

Annual Report 2006

COLOPHON

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The Hague, July 2007

ISBN: 978-90-78056-06-5

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Foreword

Please find enclosed the Electoral Council's Annual Report 2006. The Electoral Council has published this Annual Report to provide an insight into and give account for its activities in the 2006 election year.

The Electoral Council is an advisory body in the sense of the Advisory Bodies Framework Act and, pursuant to Article 28, first paragraph, of the Act is required to publish an Annual Report. The Electoral Council also serves as the central electoral committee for the elections of the members to the House of Representatives of the States General, the Senate of the States General and the European Parliament. However, the resultant activities were not taken into consideration in previous annual accounts since they do not relate to the Electoral Council's advisory duties. The Electoral Council attaches great importance to the transparency of the elections procedure, and for this reason is of the opinion that the Council's Annual Report should provide as comprehensive information as possible about its activities. Consequently the information provided by the Annual Account 2006 extends beyond the statutory requirements. In contrast to previous years, this Annual Report also reviews the work carried out by the Electoral Council in its role as the central electoral committee. The several elections held in 2006 also gave reason for the provision of this additional information.

In retrospect, it can be concluded that 2006 was an important year for everyone professionally involved in elections. Until recently the duties involved in conducting elections were carried out behind the scenes. However the situation changed during the 2006 elections, following the formation of the *Wij vertrouwen stemcomputers niet* ('We do not trust voting machines') Foundation. The Foundation successfully drew attention to the weaknesses of the Dutch election procedure. In addition, the 2006 elections of members to serve in the House of Representatives of the States General were the first to be monitored by an international election assessment mission from the OCSE¹. The OCSE's report on the elections² contained recommendations of importance to the organization and supervision of elections. In conclusion, the then Minister for Government Reform and Kingdom Relations instituted the *Adviescommissie inrichting verkiezingsproces* ('Advisory Committee on the organization of the election procedure') on 22 December 2006³. The *Commissie besluitvorming stemmachines* ('Decision-making Committee on voting machines') was also instituted in 2006⁴.

The reports from these committees will probably herald major changes in the election procedure in 2007 and subsequent years.

¹ The official name is the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OCSE/ODIHR), hereinafter referred to as the OCSE.

² The Netherlands Parliamentary Elections 22 November 2006, OSCE/ODIHR Election Assessment Mission Report, Warsaw 12 March 2007. This report is published on the OCSE/ODIHR website, www.osce.org

³ For the Decree establishing the committee see the Netherlands Government Gazette 2007, 77.

⁴ For the Decree establishing the committee see the Netherlands Government Gazette 2006, 252.

The above developments meant that 2006 was an extremely active year for all those involved. The Electoral Council wishes to take this opportunity to thank all the civil servants, volunteers and others involved in the elections at a local level for their efforts in ensuring that the elections were conducted in the appropriate manner – work which was often carried out with unbridled energy for the public good.

The Electoral Council is of the opinion that increased attention to the importance of honest and confidential Dutch elections should be regarded as a favourable development. In the Electoral Council's opinion its duties also extend to making a major contribution to the further professionalization of the election process. The Annual Report 2007 will undoubtedly contain more information about this issue.

Professor H.R.B.M. Kummeling LL.M.,
Chair of the Electoral Council.

1. Introduction

This Annual Report is comprised of sections which report the Electoral Council's activities and sections which provide an insight into organizational issues of relevance to the Council. The various sections do not make a strict separation between the work carried out by the Electoral Council in its roles as an advisory body and a central electoral committee, since there are interfaces between the two. Some issues of relevance to both the advisory and central electoral committee roles are reviewed in a separate section. These relate to issues including registration applications, offences during elections, and the *Informatiepunt Verkiezingen* ('Elections information point').

This Annual Report relates to 2006, and consequently it deals briefly with certain activities which were initiated in 2006 and will be completed early in 2007. Self-evidently, the Annual Report 2007 will review these activities in greater detail.

It has been decided that this Annual Report shall also include a summary of the recommendations the Electoral Council submitted in 2004 and 2005 (see Appendix 2), since a shortage of capacity in the Council's secretariat precluded the preparation of annual reports for those years. The Electoral Council is of the opinion that this gap in information about the Council's activities must at least be filled for those duties governed by the statutory reporting obligation.

2. Duties and members of the Electoral Council

The establishment of the Electoral Council is provided for in Article A 1 of the Elections Act. Article A 2 of the Elections Act lays down the duties and membership of the Electoral Council as follows:

1. The Electoral Council shall advise the Government and the two Houses of the States General on technical matters concerning the franchise or the conduct of elections.
2. The Electoral Council shall act as the central electoral committee in cases where the law so stipulates.
3. The Electoral Council shall comprise seven members.

A number of changes took place in the membership of the Electoral Council in 2006. During the course of the year under review two new members were appointed to replace the vacancies resulting from the departure of Messrs Nijenkamp and Elzenga on 1 January 2006. On the appointment of Mr Stoker and Ms Blokdijk-Hauwert on 1 October 2006 the Electoral Council is once again at full strength.

In 2006 the members of the Electoral Council were as follows:

- Professor H.R.B.M. Kummeling LLM, Chair;
- Mr G.J. Schutte, Vice Chair;
- Ms G.M.M. Blokdijk-Hauwert LLM, member (since 1 October 2006);
- Mr R.T.B. Heemskerk, member;
- Professor M.H. Leyenaar LLM PhD, member;
- Mr W.M.B. Stoker, member (since 1 October 2006);
- Mr A.J. te Veldhuis LLM, member.

Ms E.B. Pronk, M, Secretary since 1 August 2001, resigned on 1 January 2006. Mr P.J. Stolk LL.M served as acting Secretary Director from 1 January 2006 to 1 April 2006. As from 1 April 2006 the Electoral Council's secretariat is managed by Ms J. Schipper-Spanninga LL.M, Secretary Director.

3. Changes in the duties, procedures and organization

The Ministry of the Interior and Kingdom Relations, in consultation with the Electoral Council, initiated the *Versterking Kiesraad* ('Enhancement of the Electoral Council') project in mid-2005. An organization and staffing report was issued in November 2005. The proposed personnel changes were implemented on 1 January 2006.

