germany every 236 000 voters account for about one MEP, in Malta it is every 50 000 voters.

6. Prototype evaluation of the 2009 EP elections. The unified evaluation of the 2009 EP elections revolves around Table 1, complemented by Tables 2 and 3. The essential items are the pair of numbers separated by a hyphen "-". To the left of a hyphen we print the vote counts of a Political Group, to the right, the seat numbers hypothetically apportioned to the Group through the divisor method with standard rounding (Webster/Sainte-Laguë).

Table 1 calls for a series of comments. Member States are sorted by population figures from large to small. The reverse ordering from small to large would be equally informative. The OSCE/ODIHR report (2009) lists Member States in protocol order. This injects a considerable amount of randomness, and disguises the effects of size. — The two-letter code of a Member State is followed by a slash "/" when the State subdivides its electoral area into several districts (Germany, Italy, Poland). A star "*" indicates that the State establishes multiple constituencies (France, United Kingdom, Belgium, Ireland). — Population figures are taken from the *Official Journal*, which publishes these figures for the qualified majority decisions in the Union's Council of Ministers. Since the rationale for referring the Council of Ministers' qualified majority decisions to population is concurrent with the rationale for basing representation in the EP on the Union's citizens, we believe that in both cases the same figures should be used. Strangely, the *Official Journal* rounds population figures into multiples of centuries of a hundred citizens, and prints them as decimal fractions of legions of a thousand citizens. Since EuroStat takes pains not to

round whole citizens into fractional numbers, we prefer the authentic EuroStat input to the manipulated *Official Journal* output.[6] — The "Seats" column lists the seat contingents in force for the 2009 elections to allocate the 736 seats among the 27 Member States.

The Political Groups' vote counts are aggregated from OPP (2010). All party alliances are resolved. Non-attached parties and non-attached independent candidates not winning a seat are dismissed. — In Spain, Italy, Netherlands, United Kingdom, and Latvia, some domestic political party is represented by several MEPs who joined different Political Groups. In these cases we redistributed votes in proportion to how many MEPs joined which Group. — In Luxembourg voters can mark up to six votes on their ballots. During the 2009 elections the average number of marks per ballot was $A = 1\,121\,305/198\,364 \approx 5.7$. Therefore we divide the vote counts from Luxembourg by A and round the results to the nearest whole number. In this way we obtain numbers referring to individuals, not to ballot sheet marks. — In Ireland, Malta, and the Northern Ireland constituency of the United Kingdom, where single transferable electoral systems are used, only first preferences are entered in Table 1. — The last column quotes the divisors belonging to the divisor method with standard rounding (Webster/Sainte-Laguë). For each Member State the divisor signifies the number of voters justifying about one seat. If degressive proportionality were a concept of intrinsic value for the EP electoral systems, divisors would be decreasing so that fewer voters suffice to account for about one seat as Member States become smaller. This is not the case. Due to the high volatility of voter turnouts divisors jump back and forth, only roughly in line with population figures.

The overall conclusion is rather encouraging. The hypothetically calculated seat numbers in Table 1 most often coincide with the actually apportioned seat numbers in OPP (2010), or they deviate by no more than one seat.

Pageinsert (on even page) Table 1 about here.

Pageinsert (on facing odd page) Tables 2 and 3 about here.

There are two exceptions, France and the United Kingdom. Both States establish many constituencies, and then allocate seats by applying the divisor method with rounding

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[6] *Official Journal of the European Union* L 325 (11.12.2009) 35–61 [55–56].
   `appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_pjan&lang=en`

down (Jefferson/D'Hondt/Hagenbach-Bischoff). The method is notorious for being biased, each application promising some bonus seat shares for larger parties at the expense of smaller parties. When repeated often enough, bonuses (and maluses) materialize almost surely. In fact, in both States the largest party carries away a bonus of four seats. This provides some confirmation for our decision to only use the divisor method with standard rounding (Webster/Sainte-Laguë). The latter method is neutral to size, and immune against any biasing effects from establishing multiple constituencies.

Germany, Italy, and Poland subdivide their electoral areas into several districts. The statewide seats of a Political Group from Table 1 need to be subapportioned among districts. As an illustration, the top part of Table 2 exhibits the calculations for Italy.

