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**ELECTORAL COUNCIL
SECRETARIAT**

Date
14 november 2012

Our reference
2012-0000480394

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1

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Subject
Evaluation recommendation 2012 House of
Representatives election

1. Summary of the advice

The Electoral Council finds no cause for putting the proxy vote system up for discussion. The Electoral Council advises advancing the date of the elections in the Caribbean Netherlands by one day. Being abroad for a long stay is, in the opinion of the Electoral Council, no longer a relevant reason for allowing one eligible to vote to vote from abroad by letter. In this advice, the Electoral Council argues for the term during which declarations of support may be made to be extended from one to two weeks and, in addition, the number of such declarations required for the twentieth electoral district is to be lowered from thirty to ten. The final advice rendered is to drastically reduce the number of counts conducted by the polling station when counting the votes.

2. Introduction

This 12 September, the members of the House of Representatives of the States-General were elected. The Electoral Council assessed this election.

Parallels can be drawn with the elections for the House of Representatives of 9 June 2010 in many aspects. We do, however, get the impression that there were more problems surrounding the printing and mailing of lists of candidates and, in particular, of poll cards than there used to be. The Electoral Council deems it of the utmost importance that sufficient securities and checks are embedded in this process, as the poll card is the very instrument allowing the voter to cast his vote. In addition, it has become clear that voters are still unclear about the procedure of granting proxy by transfer of the poll card, in particular on how to fill out the relevant boxes on the back of the poll card, on the requirement of having to provide a copy of one's identity card and on the fact that a proxy vote can only be cast when the holder of proxy casts his or her own vote. The Electoral Council advises to pay more attention to this matter in the information provided to all persons entitled to vote, so as to prevent voters running into problems at the polling station. Another difference with the aforementioned 2010 House elections

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is the reduction in the number of objections on the general requirement to identify oneself when casting one's vote.

The Elections Information Centre, more than was the case in previous years, received questions from administrators on whether they were allowed to vote on behalf of someone under administration based on their private-law power of attorney. This is not the case. The entitlement to vote is an individual right that can only be exercised by the person under administration, even if said person may under the provisions of the Electoral Act grant someone the power to cast their vote in their stead. On this matter, too, the Electoral Council advises to have more attention be paid to it in the information provided to voters.

The Electoral Council has been made aware of two initiatives started up by municipalities. In the municipality of Rotterdam a pilot test was carried out with the use of iPads in the polling station. The polling station officials could use it to check the validity of a poll card. The municipality of Utrecht developed a polling station app allowing voters to find their nearest polling station. The Electoral Council embraces such initiatives - provided, of course, they do not run counter to existing laws and regulations - and deems it important that the knowledge and experience gained is shared with other municipalities.¹

In the run-up to the elections, an Organisation for Security and Cooperation in Europe (OSCE) observation team visited the Netherlands (paying a visit to the Electoral Council as well) to monitor the proceedings and organisation of the elections.² The ability to grant a right of proxy by filling in and handing over the poll card remains a point of criticism. The secrecy of the vote was deemed not to be guaranteed where this way of voting is employed, as some voters would be able to cast up to two extra votes in addition to their own and the risk of 'family voting' exists. The Electoral Council has by now been provided with the results³ of the study into proxy voting during the 12 September 2012 House of Representatives election conducted on behalf of the Ministry of the Interior and Kingdom Relations. The Electoral Council finds no cause in these results for putting the proxy vote system up for discussion. The Council does, however, request the undesired situation where holders of proxy may themselves decide what vote to cast and the situation where it was the holder of proxy, and not the granter thereof, who took the initiative in having proxy be granted, be addressed. The Electoral Council argues these matters need to be addressed in the information provided to the voters.

¹ For this reason, both municipalities were offered a stage to present their pilots during the principal electoral committees meeting this 4 October.

² The OSCE report was not yet published at the time this advice was rendered.