The project's objective was to improve the means available to the Electoral Council's for the optimum performance of its duties by providing for a more independent positioning of the Electoral Council from the Ministry of the Interior and Kingdom Relations and by the enhancement of the Council's secretariat. These duties relate to the Electoral Council's roles as the central electoral committee, advisory body, and centre of expertise for all those involved in the election procedure.

The report on the enhancement of the Electoral Council also lists duties that the Council could perform in the future, such as the supervision of the financing of political parties, the subsidizing of political parties⁵, the responsibility for the *Informatiepunt Verkiezingen* ('Elections information point') at election times, and the structural publication of statistical data on elections. The Electoral Council assumed the responsibility for these last two duties in the course of 2006. The first two require legislative amendments, and have not (yet) been transferred to the Electoral Council.

Within the scope of the *Versterking Kiesraad* project it was concluded that it would be desirable for the Electoral Council to adopt a different approach to a number of duties. This relates to the following:

- the enhancement of the Electoral Council's advisory role by (arranging for) more frequent studies of specific election or franchise issues;
- the enhancement of the Electoral Council's role as a centre of expertise for, in particular, the public, municipalities and political parties by means including the expansion of the Council's website and the historical election results project;
- the enhancement of the relations with the municipalities, principal electoral committees and political parties by means including the organization of meetings throughout the country to provide information about the election procedure;

⁵ Pursuant to the *Financiering politieke partijen* ('Funding of political parties') legislative proposal consideration is being given to entrusting the Electoral Council with the responsibility for the supervision of the finances of political parties, in particular with respect to the disclosure of gifts. Consideration is also being given to the transferral of the subsidizing of political parties to the Electoral Council. The Electoral Council submitted its recommendations on the draft legislative proposal in the spring of 2006. The legislative proposal has not yet been submitted to the House of Representatives of the States General, and for this reason has not yet been made public. See also Parliamentary Documents II, 27 422, No. 6 et seq.

- the enhancement of the Electoral Council's international role by participation in relevant international meetings and actively following election developments in other countries.

The Electoral Council wishes to adopt new working methods in the aforementioned fields since the Council is of the opinion that this will be beneficial to the performance of its primary duties. For example, more active participation in international meetings will result in Dutch election practice exerting some degree of influence on international decision-making, as well as the Electoral Council's acquisition of more knowledge about election practice in other countries. Both could be beneficial to the Electoral Council's roles as an advisory body and centre of expertise.

In 2006 the intended changes in the working methods were implemented only in part, since the attention of the (secretariat of the) Electoral Council was focused on the elections. More opportunities for the (further) implementation of the new working methods will be available in the second half of 2007.

The *Versterking Kiesraad* project has resulted in the transformation of the management of the secretariat, which until 1 January 2006 had been brought under the Constitutional Affairs and Legislation Department, into an independent unit in the General Management Support division of the Ministry of the Interior and Kingdom Relations.

As of 1 January 2006 the Electoral Council's secretariat was assigned a staffing level of 9.5 FTEs. Consequently – and apart from the deployment of a number of temporary employees in connection with the work involved in the elections – the number of the secretariat's staff in permanent employment gradually increased during the course of 2006. The organizational separation of the secretariat was accompanied by the acquisition of a certain degree of financial autonomy. The Electoral Council is now listed in the National Budget as an autonomous unit, namely in Article 1.3 of Chapter VII (Ministry of the Interior and Kingdom Relations). A number of financial key figures are enclosed in Section 12 of this Annual Report.

The Electoral Council held 22 plenary meetings in the year under review; the Council's subcommittees also held regular meetings. In principle, the Electoral Council meets once a month outside election periods. Many additional meetings were, in particular, convened in the autumn. The Electoral Council has adopted a Mandate Decree for the settlement of substantive issues. This Decree is enclosed in Appendix 4.

4. The Electoral Council as an advisory body

As indicated earlier, the several elections held in 2006 dominated the activities in the year under review. However, this does not imply that the Electoral Council issued no recommendations in 2006. A distinction can be made between recommendations submitted on request or submitted at the Electoral Council's discretion. Recommendations on request are submitted to the Minister of the Interior and Kingdom Relations, as well as to the Senate and the House of Representatives of the States General. In principle, recommendations submitted at the Electoral Council's discretion are submitted to the Minister of the Interior and Kingdom Relations.

The Electoral Council evaluates elections subsequent to their conclusion. These evaluations do not result in separate reports, but rather in the submission of a range of recommendations

for changes in the regulations or election practice. The recommendations arising from the evaluation of the 2006 elections will be submitted in 2007. The early elections for the House of Representatives of the States General also resulted in the postponement of the submission of a number of recommendations (on request) to 2007.

A total of seven recommendations were submitted during 2006, of which five were submitted on request and two were submitted at the Electoral Council's discretion. The majority of the recommendations were submitted to the Minister for Government Reform and Kingdom Relations. One recommendation was submitted to the Minister of the Interior and Kingdom Relations, and one recommendation was submitted to the House of Representatives of the States General. These recommendations were as follows:

- a recommendation of 13 March 2006 submitted to the House of Representatives of the States General relating to the Act proposed by members of the House establishing regulations for consultative referendums;
- a recommendation of 13 March 2006 submitted to the Minister of the Interior and Kingdom Relations relating to the *Financiering politieke partijen* ('Funding of political parties') legislative proposal;
- a recommendation of 16 May 2006 submitted to the Minister for Government Reform and Kingdom Relations relating to changing the polling day for the 2007 Elections to the House of Representatives of the States General;
- a recommendation of 17 May 2006 submitted to the Minister for Government Reform and Kingdom Relations relating to spreading the municipal council elections;
- a recommendation of 1 June 2006 submitted at the Electoral Council's discretion to the Minister for Government Reform and Kingdom Relations relating to election facilities modified for the disabled;
- a recommendation of 31 October 2006 submitted to the Minister for Government Reform and Kingdom Relations relating to lists of candidates and names of political parties on voting machine displays;
- a recommendation of 21 December 2006 submitted at the Electoral Council's discretion to the Minister for Government Reform and Kingdom Relations relating to voting passes.

Appendix 1 contains a brief summary of the purport of the recommendations. The full text of the recommendations is available from the Electoral Council's website, with the exception of the recommendation relating to the *Financiering politieke partijen* legislative proposal. It was agreed with the then Minister of the Interior and Kingdom Relations that this recommendation would be disclosed only once the legislative proposal had been submitted to the House of Representatives of the States General. This decision was taken since the recommendations are incomprehensible without knowledge of the content of the legislative proposal. The recommendation has not been disclosed to date since the legislative proposal has yet to be submitted to the House of Representatives.

