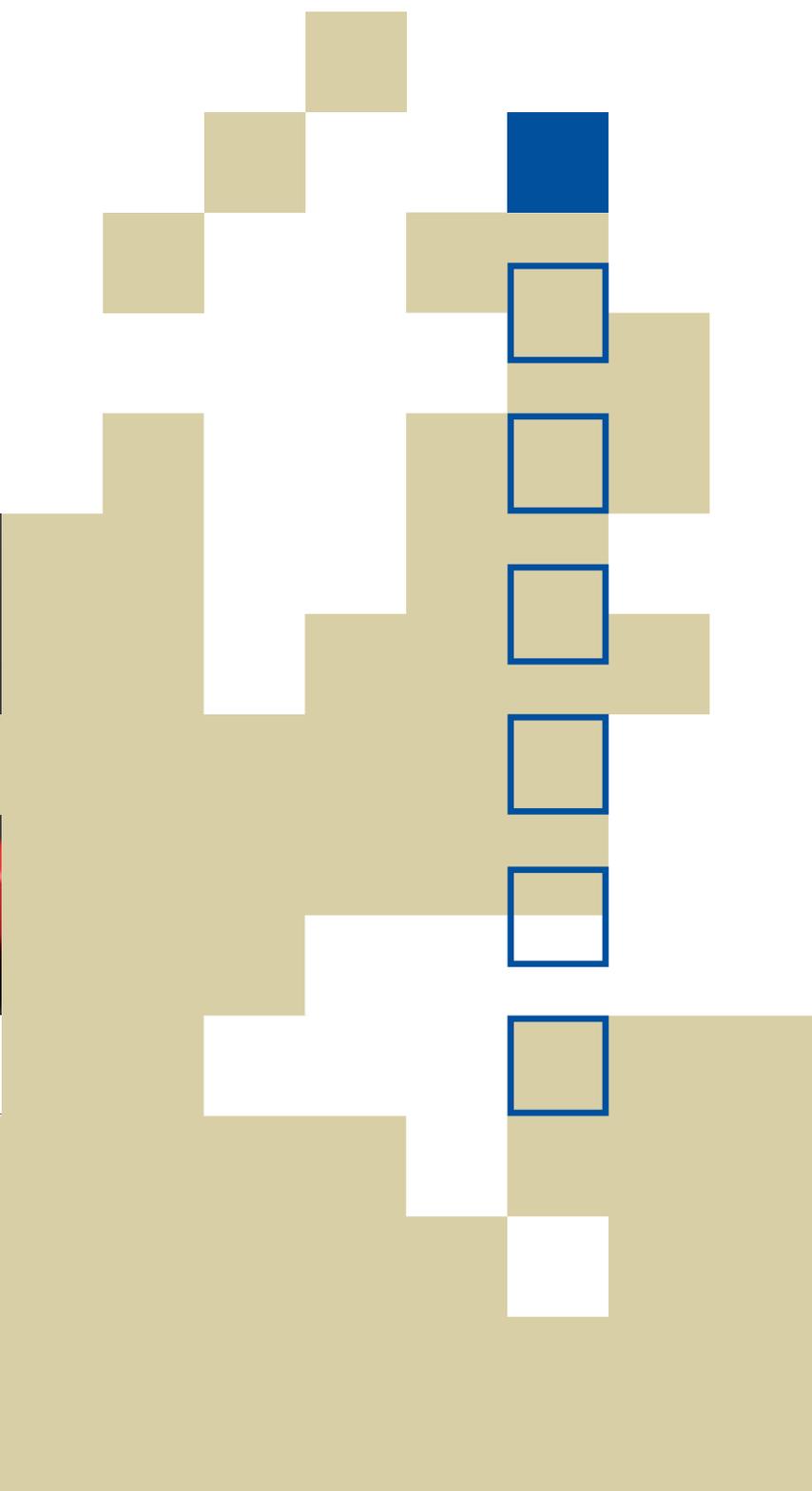
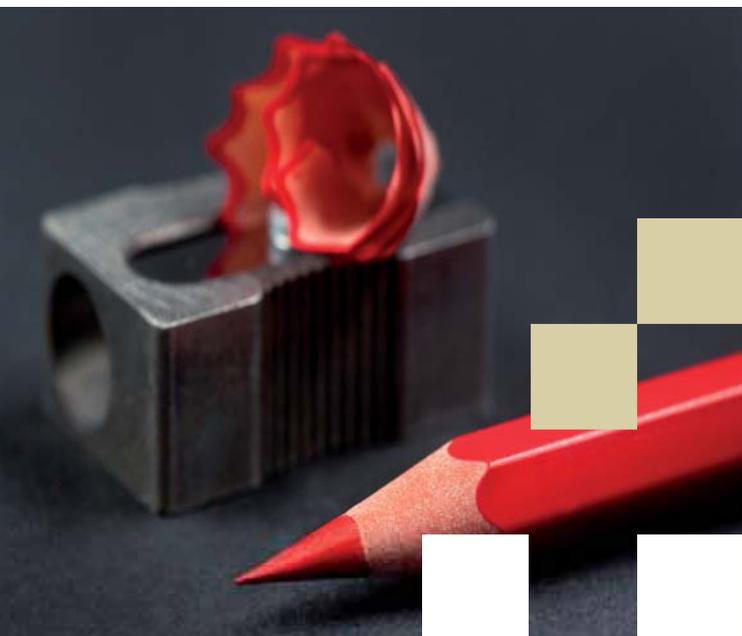




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Dutch Electoral Council



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Steps of the election proces

Contact

Electoral Concil Secretariat

Postal address

Postbus 20011, 2500 EA The Hague, The Netherlands

Bezoekadres

Herengracht 21, 2511 EG The Hague, The Netherlands

T +31(0)70 426 6266

F +31(0)70 426 6489

E kiesraad@kiesraad.nl

www.kiesraad.nl

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Photo: Karin van der Mijsbrugge (Electoral Council)

Preface

Through this annual report, the Electoral Council accounts for the way in which it performed its duties in 2011. The Electoral Council renders account in its capacity as advisory body to the Government and Parliament, as central electoral committee for the elections to the Senate and House of Representatives and the European Parliament, as advisory and information centre that citizens, municipalities, political parties and the media can contact if they have any questions about the interpretation of the Electoral Act and, finally, as provider of information during legal proceedings about matters relating to electoral law.

For a long time, Dutch suffrage and the Dutch election process have only developed on a national level. After the Second World War, a number of international treaties (the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and the International Covenant on Civil and Political Rights) paved the way for international electoral standards (free and fair elections). Especially the democratisation processes in the former communist countries in Eastern and Central Europe resulted in more specific formulations, such as in the Copenhagen Document of the OSCE (1990) and the General Comment 25 (1996) of the UN Human Rights Committee. Over the past ten years, many international soft-law documents have been added to these: documents which are not legally binding, but are of political importance. The booklet *Internationale electorale standaarden en het Nederlandse verkiezingsproces* [International electoral standards and the Dutch election process] by Laurens de Wit, published in the Electoral Council Series *Studies en adviezen betreffende kiesrecht en verkiezingen* [Studies and recommendations on the right to vote and elections] (2010, no 2) summarises the process nicely.

