



Strasbourg, 9 March 2015

Study No. 764/2013

CDL(2015)006*
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

ON

**PROPORTIONAL ELECTORAL SYSTEMS:
THE ALLOCATION OF SEATS INSIDE THE LISTS
(OPEN/CLOSED LISTS)**

by

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1. Government “of the people, by the people, for the people” can either be achieved directly or, when this is impracticable, or even extremely cumbersome, through representatives. Representative Government entails a process of election of representatives, and when there is no unanimous consensus or agreement, by selection. The elected (selected) representatives must be good representatives of their constituents: satisfying the criteria of being:

1. Personally suitable for the mandate;
2. representing his/her constituents' ideas about government; and
3. representing his/her constituents' interests. In a true democracy the choice of representatives should not be made by outsiders but must be made by the people, who are to be represented themselves.

2. The method of election and selection ought to be one that can best ensure the free choice by the people of their representatives according to those criteria. The earliest and most direct and unsophisticated way was that of having the people of a particular locality elect as their representative the person who attracts the greatest number of votes cast within the locality. This simple system, known “colloquially” as “first past the post” borrowing a metaphor from horse racing is straightforward, and from the point of view of that locality perfectly understandable and acceptable. It is still in use in Great Britain, where it is cherished for its long tradition and for the fact that, at least in general, it “worked” because it provided easily counted clear cut majorities and stable governments, together with a strong link between the “local” member of Parliament and his/her electors. It did however produce gross imbalances in representation of ideas and interests nationwide. In that, in the first past the post systems, when there are a number of candidates and not just two, the winning candidate may not, and in general does not, even represent half of the voters in his constituency. It also failed sometimes at providing Governments with a clear popular mandate, albeit supported by a lopsided majority of members in Parliament. Although lately the system has not worked so as to grant a majority for any one party, its supposed principal merit and Britain, as many other European countries has been ruled by a coalition Government, yet resistance to change towards proportionality has not slackened.

3. In this system the party's candidate for a constituency seat is usually the choice of the local “constituency party”, though it has been a long standing custom of presenting in a “safe” constituency important party figures on the national plane, who may have lost their seat through realignment of boundaries or other mishap.

4. It must be said that though theoretically members elected by first past the post should be more “independent” of their party's machine, United Kingdom members of the House of Commons have not been particularly recalcitrant to party discipline.

5. In France and other countries a refinement of the single member constituency system was introduced whereby those candidates who did not obtain the suffrage of at least half of the constituency votes on election day would have to stand for a run off between the two top candidates votewise, in a second round, so that the final result would mean that the selected deputy represented more than one half of those voting in this second round. Though markedly preferable to the simple majority system, even this method can and does result in overall very imperfect representation of ideas and interests. It is also expensive, in that most elections are run twice.

6. In many countries other systems were introduced with the aim of arriving at “proportional” representation of the ideas and policies put forward by the different political parties.

Belgium¹ was the first continental country to introduce proportional representation in 1899. Most countries have introduced some type of electoral system which could aim at proportionality. This has been done in most cases by having multiple seat constituencies. With multiple seat constituencies one effectively diminishes the unrepresented vote, which is substantial (mostly close to a half of the electorate) in single member constituencies. It is obvious that these systems achieve a higher democratic specific density, but lose some of the particular bond between “the member or deputy” and his constituency which is a great merit of single member systems.

7. In some countries there have been devised ways in which one can retain this particular relationship whilst also achieving proportionality in the representation of ideas and interests. In one such system, whilst a certain number of seats in the Assembly or Chamber of Parliament are elected by majority vote in a single member constituency, a certain other number [the proportions vary] of seats are elected by allocation according to the overall vote or of the “unrepresented” votes. A fairly recent example the Elections Act was passed by the Parliament of Hungary on 23 December 2011 [Venice Commission Opinion: Opinion No. 662/2012]. This system corrects the imbalances and is therefore a way of lessening to an absolute minimum the mass of “unrepresented” voters. It may be seen to have the defect of creating two classes of deputies: those elected directly by their constituents, and those presented by the Party for the “national” seats, with the consequence that the former might feel more independent of the Party Machine.