5. The Electoral Council as an independent administrative body

5.1 General

The Electoral Council, in its role as an independent administrative body, is assigned a number of duties pursuant to the Elections Act. The duties laid down in the Act encompass duties the Electoral Council performs its role as central electoral committee for the elections of the

members to the House of Representatives of the States General, the Senate of the States General and the European Parliament. Although the Electoral Council has virtually no statutory duties relating to municipal and provincial elections⁶ the Council nevertheless plays a role as a centre of expertise. The Electoral Council's secretariat provides information, assistance and support to the public, municipalities, provinces and political parties.

Municipal council elections were held on 7 March 2006. The elections of the members to the House of Representatives of the States General were originally scheduled for May 2007. However, as a result of the fall of the Government in the summer of 2006 early elections were held on 22 November 2006⁷.

5.2 The Municipal Council elections of 7 March 2006

Although the Electoral Council, in contrast to the elections of the members to the House of Representatives of the States General, the Senate of the States General and the European Parliament, does not serve as the central electoral committee for municipal council elections these elections nevertheless result in some work for the (secretariat of the) Electoral Council. During the period leading up to these elections many municipalities, members of the public, political parties and other bodies call on the Electoral Council's services as a centre of expertise. In addition, the Electoral Council distributes circulars and letters providing information and advice to municipalities and political parties during this period.

An information point set up for the municipal council elections answered questions raised with the Electoral Council. The *Informatiepunt Verkiezingen* ('Elections information point') was operational from 1 December 2005. The Electoral Council was responsible for this information point, which performed its duties on behalf of the Electoral Council and the Ministry of the Interior and Kingdom Relations.

The Municipal council elections held on 7 March 2006 took place in 419 municipalities. Elections were not held in the 39 municipalities where the municipal boundaries were redrawn. Polling day for the elections was not, as is usually the case, a Wednesday. Since Wednesday was the *Biddag voor Gewas en Arbeid* ('Day of prayer for the crops and labour'), polling day was one day earlier on the Tuesday⁸. Advancing polling day for the 2006 municipal council elections also resulted in nomination day being advanced by one day. The political parties taking part in the elections were required to submit their lists of candidates on Monday 23 January 2006. The municipal central electoral committees determined the election results on Thursday 9 March 2006.

An experiment with *Stemmen in een willekeurig stemlokaal* ('Voting at the polling station of your choice') took place during the 2006 municipal council elections. A total of 239 municipalities took part in this experiment, whereby voters resident in those municipalities

⁶ The Electoral Council does have a limited statutory duty relating to these elections. Pursuant to Article G 1, eighth paragraph, of the Elections Act the Council is under the obligation to publish the register of the names of political groupings for the House of Representatives prior to the elections. Pursuant to Article G 4, first paragraph, of the Elections Act these names may also be used for the elections to the municipal and provincial councils.

⁷ See the Royal Decree for the dissolution of the House of Representatives of the States General, 4 September 2006, Bulletin of Acts, Orders and Decrees, 2006, 421, and the Netherlands Government Gazette, 2006, 184.

⁸ See the Decree pursuant to Article F 1, third paragraph, of the Elections Act for the change of nomination day (and, consequently, polling day): Royal Decree of 28 June 2005, Bulletin of Acts, Orders and Decrees 2005, 361.

were issued a voting pass instead of a polling card that enabled them to vote at a municipal polling station of their choice. The evaluation report for this experiment revealed that 14% of voters voted at a polling station other than their customary polling station⁹.

5.3 The elections to the House of Representatives of 22 November 2006

The overall situation

The Electoral Council acts as the central electoral committee for the election of members to the House of Representatives of the States General. The duties of the Electoral Council in this role include the maintenance of a register of names of political parties for the election of members to the House of Representatives. Political groupings wishing to take part in the House of Representatives elections are required to submit their applications for the registration of their name to the Electoral Council. Once the lists of candidates have been submitted to the principal electoral committees in the various election districts the Electoral Council, in its role as central electoral committee, holds an open session in which it numbers the lists of candidates and arrives at a decision on the validity of linked lists submitted to the Council. An official report is drawn up of this session and made available for inspection. The lists of candidates are submitted to the principle electoral committees in the various electoral districts and the principle electoral committees reach a decision on the validity of the lists; however, the Electoral Council is nevertheless responsible for making the lists of candidates which have been declared valid available for inspection and publishing them in the Netherlands Government Gazette. The Electoral Council holds an open session on the Monday after polling day in which it determines the definitive result.

The House of Representatives elections held in November 2006 were marked by the criticism of the voting machines, an issue confronting all those involved in the elections. In the period leading up to the elections the *Wij vertrouwen stemcomputers niet* ('We do not trust voting machines') Foundation became well-known throughout the country. The Foundation raised the issue of the reliability of the voting machines, and the resultant discussions in part gave cause to their investigation. The Ministry of the Interior and Kingdom Relations, which is responsible for the organization of the elections and the deployment of voting machines, decided to implement supplementary security measures prior to, during and after polling day. These security measures resulted in extra work for the municipalities which included the inspection and sealing of all voting machines, more stringent security measures for the voting machines at the municipalities, and an inspection of the voting machines prior to and during polling day.

Some three weeks before polling day the Minister for Government Reform and Kingdom Relations rescinded the approval of the Sdu voting machines in view of the inadequate assurances for the secrecy of the vote¹⁰. The municipalities that used Sdu voting machines were compelled to switch to ballot papers or Nedap voting machines. Self-evidently, these measures and the discussions about the voting machines also affected the Electoral Council's work. The *Informatiepunt Verkiezingen* ('Elections information point') received a large number of questions from municipalities and the public relating to the

⁹ *Evaluatie 'Stemmen in een willekeurig stemlokaal', het experiment bij de gemeenteraadsverkiezingen van dinsdag 7 maart 2006*, available at the Ministry of the Interior and Kingdom Relations' website www.minbzk.nl.

¹⁰ See the decision of the Minister for Government Reform and Kingdom Relations of 1 November 2006, Netherlands Government Gazette, 2006, 213.

measures implemented by the Ministry. Many of the municipalities' questions were referred to the Ministry's separate voting machines information point.