Over the past few years, international standards have been relied on for a number of times (and sometimes successfully) during legal proceedings. For instance, Mr Santana-Rodriguez, relying on directly applicable treaty provisions, managed to ensure that non-Dutch nationals were still allowed to participate in the island council elections of Bonaire, Saba and Sint Eustatius in 2011. Over the past few years, the Netherlands has, in an international context, been confronted several times about the fact that it does not comply with all aspects of international electoral standards. For example, by the Venice Commission and GRECO about the absence of a statutory regulation on the financial supervision of political parties. In 2006 and 2010 (elections to the House of Representatives), the Netherlands was also criticised by OSCE/ODIHR observer missions on, among other things, proxy voting (risk of family voting), supervision (no independent supervision of the course of elections) and appeal (no possibility to appeal against a number of fundamental decisions in the election process).

H.R.B.M. Kummeling, Chairman of the Electoral Council



Photo: David Rozing (Hollandse Hoogte)

1. 2011 in a nutshell

Elections

In 2011, four elections were held, namely:

- provincial council elections;
- elections to the island councils of Bonaire, Sint Eustatius and Saba;
- elections to the Senate;
- municipal redivision elections for the new municipality of Hollands Kroon.

Overall, these elections went well. The Electoral Council formulated a few points for improving the provincial council elections, elections to the Senate and the island council elections. These points cover various matters, such as the ballot paper, the procedures on recounting and revoting and conducting campaigns around polling stations. (See: chapter 4, 'Recommendation following the 2011 elections'.)

Recommendations

The Electoral Council made four recommendations to the Minister of the Interior and Kingdom Relations and one to the State Secretary for Infrastructure and the Environment.

Both the Council of State and the Electoral Council earlier pleaded for a general revision (modernisation) of the Electoral Act before the upcoming elections in 2014. However, the minister preferred to amend the Electoral Act in tranches (parts). In 2011, the Electoral Council made a recommendation on the first amendment to the Electoral Act. (See: chapter 4, 'Recommendation on amending the Electoral Act (1st tranche)').

In 2011, the Advisory Bodies Framework Act was evaluated.¹ The Government's response to the evaluation report shows that the Government has decided to terminate the obligation to provide a response as 'a better link between the recommendation and the political agenda will be more effective in practice'. In this regard, the Electoral Council notes that it attaches value to some form of response (from the Government), whether or not such is requested by the House of Representatives, because this contributes to the effectiveness of the recommendations.

Funding of political parties

On 27 April 2011, the Government submitted the Political Parties (Funding) Bill.² This bill has a long history. As early as in 2005, the first exploratory talks were held between officials from the Ministry of the Interior and Kingdom Relations and secretarial staff members of the Electoral Council. The Electoral Council made recommendations on this topic twice: in 2006 and in 2008. The governments that have taken office since 2005 always intended to charge the Electoral Council, as an impartial and independent body, with both the funding of political parties and the supervision of compliance with the law. In the present bill, however, the Minister of the Interior and Kingdom Relations is charged with both duties.

'Verkiezingen op de kaart 1848-2010' symposium

On 17 June 2011, the Electoral Council organised the 'Verkiezingen op de kaart 1848-2010' [Elections on the map 1848-2010] symposium in order to celebrate the publication of the elections atlas. Employing a geographical perspective, the atlas gives a picture of the elections to the House of Representatives as from 1848.

During the symposium, which was visited by approximately 120 people, backgrounds to and features of the election results database were demonstrated and explained. This database contains the results of the elections to the House of Representatives, the Senate and the European Parliament, municipal council elections and provincial council elections.

Moreover, several lecturers discussed the elections atlas and the possibilities of geographical research into voting behaviour. The chairman of the Electoral Council presented the first copy of the atlas to Ms Gerdi A. Verbeet, the President of the House of Representatives.

¹ Evaluation of the Advisory Bodies Framework Act: Third list of recommendations 2005-2010. Parliamentary Papers II, 28 101, no 11.

² Bill on rules governing the funding and supervision of the finances of political parties (Political Parties (Funding) Act), Parliamentary Papers II, 2010-11, 32 752, no 2.



Photo: Cinthia Boll (Hollandse Hoogte)

2. Organisation

Statutory duties

'The Electoral Council shall advise the government and both Houses of the States General on matters of implementation relating to electoral law or elections.' It concerns solicited and unsolicited advice. The Electoral Council also acts as the central electoral committee for elections to the Senate, the House of Representatives and the European Parliament.

Non-statutory duties

The Electoral Council provides information to citizens, political parties, municipalities, the media and other interested parties and acts as an advisor in proceedings relating to electoral law.

Electoral Council under the Non-departmental Public Bodies Framework Act

The bill to amend the Electoral Act, to which the Electoral Council's recommendation of 14 October 2011 pertained, proposes to bring the Electoral Council also under the scope of the Non-departmental Public Bodies Framework Act. The Council now only falls under the Advisory Bodies Framework Act.

In its recommendation, the Council pointed out that it is difficult to bring the Electoral Council, with its current range of duties and powers, under the scope of either Framework Act.

The special position of the Electoral Council as central electoral committee for the Senate, the House of Representatives and the European Parliament entails, however, that the Non-departmental Public Bodies Framework Act cannot be declared to be applicable in full.

New relationship between the Ministry and the Electoral Council

On 17 February 2011 and with retroactive effect from 1 January 2011, a new relationship was formed between the Ministry of the Interior and Kingdom Relations and the Electoral Council, strengthening the independence of the Council. The Electoral Council now has more control over its employees and the spending of the budget. The new relationship was confirmed by the signing of four management regulations³ by the secretary-general of the Ministry of the Interior and Kingdom Relations and the chairman of the Electoral Council.

In 2011, the secretary-general of the Ministry and the chairman of the Electoral Council concluded a so-called Supervision Arrangement, in which management regulations have been translated into practical working arrangements.

Members of the Electoral Council

The Electoral Council consists of seven members who are appointed for a four-year period by Royal Decree. They are appointed on the basis of the expertise needed to give advice in the area of electoral law and elections and on the basis of their knowledge of society and experience.

In 2011, the Council was comprised as follows:

Chairman	Prof. Dr H.R.B.M. Kummeling Henk Kummeling is a professor of Constitutional Law and Comparative Constitutional Law at Utrecht University. He is also the dean of the Faculty of Law, Economics and Governance at this university.
Members	G.J. Schutte (also vice-chairman) For twenty years (1981-2001), Gert Schutte was the party chairman to the GPV in the House of Representatives. Before that, he was a member of the Provincial Council in Utrecht for this party.

³ Organisational Regulations on the Management of the Electoral Council (Government Gazette 2011, no 4345), Mandate Regulations on the Management of the Electoral Council (Government Gazette 2011, no 4086), Regulations on the Granting of a Mandate to the Secretary-Director for the management of the Electoral Council (Government Gazette 2011, no 4132) and Electoral Council Management Regulations (Government Gazette 2011, no 4085).

Ms Prof. Dr M.H. Leyenaar

Monique Leyenaar is a professor of Comparative Political Science at the Radboud University Nijmegen.

She conducts research in the area of civic participation, political reformations, elections and political leadership of women.

A.J. te Veldhuis, LL.M.

