

The Constitution Unit

ELECTIONS UNDER REGIONAL LISTS

A guide to the new system for electing MEPs

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Executive summary

Closed and open lists

The government has chosen a closed list system for the European Parliament elections, whereby electors can vote only for a party. The alternative would be open lists, which enable voters to express a preference for individual candidates.

Under the most open form of lists, seats are allocated to candidates according to the number of their individual preference votes (Denmark and Italy), and the lists are not ordered by the parties (Finland and Luxembourg). This maximises voter power; but the parties fear that it would force candidates from the same party to compete too openly against each other.

The use and impact of preference votes

If the government moves to open lists, it is likely to opt for a more limited variant (that used in Belgium) that gives relatively little power to voters. Lists will be ordered by the parties, and party votes will go to support the candidates at the head of the list: preference votes will make relatively little difference to the list order.

Candidate selection by the parties

To get elected candidates will need to appear high on the party list. Candidate selection will thus be crucial. Lists could be produced by the national party executive or by local party members. In other EU countries the parties generally use local and regional bodies to draw up a list of candidates, which is submitted to a national executive body for amendment or approval.

A number of European parties also use quotas to encourage female candidates (at 20% to 50% of the list); or 'zipping', whereby male and female candidates are ordered alternately.

The position of independent candidates and minor parties

Independent candidates in European Parliament elections are rare, and when they do stand, usually unsuccessful.

The UK will allocate seats at the regional level, which will produce high and variable thresholds. This will discriminate against minor parties (such as the Greens) which lack a strong regional base. This effect could be alleviated by holding a second distribution of seats at the national level; or by allowing small parties to join their lists and pool votes.

lack a strong regional base. This effect could be alleviated by holding a second distribution of seats at the national level; or by allowing small parties to join their lists and pool votes.

The allocation of seats to parties and regions

List systems require a mathematical formula for allocating seats to parties. The government has chosen the d'Hondt formula, partly because it believes d'Hondt will produce more proportionate results. But the government's calculations are flawed. More proportionate results are produced by the Saint-Laguë formula, which does not discriminate against smaller parties.

Wales should only be entitled to four seats, and not the five proposed by the government. The Bill provides for periodic review of the distribution of seats between the English regions, to take account of population shifts. But no such mechanism is proposed for Scotland and Wales, whose allocation of seats will remain fixed.

Registration of political parties

Registration of political parties is not a necessary condition of moving to a list system. In those countries where registration is compulsory, parties are often required to collect a minimum number of signatures of support. In a few countries, the registration requirements stipulate a minimum level of internal party democracy.

By-elections and supplement lists

Supplement lists in the UK, as used in the other EU countries, would avoid the need to resort to by-elections. A by-election covering a whole region would be extremely expensive.

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Introduction

From 1999, Great Britain will cease to elect its MEPs through the first past the post method, and will switch to a proportional list system¹. The government has legislated for this in the European Parliamentary Elections Bill. The legislation brings the UK more closely in line with the practice in other EU countries, all of which - with the exception of Ireland - use a list system for electing MEPs.

This briefing looks at some of the key issues arising from a decision to move to a list system in the UK. The issues covered are:

- the nature of the lists: 'closed' versus 'open', and variations of the open model
- the use and impact of preference votes
- the allocation of seats to parties
- the allocation of seats to regions
- parties' candidate selection procedures and the use of quotas
- the position of independents and minor parties
- the registration of political parties
- supplement lists and by-elections.

The electoral system

Closed versus open lists

Within the thirteen EU countries that elect their MEPs by a list system, the principal distinction is between those countries operating 'closed' list systems, and those operating 'open' lists. Under closed lists, electors can cast a single vote for a party only; they cannot vote for a particular candidate. The countries operating closed list systems are: France, Germany, Greece, Portugal and Spain.

The other EU countries operate open list systems, in that electors have the choice between voting for a party or voting for one or more of the candidates within a party's list. This option allows voters to express a preference for a particular candidate, although a preference vote is also counted as a vote for the candidate's party.

The government has proposed that the list system used in Great Britain will be a closed one. Unlike the five other EU countries operating closed lists, however, votes will be counted, and seats allocated, at the regional, rather than the national, level. This

¹ Northern Ireland will retain its existing system of the Single Transferable Vote for electing its three MEPs. This Briefing therefore limits its comments to England, Scotland and Wales.

combination will have a negative impact on factions frozen out by their parties (and allocated places only at the bottom of lists, from which position their candidates would be unlikely to get elected). With a national allocation of seats, disaffected factions could run as separate 'splinter groups' with a realistic hope of gaining seats. The effect of allocating seats at the regional level will be to lower splinter groups' chances of success, and thus to reduce the likelihood of parties splitting. The rationale behind this is explained in more detail in the section on 'Minor parties and thresholds', on page 10.