³ The Electoral Council has come to understand that the Ministry of the Interior and Kingdom Relations will refer to the results obtained through the study when evaluating the most recent House of Representatives elections.

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Various sources were consulted in drafting this evaluation advice⁴ and we have contacted the lieutenant governors of the islands of Bonaire, Sint Eustatius and Saba, the municipality of The Hague and representatives of the principal electoral committees, amongst others.

The Elections Information Centre's Evaluation Report⁵ has been attached to this advice. The number of questions coming in is still rising (3,518 as against 2,337 in connection with the 2010 House of Representatives elections). Most of the questions asked by citizens concerned the poll card, proxy voting and voting from abroad.

Below, the most important findings and a number of recommendations are presented. The Electoral Council in so doing takes the proposed amendments to the Electoral Act⁶ and the ongoing investigation into a new standard ballot paper and the possibilities with regard to central (electronic) vote counting into account. The Electoral Council recently advised⁷ on a Temporary Experiments Act that would allow for the field testing, during actual elections, of new standard ballot papers and the central, and possibly electronic, counting of votes. Irrespective of whether new standard ballot paper will be drafted (and, if so, which), the Electoral Council wishes to stress the importance of anyone, therefore also voters with a physical, including visual, impairment, being able to independently cast one's vote.⁸

The Electoral Council is looking forward to discuss this advice with you and the Permanent Committee for the Interior and therefore requests you pass it on to the President of the House of Representatives.

3. 20th electoral district, Bonaire

A new development was the institution of the 20th electoral district, that of Bonaire. Those citizens of the islands of Bonaire, Sint Eustatius and Saba entitled to vote were for the first time able to cast their votes in electing the members of the House of Representatives. The electoral proceedings in this electoral district are generally the same as those of the other nineteen districts.

Upon request, the lieutenant governors of the islands point out that the voters in the Caribbean Netherlands might be influenced by the unofficial election results in the

⁴ Including the 19 September 2012 Committee on the Verification of Credentials report (Parliamentary Papers II Proceedings 2012-2013, no. 2, item 3).

⁵ The Elections Information Centre is a joint enterprise by your Ministry and the Electoral Council. It provides citizens, municipalities and political parties answers to their questions on the subject of electoral law and the elections.

⁶ Amendment of the Electoral Act establishing means and measures to allow Dutch citizens abroad to more easily cast their votes, amending the method of submitting the lists of candidates, amending the nomination and elections dates, also making a number of further arrangements (Parliamentary Papers II 2011-2012, 33 268 no. 1 ff.).

⁷ Please refer to the advice on the 'Temporary Ballot Papers and Central Counting Experiments Act' of 5 November 2012, available on the Electoral Council's website: www.kiesraad.nl.

⁸ Also refer to the responses to the questions asked by Ms Voortman, MP, Parliamentary Papers II 2011-2012, Appendix, no. 3339.

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European Netherlands when casting their votes, as the polling stations on the islands are still open when these unofficial results are made public, due to the time zone difference. The suggestion was made to either advance the elections by a day and to publish the results the day after, or to close the polling stations in the Caribbean Netherlands at the same time as those in the European Netherlands, to wit at 15:00 hours local time, such also in view of the smaller number of persons entitled to vote. Parliament earlier decided it considered direct counting of the votes in the polling station, as a vital part of having the elections process be transparent, to be more important than the presumably very slight influencing that may occur.⁹ Referring to its own earlier advice, the Electoral Council advises to advance the date of the elections in the Caribbean Netherlands by one day.¹⁰

Another matter brought up by the lieutenant governors is that voters would prefer a list of candidates/ballot paper which includes a photo of each candidate. Such used to be norm on the islands of Bonaire, Sint Eustatius and Saba before 2010. Before responding to this matter, the Electoral Council awaits the results of your study into a new standard ballot paper, as this allows for the possibility of including photos of the candidates and the party logo. Government has previously stated to be willing to investigate how much public support such an inclusion would have and what the consequences would be in terms of implementing such a system.¹¹