From 1982 to 2003, Jan te Veldhuis was a member of the House of Representatives for the VVD, among others as spokesman of constitutional law. He currently chairs or is a member of various committees, including Zeeland Refinery and the Zeeland Historical Research Foundation.

W.M.B. Stoker

Willem Stoker is senior advisor and Head of Elections for the Civil Affairs and Municipal Taxes Department of the municipality of Utrecht. He has been working in various positions for the municipality of Utrecht since 1972.

Ms G.M.M. Blokdijk, LL.M.

Trudy Blokdijk works as a researcher and teacher of Monitoring Social Enterprises at the TiasNimbas Business School in Tilburg and has a consulting practice for Management and Supervision.

Ms A.G. van Dijk, LL.M.

Anneke van Dijk is the head of the Constitutional and Administrative Law sector of the Legislation Department of the Ministry of Security and Justice.

Secretarial staff members of the Electoral Council

In performing its duties, the Electoral Council is supported by a secretariat.

The secretary-director and secretarial staff members are employed by the Ministry of the Interior and Kingdom Relations. They render account for their activities to the Council. The activities of the staff members are based on a work programme that is adopted every year.

The secretariat has a fixed formation of 12 staff members and was composed of the following positions in 2011:

- secretary-director;
- coordinator for the electoral matters cluster/also deputy secretary-director;
- coordinator for the knowledge development and support cluster/also communications advisor;
- executive secretary;
- legal experts;
- quality assurance assistant;
- researcher;
- IT worker;
- policy support assistant for the electoral matters cluster;
- policy support assistant for the knowledge development and support cluster;
- management assistant.

During election periods, the formation is temporarily increased to staff the Elections Information Point. In 2011, this was done for the provincial council elections, the island council elections and the elections to the Senate. The Information Point is a cooperation between the Electoral Council and the Ministry of the Interior and Kingdom Relations.

Electoral Council meetings

In 2011, the Electoral Council met seventeen times, of which:

- three times as central electoral committee for the elections to the Senate (nomination of candidates and determination of the results);
- two times as central electoral committee for the elections to the House of Representatives (the handling of applications for registration);
- once as central electoral committee for the elections to the European Parliament (allocation of 26th seat).



Foto: Maarten Hartman (Hollandse Hoogte)

3. Elections

The Electoral Council as central electoral committee

The role of the Electoral Council is not the same at every election. At the 2011 elections to the Senate, the Electoral Council, as central electoral committee, decided on the validity of the lists of candidates and determined the election results.

At the elections that were held in 2011, the secretariat of the Electoral Council was consulted as a knowledge and information centre to an increasing degree.

Elections in 2011

In 2011, the following elections were held:

- provincial council elections;
- elections to the island councils of Bonaire, Sint Eustatius and Saba;
- elections to the Senate;
- municipal redivision elections for the municipality of Hollands Kroon.

In its recommendation of 22 July 2011, the Electoral Council evaluated the first three elections.⁴

Provincial council elections (2 March 2011)

A total of thirty parties submitted a list of candidates in one or more provinces. For the first time, the forms for the nomination of candidates were also available in Frisian.

On 2 March, election day, the Electoral Council received questions about conducting campaigns, such as handing out flyers, in and around polling stations. Under the Electoral Act, this is not allowed inside polling stations. However, with the arrival of mobile polling stations, for example at railway stations, the exact boundaries of polling stations are not always clear. The chairman of the polling station has an important task here; he determines what is and what is not allowable inside the polling station.

For certain parts of the Netherlands, the elections took place during the spring holidays. As a result, some voters had to grant a proxy. For these voters, it is important that the valid lists of candidates are published in time.

There was a recount in the province of Flevoland. The reason for this was a difference of eighty votes between the number of poll cards collected and the number of votes cast. The results of the recount did not lead to a different allocation of seats. The secretariat of the Electoral Council advised the provincial authorities on this and two secretarial staff members were present during the recount.

Partly as a result of this recount, the Electoral Council recommended that the statutory procedure be clarified.

Dutch nationals living abroad often asked why they were not allowed to vote at provincial council elections. For they do have the right to vote at elections to the House of Representatives. The Electoral Act provides, however, that a person has to be resident in the relevant province in order to vote at provincial council elections. Dutch nationals abroad were more interested in the provincial council elections than over the past few years. This went hand in hand with the question whether the government would obtain a majority of votes at the elections to the Senate, two months later.

Elections to the island councils of Bonaire, Sint Eustatius and Saba (2 March 2011)

The island councils of Bonaire, Sint Eustatius and Saba can be compared with municipal councils. This was the first time that these island council elections were governed by Dutch electoral legislation. This led to a change in historical and culturally-based customs. For instance, ballot papers no longer contained any photographs and logos, the elections were held on a Wednesday instead of a Friday and the polling stations were open two hours longer (until 9.00 pm). There were no incidents during the elections.

⁴ See chapter 4, Recommendation following the 2011 elections.

On 10 January 2011, so less than two months before the elections, the Joint Court of Justice ruled that non-Dutch nationals of said islands also have the right to vote at island council elections.⁵ A lot of efforts were needed in order to provide this group of voters with poll cards in time.

At the end of 2011, a bill was submitted to the House of Representatives which, among other things, allows the island councils to cast their vote at elections to the Senate⁶.

Elections to the Senate (23 May 2011)

The members of the Senate are elected indirectly by the members of the provincial councils. Not every member of the provincial council has an equal vote. Through 'weighing', a link is established with the number of inhabitants of the province; the vote of a member of the provincial council of a densely populated province weighs more than that of a thinly populated province. The Electoral Council already determined the various vote values at the beginning of the year.

In 2011, the nomination of candidates for the elections to the Senate took place with the Electoral Council at a central level for the first time.

Thirteen parties participated in the elections to the Senate, three of which participated for the first time.⁷ A unique fact was the submission of a list of candidates stating only one candidate, namely Mr Koornstra (of the Koornstra blank list). Although Mr Koornstra managed to obtain a declaration of support for his list from a member of the provincial council (of another party) in each province, this list eventually did not receive any votes.

Compared to 2007, the ratio between the number of male and female candidates in the lists was almost the same; around one in four candidates was female.

On 23 May, election day, there was an incident in the province of North Holland. One member of the provincial council cast his vote using a blue pencil instead of a red one, meaning that this vote was invalid. During the public hearing of the central electoral committee (the Electoral Council) which was held on 25 May in order to determine the results, the lawyer of the member of the provincial council objected to this invalidation. The chairman of the central electoral committee responded to this objection by saying that all votes were counted according to the rules of the Electoral Act. The Senate also arrived at this opinion when the credentials of the newly appointed members were verified: all 75 appointed members were admitted.

The 2011 elections to the Senate differed from previous elections on a number of points.

For instance, the preference threshold was increased from 50 to 100% by Act of Parliament dated 18 November 2010 (Bulletin of Acts and Decrees 2010, 790).

In 2007, five candidates were elected by preferential vote, compared to two candidates in 2011. For the first time, it was no longer possible, as a result of the above Act of Parliament, to form combined lists. In 2011, it was no longer possible to influence the allocation of residual seats by strategically forming combined lists. However, in its evaluation recommendation, the Electoral Council asks the question whether abolishing combined lists did not have an adverse effect. For prior to the elections, many (private) agreements were made about the voting behaviour of members of the provincial council.

