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**THE EUROPEAN PARLIAMENT: STATUS QUO VS.
DEGRESSIVE PROPORTIONALITY**

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Abstract

The principle of degressively proportional representation in the European Parliament recorded in the Treaty of Lisbon has not been respected so far. According to the current proposals, neither it is applied in the 2014-2019 term of office. A political compromise has led to the dominance of another principle, that is “nobody gains and nobody loses more than one”, which again by its assumption cannot be degressively proportional. This paper shows some examples of the allocations of seats according to this rule, which emphasize the need for the further discussion on the precise rules for the composition of the European Parliament in the future.

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1. Introduction

Ever since the beginning of the formation of modern states, based on the principles of democratic representation, one of the main issues in the science of constitutional law has been the creation of such rules of the electoral law which would serve in the best possible way to transfer the will (a spectrum of political views) of society to its parliamentary representation (Lijphart, 1995). Hence several diverse electoral systems were formed, with crucial differences regarding the method of establishing the results of elections to representative bodies, and the allocation of seats among the political parties, electoral committees and particular candidates. In the legal systems of individual countries there were formed several – diverse in their construction – electoral systems which can be divided into the majority, proportional and mixed (Blais, 1988). The historical, legal, economic and social phenomenon of post-war European integration, leading to the creation of the European Union, made it necessary to answer the question as to what principles should be the basis of the system for the election of the organ representing citizens of the Union, i.e. the European Parliament (EP) (Obradovic, 1996). Due to the fact that we are dealing with a supranational structure – a union of states diverse regarding their population size – it was fundamental to establish such rules and allocation of seats which would not marginalize less populous countries, and at the same time, using such an allocation which would provide the society in most populous countries, with a suitable number of representatives reflecting their share in the total population of the Union. Very significant disparities in the size of populations existing among some member states, and the legal nature of the EU as an integrational structure serving those states to achieve common economic and social aims (see Article 1(1) TEU), makes it impossible to base elections to the European Parliament on the rules of the proportional representation particular for a single state.

As a result of the growing number of member states, and at the same time of the population potential of the entire EU territory, it has become vital to find a formula which could lead to implementing such aims, yet without endangering the effective functioning of the European Parliament. A further increase in the numbers of Members of the European Parliament (MEP) would certainly contribute to such a state of affairs, as has been repeatedly demonstrated in the past.

2. Problem Statement

The new solutions introduced in the Treaty (2007), the Lisbon Treaty, regarding the allocation of the EP seats among the individual member states, established the principle of degressive proportionality (Article 14(2) of the Treaty on European Union, 2012). The ruling of the Treaty in this question is, however, of a very general nature and introduces only the criteria of the acceptable number of EU citizens' representatives (751 including the President of EP) and the minimum and maximum numerical threshold of the seats available for the least and the most populated member states (from 6 to 96 seats).

Within the indicated solutions, it is possible to apply diverse methods of allocation of seats among the member states, as long as they follow the principle of degressive proportionality. This principle is expressed in the EU documents as the inclusion of three fundamental objectives:

“1) minimum and maximum numbers defined in the Treaty have to be fully implemented in order that the allocation of the seats reflects, as broadly as, possible the cross-section of population of the

member states; 2) the larger the population of a member state, the larger the number of seats it is entitled to; 3) the larger the population of a member state, the larger the number of its citizens represented by its individual members of EP” (The Treaty of Lisbon).

The indicated elements of the concept of degressive proportionality allow for the implementation of several solutions based on diverse mathematical methods. In the face of the lack of a legally defined way (method) of allocating the seats among the individual member states, such a decision about their allocation depends on the Council of Europe, which has to pass it unanimously on the initiative of the European Parliament and with its consent (Article 14(2) TEU). Such a state of affairs results in the need to make changes in the allocation accepted so far, in particular in the case of the accession of new states, or in significant changes in the population of the individual member states. This, in turn, requires obtaining a political compromise, the acceptance of which may become a source of obstacles in the functioning of the whole institutional mechanism of the EU. The above mentioned form of legal ruling is difficult to concur with the principle of definiteness of law, which not only constitutes a fixed part of the concept of a democratic state of law, fundamental in the constitutions of individual member states, but is also a requirement formed by the theory of law addressed to every system of laws (Costa and Zolo, 2007). According to Article 2 of the TEU, the functioning of the Union should be based on the values of a state of law common for the member states. Undoubtedly, this principle should guide the creation of both the treaty basis of the Union's legal order, and the secondary laws decreed by the Union's institutions, which are their further development. This also means that the ways of understanding the concept of the state of law evolved in the legal tradition of individual member states should be used in the process of establishing and implementing laws at the EU level.

