



Green Party/Comhaontas Glas Submission to the 2018 European Parliament Constituency Commission

Recommendation: The Green Party/Comhaontas Glas (GP/CG) recommends that the Commission propose a distribution of seats among three constituencies of five-four-four seats.

Introduction

The GP/CG wish to state that its preference remains for a single national constituency - this would be the best way to ensure a proportionate distribution of seats, would bring Ireland into line with 24 out of the 27 member states¹ and would ensure compliance with the relevant European legislation. Such a structure would enable Ireland's participation in future trans-national lists, increase the 'Europeanisation' of the elections and ensure that Ireland would be in line with other EU nations for future changes to the way the European Parliament is elected. On current trends, it is likely that Ireland will be the only EU country not adopting a national constituency in the near future. However the ability to make such a proposal falls outside of the terms of reference (TOR) of this constituency committee (CC), and so the GP/CG submission focuses on what is possible within this restriction.

Abolition of three seat constituencies

The GP/CG believes that, though within its power under the TOR, the CC should not propose the creation of any three-seat constituencies. Ample evidence exists that such constituencies mitigate against a proportional distribution of seats - that is, the distribution of seats among candidates mirroring the distribution of votes.

The reasoning behind this is simple: subdividing an electorate into constituencies means that the geographical concentration of party's supporters becomes a factor in their potential success. Smaller parties will win seats only in constituencies where their voters are concentrated. Larger parties will suffer if they do not evenly distribute voters among constituencies. This problem is most extreme under single-seat constituencies, and is absent where there is a single national constituency. Therefore in attempting to achieve a proportional outcome, the fewer constituencies/greater number of seats per constituency there are, the better.

Such a proposition is not new. An Irish legal academic, James Hogan, made a similar argument as far back as 1945:

¹ <http://www.europarl.europa.eu/factsheets/en/sheet/21/the-european-parliament-electoral-procedures>
(note: France has abolished constituencies for the 2019 elections)

"The decisive point in PR is the size of the constituencies, the larger the constituency, that is, the greater the number of members which it elects, the more closely will the result approximate to proportionality. On the other hand, the smaller the constituency, that is, the fewer the number of members which it returns, the more radical will be the departure from proportionality"

(Hogan, 1945, 13)

More recent academic work has argued that five is the minimum number of seats required per constituency in order to ensure a proportional outcome (Caramani, 2011). The argument that larger constituencies produce more proportional results found favour from Clarke J in the Murphy case (2007):

"It is clear that the larger number of deputies per constituencies the more likely that a proportionate result will ensue.

The Labour Party made a detailed case for reducing the number of three seat constituencies in its 2007 submission to the Commission established that year to determine new Dail boundaries:

"Our essential point in this part of our submission is that proportionality and constituency size are inversely correlated: the larger the size of constituencies, the greater the proportionality of the system as a whole...The corollary, of course, is that the number of three seaters has been increasing, thereby automatically diluting the proportionality effect of the system as a whole."

In that submission, the Labour Party did not argue that the creation of three-seaters was legally impermissible, as Bunreacht na hÉireann expressly permits the creation of such constituencies.

However, the legal basis for European elections is not Bunreacht na hÉireann but rather the European treaties and the relevant European legislation.

Relevant European legislation

The basis for European elections in Ireland and all other member states is Council Decision 2002/772 as amended most recently by Council Decision 2018/994. This legislation states that member states must adopt systems of proportional representation to elect their MEPs (Article 1), and while they may "establish constituencies...or subdivide its electoral area in a different manner" they may not do so "without generally affecting the proportional nature of the voting system" (Article 2) (emphasis added).

There is little ambiguity in the purpose of this wording: the legislation seeks to avoid a situation where the objective of a proportional system is undermined by the creation of constituencies with a small number of seats. For example in political systems dominated by two or three large parties, it may be favourable to those established parties to create multiple constituencies with two or three seats; locking out new or smaller parties.

To find that three-seat constituencies do not generally affect the proportional nature of the voting system would be to suggest that the only scenarios the legislators were trying to avoid were single and two seat constituencies. This is a very restrictive interpretation of the legislators' objectives.

A second requirement of the European legislation is that member states may not introduce thresholds greater than 5% (Art 2a). Thresholds are requirements which exist under certain systems of proportional representation which require parties or candidates to achieve a certain percentage of vote cast before they can win seats. The PR-STV system does not have national thresholds, but rather quotas. A quota is calculated by dividing the number of seats in each constituency plus one by 100. For a three-seat constituency, the quota is 25% of votes cast ($100/3+1$). For four-seat, the quota is 20% ($100/4+1$).

Quotas differ from thresholds in that candidates may be elected without reaching the quota if they are the last remaining candidate after all others have been elected/eliminated. However quotas and thresholds have a similar effect - increasing the share of the vote required to be elected, disadvantaging smaller parties, particularly if their vote is not concentrated in one constituency. Widespread use of small constituencies therefore has the effect of introducing a de facto quota nationally which may exceed the 5% limit contained in the relevant European legislation.