The Senate itself stated that it will evaluate the last elections. That is why a Meeting of Experts was held on 29 November 2011, in which the chairman of the Electoral Council took part.

Municipal redivision elections for the municipality of Hollands Kroon (23 November 2011)

On 1 January 2012, the North Holland municipalities of Wieringen, Wieringermeer, Anna Paulowna and Niedorp were merged to form the new municipality of Hollands Kroon. On 23 November 2011, redivision elections were held for this.

⁵ Ruling of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba of 10 January 2011, appendix to Parliamentary Papers II 2010 - 2011, 32500 IV, no 25.

⁶ Bill containing a statement that there are grounds to consider a proposal to amend the Constitution, for the purpose of including a constitutional basis for the public bodies of Bonaire, Sint Eustatius and Saba and regulating the involvement of their generally representative bodies during the elections to the Senate, Parliamentary Papers II 2010 - 2011, 33 131, no 1 ff.

⁷ Namely the PVV, 50plus and the Koornstra blank list.

Software for elections

The Supporting Software for Elections (Ondersteunende Software Verkiezingen or OSV)⁸ was used for all elections held in 2011, with the exception of the island council elections. The Electoral Council continues to improve the quality and user-friendliness of the software.

⁸ The Electoral Council had this software developed in 2008. It is used by municipalities and political parties. This software supports the nomination of candidates and the calculation and determination of the election results. More information about this software can be found on the website of the Electoral Council, www.kiesraad.nl.



Photo: Karin van der Mijnsbrugge (Electoral Council)

4. Recommendations

Recommendations made in 2011

In 2011, the Electoral Council made five recommendations:⁹

1. recommendation on the right to stand for election;
2. recommendation on changing the models pertaining to the Electoral Act and the Electoral Decree in connection with the Act of 2010 amending deficiencies in statutory provisions with respect to the Ministry of the Interior and Kingdom Relations;
3. recommendation on the bill to hold indirect water board elections;
4. recommendation following the 2011 elections;
5. recommendation on amending the Electoral Act (1st tranche).

The recommendation on the bill to hold indirect water board elections was made at the request of the State Secretary for Infrastructure and the Environment. The recommendation on the elections held in 2011 is an unsolicited recommendation. The other recommendations were made at the request of the Minister of the Interior and Kingdom Relations.

Recommendation on the right to stand for election (21 January 2011)

In this recommendation, the Electoral Council argues, among other things, for simplifying the registration and nomination procedures by using IT facilities, for example e-mail.¹⁰

The recommendation deals with the requirement of association which currently applies to political parties if they want to register an appellation. The Electoral Council is of the opinion that, from an electoral point of view, it will be sufficient to merely set the requirement of full legal capacity. The Council points out that, for other reasons - for example due to opinions on desirable internal party democracy - the decision may be made to maintain this requirement. In that case, these further substantive requirements must, in the opinion of the Electoral Council, be included in the Electoral Act, as was done in the Political Parties (Grants) Act, for example.

The Electoral Council recommends that electoral districts are no longer used for the nomination of candidates. It will benefit the transparency of the election process for voters, it will simplify the procedure and there is no longer any real need for it in practice.

The Electoral Council argues for a central nomination of candidates for the elections to the House of Representatives and provincial council elections with the central electoral committees. In this connection, the Electoral Council recommends that the date of the nomination be one day earlier.

Follow-up to the recommendation

The recommendations of the Electoral Council on the central nomination of candidates and on advancing the date of the nomination have been adopted in the draft bill to amend the Electoral Act which was submitted to the Council for its opinion on 16 June 2011 and on which the Council made a recommendation on 14 October 2011.

Recommendation on changing the models pertaining to the Electoral Act and the Electoral Decree in connection with the Act of 2010 amending deficiencies in statutory provisions with respect to the Ministry of the Interior and Kingdom Relations (10 March 2011)

Forms are available for various actions during the election process. These are included in the so-called models regulation pertaining to the Electoral Act. The many amendments to the Electoral Act over the past few years have also resulted in the continuous adjustment and further expansion of the models. The Council points out that this does not always improve the readability of the models, which increases the chance of errors.

⁹ All recommendations of the Electoral Council can be read in full on the website, www.kiesraad.nl.

¹⁰ For the purpose of this recommendation, the Electoral Council had Verdonck Klooster & Associates conduct a research into the use of IT means in order to modernise the right to stand for election. The report can be read on the website, www.kiesraad.nl.

The Electoral Council also draws attention to the use of models in relation to the OSV election software.¹¹

Follow-up to the recommendation

The Electoral Council has not yet received a response to this recommendation. However, the Electoral Council did see cause to review all models. This is done in close cooperation with the Association of Netherlands Municipalities (Vereniging van Nederlandse Gemeenten or VNG) and the Dutch Association for Civil Registrars (Nederlandse Vereniging voor Burgerzaken or NVVB). This will result in an unsolicited recommendation to be made in the spring of 2012.

Recommendation on the bill to hold indirect water board elections (13 April 2011)

In its 'Freedom and Responsibility' coalition agreement of 30 September 2010, the Government opts for indirect water board elections; water board administrators are elected by municipal councillors. In its recommendation, the Electoral Council does not comment on this option. The Electoral Council does underline the importance of research into the possibilities of bringing the water board elections under the scope of the Electoral Act.

Furthermore, the Electoral Council points out the consequences of municipal redivision elections and the Council wonders what added value the electoral districts have in the structure chosen. It also asks for a substantiation of the proposal making the membership of the municipal council incompatible with the membership of the water board council.

Follow-up to the recommendation

The Government maintains the incompatibility of functions, arguing that this will emphasise the independence of the water boards compared to the municipalities. In addition, the Government is of the opinion that this incompatibility will help to prevent conflicts of interests or loyalty problems.

The Government withdraws the initial proposal with respect to electoral districts. This should, among other things, avoid the chance of manipulation to achieve desired voting proportions.

Finally, the Government opts not to incorporate the water board elections into the Electoral Act. As the choice has been made to hold indirect elections, the Government believes that incorporation into the Electoral Act is less obvious. The Electoral Act is mostly aimed at generally representative bodies and not at functional authorities. Furthermore, there are important differences as regards legal methodology. For instance, the system with guaranteed seats does not link up properly with the system of the Electoral Act and the Electoral Act contains much more detailed regulations with respect to elections than the Water Board Act does.

Recommendation following the 2011 elections (22 July 2011)

It is not unusual for the Electoral Council to make an unsolicited evaluation recommendation following one or more elections. This was also the case in 2011. The recommendation evaluates the provincial council elections, the island council elections and the elections to the Senate.

The election process has undergone many changes over the past few years. The Electoral Council believes that the parties involved can handle this well in practice. This is evident from the decrease in the number of incidents.

The Council finds it important that, prior to the next regular elections in 2014, a new ballot paper is developed which allows for the electronic counting of votes.

Furthermore, the topics of the recommendation vary from conducting campaigns (handing out flyers) in the vicinity of the polling station to clarifying and reviewing the recounting procedure and the possible adverse effect of abolishing combined lists at elections to the Senate.

