EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT REPORT

ON

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

on the basis of comments by

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I.   Introduction

1. The Council for Democratic Elections agreed upon the necessity to issue a comparative report on proportional electoral systems and more specifically the issue of the seat allocation inside the party lists, i.e. the open- or closed-list systems. The elaboration of this report was discussed in various meetings of the Council for Democratic Elections, in particular the October and December 2012 meetings and is part of the work on measures to improve the democratic character of elections in the member states of the Council of Europe.[1]

2. The Venice Commission already published several reports and comparative studies on electoral systems.[2] Nevertheless, there is no comparative report dealing specifically with the issue of seat allocation inside party lists. This topic is interesting from a comparative perspective as it provides an overview of the party-list systems used among the Venice Commission's member states possible, more precisely of those applicable to parliamentary elections. The report covers the 60 Venice Commission member states.[3] The geographical area is therefore large and offers an opportunity to compare open- and closed-list systems from Europe, Latin America, Central Asia and Maghreb. Further, it is interesting to observe in detail the methods of seat allocation, focusing on the allocation of seats inside lists in proportional systems. The report takes into account previous reports of the Venice Commission on electoral systems.[4]

3. For the purpose of this comparative report, the Venice Commission Secretariat prepared a table of the existing legal provisions on electoral systems and methods of seat allocation for 61 countries.[5]

4. Additionally, this report is based on a number of sources, in particular:

   -   Venice Commission, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report;[6]
   -   Venice Commission, Report on Electoral Systems – Overview of available solutions and selection criteria;[7]
   -   Venice Commission, Thresholds and other features of electoral systems which bar parties from access to Parliament – Comparative report (I);[8] and

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[1] 42nd meeting of the Council for Democratic Elections, meeting report (Venice, 11 October 2012; CDL-EL-PV(2012)003), item 4; and 43rd meeting of the Council for Democratic Elections, meeting report (Venice, 15 December 2012; CDL-EL-PV(2012)004), item 5.
See also the Parliamentary Assembly Report *For more democratic elections* (Doc. 13021).
Available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19004&lang=en.
Available at: www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-EL-PV(2012)004-e.
[2] See more details in para 4 of the present report.
[3] List available at: www.venice.coe.int/WebForms/members/countries.aspx. Belarus is also included in this comparative report, as being the only associate member of the Venice Commission. The table therefore contains data of 61 countries.
[4] See the list in para 4.
[5] The Venice Commission members were consulted regarding the accuracy of the table. Approximately half of the members answered. The table may therefore contain wrong references, also potentially due to difficulties in finding reliable sources in English and/or as electoral reforms may have occurred meanwhile. Reference of the document: CDL(2014)058.
Available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2014)058-bil.
[6] Adopted by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002; CDL-AD(2002)023rev).
Available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e.
[7] Adopted by the Venice Commission at its 57th Plenary Session (Venice, 12-13 December 2003; CDL-AD(2004)003). Chapters 2.2 and 2.3 are particularly relevant.
Available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)003-e.
[8] 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; CDL-AD(2008)037). This report

- Venice Commission, Thresholds and other features of electoral systems which bar parties from access to Parliament – Report (II).[9]
- Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR), election observation reports.[10]

5.   The report is divided into two parts. The first part describes the electoral systems in Europe and beyond used within the Venice Commission member states (Part II of the report: *II The electoral systems in Europe and beyond*). This part also introduces single-member-constituency (plurality or majority) and closed-list systems.

6.   The second part of the report details open-list systems and considers the level of choice of the voters and its effects in each electoral system (Part III of the report: *III Open-list systems: seat allocation within lists, effects on the results*).

II. The electoral systems in Europe and beyond

A.   Overview

7.   The Venice Commission aims at promoting the dissemination and the consolidation of a common European Constitutional Heritage implying common universal values, including in the electoral field (the European Electoral Heritage).[11] In parallel, the Venice Commission always takes into close consideration the countries' proper traditions and evolution in establishing or consolidating democratic institutions, while issuing opinions and reports. This approach applies to the electoral field. Despite promoting common values necessary to democratic elections, the Venice Commission does not recommend any specific electoral system. As stated in the Venice Commission's Code of Good Practice in Electoral Matters, "any electoral system may be chosen",[12] within the respect of the principles defined by the Code. The Code of Good Practice in Electoral Matters is therefore clear on the matter. This was confirmed in opinions of the Venice Commission on specific countries. For example, in the *joint opinion on the Act on the elections of members of parliament of Hungary*, it is written that both "[t]he 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."[13]

8.   The choice of an electoral system as well as a method of seat allocation remain both a sensitive constitutional issue and have to be carefully considered, including their adoption by a large consensus among political parties. While it is a sovereign choice of any democracy to determine its appropriate electoral system, there is the assumption that this latter has to reflect the will of the people.

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particularly focuses on thresholds and their effects, proceeding to a distinction between legal and natural thresholds.
Available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)037-e.
[9] Adopted by the Council for Democratic Elections at its 32nd Meeting (Venice, 11 March 2010) and by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010; CDL-AD(2010)007). Chapters 4.2 and 4.3 are particularly relevant.
Available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)007-e.
[10] Available at: www.osce.org/odihr/elections.
[11] Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), Guidelines, I.
[12] Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), Guideline II. 4.
[13] Adopted by the Council for Democratic Elections at its 41st meeting (Venice, 14 June 2012) and the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012; CDL-AD(2012)012).
Available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)012-e.
While there are no international standards recommending a specific electoral system or seat allocation method, the implementation of an electoral system implies to respect the principles of equality and proportionality.