3. Research Questions

When referring in the aspect mentioned in the previous section to the concepts existing in the science of law, it should be stressed that the principle of definiteness of law includes several requirements of correct legislation, among them a premise that the newly created regulations should be formulated correctly, both linguistically and logically, be understandable (clear) for those they are addressed to, but also be precise, i.e. unequivocal in their interpretation and implementation. Meanwhile, the rules included in the Article 14(2) TEU, do not indicate a precise method of allocating the EP seats among the individual member states, they simply create a general template necessary to fill in with decisions made by The Council of Europe. Such a template may be filled by assuming diverse solutions, resulting from several possibilities existing within the area delineated by the criteria of the maximum and minimum number of parliamentarians from each member state and the maximum number of seats in the European Parliament. The elements of the degressive concept of proportionality indicated above are also of a very general nature, and the relevant EU documents state that it is not possible to copy them literally (in full) and to follow in the allocation of seats. They are merely treated as points of reference when necessary to conduct a concrete allocation.

Therefore, it undoubtedly remains necessary to attempt to create a precise legal ruling regarding the presented issue, based on a suitably defined mathematical method acceptable for all the member states, which would prevent the frequent, politically motivated, changes in that area. This approach has

been further confirmed not only in the EU documents, but also in the principle of the definiteness of law fundamental in the state of law, and a principle of the EU laws (Article 2 TEU). Therefore, the considerations presented in this paper will constitute an attempt to define such a method, characterized by objectivity and respecting – to the highest possible degree – the concept of degressive proportionality in the allocation of the EP seats among the individual member states.

The main contribution of this paper is to show that the requirements on the allocation of seats for the European Parliament given by Gualtieri and Trzaskowski (2013) do not respect the highest possible degree objectives defined in that document. Namely, we show that there are other allocations following “nobody gains and nobody loose more than one”, but in the same time the degressive proportionality of the proposed allocations does not hold only for the smallest possible number of countries. It is worth highlighting that in the solutions given by Gualtieri and Trzaskowski (2013), the number of countries, which do not hold the degressive proportionality is greater than the propositions presented in this paper. Furthermore, the assumption applied by Gualtieri and Trzaskowski (2013), by its definition cannot be degressively proportional, thereby against the Treaty of Lisbon. Therefore, this paper points out some limitations of the existing propositions, but also provides solutions and their comparison, which emphasize the need for the further discussion on the precise rules for the composition of the European Parliament.

4. Purpose of the Study

The previously operated allocation of seats in the EP did not respect the condition of degressive proportionality defined in the Treaty of Lisbon. The conditions regarding the general number of parliamentarians and the maximum representation of each country are not met. The legal basis for such a deviation are based in this case on the provisions of Art. 2 Protocol no 36 regarding temporary provisions (see Gualtieri and Trzaskowski, 2013). However, a thus sanctioned deviation from the Treaty, was limited in time till the end of the 2009-2014 term of office, and therefore the necessity arose to adapt these solutions to the provisions of the Treaty of Lisbon.

As a result of such an adaptation, the general number of MEPs in the 2009-2014 term of office was restricted to 751, and Germany – as the most populous member state – will obtain 96 seats. These changes shaped the make-up of the European Parliament according to the peripheral conditions describing the general, minimum and maximum number of MEPs. However, they did not determine the fulfillment of the two other remaining conditions of the principle of degressive proportionality.

It transpired that deviations from the resolutions of the Treaty of Lisbon also occurred in the current term of office. The reluctance to upset the existing system of seats means that the proposals regarding the composition of the EP tended to aim at the smallest possible changes in the previous structure, at the expense of breaking the principle of degressive proportionality. Reports presenting the project of the resolution of the European Parliament regarding its composition for elections in 2014, pointed out as a justification the basic rule of “nobody gains and nobody loses more than one”. Losses and gains referred naturally to the previous structure in 2013 (see Table 1). The proposed solution assumed as a criterion of allocation the limiting of the loss of seats on the part of member states, at the same time respecting – as far as possible – the principle of degressive proportionality.

