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REPORT ON POLITICAL PARTICIPATION OF MOBILE EU CITIZENS: NETHERLANDS

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Report on Political Participation of Mobile EU Citizens

Netherlands

David de Groot* and Maarten Vink†

Abstract:

Resident EU citizens have the right to vote and stand as candidates in local and European Parliament (EP) elections in the Netherlands. Whilst voter registration is automatic in local elections, EU citizens have to register once to vote in EP elections. Non-resident Dutch citizens have the right to vote and stand as candidates in national and EP elections. Their electoral registration is not automatic. Both resident non-citizens and non-resident citizens encounter problems concerning the access to information, the language of documents, and the identification and registration procedures. This report includes a number of recommendations that follow from our analysis of the political participation in the Netherlands of mobile EU citizens.

Samenvatting:

Ingezetene niet-Nederlanders uit de EU hebben het recht om te stemmen en zich kandidaat te stellen bij lokale en Europese verkiezingen in Nederland. Terwijl de kiezersregistratie voor lokale verkiezingen automatisch gebeurt, moeten EU burgers zich een maal registreren voor de Europese verkiezingen. Niet-ingezetene Nederlanders hebben het actief en passief kiesrecht bij nationale en Europese verkiezingen. Hun verkiezingsregistratie is niet automatisch. Zowel ingezetene niet-burgers als niet-ingezetene burgers ondervinden problemen met betrekking tot de toegang tot informatie, taal van documenten, identificatie- en registratieprocedures. Dit rapport bevat een aantal aanbevelingen die volgen uit onze analyse van politieke participatie in Nederland door mobiele EU-burgers.

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1. Introduction

Non-resident citizens have the right to vote and stand as candidates in national legislative elections and European Parliament (EP) held in the Netherlands (see Table 1). The only exception are Netherlands nationals who are resident on Aruba, Curaçao, or Sint Maarten, who do not enjoy the right to vote in the Dutch national elections. Non-resident citizens have to register once to be able to vote in elections held in the Netherlands. Non-resident voters may cast the ballot through in-country voting, personal voting at diplomatic missions, proxy voting or postal voting.

Resident EU citizens and third-country nationals (TCNs) have the right to vote and stand for local elections. TCNs have to demonstrate at least five years of uninterrupted lawful residence in the Netherlands before they may participate in local elections. All resident voters are automatically registered for local elections. Resident EU citizens also have the right to vote and stand for EP elections. A one-off active registration is required for EU citizens to be able to cast their vote.

Table 1. Conditions for electoral rights of non-resident citizens and non-citizen residents in the Netherlands

Type of voter	Election type	Right Voting	Right Candidacy	Automatic registration	Remote voting
Non-resident citizens	National Legislative	YES ¹	YES	NO ²	YES ³
Non-resident citizens	European Parliament	YES	YES	NO ⁴	YES ⁵
Non-citizen residents	Local Legislative	YES ⁶	YES ⁷	YES	NA
Non-citizen residents	Local Mayoral	NA	NA	NA	NA
Non-citizen residents	European Parliament	YES ⁸	YES ⁹	NO ¹⁰	NA

Until 1983, the Dutch Constitution stated that only resident Dutch nationals were eligible to vote in elections. At the time, the so-called ‘minority policy’ of promoting a multi-cultural society considered that integration is promoted by trust in governmental bodies. This trust would be established by granting the right to vote to non-citizen residents.¹¹

¹ Except for Dutch citizens resident on Aruba, Curaçao, or Sint Maarten.

² A one-off active registration is required, which automatically renewed for subsequent elections.

³ In-country voting, personal voting at diplomatic missions, proxy voting, and postal voting are available.

⁴ A one-off active registration is required, which automatically renewed for subsequent elections.

⁵ In-country voting, personal voting at diplomatic missions, proxy voting, and postal voting are available

⁶ EU citizens residing in the municipality where the election is held; TCNs (except for members of diplomatic or consular missions posted in the Netherlands and their families) who can document at least five years of uninterrupted lawful residence in the Netherlands prior to the election day.

⁷ EU citizens residing in the municipality where the election is held; TCNs (except members of diplomatic or consular missions posted in the Netherlands and their families) who can document at least five years of uninterrupted and lawful residence in the Netherlands prior to the election day.

⁸ Only EU citizens residing in the Netherlands.

⁹ Only EU citizens residing in the Netherlands.

¹⁰ A one-off active registration is required, which automatically renewed for subsequent elections as long as the voter does not change his/her address of residence.

¹¹ Meindert FENNEMA, Jean TILLIE (2001), “Civic Community, Political Participation and Political Trust of Ethnic Groups”, *Connections* 24(1): 26-41, p. 36-37.

Furthermore, there were some minority groups which refused naturalisation, while the government wanted to atone for certain historic injustices done to them by granting them the right to vote.¹² Consequently, in the 1960s and 1970s, the enfranchisement of non-citizen residents and non-resident citizens were highly debated in the *Cals-Donner* Committee, and an agreement was difficult to reach.¹³ The left-wing parties wanted only the enfranchisement of non-citizen residents, while the right-wing parties wanted only the enfranchisement of non-resident citizens. Considering that a two-thirds majority was required to change the Constitution, a *quid pro quo* compromise was concluded.¹⁴ Subsequently, both groups were enfranchised to a certain extent. In 1985, non-citizen residents acquired the right to vote and stand for local elections, while non-resident citizens acquired the right to vote in national elections.