Follow-up to the recommendation

¹¹ Supporting Software for Elections.

The evaluation of the elections by the Minister of the Interior and Kingdom Relations contains a response to the recommendation of the Electoral Council.¹² The Minister states, among other things, 'that the restraint that used to be exercised on election day with respect to conducting campaigns is less obvious nowadays and that political parties are primarily responsible for this themselves'.

A change will be announced with respect to the recounting of votes.

As regards the combined lists, the Minister notes that the Government does not take the initiative to make proposals to change the way in which the members of the Senate are elected.

Recommendation on amending the Electoral Act (1st tranche) (14 October 2011)

The Electoral Act will be amended in tranches (parts). This recommendation is about the 1st tranche.

The Electoral Council draws attention to the review framework (international electoral standards) in order to guarantee consistency between the various bills.

The requirements applicable to polling station officials and the manner of publishing reports should, in the opinion of the Electoral Council, be provided for in an Act of Parliament (Electoral Act) and not in subordinate legislation (Electoral Decree). According to the Council, it is sufficient for the municipal executive to assess whether a person is suitable to be a polling station official, instead of making a training course compulsory.

Furthermore, transparency for the voters is sufficiently guaranteed if reports are made available for inspection; they need not be placed on the Internet (as well).

The Electoral Council wonders what the purpose, purport and added value is of the proposal to deploy national observers.

The draft bill provides for the possibility for voters abroad to be registered electronically. The Electoral Council supports this proposal, but points out that, in many more cases, it is already possible now to send documents electronically. The Council recommends that the Minister examine in a broader sense whether documents can be sent electronically.

The draft bill follows the Electoral Council's previous recommendation of a central nomination of candidates at provincial council elections and elections to the House of Representatives. The recommendation to remove electoral districts from the nomination procedure was not followed.

Follow-up to the recommendation

In early February 2012, the draft bill was submitted to the Council of State for its opinion.

¹² Amendment to the Electronic Remote Voting Experiments Act in connection with extending the period of effectiveness of this act, Parliamentary Papers II, 2011 – 2012, 31 142, no 31, Appendix 3a.

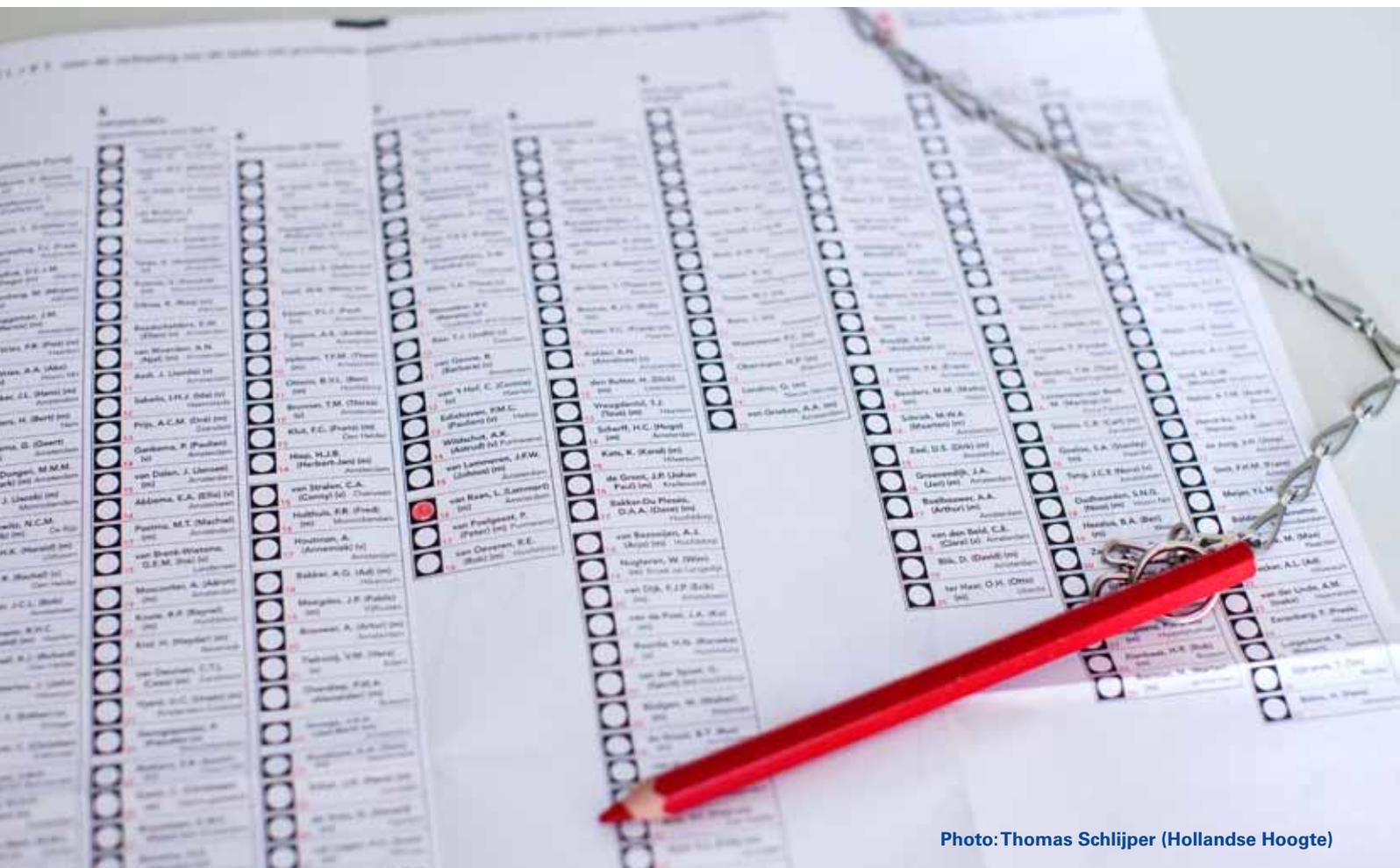


Photo: Thomas Schlijper (Hollandse Hoogte)

5. Appellations and appointments

Applications for registration

In 2011, the Electoral Council granted two applications for registration:

- Groen Rechts;
- Nederland Lokaal.

These were applications for the registration of an appellation in the register for the elections to the House of Representatives.

Deletions of appellations

In 2011, the Electoral Council did not delete any appellations. An appellation is deleted, for instance, if a political group failed to submit a list of candidates at the most recently held elections.

Publication of registered appellations

In 2011, the Electoral Council made one public announcement in the Government Gazette regarding the registration of appellations. This announcement related to the elections to the municipal council of the new municipality of Hollands Kroon, which were held on 23 November 2011. It concerned an announcement on the appellations - registered with the Electoral Council - of political groups for the elections to the House of Representatives and the names of the authorised agents and their deputies. For the appellations registered for these elections do not only apply to the elections to the House of Representatives, but, in principle, also apply to elections at a local level. This means that they can also be used for provincial council and municipal council elections. The relevant publication shows that, for the elections to the House of Representatives, 21 appellations were registered with the Electoral Council at that time and that these, in principle, also applied to these redivision elections.

