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## *ACCESS TO ELECTORAL RIGHTS* *THE NETHERLANDS*

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EUDO Citizenship Observatory

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The Netherlands***

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## Access to Electoral Rights

### The Netherlands

Annette Schrauwen

#### 1. Introduction

The Charter for the Kingdom of the Netherlands provides that the countries of the Kingdom shall conduct their internal affairs autonomously. Article 46 of the Charter sets the general rule under which Netherlands nationals who are residents of the country concerned shall elect the representative assemblies in the countries. The countries may define requirements of residence and age, not exceeding 25 years, for eligibility.<sup>1</sup> In 1985, a second paragraph to Article 46 of the Charter was added, as a consequence of changes in the Dutch Constitution. The added paragraph provides for the possibility that the countries grant electoral rights to non-resident nationals and foreign residents. The Dutch Constitution sets forth the constitutional organisation in the Netherlands. For a long time, the Dutch Constitution granted all electoral rights to resident Dutch citizens only. However, in 1983 it was amended in order to make voting for non-national residents and non-resident nationals possible. In 1985 changes were made in the Elections Act, pursuant to which foreigners who have been legally residing in the Netherlands for at least five years can participate in local elections while non-resident Dutch citizens were granted the right to participate in national elections.

These alterations were the result of a period of parliamentary discussions started by a committee of experts, namely the State Advisory Committee on the Constitution and Electoral Law (the committee *Cals-Donner*), which was installed in the late 1960s with the goal of preparing an extensive modernisation of the Constitution.<sup>2</sup> In its preliminary report the committee discussed the extension of voting rights to Dutch nationals living abroad and concluded that Dutch citizens should actually live in the Netherlands to enjoy voting rights. The principle of residence, in other words, should prevail according to the committee. This led to a discussion of whether or not all residents should be enfranchised, regardless of nationality. In its final report, the committee *Cals-Donner* proposed the idea that voting rights might be granted to non-nationals for local elections only. The committee stipulated that voting rights for national elections were closely connected

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<sup>1</sup> Statuut voor het Koninkrijk der Nederlanden, Article 46. The Countries of the Kingdom are Aruba, Curaçao, Sint Maarten and the Netherlands.

<sup>2</sup> This introduction is largely based upon a more detailed discussion of the introduction of foreign voting in the Netherlands by D. Jacobs, 'Discourse, Politics and Policy: The Dutch Parliamentary Debate about Voting Rights for Foreign Residents' in *International Migration Review* 1998 (32). 350-373.

to state citizenship, an argument that a few years later was repeated by the government when it presented the bill to change the constitution. The government added the argument that national defence and foreign affairs were discussed on the national level and, therefore, only nationals should be able to vote in national elections. In the Dutch situation, provincial elections should also remain reserved for nationals because those elections directly influence the composition of the Senate (First Chamber or Upper House). In the parliamentary discussions on the proposed bill, the constitutional possibility to grant local voting rights to resident foreigners, supported by the left, was accepted by the right-wing parties in exchange for the constitutional possibility to grant national voting rights to non-resident citizens. It took until 1983 for the change in the constitution to come into effect, due to the complex rules on constitutional change.<sup>3</sup> Once the Constitution was changed, the discussion on the conditions for local voting rights for foreigners began. A five-year legal residency condition for foreigners was included in the electoral law, the justification of which was to ensure that foreigners would have enough knowledge of the Dutch political system in order to vote rationally. A similar time-criterion to condition the new voting rights of non-resident nationals was rejected.

Implementation of EU law based local electoral rights did not give rise to any deep discussion at political level, as it was felt that the discussion had been held when local voting rights for foreigners was introduced. Implementation followed as closely as possible the existing framework for foreign voting in local elections, which meant that only the five-year residence condition had to be dropped in the case of EU nationals. The difference between EU nationals and other foreigners was motivated by a reference to Union citizenship that justified a more similar position to Dutch nationals for EU citizens than other foreigners had.

Implementation of European electoral rights for EU nationals did not cause any discussion on the substance of those rights. The Dutch system, however, demanded separate solutions for registration in order to comply with the European Directive.