Non-citizen residents have always been excluded from the right to vote in provincial elections because these are indirect elections to the Senate. Therefore, further extensions of the right to vote to national and provincial elections have not been accepted. Instead, in 1991, naturalisation rules were liberalised by accepting dual nationality for immigrants, which led to a large number of naturalisations, with a peak in 1996. In 1997, the rules on dual citizenship became more restrictive again, albeit with significant exceptions.¹⁵

When local voting rights for non-citizen residents were introduced in 1985, franchise was limited by a requirement of five years of residence. This led to two problematic issues. First, the residence requirement applied to both EU citizens and TCNs. This was problematic in light of the Treaty provisions introduced by the Maastricht Treaty, which did not provide for such residence restrictions for EU citizens.¹⁶ In 1996, the immediate right to vote upon residence in the Netherlands for non-national EU citizens was introduced.¹⁷ Second, in the 1990s, the Netherlands tightened its residence conditions for TCNs, requiring five years of uninterrupted lawful residence. This caused considerable problems as the information required for the electoral registration of TCNs provided by immigration authorities to the municipalities was often incomplete or outdated. As a result, non-national voters may have been unlawfully excluded from elections.¹⁸

The first direct elections for the European Parliament were held in 1979. The EP used to be regulated by a separate law,¹⁹ however, it was incorporated into the Electoral Law in 1992. While non-resident citizens had a vote in EP elections, residents of the Dutch Antilles and Aruba were excluded from the franchise. In 2006, the European Court of Justice considered that the different treatment between nationals living in the Dutch Antilles and Aruba and nationals living in third countries was incompatible with the principle of equal

¹² Dirk JACOBS (1998), "Discourse, Politics and Policy: The Dutch Parliamentary Debate about Voting Rights for Foreign Residents", *International Migration Review*, Vol. 32, No. 2, 350-373, p. 364.

¹³ Annette SCHROUWEN (2013), *Access to Electoral Rights The Netherlands*, SCAS/EUDO-CIT-ER 2013/1, p. 1.

¹⁴ Dirk JACOBS (1998), "Discourse, Politics and Policy: The Dutch Parliamentary Debate about Voting Rights for Foreign Residents", *International Migration Review*, Vol. 32, No. 2, 350-373, p. 366.

¹⁵ Maarten VINK (2005), *Limits of European Citizenship: European Integration and Domestic Immigration Policies* (Palgrave Macmillan), p. 148.

¹⁶ Art. 19(1) of the Maastricht Treaty; cf. Article 22 Treaty on the Functioning of the European Union.

¹⁷ *Wet van 3 juli 1996, houdende wijziging van de Kieswet en de Gemeentewet ter uitvoering van richtlijn nr. 94/80/EG van de Raad van de Europese Gemeenschappen van 19 december 1994 tot vaststelling van de wijze van uitoefening van het actieve en passieve kiesrecht bij gemeenteraadsverkiezingen ten behoeve van burgers van de Unie die verblijven in een Lid-Staat waarvan zij de nationaliteit niet bezitten*, Stb. 1996, 392.

¹⁸ Kees GROENENDIJK (2008), *Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn*, Migration Policy Institute, p. 4.

¹⁹ *Wet Europese Verkiezingen*, Stb. 1978, 652 and Stb. 1989, 490. This law was moved to the Electoral Law with Stb. 1993, 75.

treatment.²⁰ Consequently, the law was changed to accommodate these nationals under the non-resident citizens' articles.

The enfranchisement of non-resident citizens has had also another consequence. It created a specific limited group that requires special arrangements concerning especially the posting and receipt of ballot papers. This group is considered to be the perfect 'test subject' for modernised voting. Consequently, many of the 'experimental voting laws' relate specifically to non-resident citizens. These experimental laws concern new types of voting cards (which can either be of a smaller size or relate to where they can be used), electronic voting and receiving the ballot papers by email. There have also been planned 'test elections' where non-resident citizens were asked to try an internet-based voting program. However, these tests have in some cases created some confusion where the registration for these tests coincided with real elections.²¹

1.1. Demographic Characteristics of Non-citizen Residents and Non-resident Citizens

Non-citizen residents

According to Statistics Netherlands,²² on 1 January 2018, around one million persons of non-Dutch nationality resided in the Netherlands. Of these, around half were citizens of the European Union. Figure 1 below shows the evolution of these numbers since 1996, illustrating that the substantial increase of non-citizen residents since 2008 can be largely attributed to an increased inflow of EU citizens. The number of resident EU citizens in the Netherlands has doubled from 262,000 in 2008 to 525,000 in 2018.

A large part of this increase is due to an increase of Polish national residents, from 26,000 in 2008 to 132,000 in 2018. In addition, the number of EU citizens from Bulgaria and Romania, as well as from Southern European states such as Greece, Italy, Spain and Portugal, also increased substantially.

²⁰ C-300/04 *Eman and Sevinger* ECLI:EU:C:2006:545.