9.   Among **the 61 countries analysed**, only **five countries use a single-member-constituency system requiring a plural or an absolute majority for the only chamber or lower chamber of parliament**, i.e. Azerbaijan, Belarus, France, United Kingdom and the United States of America. **Azerbaijan**[14] uses a plurality (or first-past-the-post) system with 125 single-member constituencies for electing the members of parliament. **Belarus**[15] uses the same system for the House of Representatives, with 110 single-member constituencies. For the elections to the National Assembly of **France**,[16] there is a majority system with two rounds within 577 single-member constituencies. The **United Kingdom**[17] elects 650 members of the House of Commons in 650 single-member constituencies in a plurality system. The **United States of America**[18] elect 435 members of the House of Representatives in 435 single-member constituencies under a plurality system as well. In summary, apart from France which applies a majority system, all countries using single-member-constituency systems use plurality systems.

10.   **Proportional representation systems** are therefore applied in the vast majority of the countries under consideration.[19] They are characterised by the assumption that the electorate is proportionately reflected in the elected body. In total, **56 countries** out of 61 **use a proportional or a mixed (also called "combined") system**.[20] Among them, **43 countries use a proportional system**[21] – for at least one chamber for the countries having a bicameral parliament – whereas **13 countries**[22] **use a mixed system**.

11.   Apart from the mixed systems that generally combine a single-member-constituency and a (possibly compensatory) proportional vote – and where the voters may in general vote for a candidate in single-mandate constituencies as well as for a candidate list in a larger constituency – and the very few countries using a single-transferable-vote system –, most of the countries analysed in the report use a party-list proportional representation system. Party-list proportional representation systems can be either closed- or open-list systems.

12.   As underlined by the Venice Commission in its Report on Electoral Systems - Overview of available solutions and selection criteria,[23] "**once the seats have been distributed among the political parties, the question arises as to how to distribute them within the lists in the case of elections under a system of proportional representation. That distribution can be done in many ways** (…). In the simplest case, that of closed lists, candidates are elected in the order in which they appear on the lists. In this case, the political parties have very substantial power, since they determine the order in which candidates appear. In the case of preferential, cumulated and rank-ordered voting on the other side, the electors determine the position of each candidate on the list which they

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[14] Election Code as amended in 2013, Articles 143 and 169.3.
[15] Electoral Code as amended on 25 November 2013, Articles 3, 15, 82 (as amended on 25 November 2013) and 87 (as amended on 25 November 2013).
[16] Electoral Code as amended in June 2012, Title II: *Special provisions to the election of members of parliament*.
[17] Representation of the People Act.
[18] Election Law, Public Law 62-5 of 8 August 1911.
[19] As observed in the comparative table prepared by the Venice Commission Secretariat (CDL(2014)058).
[20] Only Azerbaijan, Belarus, France, the United Kingdom and the United States of America use a majority or plurality system, as developed above.
[21] List of countries: Albania, Algeria, Andorra, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Iceland, Ireland, Israel, Italy, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Peru, Poland, Portugal, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Tunisia and Turkey.
[22] List of countries: Armenia, Georgia, Germany, Hungary, Kazakhstan, Republic of Korea, Lithuania, Mexico, Monaco, Morocco, Romania, San Marino and Ukraine. The Italian system (proportionality system with majority premium) may also be considered as mixed.
[23] Venice Commission, *Report on Electoral Systems - Overview of available solutions and selection criteria* (CDL-AD(2004)003), para 78.

compose. Lastly, the single transferable vote, cross-voting (*panachage*) and open or blank lists, when applied to the letter, inherently incorporate a system for allocating seats within lists."

13.   Consequently, **in closed-list systems**, the choice of the voters is done among a number of alternative party lists. Such systems leave the possibility for the parties to protect their leaders and to determine their own ranking within the list, hopefully according to a democratic process within the party (more details in **Part II B** of the report). **In open-list systems**, the voters expressing their own preference(s), the accountability of individual candidates increases (more details in **Part III** of the report).

B. Closed-list systems

14.   In closed-list systems, the political parties compose, in each constituency, their candidate lists, which remain closed. Such candidate lists usually include a number of candidates equal to the number of members to be elected in the constituency. The order of the candidates on each party list is usually determined either by a central party committee, or by a constituency-level party body, or by a primary election involving local party members. The political party or the coalition establishing a candidate list consequently decides on the mandate allocation within the list. Such systems are therefore proportional but not preferential. They focus on political parties and give them control on translation of the votes cast for their lists into seats.

15.   The voters may vote only for a candidate list, therefore not making preferences inside the list or supporting one or more candidates. As a consequence, voters already know before the elections which candidate receives the first seat, the second, the third, etc. Thus, this implies strong and cohesive political parties or coalitions, supported by closed lists in which party elites can forge alliances across party lines and promote top-down politics.

16.   Among the 56 countries using a proportional system, 24 countries use a closed-list system (meaning with no preference and a pre-determined candidate list by the political parties)[24] whereas 31 countries use an open-list system (meaning one or several preferences, where the voter can choose from one to several names on a candidate list; countries using a single-transferable-vote system are included in this figure).