8. If the system is so designed that the voter votes for a Party List and proportionality is solely assured to the Parties, the lists are “blocked” in the sense that the sequence of electables is imposed by the Party; on the other hand when voters are allowed to express their preferences for particular candidates within the Party Lists, the proportional allocation of seats would have to take stock of the voters’ preferences. In some places electioneering for “preferences” has been fraught with corrupt practices.

9. The list of Legislative Chambers using the d’Hondt method (the highest averages method) for the allocation of seats in proportional representation is indeed impressive: [Albania](#), [Argentina](#), [Austria](#), [Belgium](#), [Brazil](#), [Bulgaria](#), [Cambodia](#), [Cape Verde](#), [Chile](#), [Colombia](#), [Croatia](#), [Czech Republic](#), [Denmark](#), [East Timor](#), [Ecuador](#), [Estonia](#), [Finland](#), [Guatemala](#), [Hungary](#), [Iceland](#), [Israel](#), [Japan](#), [Luxembourg](#), [Republic of Macedonia](#), [Republic of Moldova](#), [Montenegro](#), the [Netherlands](#), [Paraguay](#), [Peru](#), [Poland](#), [Portugal](#), [Romania](#), [Scotland](#), [Serbia](#), [Slovenia](#), [Spain](#), [Turkey](#), [Uruguay](#) and [Wales](#).

10. In Germany and other countries the system adopted has the same aim, that is that of correcting the imbalances from single member constituencies by proportional allocation of votes according to national proportions obtained by party lists. This is done by giving the voter two votes to be cast: one for a particular candidate and one for the overall party list. The systems retains the member/constituency with consequent direct accountability, whilst also conserving general proportionality. However the introduction of thresholds barring small parties from representation, at time distorts the proportionality.

11. Proportional Representation with allocation to “blocked” Party Electoral Lists and with a rather high threshold of 7% was adopted in Russia in 2005 for the Duma Elections. In December 2005 an Electoral Law was adopted in Italy, with Proportional Representation of “blocked” Party Lists and with a bonus to a *relative* majority (*premio di maggioranza*). The Constitutional Court of Italy declared this law unconstitutional on a number of points.

¹ The Belgian mathematician Victor d’Hondt was one of the first, in 1878, to devise the formula later adopted for STV. The fact that British lawyer Thomas Hare (together with German mathematician Horst Niemeyer) devised the largest remainder method for allocating seats did not help its adoption in his home country.

12. Proportional Representation with open party lists is found in Finland, Latvia, Sweden, Iceland, the Netherlands and Brazil among others. Closed party lists are present in Israel, South Africa, and others.

13. One can comment that closed party lists subtract from the choice of person by the electorate, an essential element of democratic representation.

14. A system of proportional representation with which my country and myself are more familiar is that of the single transferable vote.

15. The system of Proportional Representation by single transferable vote: the experience in Malta.

16. The system of Proportional Representation by Single Transferable Vote (PR-STV) was introduced in Malta in 1921 with the Amery-Milner Constitution of that year which provided for a bicameral Parliament and limited self-government, with the British Imperial Government retaining some reserved matters (primarily Foreign Affairs, Defence, nationality and coinage). This change from absolute direct rule came about after a period of agitation culminating in bloodshed, with the Maltese claiming full self-government and the British Government in London showing extreme reluctance to grant this demand. A Maltese National Assembly, representative of Maltese Civil Society had met and elaborated proposals for self-government. Discussions concerning the electoral system to be used for both houses of Parliament took place and political opinion was divided. The British Government suggested that Proportional Representation by Single Transferable Vote, as had been introduced in Ireland, would be the most suitable and equitable. Public opinion in Malta was, in part, suspicious of the Imperial Government's intentions: some thought that this was a way of creating space for a number of small parties, rendering the formation of strong, majority supported governments, more difficult.

17. Experience with the working of the system has shown, however, that the system tends, paradoxically, to secure the prevalence of the major parties. Thus the original four parties contesting in 1921 {the Constitutional Party [which had incorporated the Anglo-Maltese Party immediately before the elections], the *Unione Politica Maltese*, the *Partito Democratico Nazionale* and the Labour Party} became three after 1925, with the formation of one *Partito Nazionale*, and by 1927 a Compact had been signed between the Constitutional Party and the Labour Party, presenting in the 1927, '30 and '32 elections, two alternative blocks. The Constitution was suspended in 1933 and only returned in 1947. Although various new and old parties contested the elections, and in the early fifties minority and coalition governments had to be formed, by 1955 only two had survived: the Labour Party and the Nationalist Party. These two Parties have alternated in Government with their own majorities albeit very slim at times, for the last sixty years. There is now a general consensus on proportional representation and Article 56 of the Maltese Constitution as amended, provides:

56. (1) The members of the House of Representatives shall be elected upon the principle of proportional representation by means of the single transferable vote from such number of electoral divisions, being an odd number and not less than nine and not more than fifteen, as Parliament shall from time to time determine.