In his letter of 30 October 2006 the Minister for Government Reform and Kingdom Relations requested the Electoral Council to enter into consultations with Nedap, a supplier of voting machines, to reach agreement on the Electoral Council's storage of the voting machines' source code.

The Electoral Council held intensive consultations with Nedap about the deposit of the source code at an escrow agent, with the Electoral Council as beneficiary. The Electoral Council failed to reach agreement with Nedap. The Electoral Council informed the Minister accordingly, and stated that it was still prepared to provide for the deposit of voting machine source code at some time in the future, for example on a statutory basis.

The Electoral Council also devoted specific attention to the voting-machine issue when it determined the election results. More details about this question are given in a separate paragraph in this Section.

A further unusual aspect of these House of Representatives elections was the presence of an international election assessment mission from the OCSE to monitor the elections. The general mission also met with the Electoral Council. The Electoral Council also met with two bilateral OCSE missions from Kazakhstan and Moldavia. The OCSE published a report on 12 March 2007 containing recommendations of importance to Dutch election practice¹¹. The Electoral Council will submit recommendations based on this report in 2007.

Registration of names of political groupings

During the period leading up to the House of Representatives elections the Electoral Council received a record number of applications from political groupings wishing to register their name for the House of Representative elections of November 2006. It was striking to note that many of these applications were submitted at the very last minute, just before the expiry of the registration period on 28 August 2006. The Electoral Council regularly had to conclude that the applications did not comply with the formal requirements, for example because the relevant grouping had failed to submit all the necessary documents or because the signatures were not correct. The Electoral Council ultimately registered 74 names (45 names were registered for the House of Representative elections in both 2002 and 2003). A number of legal proceedings were conducted on Electoral Council decisions to refuse applications for registrations. Appendix 3 contains a summary of the legal proceedings in which the Electoral Council was involved. More details about this issue are given in Section 7.

Nomination of candidates

24 of the 74 parties which had registered their names ultimately took part in the elections. Many of the parties that did not take part stated that this was because they were of the opinion that the deposit for the nomination of candidates was excessive or because they failed to collect the required number of declarations of support.

The Electoral Council was also involved in a number of appeal cases relating to the nomination of candidates as an expert rather than as a party. These are also included in Appendix 3.

¹¹ The Netherlands Parliamentary Elections 22 November 2006, OSCE/ODIHR Election Assessment Mission Report.

As was the case with previous elections, many questions were once again received about the manner in which the candidates' details are stated in the list of candidates. These questions related to issues such as the statement of addresses of candidates who have received threats. The Electoral Council has also received comments from various principle electoral committees in which they indicate their preference for a longer period for the nomination of candidates. At present these nominations are restricted to one day. The Electoral Council shall submit recommendations about these issues in the autumn of 2007.

Determination of the results

As was the case in previous years, the Electoral Council once again contracted Bureau voor Verkiezingsuitslagen Groenendaal for ICT support during the automated calculation of the election result. In parallel to this automated calculation the Electoral Council also calculated the results manually.

The Ministry of the Interior and Kingdom Relations requested a special inspection of the voting machines for the House of Representatives elections.

The inspections of the voting machines carried out prior to polling day resulted in the submission of two voting machines regarded as possibly 'suspicious' to the Netherlands Forensic Institute (NFI). Neither machine was used during the elections. Subsequent to the elections independent auditors carried out an inspection of a random sample of voting machines. These inspections resulted in the submission of five additional voting machines to the NFI for investigation. The NFI did not find indications of manipulation of any of the seven voting machines that were designed to influence the results. The Minister for Government Reform and Kingdom Relations informed the Electoral Council of the results from these inspections on Sunday 26 November 2006. The Electoral Council needed this information to assess whether any irregularities had occurred. In the event that irregularities *had* been established this could have given cause to a different assessment of the course of the elections and, possibly, of the election results.

Although the Electoral Council's procedural law duties are restricted to the announcement of the number of votes cast for each grouping and candidate, followed by the resultant allocation of the seats, the Council was of the opinion that it was also desirable to give an opinion on the reliability of the results. For this reason the Electoral Council, in contrast to previous elections, also received the official reports from all Dutch electoral committees which indicated that objections had been lodged in connection with voting machines or which indicated that the sessions had been suspended. After giving careful consideration to the information contained in these reports, the letter from the Minister for Government Reform and Kingdom Relations and the other information available to the Electoral Council, the Council arrived at the opinion that the results from the investigations and the objections that had been lodged did not cause to doubts about the reliability of the election results. This is explained further in an annex to the official report of the open sessions that determined the election results¹². The Electoral Council is fully aware that, pursuant to Article 58 of the Constitution, the decision as to the validity of the voting rests with the House of Representatives of the States General. However, in view of the Electoral Council's expertise in this field the Council was of the opinion that it should submit its recommendations on the voting machines issue to the House of Representatives.

¹² The complete official report of the open sessions of 27 November 2006 is available at www.kiesraad.nl under *Tweede Kamerverkiezing* ('House of Representatives elections').

During the determination of the election results the Electoral Council also devoted specific attention to the use of voting passes in the 239 municipalities which took part in the *Stemmen in een willekeurig stemlokaal* ('Voting at the polling station of your choice') experiment. On polling day the Electoral Council's secretariat received many dozens of complaints from members of the public who stated that they had been unable to exercise their right to vote since they no longer had a voting pass at their disposal and had been unable to apply for a replacement voting pass.

The secretariat received a total of 136 reports (complaints) about this problem in the period around the House of Representatives elections, of which 71 % were received in the week of the elections. Objections about the lack of voting passes were also lodged during the open sessions determining the election results. The Electoral Council was of the opinion that the problem was not of a magnitude that would have had consequences for the determination of the election results. However, these complaints did give cause to the Electoral Council's submission of recommendations on 22 December 2006, at the Council's discretion, to the Minister about the periods governing the issue of replacement voting passes¹³.

5.4 Preparations for the elections in 2007

In addition to the preparations for the House of Representatives elections in 2006, the Electoral Council was also engaged in the preparations for the election of members to the provincial councils to be held on 7 March 2007 and for the election of members to the Senate to be held on 29 May 2007. Although both were scheduled for the beginning of 2007 the preparations for the elections began in 2006. This is part necessary since specific statutory periods expire long before the actual elections, such as the period available to political groupings to submit an application for the registration of their name. The application period for the provincial council elections expired on 11 December 2006. It should be noted that the statutory obligation to strike off the names of parties which did not take part in the House of Representatives elections shortly after those elections resulted in the need for any such parties wishing to take part in the provincial council elections to submit a new application for registration at very short notice. The Electoral Council submitted a recommendation about this coincidence of the periods for the registration of names of political parties for different elections in 2007¹⁴.