4. Voters abroad

Registration of voters abroad and their being able to cast their vote, and cast it in time, is a matter that has been brought to your attention for a while now.¹² One important improvement has by now been implemented. For the first time, one could now submit the form requesting one be registered as a voter and have it processed via the Internet, instead of by mail. This might have contributed to the lower number of applications for registration having been denied.¹³ The extra attention given to the fact that the pencil used when voting needs to be red in colour seems to have paid off: The number of invalid votes cast (0.6%) was significantly lower than was the case for the previous House of Representatives elections (3.6%) and was comparable to the average percentage of invalid votes (0.2%). The Electoral Council in addition requests a number of other proposed

⁹ Parliamentary Papers II 2008-2009, 31 956, no. 3, p. 10.

¹⁰ Advice of 23 October 2008 on the amendment of the Electoral Act in connection with the new constitutional position of Bonaire, Sint Eustatius and Saba as a public body of the Netherlands. Available on www.kiesraad.nl.

¹¹ Parliamentary Papers II 2008-2009, 31 956, no. 3, p. 11. Introduction of such a system will at any rate need to be accompanied by the introduction of a registration system akin to the registration system for political party names.

¹² Also refer to the Electoral Council's advice of 22 September 2010 in connection with the 2010 municipal council and House of Representatives elections, www.kiesraad.nl.

¹³ In 2010, well over 4% of all applications was denied; the amount came to 3% this time. The most common reasons to deny an application are the lack of a certificate of Dutch nationality and not having signed the registration form. Both omissions can be remedied more quickly over the Internet.

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improvements to be implemented soon, including permanent registration of voters abroad and the possibility of downloading a ballot paper.

Section M 1 of the Electoral Act states which voters staying abroad are entitled to cast their vote from abroad by letter: that person who, on the day of the elections, has his actual domicile outside of the Netherlands or, on the day of the elections, *for reasons of occupation or work or for reasons of the occupation or work of spouse, registered partner, life partner or parent*, will be staying outside the Netherlands. The 'for reasons of occupation or work' provision was added to the Electoral Act in 1983 to allow servicemen stationed abroad and seafarers and their families to independently cast their votes.¹⁴ The form (M 3 standard form) used to submit a request to be able to vote does not demand the applicant to detail occupation or work to provide proof thereof; nor is this in any way checked or verified. Nowadays, other reasons exist for a long-term stay abroad than work, such as studying abroad. The Electoral Council therefore advises to amend the wording of this provision from the Act to reflect current practice, such by deleting the above words cited in italics.

5. Declarations of support

Though less so than was the case in 2010, the Electoral Council has, over the course of the run-up to the day of nomination of candidates, been receiving signals that new political parties are hard pressed to gather the required number of declarations of support.¹⁵

A guiding principle of the Dutch Elections Act is the notion that candidates are not put forward by political parties, but are nominated by the electorate from their midst.¹⁶ They nominate a person by submitting a declaration of support. The requirement to gather such declarations was implemented for two reasons. First, it would allow for the elections process to be as efficient as possible.¹⁷ The ballot paper will hereby remain manageable for both the voters and the officials determining the results. Second, the requirement is to prevent so-called 'frivolous candidacy'.¹⁸ For candidates need to have a certain level of support to successfully participate in the elections. Parties who managed to at least attain the electoral quota during the last similar elections are deemed to have such support; ever since 2001¹⁹, such parties do not need to provide declarations of support any more. For new political parties to experience submitting the required

¹⁴ Parliamentary Papers II. 1982-1983, no. 17 819, no. 12, p. 1.

¹⁵ In response to the 2010 signals, the communication with municipalities now specifically include the instruction to provide sufficient cooperation on the declaration of support submittal process, for instance by extending the desk opening hours.