17.   Among the **24 countries using a closed-list system**, a selection of countries with a closed-list system is reflected in this report, first regarding countries with a mixed system, secondly regarding countries with a proportional system. In the countries using a **mixed system**, each voter votes for the single-member plurality or majority component and for the proportional component. In the majoritarian component, the voter votes for an individual candidate in his/her constituency. In the proportional component, the voter votes for a party list of his/her choice, either in a nationwide constituency or in a specific constituency in the context of a multi-member proportional system. For instance, the voters cast their proportional votes in a nationwide constituency in **Hungary**,[25] **Republic of Korea**,[26] **Mexico**[27] and **Ukraine**.[28] In contrast, the voters cast their proportional votes in their respective constituencies in a multi-member proportional system for instance in **Georgia**[29]

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[24] List of countries: Albania, Algeria, Andorra, Croatia, Georgia, Germany, Hungary, Israel, Italy, Kazakhstan, Republic of Korea, "the former Yugoslav Republic of Macedonia", Mexico, Republic of Moldova, Montenegro, Morocco, Portugal, Romania, Russian Federation, Serbia, Slovenia, Tunisia, Turkey and Ukraine.
[25] Act CCIII of 2011 on the elections of members of parliament, Section 17(1).
[26] Public Official Election lastly amended on 2 October 2012, Article 189.
[27] Federal Code of electoral institutions and procedures, Article 171.
[28] Law of Ukraine on Election of the People's Deputies, Article 97.
[29] Mixed system: proportional representation lists and majoritarian constituencies: one nationwide constituency for the PR system; 73 single-member constituencies for the majority system; 77 seats by the Proportional

and **Germany**.[30] This is also the case in **Italy** (proportional system with "majority premium").[31]

18. Regarding the countries using a **proportional system**, voters cast their vote in a nationwide constituency for example in **Israel**,[32] the **Republic of Moldova**,[33] **Montenegro**[34] and the **Russian Federation**.[35] Voters cast their votes in a multi-member proportional system for instance in **Algeria**,[36] **Portugal**,[37] **Slovenia**[38] and **Tunisia**.[39]

19. Regarding the various **methods of seat allocation**, 23 countries use the d'Hondt formula.[40] 18 countries use the method of largest remainder with Hare quota.[41] Four countries use the Sainte-Laguë formula.[42] Two countries use the Droop formula[43] whereas Denmark uses the method of largest remainder with Hare quota for the calculation of the compensatory seats.[44]

III. Open-list systems: seat allocation within lists, effects on the results

20. In the case of open-list systems, the voters express their own preference(s) by determining the position of each candidate on the list which they compose. Additionally, the single transferable vote, cross-voting (*panachage*) and open or blank lists, when applied to the letter, inherently incorporate a system for allocating seats within lists.

21. It should be noted that the various proportional systems lead to different degrees of choice for voters, subject to the proportional system applied. This part covers the different

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Representation system (closed party-list system; parties exceeding a 5-percent threshold are entitled to win seats under the PR system); and 73 seats by the majority system (first past the post). If no candidate secures 30 percent of the valid vote, run-off elections will be held between the two leading candidates.

[30] Federal Elections Act, Section 4 et seq.

[31] Electoral Law of December 2005. The specificity is that most of the seats are allocated through a proportional representation system (i.e. 629 seats out of 630 seats, including the 12 seats for members elected by Italian citizens abroad). Nevertheless, the remaining seat is allocated through the first-past-the-post system in the single-member constituency of Valle d'Aosta. In December 2005, a new 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.
Decision of the Constitutional Court of Italy: Corte Costituzionale Italiana, sentenza 13.01.2014 n° 1.
Available at: http://www.altalex.com/index.php?idnot=65553.

[32] Knesset Elections Law, Article 83.

[33] Electoral Code, Article 88.

[34] Law on Election of Councillors and Representatives, Article 96.

[35] Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation as amended on 12 July 2006, last amended on 2 April 2014, Article 83.

[36] Organic Law on the electoral regime, Article 88.

[37] Electoral Law, Article 15.

[38] National Assembly Elections Act, Article 93. Slovenia applies a proportional system with one peculiarity: 88 seats are attributed through 8 electoral units composed each of 11 single-seat constituencies, whereas two members respectively representing the Hungarian and Italian minorities are reserved seats.

[39] Electoral Law, Article 110.

[40] List of countries: Albania (d'Hondt first, then Sainte Laguë), Algeria, Austria (federal level), Belgium, Croatia, Denmark (then Danish), Estonia (modified), Finland, Hungary, Iceland, Israel, Luxembourg (Hagenbach-Bischoff), Montenegro, the Netherlands, Peru (modified), Portugal, Romania, San Marino, Serbia, Spain, Switzerland (Hagenbach-Bischoff), "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

[41] List of countries: Armenia, Austria, Brazil, Bulgaria Czech Republic, Georgia (more precisely, Hare-Niemeyer formula), Italy, Kazakhstan, Republic of Korea, Kyrgyzstan, Liechtenstein, Lithuania, Mexico, Moldova, Monaco, Russian Federation, Slovenia (Hare first; then Hagenbach-Bischoff, which is the same as d'Hondt) and Tunisia.

[42] List of countries: Albania (d'Hondt first, then Sainte Laguë), Bosnia and Herzegovina, Kosovo, Norway (modified formula) and Sweden (modified formula).

[43] List of countries: Ireland and Malta.