In 2013, there were 766 MEPs. To obtain the declared number of 751 representatives, the number of seats had to be decreased by 15. Germany was represented by 99 seats, and it had to lose three of them to meet the condition of a maximum representation of 96. Therefore, the remaining countries also lost 12 seats; the reference values of seats for these considerations are given in Table 1 in column “Reference”. Obviously this did not concern the smallest countries which, if they lost any seats, would not fulfill the condition of the minimum representation of six parliamentary seats. This means a cut in the number of seats concerned other 23 countries (indices 5-27 in Table 1).

On the other hand, to obtain an unprejudiced rule for the composition of the EU Parliament, a fair analysis is needed, which requires examining of all feasible allocations of seats (holding the above constraints). Therefore, lots of methods have been proposed, which construct compositions of the EU Parliament (e.g., Martinez-Aroza and Ramirez-Gonzalez, 2008; Ramirez-Gonzalez et al. 2012; Serafini, 2012; Słomczyński and Życzkowski, 2012). However, they face an essential problem – they are not able to generate (examine) all feasible allocations of seats (solutions).

Table 01. Numbers of seats for each country in 2013

Index	Country	Population	Seats	Reference
1	Malta	416110	6	6
2	Luxembourg	524853	6	6
3	Cyprus	862011	6	6
4	Estonia	1339662	6	6
5	Latvia	2041763	9	9
6	Slovenia	2055496	8	8
7	Lithuania	3007758	12	12
8	Croatia	4398150	12	12
9	Ireland	4582769	12	12
10	Finland	5401267	13	13
11	Slovakia	5404322	13	13
12	Denmark	5580516	13	13
13	Bulgaria	7327224	18	18
14	Austria	8443018	19	19
15	Sweden	9482855	20	20
16	Hungary	9957731	22	22
17	Czech Rep.	10505445	22	22
18	Portugal	10541840	22	22
19	Belgium	11041266	22	22
20	Greece	11290935	22	22
21	Netherlands	16730348	26	26
22	Romania	21355849	33	33
23	Poland	38538447	51	51
24	Spain	46196276	54	54
25	Italy	60820764	73	73
26	UK	62989550	73	73
27	France	65397912	74	74
28	Germany	81843743	99	96

5. Research Methods

Recently, Łyko and Rudek (2013) have designed and implemented an algorithm that is able to find all feasible solutions. Nevertheless, all allocations of seats such that “nobody gain and nobody loses more than one” can be generated by an exhaustive search method. As mentioned above, there are 23 counties and among them 12 have to lose one seat. Thus, the number of possible allocations to be examined is equal to the binomial coefficient $\binom{23}{11} = 1352078$. It can be done in a reasonable time. Among them, there are 9835 allocations that hold the mentioned assumption and the number of seats of a smaller country is not greater than the number of a greater country. Namely, following Table 2 there are 9835 allocations meeting the first two conditions of the principle of degressive proportionality equal to removing one seat for each of 12 countries. Analyzing solutions of two pairs not holding degressive proportionality (see also Table 4), one can notice that, apart from the four mentioned countries (i.e., Malta, Luxembourg, Cyprus and Estonia) also 9, and therefore all together 13, will not diminish in any case its representation. With each allocation of seats are lost by 8 countries, therefore the acceptance of the principle “nobody gains and nobody loses more than one” results in depriving each of these countries of one representative. In this case the task is reduced to indicating 4 countries from among 7 which have to give up a larger representation, in order that the proposed solution would not be “too drastic to be politically sustainable in a single step”.

Table 02. Number of solutions for the given number of pairs that do not hold degressive proportionality assuming that “nobody loses more than one” in reference

Number of pairs degressive proportionality	Number of solutions not holding degressive proportionality	Number of allocations
0		0
1		0
2		25
3		346
4		1770
5		3301
6		2935
7		1232
8		226
9		0
10		0
Total		9835

In other words, a solution has been declared as a result of which 12 countries lose one seat each regarding the current number of seats possessed, and at the same time the principle of degressive proportionality will be respected. However, it has not been defined what is understood as respecting this principle. The first condition is fulfilled. It is not difficult to meet the second one, so it should be understood that the aim is to somehow minimize its third condition, i.e. that “the larger the population of a country, the more inhabitants are represented by each of its Members of the European Parliament”.