Variations in 'open' list systems

Having distinguished between closed and open list systems, further distinctions need to be made between the types of open lists. The elements which combine to determine the 'openness' of a system are:

- how many votes each elector has
- how candidates are ordered on the ballot paper
- how candidates are elected from a party list: specifically, whether a 'party' vote counts towards any of the candidates' personal totals

Number of votes

Most of those countries operating an open list system allow voters only one preference vote. This is the case in: Austria, Belgium, Denmark, Finland, the Netherlands and Sweden. In Luxembourg, voters can cast up to six votes (the total number of seats available) for individual candidates: a voter may cast a vote twice for a single candidate, and may also vote for more than one party, if wished ('panachage'). In Italy, voters are allowed up to three votes in some regions, but only a single vote in others.

Candidate order

A second criterion in assessing the openness of lists is how candidates are ordered within each party list. In six countries operating open list systems - Austria, Belgium, Denmark, Italy, the Netherlands and Sweden - candidates are ordered by the parties, with the most favoured candidates at the head of the list². This may be considered a less 'open' system than that in Finland, Italy and Luxembourg, where candidate lists are unordered (they are usually alphabetical), giving voters less of a 'steer' whom they should vote for³.

² Sometimes, favoured candidates are also placed at the very end of the list, on the basis that voters - especially when confronted with long lists - pay particular attention to candidates in the top and bottom few places on the list, and are more likely to vote for candidates in these positions. Celebrity candidates are sometimes placed at the foot of the list as 'sweepers', to attract votes for the party, although they are themselves unlikely to be elected.

³ Party lists in Luxembourg include a single priority candidate at the top of the list, with the remaining candidates listed alphabetically.

Allocation of seats

A final variation between open list systems relates to the method of allocating seats to candidates. The simplest form allocates seats to candidates according to the number of preference votes they have attracted. This system is operated in Denmark⁴, Finland - where party votes are not possible - Luxembourg and Italy. In Austria, Belgium, the Netherlands and Sweden, preference votes are supplemented by party votes, since the latter are treated as being an endorsement of the list's order. Under this system, party votes are allocated to candidates in the order in which they appear on the ballot paper (see Exhibit 1)⁵.

Exhibit 1 - How 'party' votes are allocated to individual candidates

Following the count, each party is allocated seats according to its share of the vote. The first stage in deciding which candidates are to gain one of a party's number of seats is to calculate the electoral 'quota': the share of the party vote needed to gain one seat. Quotas differ between countries: in Belgium, it is the number of votes received by the party divided by the number of seats it has been allocated, plus one:

$$\begin{array}{l} \text{eg number of votes} \div \text{number of seats allocated} + 1 = \text{electoral quota} \\ 1,000 \div (4+1) \qquad \qquad \qquad = 200 \end{array}$$

In the Netherlands, a quotient is used: until 1998, this was set at 50% of the total number of votes received by a party divided by its number of seats; from 1998, it will be 25% of the figure.

Any candidate on a party list whose preference votes exceed the quota is automatically elected (usually, only popular candidates, who have been placed at the very top of the list anyway, are in this position). If the first candidate on the list has not gained sufficient preference votes to be automatically elected, his/her preference votes are topped up with the votes cast for the party list until that candidate has reached the quota. Surplus party votes are then used to top up the second placed candidate until they reach the quota, and so on down the list until the party votes have been used up. Thus, unless they can attract a significant number of preference votes, candidates lower down a party list stand little chance of being elected, since they are unlikely to receive any 'topping up' from the pool of party votes.

A typology of list systems used in elections to the European Parliament can thus be constructed (Exhibit 2). For open lists, this is based on the ordering of the party lists, the method for allocating seats to candidates and the number of votes each elector has.

The European Parliament Elections Bill provides for a 'closed' list system for the UK: voters would be offered the choice only between voting for a party or an independent candidate. However, in the Bill's second reading debate on 25th November 1997, the Home Secretary indicated the government's willingness to consider an open list system, commending in particular the arrangement in Belgium.

⁴ Parties in Denmark have the choice of using party votes to top up the preferential votes of the candidates at the top of their list, or to allocate seats to candidates according to the number of preference votes each receives. In the 1994 European Parliament elections, all the parties used the 'preference votes only' option for allocating seats; in the 1989 elections, only one party - the Socialist People's Party - used party votes to top up preference votes.

⁵ Strictly speaking, there are no 'party' votes in the Netherlands since there is no party box at the top of each list; however, if an elector votes for the first candidate on the party list, this is taken as being an endorsement of the whole list, and operates in the same way as an explicit party vote.

