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**The Harmonization of the electoral law
for elections to the European Parliament. Selected Issues**

Keywords: Elections to the European Parliament, electoral law, common principles, harmonization

Słowa kluczowe: wybory do Parlamentu Europejskiego, prawo wyborcze, zasady wspólne, harmonizacja

Summary

The European Parliament is the only parliamentary assembly of supranational character in the world, which is not composed of members of national parliaments but elected by direct suffrage. When in 1976 the Council of Ministers of the European Community decided to introduce direct universal suffrage, the elaboration of a uniform electoral procedure common to all Member States was expected to happen in the near future. Until the act was ready Member States could apply their own electoral procedures, whereas the community law regulated only essential matters, necessary to hold the elections in the Community. Obstacles which contributed to problems with the establishment of a uniform electoral system for elections to the European Parliament in the entire European Union led to the adoption of “common principles” of the European Parliament electoral procedures in 2002. Since 2002 several proposals for the modification of the electoral law have been made in each term of the European Parliament, aiming at its harmonisation. The aim of the article is to evaluate whether currently it is possible to modify the election system to the European Parliament, which would go further than the provisions of 2002 and whether it would improve the uniformity of applied electoral procedures.

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Streszczenie**Harmonizacja prawa wyborczego do Parlamentu Europejskiego.
Wybrane problemy**

Parlament Europejski jest jedynym na świecie zgromadzeniem parlamentarnym o charakterze ponadnarodowym, które nie składa się z przedstawicieli parlamentów narodowych, lecz wybierany jest w bezpośrednim głosowaniu. Gdy w 1976 roku Rada Ministrów Wspólnoty Europejskiej decydowała o wprowadzeniu powszechnych i bezpośrednich wyborów, przewidywano opracowanie w nieodległej perspektywie jednolitej procedury wyborczej, wspólnej dla wszystkich państw członkowskich. Do czasu przygotowania tego aktu państwa mogły stosować swoje własne procedury wyborcze, natomiast prawo wspólnotowe regulowało tylko niezbędne zagadnienia, konieczne dla przeprowadzenia wyborów w całej Wspólnocie. Trudności z doprowadzeniem do uchwalenia jednolitego systemu wyborczego do Parlamentu Europejskiego w całej Unii Europejskiej, spowodowały, że w 2002 roku postanowiono przyjąć *common principles* prawa wyborczego do PE. Od roku 2002, w każdej kadencji Parlamentu Europejskiego pojawiają się propozycje reform prawa wyborczego zmierzających do daleko idącej harmonizacji. Przedmiotem niniejszego artykułu jest ocena czy obecnie możliwe jest zreformowanie systemu wyborczego do Parlamentu Europejskiego, która szła by dalej niż postanowienia z roku 2002 i zwiększała jednolitość stosowanych procedur wyborczych.

I.

The European Parliament is the only parliamentary assembly of supranational character in the world, which is not composed of members of national parliaments but elected by direct suffrage. At the very beginning, since its establishment in 1951, it was composed of deputies delegated by national parliaments. Since 1979 the Parliament has been elected by direct universal suffrage. The introduction of the principle of election of members to the European Parliament by direct universal suffrage was to be related to the adoption of a uniform election procedure in the Community. The traditions of the application of the election law, especially the issue of the application of the proportional or majority electoral system well-established in particular states are the obstacles that affected the agreement on a uniform electoral system.

When in 1976 the Council of Ministers of the European Community decided to introduce direct universal suffrage, the elaboration of a uniform electoral procedure common to all Member States was expected to happen in the near future². Until the act was ready Member States could apply their own electoral procedures, whereas the community law regulated only essential matters, necessary to hold the elections in the Community.

Obstacles which contributed to problems with the establishment of a uniform electoral system for elections to the European Parliament in the entire European Union led to the adoption of common principles of the European Parliament electoral procedures in 2002³. This has undoubtedly been a major step towards the harmonisation of electoral procedures, but the majority of regulations on how to hold the elections remained the Member States' area of responsibility⁴.

Since 2002 several proposals for the modification of the electoral law have been made in each term of the European Parliament, aiming at its harmonisation. The analysis of the submitted projects shows that the idea of standardisation of an electoral procedure is not considered possible to be introduced. The aim of the article is to evaluate whether currently it is possible to modify the election system to the European Parliament, which would go further than the provisions of 2002 and whether it would improve the uniformity of applied electoral procedures.