Table 03. Number of seats following the different methods of calculation (Gualtieri and Trzaskowski, 2013)

Country	Population	Seats (step1)	Difference	Ratio pop./sets (step 1)	Seats (step 2)	Difference	Ratio pop./seats (step 2)
Malta	416110	6		69352	6		69352
Luxembourg	524853	6		87476	6		87476
Cyprus	862011	6		143669	6		143669
Estonia	1339662	6		223277	6		223277
Latvia	2041763	7	minus 2	291680	8	minus 1	255220
Slovenia	2055496	7	minus 1	293642	8		256937
Lithuania	3007758	9	minus 3	334195	11	minus 1	273433
Croatia	4398150	11	minus 1	399832	11	minus 1	399832
Ireland	4582769	11	minus 1	416615	11	minus 1	416615
Finland	5401267	13		415482	13		415482
Slovakia	5404322	13		415717	13		415717
Denmark	5580516	13		429270	13		429270
Bulgaria	7327224	17	minus 1	431013	17	minus 1	431013
Austria	8443018	19		444369	19		444369
Sweden	9482855	19	minus 1	499098	19	minus 1	499098
Hungary	9957731	19	minus 3	524091	21	minus 1	474178
Czech Rep.	10505445	20	minus 2	525272	21	minus 1	500259
Portugal	10541840	20	minus 2	527092	21	minus 1	501992
Belgium	11041266	20	minus 2	552063	21	minus 1	525775
Greece	11290935	20	minus 2	564547	21	minus 1	537664
Netherlands	16730348	26		643475	26		643475
Romania	21355849	31	minus 2	688898	32	minus 1	667370
Poland	38538447	51		755656	51		755656
Spain	46196276	57	plus 3	810461	54		855487
Italy	60820764	74	plus 1	821902	73		833161
UK	62989550	76	plus 3	828810	73		862871
France	65397912	78	plus 4	838435	74		883756
Germany	81843743	96	minus 3	852539	96	minus 3	852539

6. Findings

It is known that setting a rule that a seat cannot be gained, and that at the most one seat can be lost, has to lead to breaking the third condition of the principle of degressive proportionality (see Table 2). Importantly, the current demographic structure means that by leaving Germany with 96 seats and limiting the obtainable number of the allocated seats for France to 73 or 74, the required inequalities for a coefficient representing a number of population of a given country per one parliamentary seat is not obtained. In the case of Germany the ratio between the population and the number of seats is 852539, in the case of France it is respectively 895862 and 883756. Therefore, both in the first and the second situation it is larger for a smaller country than for a bigger one.

A similar disparity can also be observed for a pair of countries: Italy and Spain. According to the accepted principles, Italy can be represented by 72 or 73 MPEs. The ratio between the population and the number of seats of each country is then respectively 844733 and 833161. Spain can obtain 53 or 54 seats,

which results in the ratio between the population and the number of seats 871628 and 855487, respectively. Therefore, in any possible – with the above mentioned restrictions – allocation of seats, an MEP from Spain, less populated than Italy, represent a larger number of population.

Seemingly, accepting the principle “nobody gains and nobody loses more than one” does not cause any other violation of the rules of the Treaty of Lisbon. One can indicate 25 allocations (see Table 4) according to this principle which do not meet only the third condition of the principle of degressive proportionality, and that is only in the case of the two indicated pairs of countries, i.e. Germany and France, and Italy and Spain. One would therefore expect that the allocation proposed in the report presenting the project of a resolution of European Parliament regarding the composition of the EP in 2014, was one of those 25 allocations (see Table 4), but it was not so. The solution indicated by the report (Gualtieri and Trzaskowski, 2013) violated the third condition of the principle of degressive proportionality for a larger number of pairs of countries. What is more, every Irish MEP represents a greater number of citizens than MEPs from two larger countries, i.e. Finland and Slovakia (see Table 3). Hence, it is hard to say that the idea of the principle of degressive proportionality was respected “as far as possible”, since any related definition was not provided by Gualtieri and Trzaskowski, 2013.

Justifying the project of the resolution, it was also written that the proposed solution is the result of a two-step procedure, in which “the first step is a reallocation fully in line with the three principles of degressive proportionality and, at the same time, involving as little change as possible in the number of seats”. Without involving Germany in these considerations, which, in any case, has to obtain 96 parliamentary seats, an allocation obtained at this stage is the one in case of which the change of number of seats concerns 17 countries. To obtain the current result, 34 seats have to be moved. The biggest loss amounts to three, and the largest gain amounts to four additional seats.