Exhibit 2 - Typology of list systems

CLOSED LISTS: France, Germany, Greece, Portugal and Spain

OPEN LISTS:

	ORDERED PARTY LISTS	UNORDERED PARTY LISTS (May be alphabetical)
PREFERENCE AND PARTY VOTES COUNTED IN CANDIDATE ELECTION	Austria Belgium Netherlands Sweden UK?	
PREFERENCE VOTES ONLY COUNTED IN CANDIDATE ELECTION	Denmark Italy*	Finland Luxembourg*

* Electors allowed more than one vote (only in some regions in Italy)

There is thus a possibility that the list system introduced into the UK will be a variant of the open system. In terms of the typology used to classify the systems operating in other EU countries (Exhibit 2), the UK would then join the four countries in the top-left box: voters will have a single vote, which they will be able to cast either for a party or an independent candidate, or for a particular candidate from within a party list. Lists will be ordered by the parties and preference votes received by the candidates at the head of the party list will be topped up by the party votes. Such a system would give less power to voters, and more to the parties, than the more open arrangements in Denmark, Finland, Italy and Luxembourg.

The use and impact of preference voting

This section considers the prevalence of preferential voting and the impact that it has on the election of particular candidates.

The practice of voting for a particular candidate, as opposed to a vote for a party list, varies widely in European Parliament elections in other European countries. The incidence of preference voting in four countries in the 1989 European Parliament elections is shown in Exhibit 3.

The impact of preferential voting is similarly mixed. In countries where party lists are unordered, and where seats are allocated to candidates solely on the number of personal votes they attract - Finland and Luxembourg - preferential voting is the sole determinant of who gets elected (party votes are translated into a single vote for each of the candidates on the list in Luxembourg). Although lists are ordered by the parties in Denmark and Italy, this has no relevance when seats are allocated to candidates,

Exhibit 3 - Preferential voting in the 1989 European Parliament elections in selected countries⁶

Denmark	68%
Belgium	50%
Sweden (1995)	50%
Luxembourg	40%
Netherlands	20%

Figures are percentages of total votes cast

Sources: *Europe Votes 3*, Tom Mackie (ed), 1990; Constitution Unit survey results

since only preference votes are counted. As a result, candidates are frequently elected out of list order: in the 1989 European Parliament elections, for example, 7 of the 16 MEPs elected in Denmark were elected out of order.

But in countries where lists are ordered, with party votes being allocated to candidates at the head of the list, the impact of preference votes is minimal. In the European Parliament elections of 1989, preferential voting in the Netherlands did not lead to the reordering of any party's list (ie all the candidates were elected in the order in which they appeared on each party's list). In Belgium, preferential voting led to only one candidate - from the Socialist Party's (PS) list - being elected prior to other candidates placed above him on the PS's list. Preferential voting in the European Parliament elections in 1984 and 1979 in Belgium and the Netherlands was similarly ineffective, with only two candidates being elected out of order from the 49 MEPs for both countries at each election.⁷

Why does preferential voting not lead to greater reordering of the party lists when it comes to allocating seats? The main reasons are:

- many preference votes are cast for the candidates at the top of the list, rather than those further down the order. This obviously reinforces, rather than upsets, the list order. About 90% of preference votes in Italian national elections to the Chamber of Deputies are for the first candidate on the list. In the 1994 Austrian national elections, one quarter of voters made use of their preference votes, and 16 candidates received more than the required one sixth of votes to be elected without recourse to party votes; but all 16 were already placed at the top of their party's list.
- preference votes for figures lower on the list are scattered between candidates, so that no single candidate receives sufficient preference votes to be elected
- there may be thresholds which a candidate relying on preference votes must exceed if he/she is to be elected. Until recently, candidates in the Netherlands had to attract 50% of the electoral quotient (the number of votes received by their party divided

⁶ Prior to the reform of the electoral system in 1993, about 30% of voters in Italy made use of preference votes in national elections to the Chamber of Deputies (lower house).

⁷ Preferential votes make negligible difference in national elections, too. In the Netherlands, preference votes have led to the list order being upset by the election of low placed candidates only twice in the 13 elections since 1945. In Austria, this has occurred only once since the introduction of a list system in 1971.

by the number of seats allocated to it) to be elected. Such a high figure effectively prevented candidates with a low list position from being elected. In an attempt to strengthen the link between voters' preferences and the election of candidates, it was decided in 1994 to lower the threshold needed to gain a seat to 25% of the electoral quotient; this will take effect from 1998.

An open list system in the UK would theoretically allow electors to choose which candidates are elected from within a party list. Analysis of the situation in those EU countries operating an open list system most like that which might be chosen for the UK suggests, however, that preferential voting has a minimal impact.

The likely impact of this will be to focus greater attention on the parties' candidate selection procedures: which candidates are chosen and in what order? The minimal likely impact of preference votes will act as a constraint on the parties, should they wish to include unpopular candidates on their list, or to give a low list ranking to popular candidates (see section on 'Candidate selection by the parties' on page 8).