Italy constitutes a particular challenge to the advancement of the EA. The challenge arises not only from a quantitative, procedural analysis, but also from the normative, judicial viewpoint. The Italian national provisions are blatantly self-contradictory. Is this solely an Italian issue? Could non-Italian Union citizens voting in Italy feel impaired in their electoral rights and go to court? To which court?

The seat apportionment method actually used in Italy is a variant of the Hare quota method with residual fit by greatest remainders. With this method, district magnitudes in the 2009 EP election come out to be 21, 15, 15, 15, and 6, see OPP (2010). However, Article 2 of the Italian electoral provisions prespecifies the magnitudes in proportion to population.[7] The law stipulates the district magnitudes to be 19, 13, 14, 18, and 8. None of the districts is allocated the number of seats legally specified in Article 2. The prespecification of the district magnitudes is at odds with the instructions on how votes get translated into seats. Pennisi/Ricca/Simeone (2006, 2009) severely criticize the *bacchi e bucchi* in the Italian electoral systems, to no avail. The bug persists. The solution to the problem is the biproportional apportionment method used in the Swiss Cantons of Zurich, Schaffhausen and Aargau, see Pukelsheim/Schuhmacher (2004), Balinski/Pukelsheim (2006). Its application to the Italian data is displayed in the bottom part of Table 2.

The biproportional solution provides the tool to fit France, United Kingdom, and Belgium into the hypothetical, uniform evaluation in Table 1. Table 3 exemplifies the calculations for Belgium, the top part showing the novel joint biproportional evaluation, the bottom part current separate per-constituency evaluations. For the biproportional application, the vote count for a Political Group in a constituency is divided by two

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[7] *Legge 24 gennaio 1979, n. 18 – Elezione dei membri del Parlamento europeo spettanti all'Italia* (G.U. 30 gennaio 1979 n. 29), executed through *Decreto del 1º aprile 2009* (G.U. Serie generale 3 aprile 2009 n. 78).

divisors, the constituency divisor and the group divisor. The resulting quotient is rounded to the nearest seat number. Constituency magnitudes and statewide party seat numbers are met precisely. As before the seat numbers obtained deviate from the actual allocation by at most a single seat transfer. France and the United Kingdom would call for similar tables. Since the biproportional evaluation meets the Groups' statewide seat numbers, the threshold of exclusion that becomes relevant originates from the Member State's seat contingent, not from constituency magnitudes. Small magnitudes no longer entail high thresholds of exclusion.

7. Semi-open list systems?   Duff (2010a), in drawing conclusions, proposes *the compulsory use of the preferential semi-open list system* as if there were only a single such system. Without describing in detail which semi-open list system is being proposed it remains speculation to talk about its prospective merits. The proposed introduction of a semi-open list system correlates with the proposition that Member States with a population of at least twenty million shall establish multiple constituencies. Presumably ballot sheets are feared to otherwise reach poster size and become too unwieldy for voters to efficiently handle their semi-open choice.

In any case, if the EP desires to cap the size of constituencies, population figures are an inappropriate index to use. After all, the EP assigns degressive weights to batches of twenty million citizens consisting of Romanians, Poles, Spaniards, Italians, Englishmen, Frenchmen, and Germans. The index to refer to is constituency magnitude. Parliament may decree a largest constituency magnitude of twenty-five seats or the like, in addition to a smallest constituency magnitude of six seats.

8. A unionwide constituency for twenty-five additional MEPs?   Duff (2010b) takes up the long-standing proposal to elect an additional twenty-five MEPs from a single constituency formed by the Union region. The goal is to enhance the European dimension of EP elections, and to increase the representative capability of the EP. We wonder how the proposal would work out.

Assuming that prospective second votes for the unionwide list run more or less in parallel to the (first) votes shown in Table 1, each 5 600 000 votes account for about one of the twenty-five seats. The EPP would be awarded nine seats, S&D seven, ALDE three, Greens/EFA two, and ECR, EFD, GUE/NGL, and NA one each. Contemplating the EPP column of Table 1, the nine EPP seats go to Italy, Germany, Spain, France, Poland, Romania, Greece, Hungary, and Portugal. The allocation of the unionwide seats of the

other Political Groups is similarly predictable. Altogether not much of an election is going on. Rather, twenty-five safe EP tickets are dealt out among the larger Member States.