[44] For more details on the systems of seat allocation, see *Report on Electoral Systems – Overview of available solutions and selection criteria* (CDL-AD(2004)003), Part I 2.2.

types of open-list systems and the seat allocation within lists (**A.**) as well as their effects of the voter's choice (**B.**).

A.   Open-list systems: typology

22. Among the **31 countries using an open-list system**, there are considerable differences. **Seven** countries use a one-preference system[45] whereas **24** countries use a system with several preferences, either a fixed or a variable number of preferences. Among these 24 countries, seven countries use a fixed number of preferences;[46] eleven countries use a system of several preferences;[47] Liechtenstein, Luxembourg, Monaco and Switzerland use cross-voting (also called *panachage*) whereas Sweden uses the system of *adjustment seats* (also called *apparentements*); finally, Ireland and Malta use a single-transferable-vote system.

23.   There are several ways to implement open-list systems, from an option of a single preference for a candidate within the selected list to possibilities for crossing lists. There are also systems where the candidates are not selected from predefined lists but rather from nomination districts as in Denmark and Romania.[48] In Denmark, parties may choose to have predefined lists. Therefore, the candidates may or may not be ranked by the parties. In Denmark (for those parties not having a predefined list) and Romania, the candidates running in nomination districts are not ranked across the districts. There may be also candidate lists which are alphabetical or listed in any another mode of classification, and it is up to the voter to decide who should fill party's seats.[49]

24.   The single-transferable-vote system is a proportional system without party lists. Voters rank individual candidates according to their preference and if all voters follow party loyalties, the result will be proportional in party terms. The choice of candidates will be as per the voters' choice. The single-transferable-vote system may therefore be regarded as an open-list proportional system, but without lists. The system is used in Ireland and Malta in Europe.[50] If voters vote by party loyalties, the result may be close to a party-list system.

1.1   One-preference systems[51]

25. In some countries, the voter *has to* vote for an individual candidate. This is the case in the **Netherlands**, **Estonia** and **Finland** for instance. The vote is at the same time counted as a vote for the party, when the distribution of seats among parties is done. In many other countries, the voter may choose to vote for a party only, or for a single candidate.

26. For electing the 183 members to the National Council, **Austria**[52] is divided into nine provincial constituencies (identical with the nine provinces) which are further divided into 39 regional constituencies. Parties submit therefore regional, state and federal candidate lists. Voters vote for a party and may cast preferential votes for one regional candidate list and one state (province) candidate list. Seats are allocated in three stages: first, regional seats (for those candidates who have received at least half as many preference votes as the

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[45] Austria, Denmark, Finland, the Netherlands, Poland, Spain and Sweden.
[46] Cyprus (one preference for every four seats per constituency), Czech Republic (up to 4 preferences), Greece (up to 4 preferences), Kosovo (up to 5 preferences), Lithuania (up to 5 preferences), Peru (up to 2 preferences) and Slovakia (up to 4 preferences).
[47] Armenia, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Estonia, Iceland, Kyrgyzstan, Latvia, Norway and San Marino.
[48] For more details, see below III 1.7.
[49] For more details, see below III 1.6.
[50] For more details, see below III 1.8.
[51] List of countries concerned: Austria, Denmark, Finland, the Netherlands, Poland and Sweden.
[52] Federal Law on National Council Elections, §§ 97-108.

election figure[53]); second, provincial seats (each party receives as many seats as the times the election figure is contained in its total of party votes in the respective provincial constituency, minus any seats received in the first counting procedure); third, this process is repeated at the national level (by the transfer of each party's surplus votes).

27. **Denmark**[54] uses a multi-member constituency proportional system (10 multi-member constituencies subdivided into 92 nomination districts). 135 seats out of 175 are distributed among the constituencies. The 40 remaining (compensatory) seats are distributed among the parties which either have won at least one constituency seat or two percent of the votes. It is interesting to note that the parties have several options on how to nominate candidates, including forming party lists based upon their candidates in the nomination districts. For the compensatory seats, each voter can vote either for a party list or for one of the candidates. The candidates are elected in the order of their votes, as many as the party has won seats in the multi-member constituency. Candidates from parties that have obtained seats in the multi-member constituency but who have not obtained the distribution figure[55] are elected in the order of the party list.

28. In **Finland**,[56] voters vote for individual candidates. The ranking of elected candidates is based on the number of personal votes cast for the candidates. The distribution is done based on "a comparative index" so that "the first ranked candidate receives as his or her comparative index the total number of votes cast for the electoral alliance,[57] the second candidate half of the number, the third candidate one third of the number, the fourth candidate one fourth of the number and so forth."

29. In **the Netherlands**,[58] "candidates who have obtained a number of votes exceeding 25% of the electoral quota[59] on the (joint) lists on which they appear, shall be elected in the order of the number of votes cast for them, provided sufficient seats have been awarded to the relevant group of lists, set of identical lists not forming part of a group or separate list."[60]

30. In **Poland**,[61] the voter votes both for a candidate list and for one candidate from the list. The mandates obtained by a candidate list are allocated in the order of the number of votes received.