18. This article is "entrenched" and cannot be changed or suppressed without the concurrence of, at least, two thirds of the members of the House of Representatives. The PR-STV system was subsequently adopted for the elections to the European Union Parliament when Malta joined the Union in 2003. It is also used for local government elections.

19. Under the system the voter can express his first and all subsequent choices, between the candidates, those presented by the parties and those standing as independents. The voter can cross party lines. The candidates are listed in alphabetical order, although party lists are today listed separately, whilst originally, all candidates were shown on the ballot paper in strict alphabetical order. The Electoral Law specifies:

71. (1) Each voter shall have one transferable vote.

(2) A voter, in recording his vote: (a) must place on his ballot paper the figure 1 against the name of the candidate for whom he votes; and (b) may in addition indicate the order of his choice or preference for as many other candidates as he pleases by placing against their respective names the figure 2, 3, 4, 5 and 6 and so on in consecutive numerical order.

20. As a rule a great majority of voters express their choices in sequence for all their chosen party's candidates. A small minority, at times with significant effect, cross party lines.

21. One of the features of the system is that in establishing a quota to be achieved for the assignment of a seat, the total number of votes cast in an electoral division is divided by the number of seats plus one. Thus a considerable number of votes (in Malta where the number of seats is five per division, some votes less than one sixth of the total), in every electoral division, remain unrepresented. Cunning attempts at gerrymandering meant seeking to have these remnants belong to, and be suffered by, the opposite party. As the areas of strength of the two principal parties are well known, the crafting of the electoral boundaries, by chance or malice, brought about and still brings about a situation where the end result might not reflect the proportions. In 1981, the Party with more than fifty percent of the total votes cast was assigned a minority of seats and lost the election. To obviate against a recurrence, in January 1987 an amendment was agreed upon whereby seats would be added to redress the balance and ensure that the Party with a 50% majority of votes would be assigned a majority of seats. Later, in 2007 this was further adjusted to cater for occasions when a relative majority with slightly less than 50% would receive the same treatment. This "allocation" of extra seats is done by declaring elected those candidates who were nearest to be elected from the particular party which suffered the imbalance, and not by reference to any Party prepared list.

22. Although there is a danger that intraparty competition may, and in fact does, give rise to "populist" campaigning by candidates of the same party and to clientelism, yet the system has the merit of allowing the citizen the real choice of the men and women who will represent him and hold government responsible. Though the party machinery can bar unwelcome candidates from standing under the party symbols, once admitted to the ticket, all candidates must bow to the will of the electorate. The voters are not always inclined to follow subtle or less subtle indications from the parties, concerning preference.

23. Now that the system has been in use for more than ninety years, through more than twenty, very contested, general elections, in numerous local elections as well as in elections for the European Parliament, one can say that voting by expressing all one's graduated preferences for the candidates of one's chosen political party or even beyond has become familiar with the Maltese electorate. Tried in the thirties and forties when Malta and Gozo had still some illiteracy, it does not present today any difficulty for a population which is almost totally literate and politically experienced.

24. The system has also resulted in stability and alternation. All Leaders of the Opposition (except the present one, as yet) eventually became Prime Ministers. The last coalition Government goes back to 1954. No party besides the Labour Party (now in Government) or the Nationalist Party (now in Opposition) has elected a member to Parliament from 1966 onward, even though there is no stated *barrage*. Thus since Independence in 1964, the Nationalist Party was in Government from 1964 to 1971, from 1987 to 1996, from 1998 to

2013, whilst the Labour Party governed from 1971 to 1987, from 1996 to 1998, from 2013 to date.

25. Moreover, even though the counting process may take some time, methods have been adopted by the successive Electoral Commissions which have rendered the procedures more expedite whilst retaining absolute transparency. The approximate result is known within the first few hours of sorting and counting. In my experience, Prime Ministers losing an election usually hand in their resignation on the first counting day.