Duff (2010b) is silent where the additional twenty-five seats are thought to originate from. If "additional" is taken literally, they are created in addition to the existing 751 seats. The creation must appear a sheer nightmare to all believers in degressivity, since all of these seats will go to the larger Member States. Alternatively, the "additional" seats may be subtracted from the 751 total, and diminish the contingents of the Member States of the successful candidates. In essence, the larger Member States would have to upgrade seats from the domestic level to the Union level although they are already facing a reduced contingent due to degressivity.

Another imbalance may entail consequences needing attention. The twelve million EPP voters in Italy would be strong enough to carry two EP seats. A first option is to place two Italian candidates on the EPP list. We doubt whether the EPP partners would tolerate so much progressivity in favor of Italy. A second option is that the Italian EPP branch aggressively campaigns on behalf of the Lithuanian candidate, say, so that enough Italian EPP voters use the semi-openness of the list to vote the Lithuanian candidate into Parliament in addition to the Italian candidate. The idea of a unionwide constituency for the election of twenty-five additional MEPs would seem to require further contemplation.

9. Uniformity via biproportionality?   Advances on the EP electoral systems hinge on the functioning of a European party system. Only when German voters of Angela Merkel's *Christlich Demokratische Union* acknowledge that their votes may be instrumental for a candidate of Silvio Berlusconi's *Popolo della Libertá* to win an EP seat, for the reason that both parties are affiliated with the European People's Party, can we safely aggregate votes on the Union level and evaluate them unionwide. Rather than limiting ourselves to the unionwide election of an extra twenty-five MEPs, we then may allocate all 751 seats in a unionwide biproportional calculation. The biproportional halves of Tables 2 and 3 point the way how to simultaneously respect Member States' seat contingents and parties' unionwide seat numbers. From the computational viewpoint twenty-seven Member States and eight Political Groups are handled in the same fashion as are five districts and four Political Groups in Italy or three constituencies and six Political Groups in Belgium. Currently, acceptance of vote aggregation on the Union level remains *Zukunftsmusik*.

10. Conclusion. In the Council of Europe Venice Commission (2002) all 27 Member States take account of Europe's electoral heritage of conducting parliamentary elections by direct universal suffrage in a free, equal and secret ballot.[8] Morevover the Union intends to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.[9] Paying due attention to the principle of electoral equality would also help rectifying misunderstandings concerning the EP's democratic legitimization as voiced in the Lisbon decision of the German Federal Constitutional Court.[10]

All elections terminate with counting votes. The final vote counting processes for the EP elections require synchronization. With current election days ranging from Thursday to Sunday, a compromise median day appears to be a Saturday. When polling stations in Greece are kept open from 9 to 18 hours, in Italy from 8 through 17, and in Portugal from 7 to 16, they close at the same point in time. Vote counting would take place simultaneously Saturday evening. National electoral offices might process the data during Sunday morning. The European Electoral Authority could issue preliminary final results Sunday afternoon, to make it into the Monday newspapers.

In conclusion, we hold that the following ten steps would be helpful to move in the direction of more uniform procedures for the EP elections.

1. A European Electoral Authority is created. Member States are invited to deposit their national electoral provisions and final electoral results with the Authority.
2. Ballot sheets exhibit emblems and names of European parties ahead of affiliated domestic parties.
3. Domestic parties that belong to the same European party submit a joint list.
4. Alliances of European parties (also known as list apparentements) are not allowed.
5. Votes become effective to enter into the seat apportionment calculations only (a) if cast for a European party attracting at least three percent of the valid votes in each of at least a quarter of the Member States, or (b) if cast for a domestic party that the Member State recognizes as a minority representation party, or (c) if cast for an independent candidate who passes the threshold for independent candidates as stipulated by the Member States' national provisions.
6. Every Member State may establish multiple constituencies, or subdivide its electoral area into several districts.
7. Each constituency must be large enough to provide for at least six seats, unless sufficient reason justifies a smaller constituency magnitude.