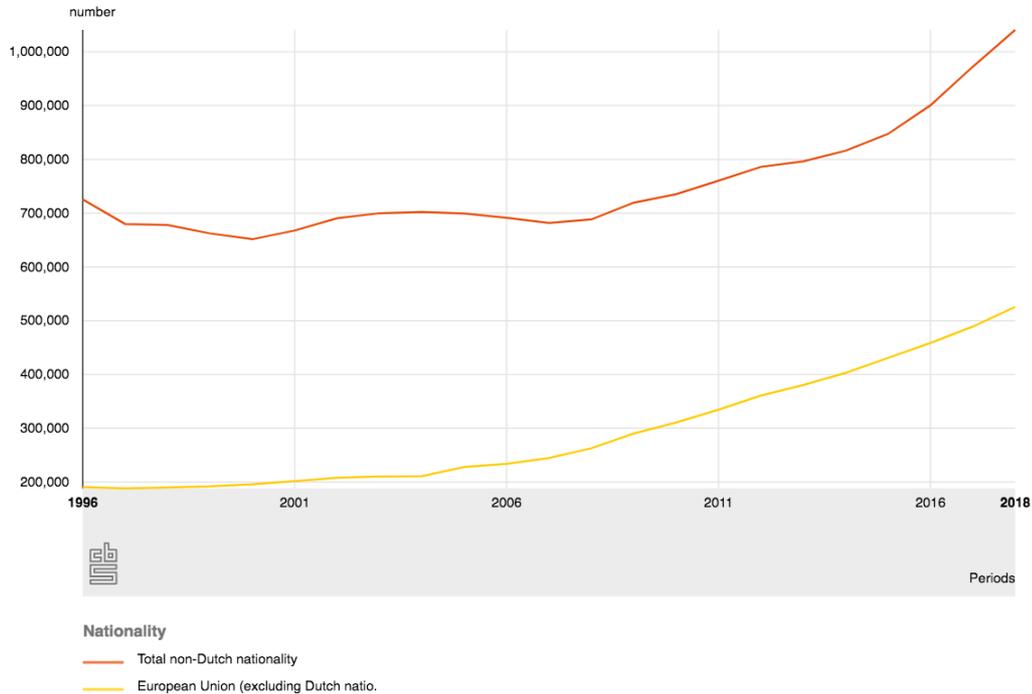
²¹ Lotte HELDER, *Evaluatie Tweede Kamer Verkiezingen 2017*, KIESRAAD, p. 10.

Figure 1. Resident non-citizen population in the Netherlands 1996-2018: total non-Dutch nationality and EU

Population; sex, age and nationality, 1 January

Topic: Males and females

Age: Total



Source: Statistics Netherlands²³

Among resident EU citizens, the age groups of 20-29 year olds (109,000) and 30-39 year olds (112,000) are the largest. Around the same number of female (263,000) and male EU citizens (262,000) are resident in the Netherlands.

More than half of all EU citizens reside in the most densely populated Western part of the Netherlands, where the major cities of Amsterdam, Rotterdam, The Hague and Utrecht are located. EU citizens also reside in the Southern part of the Netherlands, in provinces of Brabant and Limburg. Fewer EU citizens reside in the Eastern and Northern parts of the Netherlands. Mobile EU citizens generally display comparable employment rates with the native-born population of the Netherlands. According to the Eurostat statistics from 2017, 77% of EU citizens in the Netherlands were employed (compared 80% among the native-born population). However, employment status varies significantly by gender; 84% of male EU citizens had paid employment, whereas only 72% of women were employed.²⁴ Information on employment sectors is not available in these statistics.

²³ Information on the population of the Netherlands by nationality is available from Statistics Netherlands at <https://opendata.cbs.nl/statline/#/CBS/en/dataset/03743eng/line?ts=1536419449462>.

²⁴ Source: Eurostat, https://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_-_labour_market_indicators#Employment_rates

Non-resident citizens

According to the International Organization for Migration, in 2015, approximately 5.48% of all Dutch citizens resided abroad.²⁵ In 2017, about 533,000 Dutch citizens resided in other EU Member States.²⁶ The highest concentrations are in Belgium and Germany, followed by the United Kingdom.²⁷ There are no statistics available on the age composition, employment status, or sectors of employment of non-resident Dutch citizens.

1.2. Summary of the Electoral Rights of Non-citizen Residents and Non-resident Citizens

There are seven types of elections held in the Netherlands: (1) elections for the House of Representatives (henceforth ‘national elections’), (2) elections for the Senate, (3) elections for the Island Councils, (4) elections for the Provincial Councils, (5) elections for the Water Boards, (6) elections of Municipal Councils (henceforth ‘local elections’) and (7) EP elections.

Between 2014 and 2018 there also existed advisory referenda, which were held concerning the EU-Ukraine Association Agreement in 2016, and the Intelligence and Security Services in 2018. These were, however, abolished in July 2018.²⁸ For the referendum on the Constitutional Treaty in 2005 a specific law was created.²⁹

For all elections the minimum age required is 18 years. Registration can, however, already be done at the age of 17. The franchise for the different elections is either dependent on a residence requirement or on a nationality requirement.

The franchise for the elections for the House of Representatives, for the Provincial Councils and for Advisory Referenda is restricted with a Netherlands nationality requirement. The Senate is elected by the Provincial Councils.

A residence requirement exists for the Island Council, Provincial Council, Water Boards and local elections. For EP elections there is, in principle, a residency requirement, but non-resident citizens also have a right to vote if they register.

Consequently, only for the elections for the Provincial Councils and indirectly for the Senate, a dual requirement of residence and nationality exists.³⁰

In all cases, the same conditions for the right to vote apply to the right to be elected.³¹ Concerning local, Water Board and provincial elections, residence is not required to stand as a candidate, if a declaration of intent to become resident upon the election has been made.³²

²⁵ 980.325 (IOM), <http://www.iom.int/world-migration>

²⁶ Eurostat: migr_pop1ctz (no data from Cyprus and Malta). Of those registered, 284,000 are male and 173,000 are female (no data on the gender distribution from Greece, Croatia, Cyprus, Malta and Poland). Statistics Netherlands, based on 2011 data, indicates that the gender distribution was nearly equal among 470,000 Dutch-born people living in other EU/EFTA countries. See also Statistics Netherlands, *Dutch Census 2011: Analysis and Methodology* (The Hague, 2014), pp. 57-59.