Since the 1980s, when the actual electoral law with local voting rights for foreigners and national voting rights for non-residing nationals was set up, there were occasionally some discussions and modifications, but the general structure of the system did not change: local elections are based on residence, national elections are based on membership. A revision has been made in order to enfranchise Dutch nationals living on Aruba and the Antilles for European elections following the *Eman and Sevinger* ruling of the CJEU.<sup>4</sup> This led to some discussion in the media. More recently, national voting of non-resident nationals got media attention when the government in March 2012 proposed a bill to abolish dual nationality, following contestation of the dual nationality of members of government by the extreme right-wing PVV. Expats started a lobby against that proposal and they became more visible as an electoral group. In the coalition agreement of 29 October 2012, indicating the plans for the present government, abolition of dual nationality is no longer mentioned. The agreement announces however that the government sets out to increase the five-

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<sup>3</sup> A constitutional change requires first an act of parliament adopted by both Houses and after that the Lower House is dissolved. After the new Lower House has convened, the amendment is considered by each of the Houses in a so-called 'second reading'. Each House can in second reading only adopt the amendment with at least two thirds of the votes cast.

<sup>4</sup> Case C-300/04, *Eman and Sevinger*, ECR [2006] p. I-8061.

year legal residence condition for local voting rights by two years, making it a seven-year-residence condition.<sup>5</sup>

In the Netherlands, the possibility of having a referendum has been regularly discussed. The Constitution is silent on referendums. According to Article 67 par. 3 of the Dutch Constitution, members of the national legislative cannot be bound by mandate or instructions when casting their votes which means that referendums cannot be binding. Similar provisions exist for the provinces and municipalities in the Act on Provinces and the Act on Municipalities. The law does not prescribe uniform standards for referendums. However, proposals to introduce a law on national referendums and to change the constitution in order to open up the possibility of binding referendums are pending.<sup>6</sup> Currently, the relevant legislator can issue a consultative referendum on an ad-hoc basis and set the standards of the referendum, such as criteria for eligibility. The municipal law provided the possibility to have a referendum on appointment of the mayor from 2001-2008. The relevant provision was withdrawn in 2008 because referendums were not deemed to enhance the status of the office of mayor. Furthermore, the mayor holds an independent and impartial position in the municipal council, which makes it difficult for candidates to present their distinctive features. Several municipal councils held a referendum on which candidate should be recommended to the Crown for nomination, notably in Eindhoven, Zoetermeer and Utrecht. Although these referendums could only be consultative, sometimes the municipal council stated in advance it would consider itself to be bound by the result.

## 2. Eligibility

Article 4 of the Dutch Constitution determines that ‘every Dutch national shall have an equal right to elect the members of the general representative bodies and to stand for election as a member of those bodies, subject to the limitations and exceptions prescribed by an Act of Parliament.’ The Netherlands has general representative bodies at three levels: national, provincial and municipal. The national representative body, the States-General, is elected partly through national elections and partly through provincial elections. National elections are held for the Lower House or Second Chamber. Provincial elections are held for the provinces and the members of the provincial councils elect the members of the Upper House or First Chamber. Municipal elections are held for municipal councils.

### 2.1. Citizen residents

Citizen residents are eligible for elections at all three levels, the place of effective residence determining enfranchisement for the province and municipality. In 1971 the State Advisory Committee on the Constitution and Electoral Law discussed and rejected the suggestion of linking enfranchisement for municipal elections to employment.

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<sup>5</sup> *Bruggen slaal* Regeerakkoord VVD – PvdA, 29 oktober 2012, 31.

<sup>6</sup> TK 30372 and 30174.

### 2.1.1. Age

The minimum age for active voting rights was set at eighteen in 1972 and for passive voting rights it was set at eighteen in 1983. This age is the same in all types of elections. Over the years, suggestions have been made to lower the minimum age for active voting rights to sixteen. However In 2010, the Ministry of the Interior concluded on the basis of a commissioned study on lowering the electoral threshold age that there was no reason to lower the age to sixteen.<sup>7</sup>

As stated above, legislators can determine eligibility criteria for a consultative referendum. There are examples of municipalities that allow persons aged sixteen, and who fulfil all other criteria of enfranchisement, to participate in a referendum.