31. **Sweden**[62] uses a system with compensatory seats, which favours full proportionality in seat allocation. Votes are cast for party lists. Voters may also express specific preferences for individual candidates. To be awarded a seat, a party must obtain either at least four percent of the votes cast throughout the country or 12 percent of the votes cast in a constituency. Voters who wish to cast a vote for a specific person mark on the ballot paper the candidate that they would prefer to see elected. If several candidates have been cast, the voter shall be deemed to have cast a personal vote for the first candidate. The order of candidates shall be determined on the basis of the amount of each candidate's number of personal votes.[63]

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[53] Ibid, § 107: "The election figure is the 183rd biggest number when there are 183 seats to be allocated, the 182nd biggest number, when there are 182 seats to be allocated, the 181st biggest of the numbers listed in that way by 181 seats and so on."

[54] Parliamentary Elections Act, Articles 81-82.

[55] Distribution figure = number of constituency and compensatory seats acquired by the party in the multi-member constituency, increased by one.

[56] Electoral Act, Section 89.

[57] In Finland, when nominating candidates, two or more political parties have the right to form an electoral alliance by mutual agreement. Those parties are then considered as belonging to such an alliance.

[58] Elections Act, Section C 1, Article J 2 and all Section P, in particular, Articles 3, 5, 11 and 15.

[59] Ibid, Section P 12, "the central electoral committee shall divide the total vote cast for the group of lists by the number of seats awarded to the group."

[60] Ibid, Section P 15.

[61] Election Code, in particular Articles 227, 232 and 233.

[62] Electoral Law, Chapter 7, Section 2, Chapter 14, Sections 3, 4, 5, 9 and 10.

[63] Source: Election Authority of Sweden. Available at: http://www.val.se/sprak/engelska/index.html.

1.2   Several-preference systems – Fixed number of preferences

32.   In seven countries,[64] the voters select a candidate list and then can express several preferences up to a maximum fixed number. Apart from the specific system in Cyprus (one preference for every four seats per constituency), the maximum preferences vary from two to five preferences.

33.   In **Cyprus**,[65] the voters select first a candidate list (or coalition or a single independent candidate) and then can mark within the list one preference for every four seats to be filled in their constituency.

34.   In the **Czech Republic**,[66] the voters may cast four preference votes for candidates on their chosen party list. Candidates receiving at least 5% of the total number of votes cast for their party have priority in the allocation of seats, regardless of their position on the list. Regarding the seat allocation, all such candidates shall be given priority over the other candidates and the order of such candidates shall be determined by the actual amount of preference votes acquired by each of them.

35.   In **Kosovo**[67] and **Lithuania**,[68] the voters vote for up to five candidates from their selected party list. The candidate lists are reordered in descending order based on the number of votes received by each candidate. In **Slovakia**,[69] the rule is the same, with a possibility for the voters of choosing up to four candidates from their selected party list.

1.3   Several-preference systems – Variable number of preferences

36.   In eleven countries,[70] the voters select a candidate list and then can express several preferences, which vary depending on the number of seats to allocate in the constituency.

37.   In **Armenia**,[71] **Belgium**,[72] **Bosnia and Herzegovina**,[73] **Bulgaria**,[74] **Latvia**[75] and **Norway**[76] *inter alia*, the voters can express as many preferences as there are candidates in the selected party list and the candidates elected are reordered and ranked based on the individual votes they obtained through the preferences expressed by the voters. However, in **Armenia**, the voter must express preferences for at least as many candidates as there are vacant seats in his/her constituency. The ballot shall be deemed in favour of the continuing candidate[77] (a candidate who has obtained the passing quota[78]) who has received the

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[64] List of countries: Cyprus (one preference for every four seats per constituency), Czech Republic (up to 4 preferences), Greece (up to 4 preferences), Kosovo (up to 5 preferences), Lithuania (up to 5 preferences), Peru (up to 2 preferences) and Slovakia (up to 4 preferences).
[65] Law on Election of Members of the House of Representatives.
[66] Act no. 247/1995 on Elections of 27 September 1995 as amended in 2014, Articles 24, 26, 39, 48 and 50.
[67] Law on General Elections in the Republic of Kosovo, Article 111.
[68] Law on elections to the Seimas, Articles 58, 66, 89 and 90.
[69] Act no. 333 in the collection of laws of 13 May 2004 on elections to the National Council of the Slovak Republic, Sections 1, 30 and 42-43.
[70] List of countries: Armenia, Belgium, Bosnia and Herzegovina (*only* if >5% of valid votes obtained; if not = no preference), Brazil (Chamber of Deputies *only*), Bulgaria, Estonia, Iceland, Kyrgyzstan, Latvia, Norway and San Marino.
[71] Electoral Code, Article 166.
[72] Electoral Code, Articles 144, 165bis, 166-168 and 172.
[73] Election Law, Articles 9.1, 9.5, 9.7 and 9.8.
[74] Election Code as adopted on 5 March 2014, Articles 246, 248, 298 and Annex № 1 to Article 248, para. 1.
[75] Saeima Election Law as in force on 1 January 2014**,** Articles 38 and 39.
[76] Representation of the People Act of 2003, as amended on 24 June 2013.
[77] This is a candidate who is neither excluded from the counting nor declared as elected at a certain stage of summarising the voting results.
[78] Passing quota = total value of ballots / (number of vacant seats +1) + 0.01.