²⁷ 153.245 (BE), 134.972 (DE), 93.952 (UK).

²⁸ *Intrekking van de Wet Raadgevend Referendum*, Stb. 2018, 214.

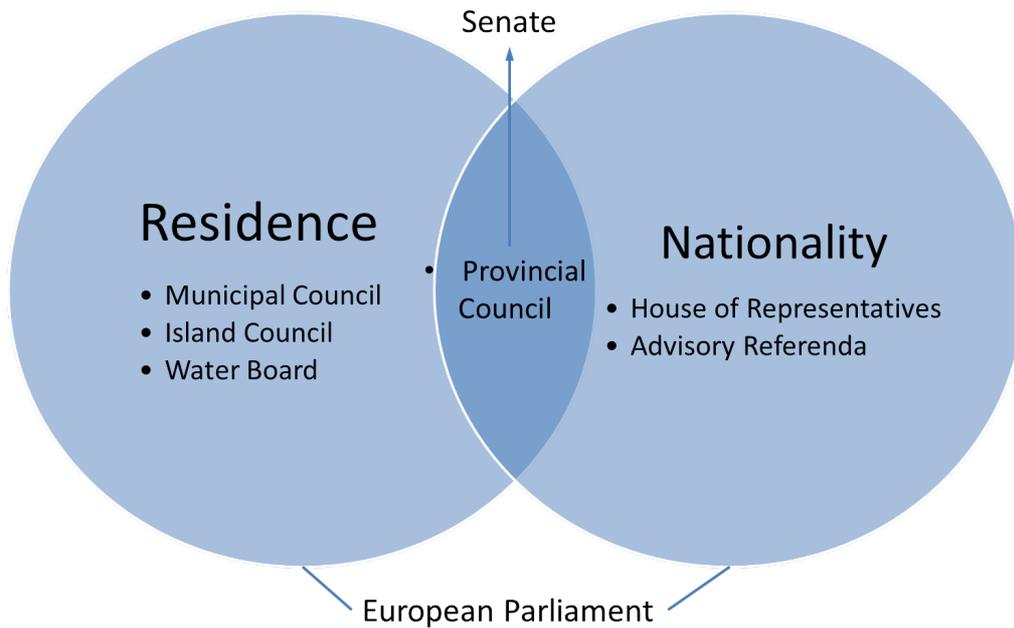
²⁹ *Wet Raadplegend Referendum Europese Grondwet*, Stb. 2005, 44.

³⁰ Provincial Council: Article B 2 *Kieswet*.

³¹ Article 10 *Gemeentewet*, Article 10 *Pronvinciewet*.

³² Article I 6(1)(e) *Kieswet*.

Figure 2. Schematic representation of access to voting rights in the Netherlands by residence and nationality



Source: own compilation

The electoral rights are mainly set out in the Electoral Act³³ and the Electoral Decree.³⁴ Furthermore, there are many ministerial decrees and regulations implementing these laws, and, for each election, a circular is issued.

The mayors and aldermen of the municipalities are responsible for the registration of the eligible voters in their respective municipality.³⁵ In cases where a certain length of residences is required to become eligible to vote, the Immigration and Naturalisation Service (IND)³⁶ gives assistance. The municipality of The Hague is responsible for the registration of non-resident citizens.³⁷

There are several methods of voting.

First of all, voting is possible in person. This can either be done with a 'poll card' or 'voter card'. A 'poll card' can only be cast at a polling station of a specific municipality.³⁸ A 'voter card' can be cast at any polling station within the territory of the constituency.³⁹ A 'voter card' has to be requested either in writing five days before the polling day or orally 12 hours before. The request can only be granted if the voter has not already requested a proxy vote or postal vote. Non-resident citizens who have requested to vote in person always receive a 'voter card'.

³³ *Kieswet*

³⁴ *Kiesbesluit*

³⁵ Article D 1 *Kieswet*.

³⁶ *Immigratie- en Naturalisatiedienst*

³⁷ Article D 2 *Kieswet*.

³⁸ It used to be the case that the poll card was even restricted to a specific polling station in the municipality. In 2004, this was extended to all polling stations within the municipality.

³⁹ In case of e.g. national elections or EP elections, this means that the ballot can be cast in the entire territory of the Netherlands, while for e.g. provincial elections the ballot can only be cast in the territory of the specific province.

Secondly, it is possible to vote by proxy. This can be done either by official request to the mayor of the responsible municipality,⁴⁰ or by filling in the form on the back of the ‘poll card’ or ‘voter card’.⁴¹ The authorised representative has to have the right to vote in the respective municipality and has to cast the proxy vote together with the own vote and has to show a copy of the ID of the represented person. The authorised representative can represent at most two other persons.⁴²