II.

The 1976 Act on the election of the members to the European Parliament by direct universal suffrage⁵ and the provisions of internal laws of Member States

² Council Decision 76/787/EWWiS, EWG, Euratom (OJ L 278, 8.10.1976).

³ Council Decision 2002/772/EC, Euratom (OJ L 283, 21.10.2002).

⁴ M. Rulka, *Ewolucja sposobu wyboru członków Parlamentu Europejskiego w prawie Unii Europejskiej*, Warszawa 2016, p. 174 ff.; R. Trzaskowski R., J. Popielawska, *How European are the European Elections? The European Parliament's Long Struggle for a Direct and Universal Suffrage Conducted According to a Uniform Electoral Procedure*, [In:] *Elections to the European Parliament as a Challenge for Democracy*, European Integration and Democracy Series, Vol. 2, eds. E. Kuźelewska, D. Kloza, Warszawa-Białystok 2013, p. 33 ff.; K. Urbaniak, *2010 proposal for a modification of the electoral system for elections to the European Parliament*, "Studies of Economic and Social Processes", Środa Wlkp. 2011, p. 59.

⁵ Council Decision 76/787/EWWiS, EWG, Euratom (OJ L 278, 8.10.1976).

were the fundamental legislations for the elections to the European Parliament held between 1979 and 1999.

The 1979 version of the Act regulated the most fundamental principles of the community electoral law, which had to be respected in the electoral procedures of Member States⁶. Just like the Treaty establishing the European Community, it provided that members of the European Parliament are elected by direct universal suffrage (art.1), defined the five-year parliamentary term and fixed the date of the first session following the elections (art. 3). The Act also regulated the elections dates, stating that the elections shall be held on the date and at the time specified by each Member State, and this date shall fall within the same period fixed by the Council, starting on a Thursday morning and ending on the following Sunday⁷. Votes could be counted only after closing polling stations in the last Member State where elections were held (art. 9). The Act allowed the relation of the seat of the member of the European Parliament with the seat in the national parliament (art. 5) but also provided a list of offices covered by the principle of *incompatibilitas*⁸ (art. 6). The Parliament was responsible for verifying the elections by taking note of the results declared officially by Member States (art.11). Article 12 of the Act referred to the issue of a vacancy and stated that each Member State shall fill any seat which falls vacant⁹.

The Act confirmed the European Parliament's duty to elaborate a draft Act on a uniform electoral procedure, which was to be a foundation for the decisions of the Council of Ministers. Until the entry into force of these uniform regulations, other electoral procedures, not covered by the Act, were to be regulated by internal regulations of Member States (art. 7).

⁶ See more: L. Bardi, *The Harmonisation of European Electoral Law*, [In:] *Political Strategies and Electoral Reforms: Origins of Voting Systems in Europe in the 19th and 20th Centuries*, ed. S. Noiret, Baden-Baden, 1990, 503–528; M. Rulka, *Ewolucja sposobu wyboru...*, p. 53 ff.

⁷ Elections in some EU states are traditionally held on Thursday (e.g. Great Britain), on Friday (Ireland), on Friday and Saturday (Czech Republic).

⁸ The principle of *incompatibilitas* included *inter alia*: the office of a member of the government of a Member State, the European Commission, the Court of Justice, Court of Auditors and the employment in institutions of the European Union.

⁹ S. Gebethner, K. Urbaniak, *Przyszły system wyborczy do Parlamentu Europejskiego w świetle prawa wspólnotowego i analizy prawnoporównawczej*, "Przegląd Legislacyjny" 2003, No. 1, p. 13 ff.; E. Dydak, *Wybory do Parlamentu Europejskiego. Zasady i wyniki głosowania*, Warszawa 2003, pp. 33–34.

When assessing the 1976 Act it must be clearly stated that the adopted regulations were aimed at direct universal suffrage. In the course of preparatory works it was not possible to elaborate at least partial uniform electoral principles. The dispute over the choice of the proportional system as applicable in all states resulted in the 1979 elections held based on internal electoral laws of individual Member States¹⁰. The 1976 Act regulated the electoral process only to a minimum extent¹¹.

III.

Successive efforts aiming at the harmonisation of the electoral procedure, made by the European Parliament of three terms (1979–1984 – report of J. Seitlinger¹², 1984–1989 – report of R. Bocklet¹³, 1989–1994 – report of K. de Gucht¹⁴), did not bring expected results¹⁵. The Members of the European Parliament from Great Britain were the main opponents of the successive propositions and strongly opposed the adoption of the proportional representation system. The lack of consensus in such matters as the active and passive right to vote, the structure of constituencies or the methods of seat allocation, was also the cause of failure¹⁶.