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[8] `wcd.coe.int/ViewDoc.jsp?id=743357`.
[9] Article 6(2) TEU, *Official Journal of the European Union* C 83 (30.3.2010) 13–45 [19].
[10] `www.bverfg.de/entscheidungen/es20090630_2bve000208.html`.

8. For list systems, the translation of votes into seats is based on the divisor method with standard rounding (Webster/Sainte-Laguë), or its biproportional variant.

9. The EP is elected by direct universal suffrage in a free, equal and secret ballot, as guaranteed in Articles 9 and 14(3) TEU. Degressive proportionality is relegated to issues concerning the composition of the EP as in Article 14(2) TEU.

10. Election day is a Saturday in May. Polling stations close at 16h GMT.

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EP2009EU Population	Effective votes	Seats	EPP	S&D	ALDE	Greens/EFA	ECR	EFD	GUE/NGL	NA	State divisor
DE/16 82 002 356	23 492 551	99	9 968 153-42	5 472 566-23	2 888 084-12	3 194 509-14			1 969 239-8		236 000
FR*8 64 350 759	13 962 586	72	4 799 908-25	2 838 160-15	1 455 841-7	2 803 759-14		257 437-1	915 634-5	891 847-5	195 000
UK*12 61 576 144	14 272 420	72		2 460 249-12	2 107 312-11	1 767 218-9	4 131 386-21	2 498 226-12	126 184-1	1 181 845-6	200 000
IT/5 60 045 068	26 566 217	72	12 966 334-35	7 997 770-22	2 476 695-7			3 125 418-8			370 000
ES 45 828 172	15 055 459	50	6 670 377-22	6 141 784-20	808 246-3	689 062-2			294 124-1	451 866-2	300 000
PL/13 38 135 876	6 714 370	50	3 787 998-28	908 765-7			2 017 607-15				135 000
RO 21 498 616	4 700 305	33	2 074 019-14	1 504 218-11	702 974-5					419 094-3	143 100
NL 16 485 787	4 329 693	25	913 233-5	548 691-3	1 034 065-6	412 537-2	155 270-1	169 882-1	323 269-2	772 746-5	170 000
EL 11 260 402	4 749 540	22	1 655 722-7	1 878 982-9		178 987-1		366 637-2	669 212-3		221 000
PT 10 627 250	3 135 493	22	1 427 300-10	946 475-7					761 718-5		140 000
BE*3 10 750 000	6 297 484	22	1 288 422-5	1 259 998-4	1 485 854-5	1 319 341-5	296 699-1			647 170-2	283 000
CZ 10 467 542	1 785 106	22	180 451-2	528 132-7			741 946-9		334 577-4		80 000
HU 10 030 975	2 716 882	22	1 632 309-13	503 140-4			153 660-1			427 773-4	122 000
SE 9 256 347	2 876 374	18	744 851-5	773 513-5	603 799-4	575 029-3			179 182-1		165 000
AT 8 355 260	2 693 766	17	858 921-5	680 041-4		284 505-2				870 299-6	157 000
BG 7 606 551	2 186 523	17	832 510-7	476 618-4	569 343-4					308 052-2	127 000
DK 5 511 451	2 172 779	13	297 199-2	503 439-3	474 041-3	371 603-2		357 942-2	168 555-1		170 000
SK 5 412 254	709 004	13	324 081-6	264 722-5	74 241-1			45 960-1			50 000
FI 5 326 314	1 634 235	13	455 874-4	292 051-2	418 251-3	206 439-2		162 930-1	98 690-1		120 000
IE*4 4 450 014	1 703 350	12	532 889-4	254 669-2	525 375-3	34 585-0		99 709-1	256 123-2		151 000
LT 3 349 872	452 503	12	147 756-4	102 347-3	88 870-2		46 293-1	67 237-2			40 000
LV 2 261 294	594 935	8	245 288-3	77 447-1	59 326-1	76 436-1	58 991-1		77 447-1		80 000
SI 2 032 362	384 286	7	200 429-4	85 407-1	98 450-2						57 000
EE 1 340 415	375 279	6	48 492-1	34 508-1	164 383-2	116 830-2	8 860-0	2 206-0			67 000
CY 796 875	296 555	6	109 209-2	67 794-2	12 630-0				106 922-2		44 000
LU:A 493 500	171 158	6	62 133-2	38 659-2	36 995-1	33 371-1					25 000
MT 413 609	242 205	5	100 486-2	135 917-3		5 802-0					50 000
Sum 499 665 065	144 271 058	736	52 324 344-259	36 776 062-182	16 084 775-82	12 070 013-60	7 610 712-50	7 153 584-31	6 280 876-37	5 970 692-35	