The allocation of seats: by party

Parliamentary seats come in whole numbers. A house (in this case, Great Britain's European Parliament delegation) of 84 members has to be divided up both by party and by territory. Each party, and each territory, must be awarded a whole number of seats. But, if voters and parties are to be treated equally, the proportional entitlement of each party, and of each territory, is always to a whole number plus a fraction. The European Parliament Elections Bill contains the rules for allocating whole numbers of seats both by party - in the operation of the rules for proportional representation - and by territory - in the Bill's schedule which sets out the number of seats in each part of Britain. Unfortunately, there are problems with both. First, party.

The Bill sets out a mechanism (the d'Hondt formula) for allocating seats to parties, once the total number of votes for each party list is known. The government has put forward a number of reasons for choosing this mechanism, rather than its principal alternative (the Sainte-Laguë formula): one was the belief that d'Hondt gave more proportional results than Sainte-Laguë. This conclusion arose from a Home Office simulation, carried out for six regions using the 1994 European Parliament election results. According to this exercise, d'Hondt scored a higher result on the proportionality index than Sainte-Laguë.

Calculations undertaken by Professor Iain McLean, of Oxford University, show that the reverse is, in fact, the case: the Sainte-Laguë formula for allocating seats is more proportional than the d'Hondt formula. These calculations reinforce the known mathematical fact that Sainte-Laguë outcomes are never less proportional than d'Hondt outcomes and may be more proportional. The government is therefore mistaken in proposing the d'Hondt formula for its supposedly superior proportionality; if this is the principal criterion, then Sainte-Laguë would be a more appropriate method for allocating seats to parties. If Parliament wishes to substitute the Sainte-Laguë formula for the d'Hondt formula, all that is necessary is to make a minor amendment to clause 1, sub-clause 3(4) of the Bill.

Professor McLean's calculations, based on data provided by the Home Office, are contained in a briefing paper, available from the Constitution Unit.

The allocation of seats: by region

For the 1999 European Parliament elections, Great Britain will be divided into eleven regions (nine English regions, Scotland and Wales). The problem of deciding how many seats to give to each region is the same problem as deciding how many seats to give to each party.

Exhibit 4 gives the proposed allocation of seats to the regions.

Scotland	8	Eastern	8
Wales	5	West Midlands	8
		South West	7
South East	11	Yorkshire and Humber	7
London	10	East Midlands	6
North West	10	North East	4

Seats are nominally allocated to the regions according to their population, with the objective that the number of electors per MEP should be broadly equal across Great Britain. Yet, on this basis, Wales should only be entitled to four seats. No explanation has been offered by the government as to why Wales has been allocated five seats.

Taking the existing allocation to Wales of five seats, then the government's distribution of seats to the English regions is correct under the Sainte-Laguë formula, which has been rejected as the method for allocating seats to parties. If the d'Hondt formula, which is proposed as the method for allocating seats to parties, is used to distribute seats to the English regions, the figures given in Exhibit 4 would be incorrect: the South East would gain one seat, and London would lose one seat.

There is thus an inconsistency between the government's methods for allocating seats to the regions and to the parties. If the government chooses to use the d'Hondt formula for allocating seats to parties, this will require revision to the number of seats allocated between the English regions. The division of seats by region proposed by the government is only legitimate under the Sainte-Laguë formula, which the government has rejected as the basis for allocating seats to parties.

The European Parliamentary Elections Bill provides for the Home Secretary to review the allocation of seats between the English regions, to take account of population shifts between elections. No such mechanism is proposed for Scotland and Wales, whose allocation of seats will remain fixed. This serves only to freeze a situation in which the two nations could be either over or under-represented by MEPs. The use of fixed quotas has recently been abandoned by the government in the case of Scottish MPs: the Scotland Bill ended the 1986 Act which guaranteed Scotland 71 parliamentary

constituencies. An arrangement being ended by the Scotland Bill in the name of flexibility and proportionality is being reintroduced through the European Parliamentary Elections Bill.

The analysis of allocating seats to the regions, by Professor Iain McLean, is also available from the Constitution Unit.

Candidate selection by the parties

The move to a list system of electing MEPs will focus attention on the way in which the parties select their candidates. The main consequence arising from the move from first-past-the-post to a regional list system is the need for parties to select a number of candidates for their slate, instead of just one. The parties may also wish to institute regional arrangements for selecting candidates, to reflect the move to a regional list system.

The importance of the candidate selection procedure will be compounded by the minimal likely effect of preference voting on the election of individual candidates (see the section on 'The use and impact of preference votes', on page 4). If a group of voters wish to see a particular candidate elected, the most effective strategy will be to focus attention on the intra-party selection mechanism rather than on persuading electors to use their preference votes when it comes to the ballot⁸.