highest number of preference votes in such ballot. In **Belgium**, in the case of both Chambers, the votes of voters who have not cast a preference vote are automatically considered to be preference votes in favour of the candidates at the top of the lists. In **Bosnia and Herzegovina**, the electoral system is partly a closed-list system, partly an open-list system, depending if a candidate list obtains more (open-list system) or less (closed-list system) than 5% of the votes cast. Moreover, if a party or a coalition does not have enough eligible candidates on the list to fill seats allocated to it, the mandate shall be transferred to the party or coalition list in another constituency. In **Bulgaria**, it has been noted during the last parliamentary elections that an unusual number of ballots have been declared (rightly) invalid as many voters expressed preferences but omitted to vote for the party list. Even if their choice may have been logically deducted from the preferences expressed, the ballots concerned were invalidated.[79]

1.4   Several-preference systems – Deletions

38.   In some countries, in addition to reordering the ranking of individual candidates given by the party, voters may delete candidates from the list selected. In most of the countries analysed in this category, the voters may choose a party list only – and the vote remains valid – or choose in addition individual preferences. In **Iceland**,[80] voters cast a ballot for a constituency party list, and may change the ranking of candidates, or reject candidates on a list by crossing their names out. In **Latvia**,[81] the voter may choose to put a "+" mark opposite the surname of any candidate, to cross out a candidate's name or surname or to leave the ballot paper unannotated. In **Monaco**,[82] while voters can choose only one ballot with one list, they can modify a ballot paper by deleting candidates and adding candidates from other lists. In **Norway**,[83] voters have the right to make changes on ballot papers, as explicitly stipulated in the electoral law: "At parliamentary elections an elector may change the order in which the candidates are listed on the ballot paper. This is done by the placing of a number by the name of the candidate. The elector may also delete the name of a candidate by the method indicated on the ballot." However the changes (in sequence and deletions) must be done by a majority of those voting for a party, to take effect. Concretely, it never happens that the voters' preferences change the parties' priorities in parliamentary elections. In **Switzerland**,[84] anyone who uses a pre-printed ballot paper may delete pre-printed candidate names. Voters may also delete the pre-printed reference number and electoral list designation or replace the same with the number and designation of a different list.

1.5   Cumulative vote

39. In **Liechtenstein**, **Luxembourg**, **Monaco** and **Switzerland**, voters can cumulate several votes on one candidate, like for instance in Switzerland by entering the name of the same candidate twice on the ballot paper.

1.6   Cross-voting system

40.   In four countries, the voters can mix candidates from lists of different parties. This is not common in national elections. This is called the cross-voting system or *panachage*. Only **Liechtenstein**,[85] **Luxembourg**,[86] **Monaco**[87] and **Switzerland**[88] use cross-voting in national

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[79] In accordance with Article 265 of the Election Code.
[80] Act No. 24 from 16 May 2000 concerning Parliamentary Elections to the Althing, Article 82.
[81] Saeima Election Law, Article 23.
[82] Law no 839 of 23 February 1968 on the elections to the national and municipal elections, as amended on 9 April 2002 (Law no 1.250).
[83] Representation of the People Act, § 7-2.
[84] Federal Act on Political Rights of 17 December 1976 (Status as of 1 January 2013), Article 35.
[85] Electoral Law as amended in 1987, Article 57.
[86] Electoral Law as amended on 1 March 2014, Articles 133, 143, 145 and 159-161.

elections. In these countries, voters can insert on a party list, candidates from other lists and cross-out other candidates. Voters choose their preferred party list that they rearrange as they like: candidates from other lists may be inserted and others cancelled and replaced or not. The voters have as many nominative votes as there are seats to be filled in the constituency. Regarding the seat allocation, for the four countries, the candidates of the other lists take the vote, and the parties' votes go to the list of the selected candidates. In **Switzerland**, voters can also form their own lists on a blank ballot paper. On the basis of the number of mandates obtained, the candidates from each list that have received the highest number of votes shall be elected."[89]

1.7   Nomination districts

41.   **Denmark** and **Romania** have systems with certain similarities. Candidates are nominated in single-member constituencies (nomination districts) but the ones with the highest number of votes are not necessarily elected. The total number of seats in parliament is distributed to parties according to their proportional share of the national results. After that, the seats won by each party are distributed to multi-member constituencies, and in the end filled by candidates running in single-member constituencies according to their number of votes. One difference between the two systems is that in Romania a candidate winning more than 50 percent of the votes in a single-member constituency is elected even if a party is not entitled to seats in the concerned constituency. That is not the case in Denmark where the parties have several options on how to nominate candidates, including forming party lists based upon their candidates in the nomination districts. In such cases, there is a threshold when the votes will over-ride the party sequence of the list.[90]

42.   The system in **Romania** is sometimes called a modified mixed-member proportional system but this can be considered as a proportional system in multi-member constituencies with compensation, which is the most obvious classification of the Danish system. Regardless of the name of the overall system, the common feature is that voters vote always for individual candidates in **Romania**, whereas it is an option in **Denmark**.[91] If a voter gives an individual vote in Denmark, he/she gives it to a candidate in a nomination district. In many ways, it will appear to be a single-member district election, but the candidate performing well in the district will only win the seat if the party is entitled to a seat in that multi-member constituency and if the candidate is doing better than the party's candidates in other nomination districts. For example, the largest party may have the candidate with the highest number of votes in all nomination districts but the proportional share of the votes for the party will decide how many of these will be elected.

1.8   Single-transferable-vote systems

43.   Two countries use the single-transferable system, i.e. **Ireland**[92] and **Malta**.[93] According this system, each voter receives a ballot paper containing the names of all the candidates in his/her constituency. There are between three and five seats per constituency in Ireland, while in Malta it is between five and seven.