Such an allocation is one of 296280 degressively proportional allocations as a result of which the biggest loss, in relation to the current state (“Reference”), amounts to -3 seats, and the largest gain amounts to +4 (see Table 5). Therefore, it seems necessary to justify the choice of this particular solution obtained on completion of the first stage (see step 1 in Table 3). Based on Table 5, it is worth noticing that there are 134 degressively proportional allocations, for which the maximum deflection from the current allocation is -2 (maximum lose) and +3 (maximum gain). It can also be proved that there are no degressively proportional allocations differing less, in that sense, from the one presently in use.

Table 04. All solutions (numbers of seats), where only two pairs of countries (bolded) do not hold degressive proportionality

Country	Ref.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Malta	6	=	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Luxembourg	6	=	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Cyprus	6	=	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Estonia	6	=	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Latvia	9	↘	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Slovenia	8	=	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Lithuania	12	↘	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11
Croatia	12	=	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
Ireland	12	=	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
Finland	13	=	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13
Slovakia	13	=	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13
Denmark	13	=	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13
Bulgaria	18	↘	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17
Austria	19	~	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18
Sweden	20	=	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Hungary	22	↘	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
Czech Rep.	22	↘	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
Portugal	22	↘	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
Belgium	22	↘	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
Greece	22	↘	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
Netherlands	26	=	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26
Romania	33	~	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32
Poland	51	~	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Spain	54	~	53	54	53	53	54	53	53	53	54	53	53	53	53	53	53	53	53	53	53	53	53	53	53	53
Italy	73	~	73	72	73	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72	72
UK	73	~	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73	73
France	74	~	74	74	73	74	73	74	73	74	73	74	73	74	73	74	73	74	73	74	73	74	73	74	73	73
Germany	96	=	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96

“=” – number of seats is the same as “Reference” in all solutions.

“↘” – number of seats decreases by -1 in all solutions.

“~” – number of seats is variable, i.e., the same as “Reference” or decreases by -1.

Table 05. Number of degressively proportional allocations (solutions) for the given maximum lose and gain with respect to “Reference”

Max lose with respect to “Reference”	Max gain with respect to “Reference”	Number of degressively proportional solutions
-1	1	0
-1	2	0
-1	3	0
-1	4	0
-2	1	0
-2	2	0
-2	3	134
-2	4	154
-2	5	155
-2	6	155
-3	1	0
-3	2	0
-3	3	146638

7. Conclusion

In this paper, we pointed out some limitations of the existing propositions, but also provided better solutions, which emphasized the need for the further discussion on the precise rules for the composition of the European Parliament. Despite the frequently stressed in official documents need to prepare a clear and repeatable way of selecting the representations of the member states, the composition of the European Parliament is still established on the basis of political compromise. Moreover, such a compromise does not allow for adapting the allocation of seats to the rulings of the Treaty of Lisbon. In the current term of office, i.e. 2014-2019, the principle of degressively proportional representation recorded in the Treaty is not respected. However, it seems that the proposed allocation which remains in force from 2014 onwards, from the point of view of the accepted principles, is removed further than necessary from the solutions written down in the legal regulations. The examples of allocation of the parliamentary seats among the member states presented in this paper follow the principles mentioned in the project of the resolution of the European Parliament in view of the elections in 2014, and reflect more closely the principle of degressive proportionality.

In our opinion, the allocation of seats for the current term of office should be chosen among the solutions presented in Table 4, since only them holds rules defined by Gualtieri and Trzaskowski, 2013. Furthermore, on the basis of these solutions different allocations of seats can be found, which depending on the preferences encourage smaller or greater countries. To hold the degressive proportionality as much as possible (see Table 4), the political discussions can concern only 7 countries (denoted by “~”), i.e., Austria, Romania, Poland, Spain, Italy, UK, France. Therefore, it has to be decide, which 4 counties among the above mentioned have less MEPs than “Reference”. Thus, the spectrum of the political negotiations is significantly reduced. Observe also in Table 4 that the allocation of seats denoted by “25” encourages smaller countries, in opposition to “1”, which prefers the more populated. It seems that solution “25” seems to be most fair, since not only Germany loses most seats (from 99 to 96) as the most

populated countries, but also other in this order, i.e., Spain, Italy, UK and France. Nevertheless, a future discussion before the new election is required such that the new structure of the European Parliament will hold at last the Treaty of Lisbon.

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