¹⁰ *The Legislation of Direct Elections to the European Parliament*, eds. V. Herman, M. Hagger, Gower 1980, passim.

¹¹ D. Millar, *European Election Procedures*, [In:] *Direct Elections to the European Parliament*, ed. J. Lodge, Palgrave Macmillan 1986, pp. 35–36.

¹² See: European Parliament Working document 1–988/81 of 26 February 1982 (Report drawn on behalf of the Political Affairs Committee “on a draft uniform electoral procedure for the election of Members of the European Parliament”, Rapporteur: Mr. J. Seitlinger).

¹³ G. De Vires, *La procédure électorale uniforme du Parlement européen: un pas pour rapprocher l’Europe des citoyens*, “Revue du Marché Commun et de l’Union Européenne” 1996, No. 399, pp. 417–421.

¹⁴ De Gucht Report, adopted 10 October 1991, OJ C 280, 28.10.1991; De Gucht Report, adopted 10 March 1993, OJ C 115, 26.4.1993.

¹⁵ See more: G. Anastassopoulos, *The debate on the system of electing the members of the European parliament: from a uniform procedure to the common principles of treaties*, Brussels 2002; D. Rudkowski, *Wybory do Parlamentu Europejskiego – problem system wyborczego*, [In:] *Parlamenty a integracja europejska*, eds. M. Kruk, E. Popławska, Warszawa 2002, pp. 89–99.

¹⁶ See: T. Kownacki, *Parlament Europejski w perspektywie prac nad jednolitą ordynacją wyborczą. Wybrane problemy*, “Przegląd Europejski” 2000, No. 1, p. 75; M. Rulka, J. Zbieranek,

Only in the late 90's it became possible to reach a consensus regarding the elaboration of common principles of community electoral law (report of G. Anastassopoulos)¹⁷. This was possible due to the gradually evolving harmonisation of national electoral laws, and mainly due to the introduction of the proportional representation system to the European Parliament in Great Britain¹⁸. Nevertheless, the whole process of discussions and negotiations, which led to the elaboration of the awaited compromise, lasted four years. On 15 June 2002 the European Parliament adopted a legislative resolution which, by qualified majority, accepted the Council of the European Union's draft Decision on the modification of the Act, established by the Decision of the Council on 20 September 1976, concerning the election of the members of the European Parliament by direct universal suffrage¹⁹. The Council arrived at a final decision on 23 September 2002²⁰.

The most important change proposed by the 2002 amendment was the introduction of the principle of proportionality²¹, which was not envisaged by the 1976 Act, to the catalogue of electoral principles applicable to the elections to the European Parliament. At the same time, the system of the single transferable vote (STV) was allowed as an alternative. The STV system's

W kierunku jednolitego aktu? System prawa wyborczego do Parlamentu Europejskiego, [In:] *W stronę europejskiego demos? Polskie wybory do Parlamentu Europejskiego w 2009 roku w perspektywie porównawczej*, eds. J. Kucharczyk, A. Łada, Warszawa 2010, pp. 120–123; M. Rulka, *Ewolucja sposobu wyboru...*, p. 85 ff.

¹⁷ OJ C 292, 21.9.1998 (Anastassopoulos Report).

¹⁸ *European Parliamentary Elections Act 1999*, <http://www.legislation.gov.uk/ukpga/1999/1/enacted> (2.10.2016); D. Butler, M. Westlake, *British Politics and European Elections 1999*, Macmillan 2000, p. 31; E. Dydak, *Wybory do Parlamentu Europejskiego...*, p. 57 i nast.; G. Ganz, *European Parliamentary Elections Act 1999: the constitutional issues*, "Amicus Curiae" 1999, No. 18, pp. 4–8; *The European Parliamentary Elections Bill*, House of Commons, Research Paper 98/102, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP98-102> (2.10.2016).

¹⁹ Doc. PE 319.164.

²⁰ Council Decision 2002/772/WE, Euratom (OJ L 283, 21.10.2002).