Appointments

The Electoral Council is charged with appointing new members in case of vacancies in the Senate, House of Representatives or the European Parliament. The Council appointed the members of the Senate after it had determined the results of the elections to the Senate. Appointments to vacancies take place in the order of candidates after ranking.

With a view to appointments, there has been frequent contact with – in this case – the Secretary General's office of the House of Representatives.¹³

No interim vacancies arose within the Senate. Due to the elections to the Senate in May 2011, a large number of the Members of Parliament have been replaced.

After the elections to the European Parliament on 4 June 2009, the Electoral Council published the Dutch election results, announcing that an extra (26th) seat would be allocated in the European Parliament as soon as the Protocol pertaining to the Lisbon Treaty had been ratified by all Member States.

On 14 December 2011, the Electoral Council, as central electoral committee, met in a public session to allocate the extra seat to the PVV (Partij voor de Vrijheid).

¹³ Appointments in interim vacancies in the European Parliament are also made through the Secretary-General's office of the House of Representatives.

In 2011, the Electoral Council appointed successors to the following vacancies:

	Senate	House of Representatives	European Parliament
Number of interim vacancies	0	6	1
Distribution among the lists	-	Christen Democratisch Appèl (CDA): 2 VVD: 2 ChristenUnie: 1 GROENLINKS: 1	PVV (Partij voor de Vrijheid): 1
Number of interim temporary vacancies due to illness or pregnancy	0	2	0
Distribution among the lists	-	GROENLINKS: 1 Partij van de Arbeid (P.v.d.A.): 1	-



Photo: Herman Engbers (Hollandse Hoogte)

6. Lawsuits

Electoral Council's involvement in lawsuits

In 2011, the Electoral Council was involved in three lawsuits. The Electoral Council was a party to one lawsuit and, during the other lawsuits, the Council provided information as an adviser to the chairman of the Administrative Jurisdiction Division of the Council of State (hereinafter referred to as 'the Division'), and to the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba, respectively.

Under the headings 'criminal cases' and 'other cases', a number of judgments in which the Electoral Council was not involved, but which are important for electoral law are mentioned for information purposes. Moreover, these cases were often covered by the media.

The Electoral Council as a party

Repayment of deposit

The lawsuit to which the Electoral Council was a party pertained to the Electoral Council's refusal in 2009 to repay the deposit for the nomination of candidates of the EUROPESE KLOKKENLUIDERSPARTIJ (EKP).

On 22 June 2011¹⁴, the Division delivered a judgment on appeal. This judgment focused on the question whether the distinction in the Electoral Act between political parties that already have one or more seats in a representative body and political parties that do not yet have any seat is contrary to the provisions of Article 26 (prohibition of discrimination) of the International Covenant on Civil and Political Rights (hereinafter referred to as 'the ICCPR'). The Division came to the conclusion that this was not the case. It was held that it should be concluded from the legislative history that there are reasonable and objective grounds for the distinction between new and current political parties.

The Electoral Council as an adviser

Voters of Bonaire, Sint Eustatius and Saba

One appeal was lodged concerning the island council elections. The Electoral Council provided information at the request of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. The Court delivered judgment on 10 January 2011¹⁵. The Court did not concur with the Electoral Council's position to dismiss the appeal.

The Court's judgment had a large impact on the group of voters in Bonaire, Sint Eustatius and Saba. As a result of this judgment, all non-Dutch nationals aged 18 or older, who have legally resided in Bonaire, Sint Eustatius or Saba for at least five years on the date of nomination still had to be included as voters. In its judgment, the Court first established that an island council should be considered equal to a municipal council as regards powers and structure.

Under Article B 3 of the Electoral Act, non-Dutch nationals have the right to vote at municipal council elections under certain conditions. The Court then considered that there is no objective justification for the unequal treatment of non-Dutch nationals at island council elections compared to municipal council elections. The Court came to the conclusion that Article Ya 14 of the Electoral Act should not apply as it is contrary to Article 26 of the ICCPR and Article 1, first paragraph, of the Twelfth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

List of SGP candidates

One appeal was submitted following the provincial council elections, whereby the Division asked the Electoral Council for information. The Electoral Council recommended that the appeal be dismissed. The appeal was lodged against the list of SGP candidates validated by the principal electoral committee for the provincial council elections of the Province of Utrecht. The person lodging the appeal argued that this list of candidates should be declared invalid, because the SGP discriminated against women. For this purpose, she referred to two judgments by the Supreme Court, in which the Court came to the

¹⁴ Case no 201011803/1.

¹⁵ Case no HJAR 04/10.

conclusion that the SGP is not allowed to exclude women from lists of candidates for elections.¹⁶ The Division dismissed the appeal, because it is up to the legislature to make an end to the situation that is considered to be unlawful by the Supreme Court. In this connection, the Division referred to the legislative history of the Electoral Act, which shows that the administration should not be charged with assessing the objectives and activities of political groups on their merits.

Criminal cases

Fraud involving lists of candidates

In its judgment of 18 January 2011¹⁷, the District Court of Leeuwarden sentenced a person accused of fraud involving lists of SP (Socialistische Partij) candidates for the municipal council elections in Skarsterlân in 2010 to sixty hours' community service. The accused was guilty of forging documents. He had placed his signature on a form that authorised the person submitting the SP list to place the party's appellation on top of the list, while he was not authorised to do so.

Election fraud during the 2006 municipal council elections

In its judgment of 28 March 2011¹⁸, the 's-Hertogenbosch Court of Appeal sentenced a man to 180 hours' community service in connection with election fraud during the 2006 municipal council elections. The man had already been sentenced for this in 2008, but the Supreme Court ordered the Court of Appeal to determine the punishment once again, as it had stated insufficient grounds in its judgment of 2008.

Other cases

Publishing lists of candidates and making them available for inspection

In 2011, various judgments were delivered on publishing lists of candidates and making them available for inspection (model H 1) under the Government Information (Public Access) Act. In a number of judgments¹⁹, the Division ruled that the Government Information (Public Access) Act does not apply during the election period, which runs from the moment the lists of candidates are made available for inspection until the moment the members are admitted. A request to send copies of lists of candidates during this period should be regarded as a request to perform an act not intended to have a legal effect. The decision on such a request is not intended to have a legal effect and is therefore not a decision against which objection or appeal lies, within the meaning of Article 1:3, paragraph 1, of the General Administrative Law Act.

Appeals against a number of judgments are still pending before the Division. In 2012, a judgment by the Division is expected concerning the publication of lists of candidates (including the home addresses of candidates) after the election period.

¹⁶ Judgments by the Supreme Court of 9 April 2010, case nos: LJN: BK4547 and LJN: BK4549.

¹⁷ Case no LJN: BP1139.

¹⁸ Case no LJN: BP 9350.

¹⁹ Judgments of 5 October 2011, case nos: 201012459/1, 201012466/1 and 201010713/1 and judgments of 16 November 2011, case nos: 201101149/1 and 201101148/1.

Forgery of signatures

On 25 March 2011²⁰, the Supreme Court upheld an earlier judgment by the Amsterdam Court of Appeal in a case relating to the 2004 water board elections. This case showed that, after the lists had been validated, a candidate had committed fraud by forging two of the ten signatures of supporters. This eventually resulted in new elections in an electoral district of the Rijnland Higher Water Board. The higher water board then decided to order this candidate to reimburse the costs incurred in connection with these new elections. These costs amounted to € 350,000.