5.5 Filling interim vacancies

The duties of the Electoral Council's Chair include the appointment of new members to the House of Representatives of the States General, Senate of the States General or European Parliament to fill any vacancies that occur during those bodies' term of office. The following numbers of vacancies were filled in 2006:

¹³ Recommendation of 21 December 2006, Ref. No. 2006-0000425212, available at www.kiesraad.nl under *Adviezen* ('Recommendations').

¹⁴ Recommendation of 28 June 2007, Ref. No. 2007-0000222146, available at www.kiesraad.nl under *Adviezen* ('Recommendations').

Representative body	Number of interim vacancies	Breakdown by list
House of Representatives	8	Christen Democratisch Appèl ('Christian Democrats', CDA) 1 Partij van de Arbeid ('Labour Party', PvdA) 2 VVD ('Liberal Party') 2 GROENLINKS ('Green Left') 1 LPF ('Pim Fortuyn List') 2
Senate	2	GROENLINKS ('Green Left') 1 SP ('Socialist Party') 1
European Parliament	0	N/A

The Chair of the Electoral Council, in the capacity of the Chair of the central electoral committee, determines the person whose name appears next on the list of candidates in the relevant list of candidates adopted after the elections¹⁵. This person is eligible for appointment. However, quite often candidates do not wish to come into consideration for appointment to fill an interim vacancy. In such situations the relevant person can submit a statement in which they state that they do not wish to be appointed¹⁶. Their names are then no longer taken into account during the appointment procedure.

Regular contacts are maintained with the registrars of the Senate and the House of Representatives of the States General to ensure that this duty is performed in the appropriate manner. Appointments to the European Parliament are also routed via the Registrar of the House of Representatives.

6. *Informatiepunt Verkiezingen* ('Elections information point')

In an initiative taken by the Ministry of the Interior and Kingdom Relations and the Electoral Council an *Informatiepunt Verkiezingen* was organized for the period leading up to the municipal council elections of 7 March 2006. Similar information points had previously been organized for earlier elections (at the time referred to as a *callcentre verkiezingen* ['elections call centre']). However, in a new development the information point was now managed by the Electoral Council's secretariat. The information point referred any policy-sensitive questions destined for the Minister to the Ministry.

The information point's major duties extended to the issue of information, explanation of electoral law and provision of information about the procedure for municipal council elections. Municipalities, members of the public and other interested parties such as the press¹⁷ and political parties were able to contact the information point during the period from 1 December 2005 to 19 March 2006 inclusive. It was decided that an *Informatiepunt Verkiezingen* would also be organized for the period leading up to the House of Representatives elections in

¹⁵ Pursuant to Article W 1 in conjunction with Article P 19 of the Elections Act.

¹⁶ Pursuant to Article W 2, first paragraph, under f, of the Elections Act.

¹⁷ The information point answered solely those questions from the press which related to the Electoral Council. Any press questions for the Ministry were referred to the Ministry's spokespersons.

November 2006. Consequently an information point was operational virtually throughout the whole of 2006.

Requests for information received by the municipal council elections information point

Medium:	Number:	Percentage:
Telephone	1682	72
E-mail	645	28
Total:	2327	100

Player:	Number:	Percentage:
Municipalities	1561	67
The public	519	22
Organizations	168	7
The press	79	4
Total:	2327	100

The *Informatiepunt Verkiezingen* organized for the municipal council elections in March 2006 received a total of 2327 requests, usually requests for information or an explanation. The majority of the questions were raised in telephone calls.

Requests for information received by the House of Representatives elections information point

Medium:	Number:	Percentage:
Telephone	1285	67
E-mail	642	33
Total:	1927	100

Player:	Number:	Percentage:
Municipalities	607	31
The public	840	44
Organizations	108	6
The press	97	5
Political parties	275	14
Total:	1927	100

The *Informatiepunt Verkiezingen* organized for the House of Representatives elections in November 2006 received a total of 1927 requests. In contrast to the municipal council elections, the majority of these requests were made by the public; 44% of the requests were received from the public, and 31% from municipalities.

The quantitative data reveals that municipalities consulted the municipal council election information point more frequently than the public, but that the public consulted the House of Representatives information point more frequently than the municipalities. This difference is in part due the nature of the two elections. The municipalities play a greater role in municipal

council elections than in House of Representative elections; for example, in contrast to the House of Representatives elections the municipalities are also entrusted with the registration of political groupings wishing to take part in municipal council elections. This in turn results in relatively more contacts between the municipalities and the Electoral Council in the period leading up to municipal council elections. The fact that as a result of their recent experience with the municipal council elections the municipalities may have had fewer questions about the House of Representative elections could also have played a role. In conclusion, experience has revealed that the public is increasingly aware of the opportunities available for contacting the Electoral Council.

7. Applications for registration

The Electoral Council processed a large number of applications for registration in 2006. This was, self-evidently, in part due to the early House of Representatives elections. However, in relative terms a larger number of applications for registration for the House of Representatives elections were received and processed than for earlier elections.

At the time of the expiry of the period for registration 74 political parties had registered their name with the Electoral Council, the largest number of registrations in the Electoral Council's history. 26 of the 74 parties ultimately submitted lists of candidates, and 24 parties actually took part in the elections. The following table compares the number of political parties registering for and participating in House of Representatives elections in the past years.

Elections	2006	2003	2002	1998	1994
Registered	74	45	45	50	38
Participated	24	18	18	23	26

Registration of the name of the *Partij voor Naasteliefde, Vrijheid en Diversiteit* ('Party for Neighbourly Love, Freedom, and Diversity', PNVD)

This Annual Report devotes specific attention to one application for registration since this application resulted in discussions about the system used for the registration of names of political parties. This related to the registration of the name of the *Partij voor Naasteliefde, Vrijheid en Diversiteit* ('Party for Neighbourly Love, Freedom, and Diversity', PNVD), a party which positioned itself as a sympathizer of and mouthpiece for paedophiles. The Electoral Council registered the party's name in August 2006. The formation of this political party and the registration of its name gave cause to a large number of unfavourable reactions from society.