26. The system allows the voter to express his preference for the candidate and party of his/her choice without any “lingering” doubt that the vote might be “wasted” as attributed to the party or candidate with a small chance of success, or too much of it, as the single transferable vote can move to those candidates and parties with a better prognosis of success, or need of supplement, through the fruition of the expressed preferences.

27. From personal experience of political events in my country², I can say that though the Single Transferable Vote system might look complicated and cumbersome from the outside it has, in fact, worked well in Malta. The criticism that is levelled against it is that although no threshold for representation is stated in the electoral law, as a matter of fact, a political party must obtain at least one fifth of the vote in any one electoral college, in order to be present in Parliament.

28. The system has also performed well in Eire were it was also introduced in 1921. It is also used in other parts (e.g. Australia, New Zealand and Tasmania) of the British Commonwealth of Nations. It has also been used in Hong Kong.

29. As a concluding comment one must say the proportionality between the views and choices expressed by the vote of the electorate on one hand and the numerical composition of a “representative” Chamber on the other is not a simple *desideratum*, it is of the essence of representative democracy. Lack of proportion distorts the representation. Though absolute, mirror image proportionality may be hard to achieve, gross departures from proportion will diminish the legitimacy of representation to a marked degree, and may poison the political climate³.

30. To refer again the Commission Opinion 662/2012:

21. The Venice Commission and the OSCE/ODIHR do not recommend any specific electoral system. Similarly, there are no international standards recommending a specific method or degree of proportionality regarding the distribution of seats. The States enjoy a broad margin of appreciation as these choices are political decisions.

31. However the closer the proportionality, the more specifically democratic one could qualify a chosen system.

32. At times proportionality, when followed too closely, was seen as rendering difficult stable government through fragmentation of political representation, so proportionality was sacrificed for the sake of ensuring a “practical” if not pedantically fair representation, by granting a bonus of seats to a relative majority, by establishing high thresholds, and other, less transparent ruses. The Venice Commission has given advice on these issues many

² I have personally followed elections since 1947 and have stood for election and been elected in 1966, 1971, 1976, 1981, 1987 and 1992. I was elected President of the Republic in 1994 and of course observed very closely the following elections, held during my mandate. My father had stood and was elected in 1924, 1927 and 1932. My son was elected in the last four general elections held in 1998, 2003, 2008 and 2013. Two first cousins and a second cousin have also been elected.

³ Preoccupations concerning proportionality can be seen in the writings of such founding fathers of the United States democracy as Jefferson and Madison.

times. Electorates tend to be suspicious of these methods of over representation as conducive to stable government. The legitimacy of Parliaments elected on the basis of these laws is somehow diminished.

33. Many a professional or occasional politician would see “open lists” as dangerous. There is always a risk in elections, indeed in all kinds of exercise of decision and free will there is bound to be hazards. Democracy however is based on a fundamental trust in choice by common citizens. There is a loss of transparency and democratic accountability in the use of “closed list”: the power of choice which should be in the hands of the citizen is taken away and bestowed on a Party machine. This gives extra representation to a group and renders a supposedly direct election into an indirect one.

34. Every European country has its own traditions and its history of evolution of democratic institutions, so it is difficult to predetermine an electoral model for all. However certain common values have been ascertained and form the matter of several opinions of the Venice Commission. Perhaps proportionality between votes cast for political parties and their numbers in a representative Chamber could receive more attention, *whilst expressing no preference for any method*, but decidedly opting for ever higher degrees of proportionality. Perhaps the “artificial” aids to ease of governance in imposed thresholds, majority bonuses and rearrangement of boundaries should be more emphatically frowned upon. Most electorates in fact do not readily digest what the common man considers as ways of reinforcing the ascendancy of threatened establishments.

35. One can commend systems such as the Single Transferable Vote System of Proportional Representation, which whilst being strictly proportional, operate as to render the formation of majority Governments, thus meeting most expectations as to fairness, efficiency and democratic method and consistency.

N.B. The following link shows the stage by stage (count by count) working sheets of the last European Elections held in 2014. It is public and can be freely reproduced.

<http://www.gov.mt/en/Government/Government%20of%20Malta/Election%20Results/EP%20elections%202014/Pages/EP-Elections%20Ct%201-10.aspx>