Thirdly, there is the possibility of postal vote, which is restricted to non-resident citizens and resident citizens who are temporarily abroad on the polling day.⁴³ This method of voting has to be requested to the mayor of The Hague 28 days before the polling day. A request for postal vote excludes all other methods of voting. The postal voter receives a ballot paper, an addressed return envelope, a postal vote certificate which contains a declaration which has to be signed by the voter that the postal voter has personally completed the ballot paper, an envelope in which the ballot paper is to be sealed, and a set of instructions.⁴⁴ The voter has to return these including a copy of a valid ID and, in case of national elections, – if the voter resides on Aruba, Curaçao or Sint Maarten – a declaration of previous ten years of residence in the European part of the Kingdom, or of employment with the public authorities of the voter, or of his or her spouse, partner or parent. The voter must ensure that the envelope is sufficiently stamped.⁴⁵ The postal vote has to have been received by the mayor of The Hague, or by postal vote by the polling stations abroad,⁴⁶ by 15:00 on the polling day.⁴⁷ In a new development, it is possible for all the documents, except the ballot paper, to be sent sooner and the ballot paper to be sent by email at a later date. This should facilitate postal voting where the voting papers arrive late. It has, furthermore, been proposed to install postal vote offices in border municipalities. This should enable voters residing in Germany and Belgium to still use their postal vote in time and not be dependent on the mail service.⁴⁸

Experimentally, other methods of voting have been used, such as voting via the internet or by phone.⁴⁹ Voting via the internet for non-resident citizens was tested in the 2004

⁴⁰ Article L 8 *Kieswet*. This request has to be made five days before the polling day. If it concerns a non-resident citizen, the request has to be made to the Mayor of The Hague six weeks prior to the polling day.

⁴¹ Article L 14 *Kieswet*.

⁴² The Electoral Council has proposed that this maximum should be reduced to one.

⁴³ This used to be restricted to non-resident citizens who were abroad for employment reasons. Residence abroad for other reasons, such as for study purposes, were excluded.

⁴⁴ Article M 6 *Kieswet*.

⁴⁵ Insufficiently stamped postal votes are automatically considered invalid and set aside. This will be changed to some extent in the near future. It has been discussed by Parliament whether it would be possible to send the electoral materials with a return envelope that is already sufficiently stamped, but this was considered unpractical. With the new rules the vote will not automatically be considered invalid as long as it has been stamped. *Wijziging van de Kieswet en de Tijdelijke experimentenwet stembiljetten en centrale stemopneming ter vereenvoudiging van stemmen vanuit het buitenland en verlenging van de mogelijkheid to experimenteren*, 35 012, nr. 3 *Memorie van Toelichting*, at 3.1 and nr. 6 *Nota naar aanleiding van het verslag*, p. 2.

⁴⁶ This is possible in Washington DC (United States), Ottawa (Canada), Paramaribo (Suriname), Brasilia (Brazil), Canberra (Australia), Wellington (New Zealand), Cairo (Egypt), Pretoria (South Africa), Nairobi (Kenya), Abu Dhabi (United Arab Emirates), Tel Aviv (Israel), Singapore, Bangkok (Thailand), Jakarta (Indonesia), Kuala Lumpur (Malaysia), Beijing (China), Tokyo (Japan), Ankara (Turkey), Doha (Qatar), Moscow (Russia), New Delhi (India) and Muscat (Oman).

⁴⁷ While this time period had been challenged by voters abroad, the court of The Hague upheld the time period. *Rechtbank Den Haag*, 09.03.2017, ECLI:NL:RBDHA:2017:2723.

⁴⁸ Proposal of 5 September 2018, TK 2018/19, 35 012

⁴⁹ *Experimentenwet Kiezen op Afstand; Besluit van 23 april 2004, houdende tijdelijke regels ter uitvoering van de Experimentenwet Kiezen op Afstand (Tijdelijk experimentenbesluit Kiezen op Afstand); Regeling van de Minister voor Bestuurlijke Vernieuwing en Koninkrijksrelaties houdende tijdelijke regels ter zake van experimenten in het kader van het project ‘Kiezen op Afstand’ (Tijdelijke experimentenregeling Kiezen op Afstand)*.

EP elections⁵⁰ and 2006 national elections.⁵¹ These experiments were discontinued and have not been incorporated in the law due to security and budgetary reasons.⁵²

Non-citizen residents

All non-citizen residents have the right to vote and stand as candidates in local elections, and Water Board and Island Council elections under certain conditions.

TCNs, except for members of diplomatic and consular missions posted in the Netherlands and their families if they have a joint household,⁵³ can vote and stand as candidates for the local elections, Water Board⁵⁴ and Island Council elections after at least five years of uninterrupted and lawful residence in the Netherlands prior to the election day. Their registration is automatic.

Resident non-national EU citizens are automatically registered for the right to vote for local elections upon registration in the population register of the municipality. EU citizen residents also have the right to stand as candidates in municipal elections. Different to the municipal elections, EU citizen residents on the Bonaire, St. Eustatius and Saba (the so-called BES Islands) only have the right to vote for the Island Councils after five years of uninterrupted residence directly prior to the election.⁵⁵

Resident non-national EU citizens can also vote and stand as candidates for the EP elections held in the Netherlands. To do so, they have to register as voters with the municipality and sign the Y 32 form attesting that they will not vote for the EP elections in the Member State of nationality and that they are not excluded from the right to vote in that Member State. This registration is automatically renewed for all subsequent EP elections.

Voting can be done in person with a ‘poll card’ at any polling station in the municipality of residence. If it is not possible to vote in person, one can vote by proxy.

Non-resident citizens

Non-resident citizens have the right to vote in national elections, EP elections and advisory referenda. To do so, they have to register for each type of election. This can be done simultaneously with the same form. Netherlands nationals residing on Aruba, Curaçao, or Sint Maarten are excluded from national elections, except if they have resided for ten years in the European part of the Kingdom, or if they or their spouse, partner or parent work for the public authorities on the islands.⁵⁶

Since April 2017, this registration is permanent and consequently the registration is automatically renewed for each election. Changes concerning the registration, like a change of

⁵⁰ See: (2004) 29 800 VII *Vaststelling van de begrotingsstaten van het Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (VII) voor het jaar 2005 – nr. 11 brief van de Minister voor Bestuurlijke Vernieuwing en Koninkrijksrelaties*

⁵¹ See: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2006) *Evaluatie van het and Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2006) “III. Verslag van uitvoering experiment internetstemmen Tweede Kamerverkiezingen 2006”*.