²¹ The principle of proportional representation means that the number of seats won by a party or group of candidates is proportionate to the number of votes received. See.: M. Rulka, *Zasada proporcjonalności w wyborach do Parlamentu Europejskiego*, "Przegląd Prawa Publicznego" 2011, No. 3, p. 17 ff.; B. Michalak, A. Sokala, *Leksykon prawa wyborczego i systemów wyborczych*, Wolters Kluwer 2010, p. 111; J. Buczkowski, *Podstawowe zasady prawa wyborczego III Rzeczypospolitej*, Lublin 1998, p. 326 ff.

effects resemble the effects of the proportional representation system at the most²². Just as in the original 1976 version of the Act, after the 2002 amendment, the fundamental principles of the elections to the European Parliament were mentioned and also the principles of free and secret elections (art. 1, sec. 3) were added to the principles of universality and direct election²³. However, the Council did not agree to add the principle of equality proposed by the Parliament²⁴. The Act also legitimised the possibility to introduce the system of preferential voting, also known as the open list system. Voters here have the possibility of changing the order in which candidates are presented on the lists by marking their preferences – pointing the candidate who should take a seat first²⁵.

The 1976/2002 Act fixed the admissible election threshold, which, on the Member State national level, cannot exceed 5 percent of cast votes (art. 3)²⁶. It eliminates the possibility to establish an electoral clause at the level of a constituency²⁷. In the light of this provision it is unacceptable to increase the 5 percent threshold level also in the case of coalitions of political parties.

After many years of discussions and quarrels the Act brought a solution to the problematic aspects of the structure of constituencies. The

²² B. Michalak, A. Sokala, *Leksykon prawa wyborczego...*, pp. 142–146; S. Gebethner, *Komentarz do Aktu z 1976 r. (w brzmieniu z 2002 r.) dotyczącego wyborów członków Parlamentu Europejskiego w powszechnych wyborach bezpośrednich*, “Przegląd Legislacyjny” 2003, No. 1; see more on STV: M. Gallagher, *The Political Consequences of the Electoral System in the Republic of Ireland*, “Electoral Studies” 1986, No. 3, p. 253 ff.; A. Żukowski, *Systemy wyborcze – wprowadzenie*, Olsztyn 1997, pp. 56–58.

²³ On the principle of confidentiality and the principle of free elections, see: B. Banaśzak, *Prawo wyborcze obywateli*, Warszawa 1996, pp. 19–20; G. Kruszeń, *Standardy prawne wolnych wyborów parlamentarnych*, Białystok 2007; J. Buczkowski, *Istota i gwarancje „wolnych wyborów”*, Przemyśl 1998.

²⁴ S. Gebethner, *Komentarz do Aktu z 1976 r. (w brzmieniu z 2002 r.)...*, p. 206; D. Farrell, R. Scully, *Electing the European Parliament: How Uniform are “Uniform” Electoral Systems?*, “Journal of Common Market Studies” 2005, No. 5, p. 969 ff.

²⁵ This system traditionally used in Poland in the elections to the Sejm, as well as election of municipal councils in cities who are also city districts, county councils and regional assemblies. See more: M. Chmaj, W. Skrzydło, *System wyborczy w Rzeczypospolitej Polskiej*, Wolters Kluwer 2011.

²⁶ The threshold refers to the votes cast in the elections. Usually in the electoral law the threshold is set in regard to the number of valid votes cast in elections.

²⁷ Otherwise S. Gebethner, *Komentarz do Aktu z 1976 r. (w brzmieniu z 2002 r.)...*, p. 205.

1998 proposal made by the Parliament was aimed at assuming that only states of less than 20 million inhabitants could, as a whole, form one constituency, whereas states having more than 20 million inhabitants would be divided into electoral districts²⁸. Such idea faced criticism from many states²⁹. Finally the Council of the European Union decided that constituencies may be created in all Member States in order to hold elections to the European Parliament. The division into electoral districts cannot however violate the essence of a proportional representation system (Art. 2). It is not recommended therefore to create small electoral constituencies because in such constituencies the result of the elections may bring a distorted image of the essence of proportional representation³⁰. In the light of the provision regarding the structure of constituencies, each state may represent one constituency.

Another new solution is to include in the 1976/2002 Act the provisions allowing Member States to fix limits on funds allocated by the candidates to finance the electoral campaign to the European Parliament (art. 4). The amendment did not change the five-year term of the European Parliament (art. 5). The elections take place on the last year of the term in all Member States at the same time, but not on the same day. A particular day or days are specified in Member States, according to national provisions, on the same week, within four days, starting on a Thursday morning and ending on the following Sunday (art. 1, sec.1). Since the first direct universal suffrage in 1979, the elections always take place in June. The European Parliament tried, by a Resolution of 1998, to move the date to May, which is the period before school holidays and summer holidays³¹. The Council refused to accept the proposal.