The Electoral Council also received a large number of reactions from members of the public, many of whom could not understand why it was possible to form a political party with ideas of this nature. However, this is commensurate with the freedom of assembly, freedom of expression, and freedom to stand for election guaranteed by the Constitution. In principle, everyone in the Netherlands is free to form a political party. The Netherlands has not adopted a system of the preventive supervision of political parties. Voters, not bodies such as the Electoral Council, are free to decide which parties shall represent them by casting their votes at elections.

Political parties wishing to display their name above their list of candidates are required to register their name in advance with the Electoral Council. The Electoral Council may test whether the name is as such contrary to public order, but may not test the objectives or actions of political parties. However, pursuant to the Netherlands Civil Code the courts may dissolve a legal body whose actions or objectives are contrary to public order¹⁸. This is possible solely on the request of the Public Prosecutions Department. The courts decide whether an association or political party should be prohibited.

The *Partij voor Naasteliefde, Vrijheid en Democratie* did not ultimately take part in the House of Representatives elections in November 2006 since it failed to obtain the number of declarations of support required for the submission of a valid list of candidates. After the House of Representatives elections, and pursuant to the applicable statutory obligation¹⁹, the PNVD name was struck off the register of names on 27 November 2006.

Examination of case law on the Electoral Council's request

It has transpired that the requirements the Elections Act imposes on applications for registrations and the grounds on which names should be refused are not always clearly applicable. The scarce case law available is not consistent, and this results in uncertainty about the manner in which the various criteria should be applied. The Electoral Council was also confronted with several bottlenecks in the implementation of the Elections Act during the processing of the large number of applications for registration for the House of Representatives elections. These reasons gave cause to the Electoral Council's request, in 2006, for an examination of the case law relating to the registration of the names of political parties. The objective of this examination was to seek clarity and certainty in the application of the various registration requirements and grounds for refusal.

The examination revealed that the case law is scarce, periodic and factual. It is not always clear which grounds for refusal should be applied; there is, in particular, uncertainty about the grounds for refusal referred to in Article G 1, fourth paragraph, under b and under c of the Elections Act. The wording under b of this Article relates to names that are identical or largely similar to the name of another political party which has already been registered and which consequently give cause to the risk of confusion, while the wording under c relates to names that are misleading for voters in some other way. In practice, both grounds for refusal are regularly used in similar situations. The report on this examination of the case law explains this problem and makes a number of recommendations²⁰.

The large number of applications for registrations, the fact that the Electoral Council encountered several bottlenecks in the implementation of the Elections Act during the processing of these applications and the examination of the case law relating to this issue gave cause to the Electoral Council's decision to decide to submit, at its discretion, a recommendation on the registration of the names of political groupings to the Minister of the Interior and Kingdom Relations. This recommendation will review the various bottlenecks and, where possible, include proposals for the improvement of the procedure. The recommendation will be submitted in the summer of 2007.

¹⁸ See Article 2:20 of the Netherlands Civil Code.

¹⁹ Pursuant to Article G 1, seventh paragraph, under d, of the Elections Act.

²⁰ See *Registratie van de Aanduidingen van Politieke Groeperingen; Verwarring wordt geducht...*, P. Boswijk. Available at www.kiesraad.nl.

8. Legal proceedings

The Electoral Council was involved in a number of legal proceedings in 2006 in which the Electoral Council was either the defendant or was heard as an expert. In those instances in which the Electoral Council was heard as an expert – cases relating to the municipal council elections and to the nomination of candidates for the House of Representatives elections – the Council was requested to express an opinion. In all instances the cases were, pursuant to the provisions of the Elections Act deviating from the General Administrative Law Act, brought before the Administrative Jurisdiction Division of the Council of State.

Although issues resulting in Elections Act proceedings can take place at any time throughout the year they are primarily concentrated in two periods in an election year such as 2006. Most cases in which the Electoral Council was involved related to the period after the expiry of the period for registration for the House of Representatives elections in November and the period after the nomination of candidates for the House of Representatives elections. Consequently there was a peak in Elections Act cases in the months from August to October.

Subsequent to the expiry of the period for the registration of names of political parties for the House of Representatives elections in November the Administrative Jurisdiction Division of the Council of State pronounced judgements in seven cases. These concerned proceedings brought by political groupings whose applications of registration had been refused or dismissed by the Electoral Council for a variety of reasons. The Division upheld the Electoral Council's decision in all seven cases. A total of five cases relating to the nomination of candidates were brought before the Administrative Jurisdiction Division of the Council of State. Various principle electoral committees were the defendants in these cases. Appendix 3 contains a summary of the Elections Act cases in which the Electoral Council was involved.

However, in 2006 the Electoral Council's involvement was not restricted to the aforementioned cases. Ultimately, many appeal cases did not result in a judgement, either because they were withdrawn or because the court registry fees were not paid.

Within this context the substance of the two Eman-Sevinger cases is of importance. The Electoral Council expressed an opinion in both cases. The first case was brought by two Dutch nationals living in Aruba – Messrs Eman and Sevinger – who wished to vote, in Aruba, in the election of members to the European Parliament. However, the Municipality of The Hague had refused to register them as voters since pursuant to the Elections Act voting rights in the European Parliament elections are granted to Dutch nationals living in Aruba or the Netherlands Antilles solely if they have lived in the Netherlands for ten years. This condition had not been met in this case. On 14 October 2006 the Court of Justice of the European Union answered preliminary questions which the Division had raised about the right to vote in the European Parliament elections.²¹ The Court of Justice ruled that if the Netherlands allows Dutch nationals living outside Europe to vote in the European elections, which is the case, then the principle of equality is an issue. The Court ruled that it is untenable that Dutch nationals living outside the Kingdom have voting rights even if they have never resided in the Netherlands whilst Arubans and Antilleans have voting rights only if they have resided in the Netherlands for at least ten years. The court ruled that these Dutch nationals living abroad are

²¹ Administrative Jurisdiction Division of the Council of State, 13 July 2004, 200404446/1a and 200404450/1a

in a comparable situation to Arubans and Antilleans. Consequently on 21 November 2006 the Division gave a ruling in which it upheld the appeals by Messrs Eman and Sevinger. The legislator will now need to carry out these instructions.