⁵² See: VERDONCK&KLOOSTERS ASSOCIATES (2014), “*Onderzoek internetstemmen voor kiezers in het buitenland - Internetstemmen bij officiële verkiezingen van vertegenwoordigende overheidsorganen*”

⁵³ Article B 3(3) *Kieswet*.

⁵⁴ Article B 2a(2) *Kieswet*.

⁵⁵ Article Ya 14(2) *Kieswet*.

⁵⁶ Article B 1(1) and (2) *Kieswet*.

address, still have to be notified. If the non-resident citizen resides in a Member State, he or she also has to make a declaration with the registration for the EP elections that he or she is not registered in the voting registry of the Member State of residence. This declaration is not required when the non-resident citizen resides in a third country.

Voting can be done by postal vote, by proxy or in person at any polling station with a ‘voter card’.

2. Non-national EU Citizens’ Franchise in EP and Local Elections

2.1. Overview of Relevant Administrative Regulations

EP elections

Chapter Y of the Electoral Act and of the Electoral Decree establish the specific rules concerning EP elections. Further implementing acts are the Ministerial Regulation on exchange of information concerning the election of the members of the European Parliament,⁵⁷ and the Ministerial Regulation on certain rules on the execution of the Electoral Act and Electoral Decree (Electoral Regulation) which contains the forms.⁵⁸ Furthermore, the Ministry of Interior sends a circular to every municipality ahead of EP elections.⁵⁹

Local elections

Article 130 of the Constitution provides that an Act of Parliament may provide for the right of non-citizen residents to vote and stand as candidates for municipal elections, as long as they fulfil the same requirements that are set for Dutch nationals. This is implemented through Article B 3(1) and (2) of the Electoral Act concerning the right to vote and Article 10 of the Municipal Act concerning the right to stand as a candidate.⁶⁰ For every election the Ministry provides the municipalities with a circular with points of attention for local elections.⁶¹

2.2. Voter Registration

The Electoral Act provides that the mayor and aldermen of the municipality of residence are responsible for the registration of eligible voters in their respective municipality. Consequently, voting registration is automatic, if not otherwise provided, e.g. registration for the EP elections for non-national resident EU citizens, which is done upon request.

⁵⁷ Regeling van de Minister voor Bestuurlijke Vernieuwing en Koninkrijksrelaties van 1 april 2004, nr. CZW04/19880, houdende nadere regels omtrent de wijze en het tijdstip van de mededeling, bedoeld in artikel Y 32, achtste lid, van de Kieswet.

⁵⁸ Regeling van de Minister van Binnenlandse Zaken en Koninkrijksrelaties van 6 november 2013, nr. 2013-0000435969, houdende regels ter uitvoering van de Kieswet en het Kiesbesluit (Kiesregeling)

⁵⁹ 2014 Elections: MINISTERIE VAN BINNENLANDSE ZAKEN EN KONINKRIJKSRELATIES *Circulaire verkiezingen voor het Europees Parlement 22 mei as. 2014-0000147830.*

⁶⁰ *Gemeentewet*

⁶¹ E.g. *Circulaire gemeenteraadsverkiezingen en raadgevend referendum 21 maart 2018, 2017-0000637107.*

EP elections

Resident non-national EU citizens can register for EP elections at the municipality of residence. Once the EU citizen is registered, his or her registration is automatically renewed for the subsequent elections.⁶²

There are certain requirements for this registration. First of all, the EU citizen has to be registered in the national population registry (BRP)⁶³ as a resident on the date of nomination (44 days before the polling day). This is done when the EU citizen registers with the municipality as a resident. Secondly, the EU citizen has to register as a voter for EP elections at the municipality and hand in a Y 32 form attached with a copy of a valid passport or ID card.⁶⁴ In 2009, this Y 32 form was available in the then 23 official languages of the EU.⁶⁵ It is unclear whether this is still the case today.⁶⁶ This form has to be available at the municipalities, six weeks prior to the nomination date.⁶⁷

The registration has to be made before or on the date of nomination. The Y 32 form has to be handed in six weeks before the polling day. This does not necessarily coincide with the date of nomination on which most municipalities complete the lists of resident eligible voters. In 2014, the Ministry of Interior reminded the municipalities that if an EU citizen was resident on the date of nomination and registered two days after that date – which was still within the six weeks period – the registration still had to be accepted for the 2014 EP elections and thus added to the previously made list.⁶⁸

While Article Y 32(8) of the Electoral Act states that the mayor and aldermen of the municipality should contact the authorities of the Member State of origin after the EU citizen has registered as a voter, this is actually done by the Ministry of Interior on behalf of the mayor and aldermen. To do so, the Ministry uses the information that is available in the BRP. If the information is not available, the mayor and aldermen are requested to provide the required information.⁶⁹ If it turns out that the EU citizen is also registered in the Member State of nationality, he or she is immediately deleted from the voting register and notified of this.

If the municipality were to refuse a registration or delete a person from the register for any reason, there is no need to make an objection before lodging appeal in court.⁷⁰

⁶² Article Y 33 *Kieswet*

⁶³ *Basisregistratie Personen*

⁶⁴ The model for this form is provided in the annex of *Regeling van de Minister van Binnenlandse Zaken en Koninkrijksrelaties van 6 november 2013, nr. 2013-0000435969, houdende regels ter uitvoering van de Kieswet en het Kiesbesluit (Kiesregeling)*.