Additional issues for candidate selection that are raised by a list system are:

- whether, and how, to consult party members
- the mechanism by which to rank order the candidates selected
- the use of quotas, to promote the candidacies of women and ethnic minorities.

Underlying these issues is the balance of power between the parties' headquarters and their 'grassroots'; one fear expressed about list systems is the potential power they give to the party executive to exercise control over list nominations (the "apparatchik rule of central party control", as Richard Shepherd MP put it in the Bill's Second Reading debate).

While there is concern in several other EU countries about the power of party executives to influence the composition and ordering of candidate lists, only in France is selection wholly determined by the parties' central executive⁹. On the other hand, there are few examples of direct ballots of party members, the system currently operated by the Liberal Democrats in the UK. Most parties in EU countries fall somewhere between the wholly centralised or wholly decentralised models; the

⁸ This has occurred in Belgium where, as a result of the limited effectiveness of preference votes, the Dutch speaking Liberal Party has urged reform of the candidate selection process, in particular a move to the use of primaries.

⁹ Such centralisation in France may be waning: the Socialist party, for one, is looking to involve party members more closely in selecting its candidates for the 1999 EP elections, possibly through a regional selection process for drawing up lists.

majority of candidate lists are drawn up by local and/or regional meetings of party members, and submitted to national executive bodies for approval.

In the UK, the Labour Party has announced plans to consult its members via a 'one member one vote' ballot in the present Euro-constituencies, with an appointments panel - composed of NEC members and regional representatives - vetting the candidates and ordering them on regional lists (*Guardian*, 28 January 1998). The Conservatives have decided to give party members the dominant role in both selecting candidates and rank ordering them, although on the basis of mass meetings, rather than postal ballots (*Financial Times*, 21 January 1998).

The typology in Annex 1 gives an indication of the balance in candidate selection between the different party levels and the role played by party members and executive bodies. In virtually all cases, the parties are free to adopt whatever procedures they wish; only in Finland is the selection procedure subject to legal regulation. However, our research has not discovered any parties that fail to lay down any internal rules of their own, leaving it to individual constituencies and regions to decide how to select their candidates.

Quotas

The use of quotas in drawing up candidate lists is reasonably common among parties in other EU countries. The examples that the Constitution Unit has identified relate to the balance between male and female candidates, and not to the need for more candidates from ethnic minorities, although the Dutch Labour Party tries to ensure that its lists are representative of young people.

Most quotas employ a simple figure denoting the minimum percentage of female candidates that should appear on the list. Normally, this figure is 20% or 25% of all candidates. For the Belgian Socialist Party, neither sex is allowed to constitute more than two thirds of the list, and for the Social Democrats in Denmark, neither sex can account for more than 40% of list places. The Dutch Labour Party stipulates that one third of all its candidates must be women; this figure is 40% for the Social Democratic Party in Austria and Germany and the Socialist party in Spain, and 50% for the Socialist Party in France.

There are also examples (the Socialist parties in Denmark, France, Spain and Sweden, and the Greens in Germany) of 'zipping', where male and female candidates are ordered alternately on the list. As Germany operates a closed list system, the use of zipping guarantees female representation should the Green party gain two or more seats. An open list system, such as Denmark's, where only preference votes are used in deciding which candidates are to be elected could, in theory, negate the impact of zipping, since voters may choose to cast their preference votes for male candidates.

The position of independents and minor parties

(a) Independents

Independent candidates may stand for election to the European Parliament in all EU countries except Greece (although in Germany only independent groups are allowed, not individual independent candidates; the reverse will be the case in the UK, since only individuals will be allowed to stand as independent candidates).

In general, independent candidates in European Parliament elections are rare and, when they do stand, unsuccessful. In the 1989 elections, for example, no independent candidates stood in Belgium, Denmark, Germany, Luxembourg and the Netherlands. The current European Parliament, elected in 1994, contains only one candidate (from Ireland) elected as an independent from outside a party list.

Independent candidates are more frequent in France and Italy, principally because they are included on party lists; these independents are usually high profile figures, and are included on the list for the votes they will bring to the party. Of the 81 MEPs elected in France in 1989, ten were independents, all included on one of five party lists. At the same elections, four independents were elected as Italian MEPs, from two party lists.

The principal reason for independent candidates' lack of success in European Parliamentary elections¹⁰ is the presence of high de facto and de jure thresholds (the percentage of the vote needed to gain one seat). Because of the low number of seats available in European Parliamentary elections, compared to national elections, the threshold needed to gain one seat ($100\% \div (\text{number of seats} + 1)$) is relatively high. The nominal national threshold for the 1999 elections ranges from 1% in Germany (99 MEPs) to 14.3% in Luxembourg (6 MEPs). The latter figure constitutes a major barrier for all but the major parties; in Denmark, Ireland, Austria, Finland and Sweden, the nominal threshold is lower, but is still 4% or more of votes cast.