The provisions regarding the political and legal status of the member of the European Parliament did not change considerably in 2002. The principle of the free mandate remained. According to Art. 6, section 1 of the 1976/2002 Act, members of the European Parliament are not bound by any instructions and cannot get the imperative mandate. They represent the whole subject of

²⁸ K. Urbaniak, *2010 proposal for a modification...*, p. 63.

²⁹ See: E. Dydak, *Wybory do Parlamentu Europejskiego...*, s. 73.

³⁰ See: S. Gebethner, *Komentarz do Aktu z 1976 r. (w brzmieniu z 2002 r.)...*, p. 206.

³¹ OJ C 292, 21.9.1998 (Anastassopoulos Report), p. 6.

sovereignty, and not only their electors. They are not bound by any orders of electors and cannot be revoked by the electors. A free mandate is recognised by the majority of contemporary representation theories and is a standard institution in democratic countries³².

The 2002 Act extended the principle of *incompatibilitas* of the office of a member of the European Parliament with other functions and posts in the European Union and in Member States. (art. 7 of the Act)³³. The most spectacular solution was to establish a prohibition of relation of a mandate of a member of the European Parliament with the mandate of the national parliament. In addition, a clause was introduced, under which each Member State may extend the rules of *incompatibilitas* at a national level. The principles of election procedure, which are not regulated in the Act of 1976/2002, are regulated by the internal rules in each Member State.

³² See: E. Dydak, *Status członków Parlamentu Europejskiego w prawie wspólnotowym*, [In:] *Konstytucja – wybory – partie*, eds. A. Materska-Sosnowska, K. Urbaniak, Warszawa 2013, p. 197 ff.; J. Szymanek, *Reprezentacja i mandat parlamentarny*, Warszawa 2013, p. 336 ff.

³³ According to this article the office of a member of the European Parliament shall be incompatible with that of:

- member of the government of a Member State,
- member of the Commission of the European Communities,
- Judge, Advocate-General or Registrar of the Court of Justice of the European Communities or of the Court of First Instance,
- member of the Board of Directors of the European Central Bank,
- member of the Court of Auditors of the European Communities,
- Ombudsman of the European Communities,
- member of the Economic and Social Committee of the European Community and of the European Atomic Energy Community,
- member of committees or other bodies set up pursuant to the Treaties establishing the European Community and the European Atomic Energy Community for the purposes of managing the Communities' funds or carrying out a permanent direct administrative task,
- member of the Board of Directors, Management Committee or staff of the European Investment Bank,
- active official or servant of the institutions of the European Communities or of the specialised bodies attached to them or of the European Central Bank.

In the 2002 amendment the principle of *incompatibilitas* applied also to judges of the Court of First Instance, members of the Board of Directors of the European Central Bank, and the Ombudsman.

IV.

As has frequently been the case in the institutional development of the EU, the Act of 2002 was more about catching up with and codifying reality than about imposing a new set of obligations that requires Member States to make substantial changes³⁴. The main part of the regulation, including in particular, the provisions related to the distribution of seats among the political parties, remained in the hands of Member States. The European Union States avail themselves of the freedom to adjust the electoral procedure to the European Parliament (see Table 1) granted to them by the 2002 Act. Analyzing the electoral principles in the Member States, one can identify a number of differences between the systems to be noted in four main features: the electoral formula, district magnitude, threshold and ballot structure. These are the basic factors which influence the shape of the representation in the European Parliament. With reference to the electoral formula, one can notice two levels of differences – the distinction between the Single Transferable Vote (STV) and lists systems. Within the lists system, the highest average allocation methods are used (d'Hondt, Sainte-Laguë and modified Sainte-Laguë) along with the largest remainder method (Hare, Hagenbach-Bischoff, Droop). The structure of constituencies also makes up important differences. In six Member States, there are constituencies of regional character. Some Member States make the right to participate in the distribution of seats dependent on having got a certain level of voters' support – the threshold (12 states). The abovementioned factors, i.e. the electoral formula, the structure of constituencies/district magnitude and the electoral threshold have a major impact on the extent of the principle of proportionality implementation³⁵. Another important factor to differentiate the electoral systems in the individual states is the possibility to have preferential voting. In most states, the voters have the right to express their own personal preferences and indicate the candidate who in their opinion, should take over the seat of a given party in the first place. In turn, in nine states, closed lists are applied (no preferential vote). The application of any of the abovementioned systems affects to a large

³⁴ D. Farrell, R. Scully, *Electing the European Parliament...*, p. 970.