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[87] Law no. 839 of 23 February 1968 as amended on 9 April 2002 on national and municipal elections, Articles 20 and 20-1.
[88] Federal Act on political rights of 17 December 1976 (status as of 1 January 2013), Articles 16, 17, 21-33, 34-35, 37, 40-43, 47 and 50.
[89] Federal Act on political rights of 17 December 1976 (status as of 1 January 2013), Article 43.
[90] See supra, para 27.
[91] In Denmark, there is an option to give a party vote only.
[92] Electoral Act 1997 as of April 2014, Sections 37, 107 and 118-121. See also the Statutory Instrument no. 156 of 2007.
[93] General Elections Act of 27 September 1991 (Last amendment 28 Mars 2014), Arrangement of act - Part XI, Article 71; Thirteenth Schedule (Article 105), Articles 7-10.

44. In both countries, the voter indicates his/her order of preference amongst all the candidates in the constituency whether allied to a political party or not. The total number of valid papers is ascertained, and from that figure the electoral quota is calculated, by the Droop formula. Candidates who obtain a number of first preferences equal to or greater than this quota on the first count are declared elected. If no candidate has reached the quota, the candidate who received the lowest number of votes is eliminated and his/her votes are transferred to the candidate for whom a second preference is recorded. If a candidate receives more than the quota required for election, the surplus votes are transferred proportionately to the remaining candidates in accordance with the subsequent preferences expressed by the voters. When the number of remaining candidates neither elected nor eliminated equals the number of vacancies to be filled, those candidates are declared elected, although they may not have reached the quota.

45. In **Malta** when two parties win parliamentary representation in a given general election, additional members may be elected in accordance with the Constitution to ensure that the party with the majority of first preference votes secures a one-seat majority in the House of Representatives. The additional seats are given to the remaining unelected candidates of the winning party irrespective of the district contested. Candidates to the general elections may contest no more than two districts. In case they are elected from two districts, they will choose one district that they will represent after the elections. The seats vacated by these candidates will be filled by "casual elections" prior to the first session of the House of Representatives. The votes initially cast for the member to be replaced (because of resignation and death) are allocated to the member on the basis of the preferences expressed. If this cannot be done fruitfully (as no unelected candidate of that constituency could possibly obtain the required number of preference votes), a member is 'co-opted' by a resolution of the House of Representatives on the motion of the leader of the political party of the former member.

1.9 The ballots

46. With open-list systems, the ballot design is a challenge. With closed-list systems, only the party name needs to appear on the ballot. On the contrary, with open-list systems, the voter must be given the opportunity to cast a vote for a candidate as well. If all candidates of all parties are to appear on one ballot, it may become very large. This is the case in for example **Bosnia and Herzegovina**. In other countries, like in **Estonia** and **Finland**, the problem is solved by giving a number to all individual candidates and the voter enters the number of the preferred candidate on the ballot, which count both for the individual vote and for the party vote. In that case, the voter only cast one individual vote and lists of all candidates need to be posted in the polling station. The parties and candidates would also use the numbers in their campaign to ensure that the voters know how to vote. If voters would be offered more extensive choices, that would not work. In **Norway**, the ballot problem is solved by printing separate ballots for each party. All ballots will be available in the polling booth and the voter will take the ballot of the preferred party. If the vote cast remains unchanged, it is counted as a vote for the party's priority, but the voter may also change the sequence and delete candidates from the list.

B.   Open-list systems, effects of the voter's choice

1.1 Plurality vote within lists

47. The most common way to determine the result is to count the number of individual votes given to candidates and let the one(s) with the highest number of votes win the seats. This may be done regardless of whether the voter may be permitted one or several votes.

1.2 Thresholds and other obstacles to the effectiveness of preference voting

48. There is often a barrier for preference vote to be effective. In some places where the individual votes within a list are counted, a candidate needs to pass a percentage of the votes to move up the list; otherwise, the party's priority remains. In **Bosnia and Herzegovina**, it is five percent whereas it is seven percent in **Bulgaria**. These are moderate thresholds, which give good possibilities for voters' influence.

49. If there is no threshold, there is a possibility for a relatively small, organised group to determine who should fill the seats. Combined with not making the individual vote mandatory, this may easily happen, since voters accepting the party's priorities may not give an individual vote.[94] If the individual vote is mandatory, it is less likely that a small organised group can decide who will fill the seats across parties.

50. For example, in **Denmark**, a party may choose to run only by candidates in the nomination districts or by forming lists of such candidates across multi-member constituencies. If the party has opted for a list, a candidate needs more than an election quotient.[95] If for example a party has won one seat, the candidate needs more than half the votes to be elected. If a party has won four seats, the candidate needs more than 20 percent of the party's seats in order to change the party's priority. In other words, the party may opt for an alternative where the voters have comparatively small possibilities to change the order of the list. However, if the party does not choose to have a predefined list in the multi-member constituency, the voters have a lot of influence since the ones with the highest number of votes are elected without any threshold.

51. In **the Netherlands**, the threshold is also dependent on the election quotient applied to the list: If fewer than 19 seats are to be awarded, half of the number of votes cast for a list divided by the number of seats won; if it is nineteen or more, it is a quarter of the quotient. That means that if a list has won only one seat, more than half must have voted for a candidate for him or her to be elected. Otherwise, the first on the list is elected. If 20 seats are to be filled, it is sufficient for a candidate to win more than 1.25 percent to compete for the seats according to the individual votes.