A legal challenge against three seaters for Dail Eireann would not succeed due to the wording of Bunreacht na hEireann. However a legal challenge against three seaters for European elections would be decided on a different legal basis, and it is unclear how Ireland would defend the use of constituencies with a small number of seats.

Few grounds for defence

There appears no clear path for Ireland to defend the use of a single or multiple three seat constituencies. Ireland is, certainly in comparison to other member states, highly centralised and monolingual. However following the exit of the UK and the abolition of constituencies for European elections by France, Ireland is joined only by Belgium and Italy in subdividing into constituencies. Certainly Belgium, with its clear linguistic divide, has a case for such constituencies but in their case they restrict their use to three constituencies for their 21 MEPs.

Ireland could not argue that three-seaters are an essential aspect of our political system, especially as in recent years the trend has been away from their use. The existence of three-seaters for Dail elections has halved from 18 in 2004 to 9 at present. For local elections, the use of smaller constituencies (three and four seat) are to be used only where there are "compelling circumstances"².

There is also evidence that the use of smaller constituencies is creating disproportional results. The last European elections (2014) took place with an average constituency size of 3.66 and produced a highly disproportionate result. Three parties (FG, FF and SF) finished

² <http://www.boundarycommittee.ie/termsreferencehtm.htm>

within 3% of each other, yet the distribution of seats was 4, 1 and 3 respectively. Transfers may account for some of this discrepancy, but not all. Because Fianna Fáil voters were highly concentrated in one constituency (Ireland South) while Fine Gael voters were more evenly distributed, Fine Gael voters are now significantly better represented in the European Parliament.

The previous election, contested under four three-seat constituencies, produced a similar skewed result. Sinn Féin won 11.2% of the vote and no seats, whereas the Socialist Party won 2.7% of the vote and won one seat. Over 10% of the population voted for Sinn Féin but yet were not granted representation in the European Parliament. This is precisely the scenario that European legislation, with its limit of thresholds to 5%, is seeking to avoid.

In determining whether three-seat constituencies can be considered proportional, an Irish or European Court may be influenced by legal rulings in other member states. The only case known to GP/CG where a Court ruled on this issue was a 2016 Belgian case, *Thibaut v la Région wallonne*, which concerned the constituencies established for elections to the regional parliament of Wallonia. The Court ruled that the fewer the seats, the less proportional the result, and as a result struck out the use of two and three seat constituencies - though permitted the use of constituencies with four or more seats.

Ireland would also have to explain why three seat constituencies were used, when a viable alternative option (5-4-4) existed.

Geographic size of constituencies

Ireland may argue that smaller constituencies are required in order to ensure a connection between voters and their elected representatives. However even in a three seat constituency, MEPs will represent over 1 million citizens. Providing constituency services will be next to impossible. And even if possible, the primary role of an MEPs is to legislate for the Union as a whole, not provide constituency services. Many other member states organise their European election with a single national constituencies much larger than current Irish constituencies or indeed Ireland as a whole.

Relevance for this Commission

It's regrettable that the relevant Irish legislation does not make reference to the clear requirement under EU law to avoid a disproportional outcome due to the subdivision of constituencies. However the Commission should, as far as possible within its terms of reference, seek to ensure Ireland is in compliance with this legal requirement. That would involve not proposing the creation of three-seat constituencies, leaving a five-four-four distribution as the only remaining option.

What distribution of seats?

The GP/CG primary objective is to discontinue the use of three seat constituencies. How the Commission goes about allocating seats among the only viable alternative distribution (five-four-four) is of secondary importance. However GP/CG does believe that Dublin should remain as a single constituency, with four seats, due to the constraints

placed by the Terms of Reference (including need to maintain County boundaries and respect geographic realities). The remainder of the country would have to be divided between two constituencies: one four and one five seat. It is our belief that the most reasonable allocation would be to transfer the county of Kildare from from Midlands-North-West to South, and make the latter a five seat constituency.

Variance in population

The Commission TOR contain a number of requirements: equality of representation, avoiding breaching county boundaries, continuity in relation to the arrangement of constituencies among others. The Commission may struggle to reconcile all of these requirements, particularly the equality of representation as between constituencies.

In such circumstances, and only where there is a clear inability to reconcile some of these requirements, the Commission should look to population trends in making its recommendation. For example it's clear that Dublin will, for the foreseeable future, continue the pattern of its population growth exceeding that of the rest of the country. As a result any under-representation of Dublin based on the 2016 census would be exacerbated by the time of the 2019 elections, while an over-representation would be remedied³.

³ <https://www.cso.ie/en/releasesandpublications/er/rpp/regionalpopulationprojections2016-2031/>