¹⁶ Parliamentary Papers II 1987-1988, 20 264, no. 3, p. 38.

¹⁷ Parliamentary Papers II 1987-1988, 20 264, no. 8, p. 26 and Parliamentary Papers II 1996-1997, 25 227, no. 3, p. 7.

¹⁸ Parliamentary Papers II 1996-1997, 25 227, no. 5, p. 10.

¹⁹ Act of 20 December 2001 amending the Electoral Act, establishing an extension of the term of the elections to the period from seven hours and thirty minutes in the morning to nine hours in the evening, also making a number of further arrangements (Bulletin of Acts and Decrees 2001, 705).

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amount of declaration of supports as a hurdle to overcome therefore is a deliberate choice made at the time by Parliament.

Ever since the current Electoral Act came into force - on 1 November 1989 - the Electoral Act requires declarations of support to be submitted at town hall, in the presence of the mayor (...), by someone registered as a voter in the relevant municipality, in the seven days before or on the day of the nomination.²⁰ Prior to 1989, political parties could themselves request voters to submit declarations of support, but abuse of this system finally led to the rules becoming more strict.²¹ The current rules require municipalities to be more actively involved and leads to new parties not yet having acquired the required number of declarations of support to be actively beseeching voters in or near town hall to make such a declaration, sometimes up until the very day of nomination. The Electoral Council deems this to be undesirable, as submitting a declaration of support ought to be a fully free and personal decision by the voter, one made after careful deliberation. There are doubts as to whether this actually always is the case, as the Electoral Council has received multiple notices that many people signing such a declaration is hardly, or not at all, informed about what the document is for.

The Electoral Council has deliberated on whether the objections raised by new parties can be resolved without compromising the considerations that led Parliament to implement the current rules. In doing so, the Council has, first of all, once more looked to the rules in force before 1989, which did not require one to go to town hall. To prevent the implicit risk of abuse, a registration system (perhaps digital) needs to be in place, one requiring citizens to prove their identity, for instance by logging in with their DigiD code, and allowing for checking whether someone is entitled to vote within that electoral district and whether no more than one declaration has been signed. As such a registration system is not yet available, the Electoral Council does not believe this to be a valid option. Next, the Electoral Council looked into the possibilities of extending the term during which declarations of support could be submitted from one to two weeks. An extended term would provide new political parties with more time to obtain the required declarations and therefore makes it easier for them to gain access to the elections process. While the Electoral Council realises political parties in practice do have a tendency to wait till the last moment to obtain their declarations of support, it does advise you to determine the term be extended.²²

Finally, the Electoral Council has looked into the number of declarations of support to be submitted in the Caribbean Netherlands. Numerous parties have asked the Elections Information Centre how to obtain the required thirty

²⁰ Refer to Section H 4(3) of the Electoral Act.

²¹ Parliamentary Papers II 1987-1988, 20 264, no. 3, p. 38-39.

²² This was confirmed by a number of principal electoral committees during the 4 October 2012 meeting.

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declarations in the 20th electoral district, given that the number of people entitled to vote is significantly lower (about 12,000) and they live far more spread out over the territory than is the case in other electoral districts. This makes it more difficult for parties not yet represented in the House to obtain the required thirty declarations of support for nomination. With a view to the above, the Electoral Council advises to reduce the number of required declarations of support in the 20th electoral district to ten. The number will then be equal to the number required for participation in the municipal council elections in a municipality of up to 20,000 inhabitants.²³

6. Inside the polling station

According to Section J 37 of the Electoral Act, the presiding official of a polling station is charged with enforcing the order inside the polling station - and may request the mayor to provide aid in doing so. It is of the utmost importance for the elections to proceed in a calm and orderly fashion and that no voter be hindered in casting their vote. It is up to the presiding official to assess, after consultation with the other polling station officials, any given situation and to decide whether a certain act is or is not allowed inside the polling station. Only a few guidelines on this matter are provided by the Electoral Act, such as the provision that no acts may be carried out inside the polling state aimed at influencing the choice of voters.²⁴