Table 1: *Hypothetical 2009 per-State seat apportionment by Political Groups, using the divisor method with standard rounding* (Webster/Sainte-Laguë). For each Member State, a Political Group's vote count is divided by the state divisor. The resulting quotient is rounded to the nearest seat number, printed after the hyphen "-". [Sources: Member States' two-letter codes from Interinstitutional Style Guide `publications.europa.eu/code/`. Population figures ameliorated from *Official Journal* L 325 (11.12.2009) 35–61 [55–56]. Vote counts aggregated from OPP (2010) as described in Sections 5 and 6.]

EP2009IT	Magnitude	EPP	S&D	ALDE	EFD	District divisor
Statewide seats	72	35	22	7	8	
Nord-Occidentale	21	3 395 613-9	2 002 790-5	663 495-2	1 684 842-5	
Nord-Orientale	15	2 274 579-6	1 772 850-5	454 801-1	1 204 785-3	
Italia Centrale	14	2 685 918-7	2 030 062-6	483 471-1	186 988-0	
Italia Meridionale	16	3 452 186-10	1 575 928-4	688 368-2	39 521-0	
Italia Insulare	6	1 158 038-3	616 140-2	186 560-1	9 282-0	
Group divisor		360 000	367 000	350 000	374 000	
Nord-Occidentale	19	3 395 613-8	2 002 790-5	663 495-2	1 684 842-4	1.1
Nord-Orientale	13	2 274 579-5	1 772 850-4	454 801-1	1 204 785-3	1.1
Italia Centrale	14	2 685 918-7	2 030 062-5	483 471-1	186 988-1	1
Italia Meridionale	18	3 452 186-11	1 575 928-5	688 368-2	39 521-0	0.8
Italia Insulare	8	1 158 038-4	616 140-3	186 560-1	9 282-0	0.64
Group divisor		410 000	370 000	370 000	370 000	

Table 2: *Hypothetical 2009 Italian district subapportionments by Political Groups.* Statewide seat numbers are taken from Table 1. Top: *Separate per-group evaluations.* For each Political Group, a district's vote count is divided by the group divisor, and rounded. Bottom: *Joint biproportional evaluation.* District magnitudes are prespecified in the Italian electoral provisions. The vote count of a Political Group in a district is divided by the group divisor and by the district divisor, and rounded. All district magnitudes are law-abiding.

EP2009BE	Magnitude	EPP	S&D	ALDE	Greens/EFA	ECR	NA	Constituency divisor
Statewide seats	22	5	4	5	5	1	2	
Nederlands kiescollege	13	948 123-3	539 393-1	837 884-3	751 235-3	296 699-1	647 170-2	270 000
Collége electoral français	8	327 824-1	714 947-3	640 092-2	562 081-2			230 000
Deutschsprachiges Wahlkollegium	1	12 475-1	5 658-0	7 878-0	6 025-0			10 000
Group divisor		1	1	1	0.9	1	1	
Nederlands kiescollege	13	948 123-3	539 393-2	837 884-3	751 235-2	296 699-1	647 170-2	260 000
Collége electoral français	8	327 824-1	714 947-3	640 092-2	562 081-2			230 000
Deutschsprachiges Wahlkollegium	1	12 475-1	5 658-0	7 878-0	6 025-0			10 000

Table 3: *Hypothetical 2009 Belgium constituency subapportionment by Political Groups.* Constituency magnitudes are prespecified in the Belgium electoral provisions, statewide seat numbers are taken from Table 1. Top: *Joint biproportional evaluation.* The vote count of a Political Group in a constituency is divided by the group divisor and by the constituency divisor, and rounded. Bottom: *Separate per-constituency evaluations.* For each constituency, a Political Group's vote count is divided by the constituency divisor, and rounded. Statewide seats are missed due to a seat transfer between S&D and Greens/EFA.