In the second case²² brought by Messrs Eman and Sevinger they argued that they were also entitled to voting rights for the House of Representatives elections. However, in this case the Division ruled that there was a difference between Dutch nationals living in Aruba and the Netherlands Antilles and other Dutch nationals living abroad, in brief on the basis of the reasoning that residents of Aruba and the Netherlands Antilles have voting rights for their Estates that give advice on Kingdom legislation and consequently can exert an influence on that legislation.

9. Offences during elections

The Electoral Council concluded that a number of offences had possibly been committed during the various elections in 2006. A number of these are reviewed briefly below since they also drew the necessary attention from the media. These include a Caz! radio station campaign in the period leading up to the House of Representatives elections and alleged fraud in the Municipality of Landerd during the municipal council elections. We wish to emphasise that none of these instances had consequences for the validity of the election results or the admission of elected members.

Alleged fraud in the Municipality of Landerd

Some commotion arose about the municipal council election results in the Municipality of Landerd. When the votes were being counted it was noticed that a candidate had received significantly more votes at one polling station than at all other polling stations. The candidate in question was a member of the polling station team and operated its voting machine; he was also entitled to vote at that polling station. The Public Prosecutions Department instituted a criminal investigation and carried out an investigation of the performance of the voting machine. The Public Prosecutions Department was of the opinion that, in part in view of the result of the shadow election, an inexplicably high number of votes had been cast for the candidate in question. The voting machine was found to have performed correctly. The Public Prosecutor was of the opinion that the voting machine had been manipulated since a large number of voters had not had an opportunity to vote and that the man had cast a vote for himself in those instances. However, the court found that there was insufficient proof of fraud. On 10 April 2007 the Court of 's-Hertogenbosch acquitted the accused of committing fraudulent practices during elections. The Public Prosecutions Department has lodged an appeal against this ruling.

Touting for declarations of support and proxies

Touting for declarations of support and proxies occurred on several occasions during the municipal council elections in March 2006. Both forms of touting are offences punishable under the Elections Act and the Netherlands Criminal Code.

During the period leading up to the municipal council elections the *Informatiepunt Verkiezingen* ('Elections information point') received a number of reports of suspicions of

²² Administrative Jurisdiction Division of the Council of State, 21 November 2006, 200607567/1 and 200607800/1

touting for declarations of support and proxies. When touting practices were suspected or had been observed the information point advised the callers to report the incident to the police. The information point also asked to be kept up to date with any actions taken by the Public Prosecutions Department.

One striking report about touting practices - which received the necessary attention from the media – related to a political party's touting for declarations of support in the Municipality of Arnhem. The party in question offered homeless people 10 euros to sign a declaration of support for the political party at the town clerk's office. The Court of Arnhem found that it had been proven that the accused had committed an offence and sentenced them to three to six months' imprisonment, of which part was suspended with an operational period of two years. The accused lodged an appeal²³.

In his letter of 24 April 2006 the Minister for Government Reform and Kingdom Relations requested the Electoral Council to submit recommendations on the prevention of and sanctions against touting for declarations of support for the nomination of candidates and touting for proxies. The Electoral Council has undertaken to submit these recommendations to the Minister, and is currently carrying out a comparative law investigation of the issue. It is expected that the recommendations on the prevention of and sanctions against touting will be submitted in the autumn of 2007.

The Caz! radio station campaign

The Caz! radio station campaign in the period leading up to the House of Representatives elections gave cause for suspicions of an offence. During the station's Timur Open Air programme DJs Timur and Ramón collected signed polling cards from voters who did not intend to vote and then distributed them between highly-enthusiastic voters who were then able to fill in their own names and vote by proxy. It should be noted that votes by proxy may be cast solely at the polling station specified on the polling card. In those municipalities which took part in the *Stemmen in een willekeurig stemlokaal* ('Voting at the polling station of your choice') experiment a voting pass could be used to vote at any polling station in the municipality. Caz! had received a total of 74 voting passes, and had distributed 49 of them. The Electoral Council was of the opinion that there was a suspicion of an offence. Pursuant to the Elections Act a voter may authorize someone else to vote on their behalf. The representative may cast the proxy vote solely together with the representative's own vote, and may not accept more than two designations as representative. However, structurally calling on voters to surrender their polling cards is an offence.²⁴

The Electoral Council saw reason enough to report an offence. When the Electoral Council considered the necessity of reporting the offence it also took account of the fact that the Caz! radio station campaign had a national effect. Consequently the offence was not restricted to the territory of one municipality, and could not be regarded as falling under the responsibility of one mayor. In spite of the Electoral Council's warnings the persons involved continued their

²³ The Court of Appeal in Arnhem rejected the appeal on 9 July 2007. See LJN No. BA9085.

²⁴ Article Z 8 of the Elections Act stipulates that 'A person who systematically speaks to or otherwise approaches people in person in order to induce them to sign the form on their voter registration card intended for voting by proxy and relinquish their card shall be liable to a term of detention not exceeding a month or a category three fine'. See also Article Z 3 of the Elections Act, which stipulates that 'A person who has in his possession ballot papers, voters' passes, certificates of authorisation or postal vote certificates with the intention of using them or causing others to use them unlawfully shall be liable to a term of imprisonment not exceeding two years or a category four fine.'

campaign, and consequently the Electoral Council felt responsible for taking action against the campaign and reporting the station to the authorities²⁵.

10. Communications

10.1 General

Communications about election affairs are of importance to the provision of an increased insight in to the election procedure, the statutory provisions, and the recommendations the Electoral Council submits relating to the right to vote and elections. The Electoral Council makes use of a number of means of communications, the most important of which are the Electoral Council's website and the briefings to the media. The Electoral Council also publishes information material; for example, in 2006 the Electoral Council, in collaboration with the Association of Netherlands Municipalities and the Ministry of the Interior and Kingdom Relations, once again published the *Meest gestelde vragen over verkiezingen* ('FAQs about elections')²⁶ booklet.

The Electoral Council's communications are directed towards various target groups, namely the public, municipalities (and their civil servants), and political parties.

The Electoral Council's website was expanded in the spring of 2006, and consequently the number of visitors to the site also grew significantly in that year. The Electoral Council endeavours to publish current affairs on the website immediately. During 2007 the Electoral Council will expand its website to include more digital information.