A relatively recent occurrence in the Dutch electoral practice is for a voter or journalist to take photographs or film inside the polling station, for instance by using a mobile phone. In some cases, the images taken are next placed on the Internet. One may even provide a voter with a recommendation on what to vote by Twitter inside the polling station. For these and like situations, too, the presiding official is charged with deciding when an act disturbs the public order. The Electoral Council sees no grounds for it to advise introducing provisions limiting such situations in the Electoral Act, but does think it important the matter is given attention when instructing the polling station officials. Apart from securing the secrecy of the vote, the starting point should be that no voters can be photographed or filmed against their wish.

Once again, most voter complaints had to do with the accessibility of the polling station and the way it was laid out. The Electoral Council expects the arrival of a new, significantly smaller, ballot paper to reduce the voters' agitation about polling station officials or other voters possibly being able to look over their shoulder in the polling booth.

The Electoral Council thinks it important to hereby also request attention for the matter of the counting process in the polling station directly subsequent to the

²³ Section H 4(1) of the Electoral Act in conjunction with Section 8 of the Municipalities Act.

²⁴ Section J 36 of the Electoral Act.

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closing of the station. A process that is to ultimately end in the N 10 official report, to be filled out by the polling station.

The Electoral Act currently in force in minute detail prescribes the various counts to be conducted by the polling station officials, which are to subsequently be reflected in this official report. Said official report has been subject to discussion for decades now. The standard form has been tinkered with many times now, but the Electoral Council and the Committee on the Verification of Credentials at every House of Representatives elections conclude that, in practice, much goes awry during the count and the subsequent filling out of official reports in the polling stations.

The Ministry of the Interior and Kingdom Relations and many municipalities have paid a lot of attention to instructing the polling station officials over the past few years. The Electoral Council welcomes this attention, but at the same time concludes that the instruction apparently still insufficiently guarantees the official report being correctly filled out. Yet it is highly important this happens, as the polling station official reports do form the basis for determining the final elections results. The Council advises implementing a significant simplification of the polling station counting process, such taking the shape of having fewer counts, at as short a term as possible. This would, consequently, also allow for a drastic simplification of the N 10 official report standard form.

In rendering this advice, the Council is aware of the current developments regarding the possible introduction of a new ballot paper and of central counting, electronically or otherwise. This may also have consequences for the counts to be conducted by the polling station and for the N 10 official report. It will take some while before those developments have been turned into action plans, though. The Electoral Council thinks it unwise to wait for this to happen. The Council considers it desirable for the simplification of the counting process it argues for to be in force during the next regular elections, the municipal council elections of March 2014.

The Electoral Council is of the opinion that the higher the number of required separate counts, the greater the likelihood of errors slipping into these counts. The Council proposes to have the main attention in respect of counting be paid exclusively to determining the number of voters having cast a vote and the number of ballot papers found in the ballot box. These two counts are the only two of actual importance in calculating the results and preventing electoral fraud. Almost all other counts can be considered context counts, which are not strictly required for calculating the results, unnecessarily complicating matters and, therefore, in the view of the Electoral Council, actually undesirable. Of importance in this regard is also the fact that the non-essential context counts in practice often turn out to be erroneous - and are corrected afterwards - and in part exactly because of this questioning or even

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casting doubts on the veracity of the count of the ballot papers found in the poll box that actually is of the essence.²⁵

Those counts that, in the opinion of the Electoral Council, can be discontinued with no consequence are:

- counting the initial and final ballot paper stockpile (N 10 official report: 5.1 and 5.2);
- count of the number of voters not admitted (N 10 official report: 3.1 and 3.2);
- count of the number of ballot papers returned and rendered unusable (N 10 official report: 5.4 and 5.5); and
- count of the number of ballot papers carried in by the voters (N 10 official report: 5.6).