³⁵ Ibidem, p. 971; M. Rulka, *Zasada proporcjonalności...*

extent the scope of influence the voters can have on the personal representation in the European Parliament.

Apart from differences, with regard to the mechanisms which influence the political representation in the European Parliament, one can also indicate other differences related to the electoral procedure in individual states. The most spectacular differences result from the traditional electoral law. Thus, they concern, for instance, the minimum age for the right to stand for the election and the day on which elections are held. The minimum age to stand for elections is 18 years in most Member States, except for Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Ireland, Lithuania, Latvia, Poland and Slovakia (21 years), Romania (23 years) along with Italy and Greece (25 years). In turn, elections are held in various states, according to the established tradition, respectively, on Thursday (the Netherlands, UK), on Friday (Ireland, the Czech Republic), on Saturday (e.g. Latvia, Slovakia and Malta) or Sunday (most states). The latter factor seems difficult to be made uniform³⁶.

Only the main differences in the electoral systems to the European Parliament in force in the individual Member States have been abovementioned. The differences in the rules for candidates nomination for the election, those of campaigning, the access to electronic media and election campaign financing have been omitted although they are not less important. All the abovementioned factors lead to the conclusion that, in practice, the European Parliament elections take place based on 28 different electoral systems.

V.

The differences in electoral systems of individual states, as outlined above, had it that in the subsequent terms of office of the European Parliament, following the introduction of the 2002 Act, attempts were undertaken to harmo-

³⁶ See more on electoral systems to the European Parliament: J. Outly, *The Electoral System for Elections to the European Parliament: A Comparison of the Original and the Newly Admitted Countries*, "Contemporary European Studies" 2007, No. 1, pp. 5–21; D. Farrell, R. Scully, *Electing the European Parliament...*, W. Sokół, *Systemy wyborcze do Parlamentu Europejskiego: mechanizmy i konsekwencje polityczne*, [In:] *Wybory do Parlamentu Europejskiego. Prawne, polityczne i społeczne*, eds. A. Sokala, B. Michalak, A. Frydrych, R. Zych Toruń 2009.

nize the electoral procedures through the introduction of common solutions in some areas of electoral law. These attempts proved to be a failure. However, it is worth having a look at suggestions made in this regard³⁷.

The most far-reaching draft of changes was presented in 2010³⁸. The proposals submitted included quite a few far-reaching changes in the EU electoral law to the European Parliament, in force since 2002. These changes were to help to stop the trend of declining voter turnout in the short term³⁹, and to strengthen the representative function of the EP and to prepare the institutional base to create the European electorate in the long run⁴⁰.

The proposals of reform presented in the Parliament related to various elements of the electoral law. Analyzing the proposed reforms, one can indicate nine main proposals for changes. The first proposal related to the mandatory division of the constituencies in the Member States with a population of over 20 million. In the light of the proposal, the basis to create constituencies were to be regions. The mandatory creation of constituencies in the Member States with a population over 20 million was to foster a better representation in the Parliament of the interests, concerning the inhabitants of various regions. The introduction of the division of constituencies is also to guarantee more ties between Parliament Members and their constituency⁴¹.

The second proposal assumed the imposition on the Member States of a mandatory duty to establish such electoral procedures as to ensure

³⁷ M. Rulka, *Ewolucja sposobu wyboru...*, p. 205 ff.

³⁸ *Draft Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976* (Rapporteur: A. Duff), Committee on Constitutional Affairs, European Parliament, 12.04.2010; K. Urbaniak, *2010 proposal for a modification of the electoral...*

³⁹ M. Rulka, *Próby reformowania procedury wyborczej do Parlamentu Europejskiego na poziomie unijnym*, "Wspólnoty Europejskie" 2010, No. 2, p. 8.

⁴⁰ Andrew Duff on *Electoral reform*, European Parliament News, www.europarl.europa.eu (10.12.2011); S. Hix, S. Hagemann, *Could Changing the Electoral Rules Fix European Parliament Elections?*, "Politique Européenne" 2009, No. 28.