### 2.1.2. Mental disabilities

The Dutch Constitution contained the provision (article 54, paragraph 2 under b) that anyone who has been deemed legally incompetent by irrevocable judgment of a court because of mental disorder was not entitled to vote. This provision has been withdrawn in June 2008. The reason for the withdrawal was a ruling of the highest administrative court, the Council of State, of 29 October 2003, on the question of whether per se exclusion from voting of persons deemed legally incompetent because of mental disorder is compatible with the International Covenant on Civil and Political Rights.<sup>8</sup> The Council of State ruled that categorical exclusion as such is not an unreasonable restriction of the right to vote in the meaning of Article 25 ICCPR, but that it could be in individual cases. The Council further ruled that it is up to the legislator to take away any incompatibilities that may arise. The legislator reacted by withdrawing the constitutional exclusionary provision. No longer excluding this category of voters was seen as a reflection of the emancipation of mentally disabled persons, and the changing perception of the right to vote as a fundamental individual right instead of a right that, because of its fundamental nature, should only be exercised by those who can make responsible use of it.<sup>9</sup>

### 2.1.3. Criminals

Prisoners are not disenfranchised as a category. However, prisoners who are sentenced by an irrevocable judgment of a court of law to a custodial sentence of not less than one year can be simultaneously disqualified from voting (Article 54, par. 2 Dutch Constitution). Although Article 15, paragraph 4 of the Dutch Constitution provides that a person who has been lawfully deprived of his liberty may be restricted in the exercise of fundamental rights in so far as the exercise of such rights is not compatible with the deprivation of liberty, Article B6 of the Elections Act provides that prisoners shall exercise the franchise by proxy voting. Therefore, there is neither formal nor substantive general exclusion of prisoners from voting.

<sup>7</sup> See e.g. EK, Vergaderjaar 2009-2010, 31 012, E; H. van der Kolk, K. Aarts, *Het verlagen van de kiesgerechtigde leeftijd tot 16 jaar; debatten, argumenten en consequenties*, Universiteit Twente, 2010.

<sup>8</sup> ABRvS, 29 October 2003, AB2003/463.

<sup>9</sup> TK, Vergaderjaar 2005-2006, 30 471, nr. 3.

## 2.2. Citizens abroad

Since 1983, Article 54 of the Dutch Constitution provides that the Members of the Second Chamber shall be elected by the Dutch nationals who have attained the age of eighteen, with the exception of any Dutch nationals who may be excluded by an Act of Parliament by virtue of the fact that they are not resident in the Netherlands. The Elections Act provides for these exclusions.

### 2.2.1. Residence in the country

Residence in the country is not a general condition for franchise in national elections, but residence in the province and municipality is a general condition for franchise in provincial and municipal elections. However, candidates who are not resident of the province or municipality for which they run can participate if they sign a declaration showing that, if elected, they intend to take up residence in the relevant province or municipality.<sup>10</sup>

One category of Dutch citizens abroad is excluded from national elections, notably those who have their actual place of residence in Aruba, Curaçao or Sint Maarten. The exception is based on the wish to prevent double voting for the representative body in matters of the Kingdom of the Netherlands, in which the respective governments of the Netherlands, Aruba, Curaçao and Sint Maarten participate.<sup>11</sup> The exception is not valid for Dutch citizens who have been resident in the Netherlands for at least ten years and for Dutch nationals who are employed in the Dutch public service in Aruba, Curaçao and Sint Maarten and their Dutch spouses and children, in so far as they have joint households.

### 2.2.2. Temporarily absent citizens

Dutch citizens resident in the Netherlands who are temporarily abroad for their profession – or that of their spouse, partner or parents – are allowed to vote by proxy. They can also file a request with the mayor of The Hague to be allowed to vote by post, but only in Lower House elections or elections for the European Parliament. Postal voting is also possible via designated polling stations abroad. All other temporarily absent citizens may vote by proxy in all types of elections.