The Electoral Council does think it wise to continue to include the number of voters who voted by proxy in the official report. Incidentally, nothing is currently done in practice with the information on the number of voters voting by proxy thus obtained. This item does no longer appear on the municipal-level N 11 official report and is, therefore, absent in the official reports drafted by the principal and central electoral committees. With a view to determining the results, this absence is understandable. Yet the Council still looks at it as a shortcoming. There is a great deal of interest, also internationally, in the Dutch proxy voting system. For this reason, the Council believes it to be wise to have more and better substantiated data on this voting method available. The Council therefore suggests you to add items to the N 11, O 3, and P22-1 and 2 official report standard forms accordingly.

Naturally, the Electoral Council has deliberated whether discontinuing the aforementioned context counts would not remove essential accuracy and scrupulousness guarantees. In the opinion of the Electoral Council, such is not the case. Accuracy and scrupulousness are, of course, of the essence where entitling a person to cast a vote is concerned, but such can and should, thus the Council, be sufficiently guaranteed by safeguarding a correct and orderly state of affairs in the polling station, which is the responsibility of the polling station officials. The aforementioned counts are not necessary and, as mentioned before, undesirable in terms of guaranteeing the required accuracy and scrupulousness in the elections results determination process.

The Electoral Council suggests you amend the description of the counting process in the Electoral Act accordingly and, consequently, to also adjust the N 10 official report standard form. The Council deems this to be a sound decision, also in terms of international elections standards (viz. the passage of the Venice Commission Code of Conduct cited), resulting in clear benefits:

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1. a significant reduction of the activities to be carried out by the polling station officials;
2. improved counts; and
3. a reduction of the necessity to have public officers correct, without there being a relevant statutory basis, the erroneous or uncertain polling station counts.

7. Incidental advice

a. Declaration of consent by voters abroad

No form exists for declarations of consent (H 9 standard form) by voters abroad. As it now is possible to download the standard form from a website, the voter abroad can easily avail himself of it. The Electoral Council advises to have Section H 9(5) of the Electoral Act deleted.

b. Joint Court of Justice appeal period

Section Ya of the Electoral Act stipulates that an appeal may be lodged with the Joint Court of Justice of Aruba, Curacao, Saint Martin, Sint Eustatius and Saba against any decision on the validity of the list of candidates. The reduction of the terms for the Administrative Jurisdiction Division of the Council of State to deliver judgment have been determined to apply equally. However, this does not apply to the reduction of the period to lodge an appeal. The Electoral Council advises to amend Section Ya 44 of the Electoral Act, to such an effect that Section I 7(1) of the Electoral Act applies equally.

c. Public announcement principal electoral committee session

Transparency is an important safeguard for the electoral process. It is effected by, amongst other things, holding public principal and central electoral committee sessions. To inform the voter such a session is being held, public announcement is made thereof. Announcement of the principal electoral committee session on the Friday following the day of the elections,²⁶ during which the electoral district's vote results are made public and determined, is not required by the Electoral Act. The Electoral Council advises to add a provision applying to the principal electoral committee session²⁷ that is similar to the one applying to the central electoral committee session.

d. Voter card and replacement poll card

Section K 4(3) of the Electoral Act stipulates that no new voter card will be issued or sent to voters who have mislaid their voter card. A common question is whether it is possible to obtain a replacement poll card. The Electoral Council

²⁶ Refer to Section O 1 of the Electoral Act.

²⁷ Refer to Section P 20(2) of the Electoral Act: 'The time and date of the meeting shall be announced in good time by the chairperson of the central electoral committee'.

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advises to add a provision in the aforementioned Section stating that no new poll card can be obtained.

THE ELECTORAL COUNCIL,
on whose behalf,

H.R.B.M. Kummeling,
Chair

M. Bakker,
Secretary Director