⁴¹ *Draft Report on a proposal for a modification...* A. Gostyńska, *Reforma procedury wyborczej do Parlamentu Europejskiego*, "Biuletyn – Polski Instytut Spraw Międzynarodowych", No. 113(721), 3 September 2010; S. Hix, S. Hagemann, *Could Changing the Electoral Rules...*, pp. 31–33.

to voters preferential voting for those on lists. The introduction of such a system was to increase the voters' influence on the composition of the EP. Another proposal advocated for the distribution of the European Parliament seats 12 months before each election, in the case this is justified by demographic data presented by Eurostat. This change was intended to ensure a fair representation of EU nationals in the EP and to de-politicise the issue⁴².

Another proposal was very controversial. It advocated the idea of an additional constituency, covering the whole territory of the European Union which was to serve to promote European political parties. Supranational lists would need to include candidates from at least one third of Member States, at the same time, respecting gender balance. 25 deputies were to be elected in such a constituency. The EU nationals would have the right to cast two votes: one for the national or regional list, and the other for a candidate from the EU list. Voting in the EU constituency was to be based on the system of preferential voting through the semi-open list system (whereby votes are cast for the party lists or for individual candidates on a given list). Mandates were to be distributed among individual lists, according to the Sainte-Laguë's method⁴³. The proposal was met by the Member States with great reserve, as it breached the principle of state representation in the European Parliament. The proposal to make a EU constituency would involve the need to establish at the EU level an electoral body with the main task to coordinate and conduct elections from European lists, as well as, to verify the election results in the constituency. The electoral body was to be composed of the representatives of the Parliament, the Commission and the Member States⁴⁴.

Other two proposals of changes related to the elections schedule to the EP, common to the Member States. Moving the date of the elections from June to May was proposed along with the suggestion to have the elections on two days: every time on Saturday and Sunday. The rationale for the earlier elections was that June is in many Member States the period of summer break, which results in a lower voter turnout during elections. Limiting the elections

⁴² K. Urbaniak, *2010 proposal for a modification of the electoral...*, p. 66.

⁴³ Ibidem; R. Trzaskowski R., J. Popielawska, *How European...*, p. 36.

⁴⁴ *Draft Report on a proposal for a modification...*

to two days resulted, in turn, from a critical assessment of excessively long electoral period (4 days)⁴⁵.

The last proposal advocated an age reduction and harmonization of active and passive voting rights in the elections to EP. The project was for lowering the active voting rights to the age of 16, and the passive voting rights to 18. Currently, in all Member States, the national obtains the right to vote the moment they are 18. Only in Austria, is it sufficient to be 16. In turn, only in 12 states an EU national, who is 18 may candidate to the European Parliament. In other states, a higher age is required⁴⁶.

As we have already mentioned, the proposals failed to gain the Member States' acceptance and the 2002 Act was not modified. Their acceptance would result, in most cases, in fundamental changes in the Member States' electoral system to the European Parliament. The introduction of preferential voting would impose on 9 states which apply the system of closed lists, changing their systems (Estonia, France, Greece, Spain, Germany, Portugal, Romania, Hungary, United Kingdom). The situation is similar with regard to the establishment of mandatory constituencies. Currently, 20 states constitute one constituency. As to the right to vote, only 12 states grant it to those at the age of 18. Similarly with the idea of establishing uniform days to vote. The introduction of mandatory voting on Saturdays and Sundays would make some states withdraw from the vote on traditionally accepted days. All these arguments underlay the skeptical approach of the Member States to the proposals and the work on the reform has not been completed⁴⁷.

In the current Parliament's term of office (2014–2019) another work on the harmonization of election procedures was undertaken. However, the European Parliament, mindful of the experience of the previous term of office, is currently working on the harmonization of procedures that do not have political significance, nor do they directly relate to the shape of parliamentary representation nor to the established traditional principles of electoral law in the Member States. The problems under debates relate, among other things, to selected elements of electoral campaigning, the principles of

⁴⁵ Ibidem.

⁴⁶ K. Urbaniak, *2010 proposal for a modification of the electoral...*, p. 67.

⁴⁷ M. Rulka, *Ewolucja sposobu wyboru...*, p. 233.

choosing and nominating candidates and the rules and deadlines for drawing up lists of voters⁴⁸.

VI.