⁶⁵ (2009) *Circulaire verkiezingen voor het Europees Parlement 2009*, point 8(a).

⁶⁶ The available toolkit online no longer offers the Y 32 form since it only refers to the local elections.

<https://www.rijksoverheid.nl/documenten/publicaties/2017/11/08/verkiezingentoolkit-2018>

⁶⁷ Article Y 1a *Kiesbesluit*.

⁶⁸ (2014) *Circulaire verkiezingen voor het Europees Parlement 22 mei as.*, p. 2.

⁶⁹ Article Y 7 of the Electoral Decree (*Kiesbesluit*) states that the Minister of Interior can make more precise rules on the timing and the method of the exchange of information. These rules are provided for in the *Regeling gegevensuitwisseling verkiezing leden Europees Parlement*, Stcrt. 2014, 7750.

⁷⁰ Article Y 32 and Y 33 are mentioned in Annex 1, *Algemene Wet Bestuursrecht*, which exempts them from the requirement of first making objection before lodging appeal prescribed by 1:7 Awb.

Local elections

EU citizens are automatically registered for local elections if they have registered their residence with the municipality. Special conditions apply to TCNs, since they have to have five years of uninterrupted prior legal residence in the Netherlands before they can be registered. The IND assists the mayors and aldermen to establish which TCNs have the right to vote in their respective municipality.⁷¹

2.3. Information during Election Campaigns

On several levels of government, information is provided to non-citizen residents concerning their right to vote. The information is mainly provided in circulars by the municipalities. There are, however, large differences in the amount of information provided for local and EP elections.⁷²

EP elections

In 2014, 61% of the municipalities indicated that they had directly informed EU citizens of their right to vote.⁷³ Only 42% of the municipalities indicated that they had provided concrete information concerning the conditions of eligibility.

74% of the municipalities provided information specifically for non-citizen residents on their website and 55% provided information in door-to-door papers. 33% of the municipalities sent out personal letters with information on the upcoming elections.⁷⁴ 8% of the municipalities with more than 100,000 inhabitants also provided information on local television programmes. Only 31% of the municipalities provided the information also in a language other than Dutch.⁷⁵

Article Y 32(5) of the Electoral Act states that if a non-national EU citizen moves from abroad or from outside the European part of the Netherlands into a municipality, this municipality should send this person a Y 32 form to enable him or her to register for the EP elections. This requirement is, however, not applicable if the non-national EU citizen moves from one municipality to another in the European part of the Kingdom.

In 2015, the national Ombudsman decided that a certain municipality had failed to inform an EU citizen correctly, who wanted to participate in the elections, of the requirement of the Y 32 form.⁷⁶ This EU citizen had previously resided in another municipality and should have already received the Y 32 form there. The Ombudsman accepted that the second municipality had no legal obligation to also send the form. However, it was considered that

⁷¹ Circulaire 2018, p. 5.

⁷² Statistics in this part come from GfK (2014), *Evaluatie Gemeenteraadsverkiezingen en Verkiezingen Europees Parlement 2014*, GfK. This project was based on an enquiry in the municipalities evaluating the 2014 local and EP elections. This report is available on <https://kennisopenbaarbestuur.nl/media/123925/evaluatie-gemeenteraadsverkiezingen-en-verkiezingen-europees-parlement-2014.pdf>

⁷³ GfK (2014), *Evaluatie Gemeenteraadsverkiezingen en Verkiezingen Europees Parlement 2014*, GfK, pp. 75-77.

⁷⁴ The numbers concerning municipalities with more than 100,000 inhabitants are slightly different compared to the others. 92% provided information on their website, 42% in door-to-door papers and 50% in personal letters.

⁷⁵ 35% for municipalities more than 100,000 inhabitants.

⁷⁶ <https://www.nationaleombudsman.nl/system/files/rapport/20150090%20%20R%20%20201408968%20%2008-06-2015.pdf>

the second municipality was under an obligation to actively provide information of the possibility to register. The information that was provided had only referred generally to the upcoming EP elections, but had not specifically mentioned the EU citizens' right to vote. Furthermore, it did not mention the extra requirement of EU citizens to submit the Y 32 form. The Ombudsman considered that this could be misleading and was therefore a failure to provide EU citizens with the correct information.⁷⁷

It should be noted that on many official platforms where information concerning the EP elections is provided, the requirement of the Y 32 form is omitted (in some language versions).⁷⁸

Local elections

In 2014, only 31% of the municipalities provided specific information to non-citizen residents. This was even lower in municipalities of a size between 50,000-100,000 where only 8% provided specific information.⁷⁹ Municipalities mostly used their own website to provide information. Also door-to-door papers and folders were used, especially in larger municipalities. Only 4% of the municipalities provided information in a language other than Dutch.