Some countries have imposed additional de jure thresholds: Sweden and Austria have set a minimum limit of 4% of national votes before seats can be won¹¹, and in France and Germany it is 5%.

(b) Minor parties and thresholds

The nominal threshold in Great Britain will be higher than in other EU countries, since votes are to be counted, and seats allocated, at the regional level. In the North East, for example, 4 MEPs will be elected, giving a nominal threshold of 20%, while in the South East, with 11 MEPs, the threshold will be 8.3%. In six of the nine English regions, and in Scotland and Wales, the threshold for gaining a single seat will be 10% or more of the vote.

¹⁰ They are also unsuccessful at national elections: in Denmark, for instance, there is only one independent candidate in the 175-strong Folketing. There are no independents currently sitting in the Spanish Cortes.

¹¹ In Sweden, if parties and independents fall below the national 4% threshold, they can gain seats at the constituency level, provided they gain at least 12% of votes there.

By adopting a regional allocation of seats, the UK is not reflecting the practice in most other EU countries. Of the thirteen other countries using a list system for elections to the European Parliament, only Belgium allocates seats solely on a regional basis (13 MEPs in the Flemish area, with 11 MEPs in Wallonia). Italy uses a two tier process, with seats allocated first at the constituency level, and then at the national one.

The effect of a wholly or partly national system for allocating seats is to help those minor parties which lack a strong regional base of support (the Green Party, for example, or 'splinter groups' that have decided to split from the major parties). Such parties might fail to poll sufficient votes at the regional level to gain a seat outright (to use the 1999 elections in the UK as an example, a party might fall short of the 8.3% figure which represents the lowest nominal regional threshold - in the South East), yet might attract adequate votes across the regions to be entitled to one or more seats (with 8.2% of the UK vote, for example, a party in the 1999 EP elections should theoretically receive 7 seats).

The negative impact that the regional allocation of seats has on some minor parties could be alleviated by adopting the systems used in other EU countries:

- allocating seats at the national level: Great Britain's 84 seats would produce a nominal threshold of 1.2% of the vote
- a two tier system, which 'topped up' seats won at the regional level by an additional national allocation of seats (similar, in principle, to the Additional Member System proposed for the Scottish Parliament and Welsh Assembly)

Because of the existence of strong regional parties in Scotland and Wales, any reforms aimed at producing a more proportional result in the UK would either have to use the two-tier method, or treat England, Scotland and Wales as separate 'nations' for the purpose of allocating list seats. If Great Britain was chosen as the unit for allocating seats, the Scottish National Party and Plaid Cymru would receive few, if any, seats.

(c) Minor parties and 'apparentement'

An alternative means by which small parties could be helped to gain seats would be to allow them to join their lists and thus pool their votes ('apparentement'). This arrangement is used in Denmark and Finland for the European Parliament elections. Parties in most other EU countries can gain the same advantage by forming coalitions when presenting their lists. List joining or coalition forming are particularly important for small parties in countries - such as Great Britain - using the d'Hondt formula for allocating seats, since this mechanism is biased in favour of larger parties.

Standing for election: Registration of parties

The European Parliamentary Elections Bill stipulates that lists of candidates can only be submitted by independent candidates or parties that have been registered. The main reasons for the registration requirement are:

- to remove the possibility of parties standing under similar titles, which might confuse voters (the 'Literal Democrat' problem)
- to allow electoral officers to assess which groups are eligible to put forward lists of candidates.

The registration of political parties is not, strictly speaking, a necessary condition of a list system; in four EU countries operating lists - Belgium, France, Luxembourg and the Netherlands - parties are deemed to be voluntary associations, and are not required to be registered (in both Belgium and the Netherlands, however, groups can protect their name on the ballot paper by registering them; in Belgium, this requires the support of 5 MPs. In France, parties must deposit their statutes with a central or local authority.).

In countries that do require parties to be registered, and thus become legal entities, this task is normally undertaken by a central government department, in most cases the Ministry of the Interior (in the UK, the indications are that the authority will be the Registrar of Companies). The requirements for registration vary in complexity (Exhibit 5).

Exhibit 5 - Criteria for registration of political parties in other EU countries

Nominal conditions: parties in Italy need only register the name and symbol of their party, in order that these are not used by other parties at elections.

Conditions relating to party policies: to prevent extremist parties, the legal regulations in Austria and Germany stipulate that parties seeking registration must not hold policies that contravene other constitutional principles, notably that barring programmes that promote racial discrimination.