### 2.2.3. Citizens residing permanently abroad

Citizens who reside permanently abroad may vote in and run as candidates for Lower House elections, except for citizens residing in Aruba, Curaçao and Sint Maarten as described above, under section 2.2.1. All Dutch citizens residing permanently abroad may vote in and run as candidates for European Parliament elections. Citizens residing permanently abroad cannot vote in provincial and municipal elections. They can run as candidate for the Upper House, which is indirectly elected via provincial councils. Furthermore, they can also run as candidate for a provincial or municipal council, provided they sign a declaration showing that, if elected, they intend to take up residence in the relevant province or municipality.

Citizens residing permanently abroad have the option to request to vote by post, vote by proxy or at a polling station of her/his choice in the Netherlands.

<sup>10</sup> Article H7 par. 3 Elections Act.

<sup>11</sup> See Charter for the Kingdom of the Netherlands, paragraph 2.



### 2.3. Foreign residents

Article 130 of the Dutch Constitution provides that the right to elect members of a municipal council and the right to be member of a municipal council may be granted by an Act of Parliament to residents who are not Dutch nationals provided they fulfil at least the requirements applicable to residents who are Dutch nationals. The Act of Parliament of 29 August 1985<sup>12</sup> changed the Elections Act and granted local voting rights to foreign residents. According to Article 87 of the Municipal Act, foreign residents' electoral rights are also granted in elections for representative councils for municipal districts. Foreign residents do not have electoral rights for provincial or national elections.

#### 2.3.1. Default category of foreign residents

Foreign residents who are not EU-nationals enjoy both passive and active local voting rights if they are residents of the municipality on nomination day, have attained the age of eighteen years on polling day and have been legally resident in the Netherlands for an uninterrupted period of at least five years immediately prior to nomination day. The entitlement to vote does not apply to foreign residents who are employed in the Netherlands as members of diplomatic or consular missions posted to the Netherlands by other States and their foreign spouses, partners or children, in so far as they have a joint household.

#### 2.3.2. Specific other states

There are no specific provisions for electoral rights based on bilateral agreements or international associations other than the EU.

However, one specific situation needs to be mentioned, notably that of non-Dutch nationals on Bonaire, St. Eustatius and Saba. According to Article Ya 3 of the Elections Act, the island councils of these islands are to be considered as municipalities. One would have expected that non-Dutch residents on these islands have passive and active voting rights under similar conditions as are applicable to municipal elections in the Netherlands. However, an amendment of the Dutch Constitution is foreseen whereby the island councils also participate in the election of the Upper House.<sup>13</sup> Therefore, enfranchisement for the island councils is based on Dutch nationality.<sup>14</sup> On 10 January 2011, the Court of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba ruled in the Santana Rodriguez case<sup>15</sup> that Article Ya 14 should remain inapplicable as long as the Dutch Constitution has not been amended. Until that time, rules on active voting rights for local elections are *mutatis mutandis* applicable to elections for island councils which means that foreign residents having legally resided on the island for an uninterrupted period of at least five years immediately prior to nomination day are entitled to vote for the island council.

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<sup>12</sup> Stb. 1985, 478.

<sup>13</sup> See also Article Ya 22 Elections Act.

<sup>14</sup> Articles Ya 14 and Ya 19 Elections Act.

<sup>15</sup> HJAR 044/10.

### 3. Electoral rights of EU citizens

The transposition of Directive 93/109/EC on European Parliament elections was effectuated by withdrawal of the Act on European elections and inclusion of a separate section Y in the Elections Act.<sup>16</sup> Transposition of Directive 94/80/EC on local elections required adaptation of the provisions on voting rights for foreign residents in municipal elections. The Act of 3 July 1996 amended the relevant provision of the Elections Act and the municipal law to that effect.<sup>17</sup>

#### 3.1. Local elections

Directive 94/80/EC has been fully implemented since 17 July 1996. The provisions apply *mutatis mutandis* to elections for neighbourhood councils.<sup>18</sup> The Elections Act does not impose any additional conditions on EU citizens compared to national citizens. The additional condition of five-year legal residence imposed on foreign non-EU residents does not apply to EU citizens. The Elections Act does not prohibit ‘double voting’, e.g. for a municipal council in the Netherlands and a municipal council in the Member State of origin. It is not considered to be genuine double voting, because the representative bodies that are elected are different.