52. In **Belgium** and **Norway**, the voter may give a priority number to a candidate. The candidate with the highest number of number-one positions is placed first. However, those ballots where the voters have made no changes (preferences) count as a vote for number one. Therefore, to avoid such effect, more than half of the votes would need to be cast for the same candidate. In practice, this rarely happens, which therefore leads these systems to be *de facto* closed-list system, even if preference vote is allowed.

53. In **Estonia**, mandates are first allocated in the constituencies among political parties who have received more than the 5% national threshold. This allocation is based on simple quota (a mandate is allocated if the list receives 0,75 quotas; or an additional mandate is allocated, if it receives 0,75 quotas more than the full number of quotas, i.e. if the number of votes equals 1,75 quotas, the list receives two mandates). A candidate is not allocated a seat in case he or she has fewer preferences than 10% of the simple quota. Those mandates left are distributed at national level based on the ranking of candidates in the list whereas the number of preferences is not taken into account. Still, candidates with a number of preferences inferior to 5% of the simple quota are not allowed to receive a mandate in case there are other candidates in any constituency from the same political party with more preferences than 5% of the simple quota.

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[94] For instance, in the municipality of Asker in Norway more than half of the elected representatives elected were women in 1971, due to an action by women activists. Thresholds were later introduced, but then later removed again.
[95] Electoral quotient = number of votes for the party / (number of seats for the party + 1).

1.3   Quotas for gender balance or other quotas

54. In some countries, like in **Bosnia and Herzegovina**, there are requirements for gender balance on the list. One of the two first on the list need to come from each gender, and two out of the first five, three out of the first eight, etc. At the same time, Bosnia and Herzegovina has an open-list system, with a five-percent threshold for the voters' choice to take effect. There is a risk that the voters will change the representation in favour of the dominating gender.

1.4   Competition within a party

55. Open-list systems introduce a competition among candidates of the same party. In most countries, this gives incentives for a positive campaign by the candidates, all fighting for the parties' platforms against other parties. There is a risk, however, that candidates direct their campaign against fellow candidates of the same party. This can lead to personalisation of politics reducing the importance of parties' platforms and ideas.

1.5   Constituencies

56. Proportional representation is carried out in multi-member constituencies, either with the whole country as a single constituency, like in **Slovakia** and **the Netherlands**, or with the country divided in a number of geographical constituencies. With the exceptions of Denmark (under one of the defined options) and Romania, the candidate lists correspond to the constituencies. If the whole country is a nationwide constituency, there is no guarantee that there are candidates from all over the country, and in some areas, the voters may not know the candidates, even though the incentives for proportional representation are to be inclusive. The open-list option may be then less efficient; otherwise there is no difference in applying open-list systems to local constituencies or to the country as a whole.

IV. Conclusion

57. In summary, the following points may be underlined.

58. An overview of the 61 countries analysed reveals that a vast majority of countries (56) use a proportional system in parliamentary elections. Among them, 43 countries use a proportional system whereas 13 countries use a mixed system.

59. The simplest cases are the closed-list systems where the voters cannot express preferences inside the lists. In this case, the political parties have a very substantial power, since they determine the order in which candidates are elected. In the case of open-list systems, the voters determine, at least up to a certain extent, the position of each candidate on the list which they compose. In addition, there are a few specific systems that can be classified among the open-list systems, which are the single transferable vote, cross-voting (*panachage*) and open or blank lists, which inherently incorporate a system for allocating seats within lists.

60. On the one hand, 24 countries with a closed-list system have been analysed. They can be divided between nationwide and multi-member proportional systems. On the other hand, in the open-list systems, the seat allocation within candidate lists can be done in many ways. While seven countries use one-preference systems (Austria, Denmark, Estonia, Finland, the Netherlands, Poland and Sweden), many other countries use several-preference systems. In this last category, seven countries have a fixed number of preferences (Cyprus, Czech Republic, Greece, Kosovo, Lithuania, Peru and Slovakia) whereas ten countries have a variable number of preferences, depending on the number of seats to allocate in the

constituency (Armenia, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Iceland, Kyrgyzstan, Latvia, Norway and San Marino).

61. There are countries with open-list systems where the voters can cross out candidates (Iceland, Latvia, Monaco, Norway and Switzerland); countries with a cross-voting system, i.e. where the voters can mix candidates from lists of different parties (Liechtenstein, Luxembourg, Monaco and Switzerland). There are also countries where the candidates are nominated in single-member constituencies (nomination districts; Denmark, Romania); and countries using the single-transferable-vote system (Ireland and Malta).

62. It has to be noted that in some systems the presence of thresholds or conditions may limit the extent of the influence which preferences will ultimately have on the distribution of seats within a list. Although the voters can indicate their preferences, a number of conditions have to be fulfilled before they can be taken into account, such as thresholds or allocation of votes for lists with no preference to candidates at the top of the list. This generally results in a *de facto* closed-list situation, in addition to other obstacles to the effectiveness of preference voting (nomination districts, quotas for gender balance).[96]

63. Other questions might be further developed in a future analysis, such as the effect of gender policies, of thresholds or constituencies' size on the voters' choice. The Venice Commission could also consider making recommendations on the choice to be offered to the voters and its effects.

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[96] Venice Commission, *Report on Electoral Systems - Overview of available solutions and selection criteria* (CDL-AD(2004)003), para 80.