Minimum levels of popular support: this is the most popular condition for registration, with parties having to produce signatures of support from registered voters. The level of support required ranges from 1,500 voter signatures in Sweden, to 1/175th of the number of voters at the previous election (currently 19,015) in Denmark.

Conditions relating to a party's internal functioning: party registration in Finland, Spain and Germany includes conditions setting out how parties must organise their affairs. The 1969 Party Act requires Finnish parties to follow democratic principles in their internal decision making. Spanish law similarly requires that the functioning of parties is conducted according to democratic principles. A condition of registration in Germany is that party leaders be democratically elected. The Basic Law also imposes restrictions on the composition and election of parties' executive bodies: there are limitations on how many ex officio members these bodies can have, and their members must be elected, by delegate assemblies.

Standing for election: The requirements for submitting a list of candidates

Where parties are already registered, they usually face no further requirements in submitting a list of candidates for election. In Austria, however, registered parties, along with any independent candidates, must provide a certain number of voter signatures (2,800 for a national campaign or between 100-500 per electoral district) or the support of 3 MPs, for each list submitted. A party in Sweden can only protect its name at an election if it also registers all its candidates with the National Tax Board.

Austria, France, Greece, Ireland and the Netherlands require registered parties to pay a financial deposit when submitting a list of candidates.

For independent candidates, the requirements for submitting a candidate list are similar to those for parties seeking registration: usually a minimum number of voter signatures or support from a certain number of MPs. While parties wishing to put forward lists across a country often have to demonstrate a nationally set level of support, independent candidates wishing to submit a list in one constituency or region have to produce a smaller number of voter signatures gathered in that area.

Supplement lists and by-elections

When seats are vacated (due, for example, to the death or resignation of an MEP) the European Parliamentary Elections Bill provides for the vacancy to be filled from the party list of the departing MEP. But if there are no spare candidates from the party list to fill a vacancy, a by-election will be triggered.

Party lists can only be as long as the number of seats available in a region. In the North, for example, the list put forward by the Labour party will consist of four candidates. At the last European Parliament elections in 1994, Labour won 68% of the vote in the three constituencies, with the next largest party winning only 16% of the vote. There is therefore a distinct possibility that Labour will win all four seats in the North in the 1999 elections. Should one of its MEPs subsequently step down, or die, the vacancy would only be filled through a by-election.

A by-election covering a whole region would be extremely expensive. Largely for this reason, the other EU countries use 'supplement' lists of candidates in addition to the main party lists. The supplement lists, which appear alongside the main lists on election day and are voted on in the same way by electors, are used when vacant seats arise, and when the main party list has been exhausted of candidates. A similar system of supplement lists in the UK would avoid the need to resort to by-elections.

Conclusion

The move to a regional list system for electing MEPs is a major political and constitutional step for the UK. The European Parliamentary Elections Bill makes clear how much of the system will work. There are a number of areas, however, where decisions remain to be made:

Decisions for the government

- should lists be closed or open? If the latter, what variant of the open list would be appropriate for the UK: in particular, how much weight should be given to preference votes for individual candidates?
- should seats be allocated to parties under the d'Hondt method, which is less proportional than the Sainte-Laguë method? If it is decided to remain with the

d'Hondt formula for allocating seats to parties, should the distribution of seats to the English regions be modified, to retain a consistent approach?

- should Wales be over-represented at the 1999 European Parliament elections, by virtue of having five seats, rather than the four merited by the size of its population?
- will the allocation of seats to Scotland and Wales be reviewed prior to each European Parliament election, as in the English regions, to ensure that over or under-representation of MEPs does not take place?
- in the interests of proportionality, will the process of allocating seats be made neutral between large and small parties by using either a national system of counting votes and allocating seats, or by holding national 'top ups' to seats won at the regional level? Will small parties be allowed to join their lists and pool their votes?
- what criteria should be laid down for parties wishing to register?
- should 'supplement' lists be used in addition to the main party lists, to avoid the possible need for expensive by-elections when vacant seats arise?

Decisions for the parties

- what method should be chosen for selecting candidates: in particular, what balance should be struck between grassroots members and national party headquarters? (although the three major parties have now indicated what methods they propose to use, these are likely to be the focus for continued debate)
- should quotas or 'zipping' arrangements be used, to encourage female candidates?

ANNEX ONE

Candidate selection procedures in EU countries

Summary

The typology below highlights the range of approaches adopted by parties in different EU countries for the selection of candidates. One extreme is the 'open', decentralised model: the Austrian People's Party, for example, chooses its candidates through primaries that include both party members and non party members¹². The other extreme is a 'closed', centralised system, for example that operating in France.

However, there is no clear pattern of centralisation or decentralisation in candidate selection across parties in the EU. Most systems are decentralised to the extent that decisions are made at the sub-national level, although few go as far as the systematic involvement of individual party members through a direct ballot. Candidate selection in Belgium and the Netherlands is becoming more centralised, in shifting responsibility to the parties' national executives; Denmark and Sweden, however, are moving in the opposite direction.