10.2 The Government Information (Public Access) Act

Open government is a general principle of law. The Government Information (Public Access) Act provides for both the publication of information and the disclosure of information on request. The Electoral Council complies with the obligation to publish information pursuant to Article 8 of the Act by placing as much relevant documentation as possible on its website, and by issuing press releases and information material.

The public and journalists regularly make use of the Government Information (Public Access) Act to request information. The Act cannot be invoked to inspect privacy-sensitive information, documents intended for internal consultations containing personal policy opinions or documents containing companies' competition-sensitive information. The Electoral Council endeavours to comply with as many requests submitted pursuant to the Act within the statutory period of time. However, in view of the complex nature of some requests this is not always possible. The extremely broad scope of the requests from the *Wij vertrouwen stemcomputers niet* ('We do not trust voting machines') Foundation required a longer processing period.

²⁵ One of the accused has been acquitted for lack of evidence. The Public Prosecutions Department has offered a transaction to the other.

²⁶ *Verkiezingen 2006-2007, Antwoorden op de meest gestelde vragen*, VNG-Uitgeverij, The Hague 2006. Also available from the Electoral Council's website www.kiesraad.nl.

10.3 The media

The Electoral Council receives a lot of questions from the press, many of which relate to the background to specific aspects of the election procedures or explanations of the Elections Act. In a minority of the questions the Electoral Council is requested to state its standpoint on specific affairs. Records of questions the press asked in 2006 have been kept solely to the extent that they were received by the *Informatiepunt Verkiezingen* ('Elections information point'). In addition to these questions, many questions were also received by the communications consultant. The Electoral Council endeavours to answer questions from the press on the same day.

10.4 Publication of statistical data on election results

As from the 2005 referendum on the European Constitution the Electoral Council has, on the request of the Minister for Government Reform and Kingdom Relations – who was confronted with the Central Bureau of Statistics' unwillingness to continue to carry out the duty – assumed the responsibility for the publication of the statistical data on election results after the relevant election.

The Electoral Council had already begun the structural collection of the official results of all Dutch elections, namely the results of the elections of members to the House of Representatives and the Senate of the States General, the European Parliament, the municipal councils and the provincial councils. The results of these elections and the results of the 2005 referendum on the European Constitution are included in a *Verkiezingsuitslagen* ('election results') databank available at the Electoral Council's website and the www.verkiezingsuitslagen.nl website. The databank contains election results from 1998.

In addition to publishing election results on the Internet, the Electoral Council has also begun work on hardcopy versions of the statistical data for elections from the 2005 referendum onwards. The Electoral Council continued with this new duty it assigned itself in the 2006 election year. For example, in the year under review the Electoral Council published a statistical report on the municipal council elections in March and worked on a statistical report on the House of Representatives elections in November. In addition to the publication of a statistical report after each election, the Electoral Council has for many years published a bound volume of the official report of the results of the relevant election and, since the 2005 referendum, a *Kerngegevens* (Key figures') report with a convenient summary of the data.

10.5 The historical election results project

In 2006 the Electoral Council, in collaboration with the Ministry of the Interior and Kingdom Relations' Strategic Knowledge Development Programme Team, began work on the historical election results project. The objective of this project is to make the election results from 1848 onwards available on the Internet. This objective is based on the philosophy that election results need be available on the Electoral Council's website since they are of historical importance and that the Electoral Council, in its role as central electoral council, is responsible for the issue of this data.

Many of the results of national elections are available in various Dutch archives. However, a period is missing. Pursuant to a request from the Electoral Council and the Ministry historical research is now being carried out to collect the missing data. Technical applications are also being developed to render the digital data files accessible in one databank. The House of Representatives election results will be the first to be included in the databank. The elections databank is expected to be made available on the Electoral Council's website in mid-2008.

11. International contacts

National elections are increasingly influenced by international electoral law developments. Some years ago a standing Electoral Management Bodies group was formed within the context of the Council of Europe. On average, the group meets once a year. The OCSE has expanded its field of operations to the “older democracies”, and now also sends assessment missions to monitor these countries’ elections. In addition, developments in the elections field in one country can increasingly be of importance to other countries, whereby the rapid availability of information via the Internet also has its effects. Consequently the Electoral Council is of the opinion that its duties include remaining fully up to date with international electoral law developments and – where relevant – exerting an influence on the development of, for example, recommendations within the Council of Europe.

Following the enhancement of its secretariat in 2006 the Electoral Council was able to focus more on the maintenance of international contacts, which has been given shape both by receiving delegations from abroad and visits to a (limited) number of meetings of international organizations by a member of the Electoral Council and/or a member of the secretariat.

In 2006 the Electoral Council took part in meetings including those of the Council of Europe in Poland and Russia. The Electoral Council also took part in symposia on issues in the Council’s field which took place in the United Kingdom and Austria (on the supervision of the financing of political parties and electronic voting respectively).

12. Finances

The following table summarises the Electoral Council's working budget and actual expenditure in 2006. The Electoral Council's total budget amounted to 865,000 euros.

Table (x EUR 1000)

	Working budget:	Actual expenditure:
Personnel (salaries of personnel inclusive of temporary staff)	418	348
Materials	447	427
Total:	865	775

The Electoral Council's budget was underspent in 2006. This underspending was in part due to the partial use of the resources available for personnel as a result of the later than intended commencement of employment by some staff, as well as to the postponement of a number of relatively expensive activities – such as the construction of a new website and the further professionalization of the communications – to 2007.

The Materials budget item is comprised of the Electoral Council's (limited) programme funds (research and associated costs), the reimbursement and fees for the Chair and members respectively, accommodation costs, personnel training costs, and regular material expenditure such as travelling expenses and office requisites.

These figures do not include the Electoral Council's income from deposits for the registration of names and nomination of candidates. These deposits are transferred to a separate account since in certain instances they subsequently need to be reimbursed to those involved, and in the other instances fall to the State.

As from 1 October 2006 the Electoral Council's Chair receives reimbursement equal to remuneration of 0.3 FTE in scale 18 of the Civil Servants' Pay Decree 1984 (BBRA). During the period from 1 January to 1 October 2006 the reimbursement amounted to remuneration of 0.1 FTE in scale 18 of the BBRA. The members of the Electoral Council receive a fee of 235 euros for each meeting.

The Electoral Council's secretariat does not employ any staff falling under the *Wet Openbaarmaking uit Publieke middelen gefinancierde Topinkomens* ('Act governing the Disclosure of Top Income Earners in Publicly Funded Sectors').