Seven years after the elections, it has been established that the higher water board was right in ordering the candidate to reimburse these costs.

²⁰ Case no LJN: BP2310.



Photo: Bert Spiertz (Hollandse Hoogte)

7. Expertise

Increased interest in election information

During the 2011 election periods, the Electoral Council was once more frequently, and to an increased degree, consulted by voters, municipalities and political parties. The media were also very interested. Within this context, some interviews were given, for the radio, television and newspapers. Where necessary or desired, discussions were held with information officers from the Ministry of the Interior and Kingdom Relations.

Elections Information Point

With a view to the provincial council elections, island council elections and elections to the Senate, the Electoral Council had an Elections Information Point until June 2011. This Information Point was a cooperation between the Electoral Council and the Ministry of the Interior and Kingdom Relations. It was set up in November 2010 and manned by two external staff members. There were almost no questions about the island council elections, which is why they are not discussed separately here.

Questions about the provincial council elections

During the period the Information Point was active for these elections, 1618 questions were received, by e-mail (33%) or telephone (76%). Most questions were asked in the month of February. A large number of questions (188) was received on election day. Most questions came from municipalities (43%), followed by voters (31%) and political parties (16%). Moreover, local and national media showed a lot of interest (16%).

The Elections Information Point received more questions than at the previous provincial council elections in 2007 (when it received a total of 1021 questions). Adjusted for the number of months the Information Point was active, it concerns an increase of 44%.

Questions about the elections to the Senate

During the period between November 2010 and May 2011, the Information Point received a total of 247 questions about these elections. Most questions (82%) were asked by telephone (18% by e-mail). Unfortunately, no comparison can be drawn with the number of questions asked during the 2007 elections to the Senate, because these were not kept at that time. It is clear, however, that the number of questions asked at the 2011 elections to the Senate was considerably lower compared to the other elections since 2006. The media were particularly interested (32%). The questions were often about determining the results and about the voting, in particular about vote agreements between parties and individual members of the provincial council.

Website

The upward trend in the number of visitors of the website also continued in 2011. In 2011, the website www.kiesraad.nl was visited (over) 7500 times per month on average (this was over 2000 times in 2009, and over 3000 times in 2010).

In 2011, new sets of 'Questions and Answers' relating to the elections held in 2011 were placed on the website.

In the autumn of 2011, a small-scale user research was conducted for the website. The aim of the research was to assess the experiences and appreciation of visitors regarding website navigation, content and design. The results of the user research will be evaluated at the beginning of 2012.

Website

2011	Unique visitors	Daily average	Peak day
January	8.414	271	18-01: 570
February	20.822	694	28-02: 2.311
March	31.481	1.044	02-03: 9.984
April	3.237	108	28-04: 318
May	7.639	246	23-05: 2.831
June	3.068	102	06-06: 223
July	2.159	69	14-07: 419
August	1.793	58	29-08: 97
September	3.024	100	21-09: 222
October	3.254	104	18-10: 179
November	3.649	121	24-11: 195
December	2.715	87	12-12: 250
Total	91.255	250	

Election results database

In 2011, the election results database was expanded considerably. The election results of the elections held in 2011 have been included in the database. The municipal council elections held since 1946 can now also be consulted.

Database

2011	Hits	Page views	Visitors
January	137.013	85.422	2.482
February	179.952	120.546	2.956
March	602.953	203.512	23.944
April	124.409	86.377	2.629
May	111.431	70.719	2.670
June	109.449	67.326	2.496
July	88.521	59.155	1.659
August	94.510	55.200	1.779
September	96.938	65.992	1.900
October	122.223	91.095	2.241
November	106.885	77.902	2.007
December	99.043	74.750	1.826
Total	1.873.327	1.057.996	48.589

Social media

For a period of five months in 2011, the Electoral Council secretariat gained experience with the use of Twitter. After that, it was decided to continue with this for one year. Thirty-six tweets were sent during the year. These tweets nearly always contained links to news messages on the website of the Council. The basic principles on the use of Twitter have been recorded in a memorandum.

Publications

Various publications were made in 2011.

'Kerngegevens' [core data] collection

This publication includes the most important data on the results of the elections to the Senate of 23 May 2011.

'Verkiezingen op de kaart 1848-2010; Tweede Kamerverkiezingen vanuit geografisch perspectief' [Elections on the map 1848-2010; Elections to the House of Representatives from a geographical perspective]

Employing a geographical perspective, the publication gives a picture of the elections to the House of Representatives as from 1848. The data on which the maps and analyses are based have been derived from the election results database of the Electoral Council.

'Kieskringen. Ontwikkeling – werkwijze – alternatief.'* *[Electoral districts. Development – procedure – alternative.]

The division of the Netherlands into (20) electoral districts is out of date. It is still possible now for parties to participate in provincial council elections and elections to the House of Representatives with (regionally) varying lists of candidates. In practice, however, this occurs less and less and, at the most recent elections to the House of Representatives in 2010, the parties had one and the same list everywhere. Bastian Michel, researcher, establishes this in his final report. He also comes to the conclusion that the division into electoral districts may have undesirable effects: due to the allocation of seats within a system of electoral districts, a candidate who is not in all lists may miss out on a seat as a result of preference votes. The research results were issued as the third part of the Electoral Council Series Studies en adviezen betreffende het kiesrecht en verkiezingen [Studies and recommendations on electoral law and elections].

Knowledge management

In 2011, attention was paid to optimising knowledge management within the Electoral Council and its secretariat. Furthermore, it was decided in 2011 to invest in the development of a knowledge base on electoral law/elections. This knowledge base will link (relevant) laws and regulations, case law, legislative history, professional literature and comments on individual articles to each other. Moreover, the knowledge base will improve access to recommendations of the Electoral Council, so that, for future recommendations, it will be easier to find out what was recommended in the past and what action was taken on the recommendation. The knowledge base is expected to be put to use in the spring of 2012.

Scientific Advisory Council

In 2008, the Electoral Council set up a Scientific Advisory Council. This Scientific Advisory Council advises the Electoral Council on research programmes and supervises and assesses current projects.

The Scientific Advisory Council is comprised as follows:

Chairman: Prof. Dr W. Voermans,
professor of Constitutional and Administrative Law, University of Leiden;

Members: Dr H. van der Kolk,
university lecturer and Political Sciences researcher, University of Twente;

Dr J. van Merriënboer,
historian, connected to the Centre for Parliamentary History;

Secretary: Dr R. de Jong,
Electoral Council researcher, historian.

In 2011, the Scientific Advisory Council met once in order to discuss the traineeship report by Bastian Michel, law and mathematics student at the University of Amsterdam and the University of Utrecht.

Government Information (Public Access) Act

The Government Information (Public Access) Act provides for both the active and passive disclosure of documents. The Electoral Council carries out the duty of active disclosure by providing as much relevant information as possible, for example through its website.