The introduction of EU law based local voting rights led to a limitation of the exception for foreign residents ‘employed by other States’ to ‘members of diplomatic or consular missions’. The Directive does not provide for an exception in that regard, but denying local voting rights to foreign EU-national staff members of diplomatic or consular missions is motivated by reference to the Vienna Convention on Diplomatic Relations of 18 April 1962 and the Vienna Convention on Consular Relations of 18 April 1963.<sup>19</sup> The privileges and immunities accorded to those persons ensure that they are not fully subjected to the legislation and jurisdiction of the receiving state, in order to guarantee their independence with the aim of safeguarding the efficient performance of the functions of diplomatic and consular missions. Local voting rights are considered to be at odds with that independence, and therefore the exception is justified according to the Dutch authorities. The exception covers non-Dutch staff members only, regardless of their nationality.

#### 3.2. EP elections for EU citizens residing in the Netherlands

For European Parliament elections, the provisions concerning the election of the members of the Lower House are applicable, unless the chapter on the election of members of the European Parliament of the Elections Act provides otherwise. In order to participate, EU citizens must, unlike Dutch nationals, reside in the European part of the Netherlands on the day of nomination. EU citizens living in non-European parts of the Netherlands are not allowed to participate in the Dutch election of the European Parliament. Residence in the non-European parts of the Netherlands is not presumed to be residence ‘in a Member State of which he is not a national’ that would give entitlement to participate in elections to the European Parliament under the same

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<sup>16</sup> Stb. 1993, 75.

<sup>17</sup> Stb. 1996, 392.

<sup>18</sup> Article 87 Municipal Law.

<sup>19</sup> Trb. 1962, no. 101 and Trb. 1984, no. 108; Trb. 1965, no. 40.

conditions as Dutch nationals.<sup>20</sup> For Dutch nationals in Bonaire, Saba and Sint Eustatius the Elections Act contains a specific paragraph with provisions regarding the election of the Members of the European Parliament.<sup>21</sup>

Prevention of double voting and the requirement that EU citizens may not have been disqualified from voting in the Netherlands, or in their Member State of nationality, required a different procedure for registration of EU voters. Dutch citizens are automatically registered to vote in the Dutch municipality where they reside. EU citizens have to submit a written request for registration of their franchise and must declare that they shall vote only in the Netherlands and have not been disqualified from voting in their Member State of nationality.<sup>22</sup> The enfranchisement remains registered as long as the EU citizen resides in the Netherlands, or until registration is cancelled. No more than seven days after nomination day, the municipalities forward a list with data of registered EU citizens to the relevant Ministry that indicates to the competent authorities of other Member States the registration of their nationals as voters in the Netherlands.<sup>23</sup> With respect to active voting rights the possibility offered by Directive 93/109/EC to the Member State of residence, to check whether or not an individual has been disqualified from voting in their home Member State, has not been transposed. The Dutch municipalities do not actively control disqualification in the Member State of nationality, but registration is refused if the municipal authority is notified by another Member State that the person in question is disqualified from voting. Furthermore, EU citizens who vote both in the Netherlands and in the Member State of nationality in elections to the European Parliament shall be liable to a term of detention not exceeding one month or a category two fine.

When the Directive was transposed the requirement that a candidate had to produce an attestation from the competent authorities of the Member State of his nationality that he has not been deprived of the right to stand as a candidate was brought in line with the Dutch system whereby credentials are subject to inspection after the election. This meant that the attestation was to be sent to the Lower House after election day. The European Commission contested this transposition and argued that the attestation should be produced when EU citizens apply as a candidate. As a result, the Elections Act was changed in 1999 to the effect that the central electoral committee shall strike off the list the name of a candidate who has not submitted the required attestation.<sup>24</sup>

### 3.3. EP elections for national citizens abroad

Originally, transposition of the Directive declared enfranchisement of nationals for elections to the Lower House applicable to elections for the European Parliament. All Dutch citizens abroad had active and passive electoral rights for the European Parliament, except those residing on Aruba and the Antilles (see above, 2.2.1.), who had only passive voting rights.<sup>25</sup> The judgment in the *Eman and Sevinger* case<sup>26</sup> led to

<sup>20</sup> TK vergaderjaar 2008-2009, 31956, nr. 3, par. 7.5; Article 22, par. 2 TFEU; see also Case C-300/04, *Eman and Sevinger*, above note 2, notably point 53.