The key feature of most of the systems set out below is that decisions are normally made at the sub-national level, and submitted to national executive bodies for approval. In some cases, national executives have the authority to add a certain percentage of their own candidates if they wish. Decision making at the sub-national level usually involves both constituencies and regional bodies: in a few cases, these are large scale forums of party members, although most decisions appear to be made by executive bodies.

The information below is ordered according to the degree of centralisation/decentralisation in the selection procedures:

- decentralised ballot of party members
- local primaries
- decision making by local and regional executives
- centralised decision making by central party bodies.

Ballot of party members

Denmark: in both the Socialist People's Party (SF) and the Social Democratic Party (SD), membership ballots to select candidates are compulsory; the Conservative Party also uses member ballots. The national executive in the SF approves locally produced

¹² The use of primaries that involve the wider public as well as party members has recently been proposed by the Dutch speaking Liberal Party in Belgium. The Social Democrats in Germany have also suggested that non party members have a say in drawing up candidate lists; another SPD proposal is to introduce compulsory membership ballots, with the result being binding on the parties.

lists. In the SD, a national congress has the nominal authority to order the lists; in practice, the order depends on the number of preference votes obtained by each candidate. The national executive plays no role in selecting or approving candidates in the Conservative Party.

Netherlands: only the D66 party organises a (postal) ballot of party members.

Sweden: the Social Democrats provide for a local ballot of members, if one quarter of the constituency executive supports this option. Otherwise, district bodies nominate candidates for the regional lists; these are submitted to a central board, which decides on the final list.

Local or regional primaries of party members

Austria: since 1994, both main parties - the Social Democrats (SPO) and the People's Party (ÖVP) - have used constituency level primaries to select their candidates. The SPO's primaries are open to party members only, with the ÖVP's open to the wider public as well. The SPO national executive has the power to select 20% of the final candidate list, with the ÖVP executive able to select 10% of the list.

Finland: parties are free to devise their own mechanisms to meet the legal requirements on candidate selection procedure; in practice they have adopted similar arrangements that merely reflect the terms of the law. The legislation is contained in the 1969 Act on Parliamentary Elections, and stipulates that party members must have a vote in candidate selection. Specifically, the Act requires that:

- a decision on how many party candidates to put forward is taken by the constituency executive
- primaries be held where the number of candidates put forward exceeds the number of constituency seats (in practice, this rarely occurs)
- the nomination of candidates is by district level party branches
- the national executive has the power to appoint up to one quarter of candidates to the final list

Primaries are rarely held, and candidates are usually nominated by groups of party members and local executive bodies, rather than individual members. Nominations are then put to the parties' national executives for a final decision on which candidates should appear on the list.

Germany: the Social Democratic Party uses regional gatherings of local delegates to draw up lists. The head of the national party and the regional party heads decide jointly on the order of the candidates on the national list.

Ireland: the parties all follow similar procedures for selecting candidates. Candidates are nominated by local party branches; this list is then subject to a vote, held under a proportional system, by constituency level assemblies of branch delegates. The national executive ratifies the list, and can both add and delete candidates (except for Fianna Fail, where the national executive cannot delete constituency approved candidates).

Decision making by local/regional executives

Belgium: candidate selection has been 'centralised' in recent years, with a move away from polls of party members to decision making by executive bodies at the constituency level. The candidates for Christian Democrat lists are drawn up by constituency executives, and submitted to a national executive for approval. The latter can add, delete or re-order candidates subject to a two thirds majority in favour.

Strong role for national executive

Belgium: candidates for the Socialist Party list are drawn up by the national executive. The number of candidates to be included on each regional list, and their order, is decided by regional councils.

Netherlands: parties have shifted from a decentralised system - characterised by member ballots - to a more centralised one, in which national executive bodies have the dominant role. In the Labour Party (PvdA), Liberal Party (VVD) and Christian Democrats (CDA), national executive bodies draw up initial candidate lists. For the PvdA, a national congress, composed of district branches, votes on which candidates should be selected and in which order¹³; the CDA gives this role to constituency level committees which, however, are appointed by the national executive. The only significant grassroots input to the process is through the party congress, which confirms the final list. The VVD allows constituency bodies to make nominations, which the national executive uses to draw up an advisory list; this is then amended and approved by regional executive bodies, with the party congress deciding on the list order.

¹³ Although candidates are usually party members, the PvdA has, at previous EP election, also advertised in the national press for nominees.

SOURCES

The principal source for this paper was a short questionnaire sent by the Constitution Unit to electoral and political party experts in the 15 EU member states. Responses were received from:

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Additional information was derived from the following secondary sources:

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