In 2011, the Electoral Council received and dealt with two requests under the Government Information (Public Access) Act. One request came from a citizen who requested copies of the lists of candidates, declarations of support and declarations of consent of all participating parties and/or lists for the purpose of the elections to the Senate. The Electoral Council's decision was positive as regards the lists of candidates and the declarations of support, because these documents had been available for inspection earlier. However, the details of two authorised agents were rendered illegible for privacy reasons. The declarations of intent were not provided for privacy reasons.

The other request came from a citizen who wanted to know which member of the provincial council in Utrecht had signed the declaration of support of the blank list with list number 12 (Mr Koornstra) for the elections to the Senate. The Electoral Council's decision on this request was positive.



Photo: Karin van der Mijnsbrugge (Electoral Council)

8. National and international contacts

The Electoral Council and its network

The Electoral Council forms part of national and international networks of electoral authorities and experts. It actively participates in meetings of national and international organisations and receives national and international delegations with some regularity.

In case of applications for working visits to the Electoral Council or participation in meetings, it is assessed whether representation by the Electoral Council members, or the secretariat, or both, is desirable. The following criteria are used for this:

- Who is the organising party?
- Does the Electoral Council have an interest in it?
- What are the costs?
- How much time is required?

In 2011, too, there were several national and international contacts.

National

Ministry of the Interior and Kingdom Relations

In 2011, regular consultations were held with representatives from the Ministry of the Interior and Kingdom Relations, on matters concerning both policy and management. These consultations were held during the year at various levels and with varying frequency.

Ministry of Foreign Affairs

At official level, consultations were held twice with representatives from the Ministry of Foreign Affairs. During these consultations, the exercise of the right to vote by Dutch nationals abroad and observer missions were discussed.

VNG and NVVB

In 2011, regular consultations were held with the Association of Netherlands Municipalities [Vereniging van Nederlandse Gemeenten or VNG] and the Dutch Association for Civil Registrars [Nederlandse Vereniging voor Burgerzaken or NVVB].

Senate and House of Representatives

In 2011, the Electoral Council did not hold any consultations with the Standing Committee on the Interior of the House of Representatives and with the Committee on the Verification of Credentials of this House. During a private consultation on 29 November 2011, however, the chairman of the Council talked to the Standing Committee on the Interior and the High Institutions of State / General Affairs and House of the Queen of the Senate about the manner in which members of the Senate are elected, the so-called Meeting of Experts.

Association of Water Boards and Ministry of Infrastructure and the Environment

As in previous years, administrative consultations with representatives from both the Association of Water Boards and the Ministry of Infrastructure and the Environment on water board elections were also held in 2011.

Political parties, municipalities and provinces

With a view to the elections held in 2011, the Electoral Council organised information and instruction meetings for political parties, municipalities and provinces on the use of Supporting Software for Elections (OSV).

The annual meeting with representatives from the municipalities with a principal electoral committee took place in Utrecht on 9 June 2011. The meeting was organised to obtain further information on the elections held in 2011. The Electoral Council incorporated this input in its recommendation of 22 July 2011 on the evaluation of the provincial council elections, elections to the island councils of Bonaire, Saba and Sint Eustatius and elections to the Senate.

Universities

The secretariat contributed to various meetings, such as:

The 'International election observation and assessment of elections' Symposium at the University of Maastricht, on 8 and 9 April 2011.

A guest lecture on 'Developments in electoral law/electoral systems in the 19th century', at the The Hague Campus of the University of Leiden, on 15 November 2011.

International

Working visit to the Caribbean Netherlands

From 23 January to 1 February 2011, the chairman of the Electoral Council and the secretary-director paid a working visit to Aruba, Curaçao, Sint Maarten and the Caribbean Netherlands. During the trip, they talked to, among others, the Lieutenant Governors of Saba, Sint Eustatius and Bonaire, and to the Governors of Aruba, Sint Maarten and Curaçao. The purpose of the visit was to make acquaintance and to exchange information with a view to cooperation at various elections.

Egyptian delegation

On 24 March 2011, the secretariat received a delegation from Egypt. The visit took place on the initiative of the Ministry of Foreign Affairs. During the meeting, information was provided on the Dutch electoral system.

Conference on E-democracy and Open Government

On 5 and 6 May 2011, there was an international conference in Krems (Austria) on the theme 'E-Democracy and Open Government'. The conference was organised by the University of Krems. The Electoral Council was represented by a secretarial staff member.

Electoral Management Bodies

On 12 and 13 May 2011, the 8th EMB21 conference took place in Vienna. The theme of the conference was 'Elections in a changing world'. The Electoral Council was represented by two secretarial staff members.

Delegation of young Egyptian political leaders

On 27 June 2011, the secretariat received a delegation of young Egyptian officials, politicians and representatives from NGOs who were invited by the Ministry of Foreign Affairs. The visit was supervised by ProDemos, House for Democracy and the Rule of Law. During the meeting, information was provided on the Dutch electoral system.

Indian CERI delegation

On 19 August 2011, the Electoral Council secretariat received a delegation from India. This delegation was connected to the Campaign for Electoral Reforms (CERI) in India. In preparation for a proposal on the introduction of a system of proportional representation in India, the CERI visited various countries that have such a system. During the meeting, the Electoral Council provided information on the Dutch electoral system. At the request of the CERI, a secretarial staff member attended an Experts Workshop in Berlin from 17 to 19 October 2011. The workshops were visited and lead by various experts in the field of electoral systems.

Delegation from Zimbabwe and Egypt

On 16 September 2011, the Electoral Council secretariat received a delegation from Zimbabwe and Egypt. The meeting was attended by three representatives from the European Partnership for Democracy, coming from the Netherlands, Italy and Belgium. There was also a representative from 'Mint consultancy', which engages in effective and conflict-free cooperation. During the meeting, information was provided on the Dutch electoral system.

Delegation from Sint Maarten

On 27 October 2011, the secretariat received a delegation from Sint Maarten. The meeting discussed the possibilities to have inhabitants of Sint Maarten who are resident in the Netherlands participate in parliamentary elections in Sint Maarten.

IDEA conference

From 5 to 8 December 2011, Ms Prof. Dr M.H. Leyenaar and the secretary-director of the Electoral Council attended an international conference in Stockholm, organised by the Institute for Democracy and Electoral Assistance (IDEA). The theme of the conference was 'The changing role of EMBs'. The secretary-director gave a presentation in one of the working groups.



Photo: Karin van der Mijsbrugge (Electoral Council)

9. Finances

2011 spendable budget

The Electoral Council is included in Chapter VII of the National Budget and follows the budget and accountability cycle of the Ministry of the Interior and Kingdom Relations.

In 2011, the Electoral Council's spendable budget was € 2,100,000.

Remuneration for the Electoral Council chairman and members

In 2011, the Electoral Council members received a remuneration for their efforts. The remuneration for the chairman amounted to 0.3 FTE in scale 18 of the Civil Servants' Pay Decree (BBRA). The Electoral Council members received an attendance fee of € 235 per meeting and a travel allowance.

The Council and its secretariat do not employ any persons who fall under the scope of the Executives' Pay Financed from Public Funds (Disclosure) Act.

Deposits

This overview does not include the deposits which the Electoral Council receives for the registration of appellations and for the nomination of candidates of political groups. These deposits are credited to a separate account of the Ministry of the Interior and Kingdom Relations and will revert to the State if they are not refunded to those who paid the deposits.