<sup>21</sup> Articles Ya 32 – Ya 39 Elections Act.

<sup>22</sup> Article Y 32 Elections Act.

<sup>23</sup> Ministerial by-law on exchange of information with respect to the election of members of the European Parliament, *Staatscourant* 2004, 70.

<sup>24</sup> Article Y 35a Elections Act.

<sup>25</sup> Article 56 Dutch Constitution j° Article Y 4 under a) Elections Act.

an amendment of the Elections Act in 2008 that annulled the exception for residents on Aruba and the Antilles.<sup>27</sup> At the same time, a specific provision for registration was included that gives Dutch nationals living on Aruba and the Antilles the possibility to register either at the Dutch representation in Aruba or the Antilles, or at the municipal executive of The Hague, where all other Dutch citizens abroad register.

In 2010, the Elections Act was modified due to the altered status of Bonaire, Sint Eustatius and Saba as public bodies within the Netherlands.<sup>28</sup> The special provisions for Aruba and the Antilles were limited to Aruba, Curaçao and Sint Maarten. Dutch nationals in the new public bodies enjoy the same electoral rights and can vote according to the same procedures with respect to elections to the Lower House and the European Parliament as Dutch nationals residing in the European part of the Netherlands. As stated above (section 3.2), non-Dutch EU citizens residing in the new public bodies do not enjoy Dutch law based voting rights for the European Parliament, as the public bodies are overseas countries and territories to which Article 22 TFEU is not applicable.

### **3.4. Regional and other elections**

In the Netherlands elections for general representative assemblies are limited to the municipal, provincial, national and European elections as described above. Apart from that, every four years elections are held for District water boards (*Waterschappen*). All persons who have reached the age of eighteen, are not excluded from the vote as provided for by the Elections Act, and who have their actual residence within such a district have active and passive voting rights, regardless of their nationality.<sup>29</sup> At present, the 2012 elections have been postponed and an interim board has been installed, with a view to alter the election of District water boards.<sup>30</sup> Indirect election of the District water boards by municipal councils is under discussion.

## **4. Exercising electoral rights**

Foreigners do not have electoral rights in national and regional elections. Therefore, they are not included in the next section 4.1 of this report.

### **4.1. National and regional elections**

#### **4.1.1. Voter registration**

In the Dutch system of voter registration, the municipal authorities register resident voters on the basis of the municipal database. All persons whose names and addresses are entered in the municipal database are deemed to have their actual place of residence in that municipality. Eligible voters are registered automatically, save where otherwise provided by law. Resident citizens are automatically registered for

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<sup>26</sup> Cited above, footnote 2.

<sup>27</sup> Act of 30 October 2008, Stb. 2008, 475.

<sup>28</sup> Act of 17 May 2010, Stb. 2010, 347.

<sup>29</sup> Articles 15-17 Act on District water boards of 6 June 1991, Stb 1991, 379.

<sup>30</sup> Act of 23 September 2012, Stb 2012, 428.

municipal, provincial, national and European elections. In Bonaire, Sint Eustatius and Saba registration of franchise is done by the public bodies in a way that is identical to municipal registration in the European part of the Netherlands.

The municipal executive of The Hague will register Dutch citizens residing abroad to vote. Such persons have to submit a written request to that effect. The request must be submitted not sooner than six months before polling day and must be received not later than six weeks before polling day. Following complaints with respect to the complex registration procedure, a semi-permanent central registration system was set up. The municipal executive will maintain a database of persons who have requested registration for national elections or who have requested to be entered in the database. A registration form for the franchise will be automatically sent to them for each new election. Further measures to simplify registration, notably the possibility to send registration forms electronically and to have an internet-based registration, are under discussion as are measures for central registration of non-resident citizens.<sup>31</sup>

#### 4.1.2. Casting the vote

As of January 2010, Article J5 of the Elections Act makes it possible for resident citizens to cast their vote in any polling station in the municipality in which they are registered as a voter.<sup>32</sup> According to Article K1 of the Elections Act, they are also permitted, at their request, to vote at a polling station of their choice in either the province of residence for provincial elections or the national territory for national elections. Apart from casting their vote in person, resident citizens may also vote by proxy by authorising another voter registered in the same municipality to vote at a polling station in that municipality. To that effect, the voter registration card resident citizens receive contains a form on the back that can be filled out and must be signed by the voter and the designated proxy.