The work on the harmonization of the electoral law for the European Parliament opened the discussion on the nature of the elections to the EP and whether any further harmonization of the electoral procedures is possible, and if so, whether it will contribute to a further nationals' trust in the European Parliament institutions⁴⁹. It turned out that the field of compromise in case of electoral law harmonization is insignificant. The skeptical approach of the Member States to the harmonization of EU electoral law to the EP arises from the fact that European democracies are attached to their traditional elections. It also turned out that the Member States are trying to keep, through internal electoral procedures (election constituencies, electoral threshold, voting principles) at least a minimum impact on the shape of the representation in the European Parliament. One must also bear in mind the fact that the harmonization of electoral procedures is also under the influence of the scale factor. 6 to 96 members are elected in the elections to the European Parliament in the individual Member States. This fact alone puts into question the chance to create uniform rules for the elections.

It should be emphasized that the most important element to block any changes of the electoral law to the European Parliament in the Union results from the fact that the 1976/2002 Act has the status of primary law and its change requires the approval and ratification by all the Member States. This factor has it that in the near future, any significant harmonization of the electoral law to the European Parliament, important elements of law, influencing the election results included, is unimaginable. Although, it is possible to harmonize some secondary elements of the electoral law, but it is difficult to dream about the real harmonization of laws so as to unify the electoral procedures.

⁴⁸ *Reform of the electoral law of the EU*, European Parliament resolution of 11 November 2015 on the reform of the electoral law of the European Union (2015/2035(INL)), P8_TA(2015)0395, European Parliament 2014–2019 – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0395+0+DOC+PDF+V0//EN> (2.10.2016).

⁴⁹ A. Gostyńska, *Reforma procedury wyborczej...*

Table 1. Current Electoral Practices in Member States

Country	Number of seats	Day of elections	Eligibility to stand for elections	Electoral system	Constituencies
Austria	18	Sunday	18	PR with preferential vote, 4% threshold D'Hondt	1
Belgium	21	Sunday	21	PR with preferential vote, D'Hondt	4
Bulgaria	17	Sunday	21	PR with preferential vote, Hare-Niemeyer	1
Croatia	11	Sunday	18	PR with preferential vote	1
Cyprus	6	Sunday	25	PR with preferential vote, Hare	1
Czech Republic	21	Friday–Saturday	21	PR with preferential vote, 5% threshold D'Hondt	1
Denmark	13		18	PR with preferential vote, D'Hondt	1
Estonia	6	Sunday	21	PR with closed lists, D'Hondt	1
France	74	Sunday	23	PR with closed lists, D'Hondt	8
Finland		Sunday	18	PR with preferential vote, D'Hondt	1
Germany	96	Sunday	18	PR with closed lists, 5% threshold Sainte-Laguë	1
Greece	21	Sunday	25	PR with closed lists, 5% threshold Droop	1
Hungary	21	Sunday	18	PR with preferential vote, 5% threshold D'Hondt	1
Ireland	11	Friday	21	PR – STV	4
Italy	73	Saturday/Sunday	25	PR with preferential vote	5
Latvia	8	Saturday	21	PR preferential vote, 5% threshold Sainte-Laguë	1
Lithuania	11	Sunday	21	PR preferential vote, 5% threshold Hagenbach-Bischoff	1
Luxemburg	6	Sunday	18	PR with vote-splitting, Hagenbach-Bischoff	1
Malta	6	Saturday	18	PR – STV, Droop	1

Country	Number of seats	Day of elections	Eligibility to stand for elections	Electoral system	Constituencies
Netherlands	26	Thursday	18	PR with preferential vote	1
Portugal	21	Sunday	18	PR with closed lists, D'Hondt	1
Poland	51	Sunday	21	PR with preferential vote	13 (1)
Romania	32	Sunday	23	PR with closed lists, D'Hondt	1
Slovakia	13	Saturday	21	PR with preferential vote 5% threshold Hagenbach-Bischoff	1
Slovenia	8	Sunday	18	PR with preferential vote, D'Hondt	1
Spain	54	Sunday	18	PR with closed lists, D'Hondt	
Sweden	20	Sunday	18	PR with preferential vote, 4% threshold Modified Sainte-Laguë	1
United Kingdom	73	Thursday	18	PR with closed lists (but Northern Ireland: STV)	11+1

Source: *Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976* (2009/2134(INI)), Rapporteur: Andrew Duff, A7-0176/2011, Committee on Constitutional Affairs, European Parliament, 28.04.2011, pp. 62–70.

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