Resident citizens who are temporarily absent may vote by proxy. Only if they are abroad for work purposes are they – and their spouse and children – allowed, at their request, to vote by post in national and European elections, but not in provincial (or municipal) elections where only voting by proxy is possible.<sup>33</sup> In that case, the voter who is temporarily abroad may either submit his signed voter registration card to a proxy, who also has to sign the registration card. Failing that, the voter can apply in writing for voting by proxy to the mayor of the municipality of his registration, no more than two weeks before polling. For this application a form is available free of charge, in which the voter must designate a proxy.

Non-resident citizens have the option to vote by mail, vote by proxy or vote personally at a polling station of their choice in the national territory.<sup>34</sup> A written application indicating the method of voting of their choice must be submitted together with the request for registration.

In the past, some experiments have been carried out with electronic voting for non-resident citizens. At present, a proposal is under discussion to make internet-

<sup>31</sup> TK vergaderjaar 2011-2012, 33268; TK vergaderjaar 2011-2012, 31142.

<sup>32</sup> Act of 29 October 2010, Stb. 2009, 452.

<sup>33</sup> Articles M1 and Y2 Elections Act.

<sup>34</sup> Article K7 Elections Act.

based voting possible for voting from abroad, in addition to postal voting.<sup>35</sup> Postal voting has led to many practical problems, notably because mail services are not always reliable and forms were received too late or went missing.<sup>36</sup>

#### **4.1.3. Running as candidate**

According to Article 56 of the Dutch Constitution, all Dutch citizens who have attained the age of eighteen and are not disqualified from voting are eligible for membership of the Parliament. Dutch citizens whose residence is situated outside the Netherlands must designate an agent in the Netherlands, who is empowered, if the candidate is elected, to accept the appointment.<sup>37</sup> For membership of the provincial council there is the extra condition of residence in the relevant province.

Non-resident citizens may run as a candidate for Parliament. They may only run as a candidate for the provincial council if they have signed a declaration showing that, if elected, they intend to take up residence in the relevant province. This declaration has to be submitted with the list of candidates to the chairperson of the principal electoral committee on nomination day.

#### **4.1.4. Assimilated or special representation of citizens abroad**

All non-resident citizens who have submitted a request in writing to be registered for voting are registered by the municipality of The Hague and are included in the electoral district of The Hague. When the status of the Antilles changed, Bonaire has been added as electoral district and contains Bonaire, Sint Eustatius and Saba. Districts serve organisational purposes only. There is no special or discrete representation of non-resident citizens. The Netherlands has a system of proportionate representation (D'Hondt).

### **4.2. Local elections**

Non-resident citizens do not have electoral rights in local elections. Therefore they are not included in the following subsections of this report.

#### **4.2.1. Voter registration**

Registration of resident citizens is identical to their registration in national and provincial elections, as described above in section 4.1.1. Registration of eligible foreign residents also takes place by municipalities based on the municipal database. It is identical to and does not differ from that of resident citizens.

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<sup>35</sup> TK vergaderjaar 2011-2012, 33354.

<sup>36</sup> In the September 2012 elections, 88 per cent of the postal vote was received on time, see <http://www.denhaag.nl/bewoners/to/Uislag-Tweede-Kamerverkiezing-2012-Den-Haag.htm> (last visited 17 November 2012).

<sup>37</sup> Articles H10 and R 9 Elections Act.

#### **4.2.2. Casting the vote**

Both resident citizens and foreign residents may cast their vote in the polling station of their choice in the municipality in which they are registered as a voter. Apart from casting their vote in person, resident citizens may also vote by proxy through authorising another voter registered in the same municipality to vote at a polling station in that municipality. The voter registration card resident citizens receive contains a form to designate and authorize a proxy.

#### **4.2.3. Running as candidate**

Foreign residents who fulfil the five-year legal residence condition can run as candidate for the municipal council of the municipality of their residence under identical conditions as Dutch residents.