In the 2018 municipal elections, the voting advice application *kieskompas*⁸⁰ in Wageningen was translated into English to be able to also inform the local international community, who mostly work or study at the local university.⁸¹

⁷⁷ “In de informatie in de huis-aan-huisbladen en op de website van de gemeente attendeerde de gemeente EU-onderdanen niet op hun bijzondere positie. In de huis-aan-huisbladen werd met geen woord gerept over EU-onderdanen. Op de eigen website vermeldde de gemeente dat onder andere EU-onderdanen die ouder dan 18 jaar zijn en het stemrecht niet hebben verloren kunnen stemmen. Hiermee wordt via beide informatiebronnen op geen enkele manier een voorbehoud gemaakt of aangegeven dat EU-onderdanen alleen in Nederland kunnen stemmen als zij een Y32 verklaring indienen of al hebben ingediend. Door hierover niets te vermelden, kunnen EU-onderdanen op het verkeerde been worden gezet. Door geen specifieke informatie of een waarschuwing op te nemen in de tekst, was de informatie voor de EU-onderdanen onvoldoende duidelijk en niet goed vindbaar. De gemeente heeft daarmee niet voldaan aan haar verplichting om de informatie voor de EU-onderdanen actief beschikbaar te stellen.”

⁷⁸ E.g. on the website of the Electoral Council the requirement of the Y 32 form is mentioned in the Dutch version, but not in the English version. The English version states: “A voter must meet the following requirements to be entitled to cast a vote in the elections for the European Parliament: - the voter must possess Dutch nationality or the nationality of one of the other Member States of the European Union - the voter must be 18 years of age or over - the voter may not be debarred from voting”

<https://english.kiesraad.nl/elections/elections-of-the-european-parliament>. The Dutch version states: “Onderdanen van andere lidstaten van de Europese Unie die in Nederland wonen, mogen hun stem uitbrengen (actief kiesrecht) voor de verkiezing van het Europees Parlement. Hierbij is van belang dat: -men op de dag van de kandidaatstelling officieel – volgens de BRP (basisregistratie personen) – in Nederland woont -**men zich laat registreren bij de gemeente met een Y-32 formulier** -men niet is uitgesloten van kiesrecht, hetzij in Nederland, hetzij in de lidstaat waarvan men onderdaan is” <https://www.kiesraad.nl/verkiezingen/europees-parlement/stemmen/niet-nederlandse-inwoners>

⁷⁹ GfK (2014), p. 14-15.

⁸⁰ *Kieskompas* is an application which based on answers given to 30 questions establishes the voting preference of the user and shows which political parties represent these views. See: www.kieskompas.nl .

⁸¹ Wageningen: <https://resource.wur.nl/nl/show/Kieskompas-ook-in-het-Engels.htm>

2.4. Political Parties and Candidacy Rights

In the Netherlands, around 300,000 persons are members of a political party which is represented in the Lower House of Parliament. These membership numbers have been steadily in decline over the past decades, though there has been an increase in recent years.⁸² Dutch political parties do not seem to have many resident non-citizen members. In certain cases the foreign background of a candidate might be emphasised, but in most cases the candidate is a national. Also in the media when the migration background of voters is considered it mostly concerns Dutch nationals with a migration background. In 2015, the party DENK was founded, which focuses specifically on the representation of Dutch citizens with a migration background (in particular among Dutch-Turkish residents). This party won three seats in the elections for the Lower House in 2017. There are no parties that specifically target EU citizens, though for local elections in cities with a large number of EU citizens (e.g. students in the university town Maastricht), parties sometimes specifically target local EU citizens.⁸³

Never has a non-national EU citizen been elected for the Dutch EP elections.

EP elections

At least three weeks before the date of nomination for EP elections, public announcements are made which have to specify that EU citizens also have the right to be elected.⁸⁴

The conditions for the registration of non-national EU citizens as a candidate are: residence in the European part of the Netherlands; having attained the age of 18 on the polling day; and not being excluded from the right to be elected in the Netherlands and in the Member State of nationality. The residency requirement continues to apply when the non-national EU citizen is elected.⁸⁵

Every candidate has to sign the Y 13 form, which contains a declaration that one is not also a candidate in another Member State. Additionally, a non-national EU citizen resident has to fill in the Y 35 form, which contains a declaration that he or she is not excluded from the right to be elected in the Member State of nationality. The latter form is sent by the Electoral Council to the authorities of the Member State of nationality of the candidate for confirmation.

For each list a deposit of €11,250 has to be made. If the list fails to acquire 75% of the quota, this deposit is lost. This deposit is not required for parties who got at least one seat in the last election. Proof of this payment has to be presented with the list.

Every candidate has to make a written declaration of consent to the nomination. Additionally, for every candidate who does not yet have a seat in the European Parliament, a copy of a valid passport or ID card is required. Furthermore, a declaration of the authorised representative of the party has to be included allowing the placement of the name of the party above the list.

⁸² Documentatiecentrum Nederlandse Politieke Partijen. [Persbericht 7 februari 2018](#): Gezamenlijk ledental Nederlandse politieke partijen stijgt aanzienlijk. See: <http://dnpprepro.ub.rug.nl/11053/7/persberichtledentallen-2017.pdf>.

⁸³ See e.g. <https://maastricht.d66.nl/overig/english/elections/>.

⁸⁴ Article Y 34 jo. H I *Kieswet*.

⁸⁵ Article Y 28 *Kieswet*.

Parties that did not participate in the previous election, did not acquire a seat or have not registered a party name,⁸⁶ additionally need to present 30 supporting declarations of registered voters.⁸⁷

Local elections

To stand as a candidate in local elections, residence in the municipality is not necessarily a requirement as long as the candidate has made a declaration of intention to settle in the municipality upon being elected.⁸⁸ This does not apply to non-resident non-national EU citizens.⁸⁹

For each list a deposit of €225 has to be made. Proof of this payment has to be provided upon handing in the list. If the list does not acquire 75% of the quota and does not acquire a seat the deposit is lost. Parties that won a seat in the previous elections are exempted from this requirement.

If a party participates in the elections for the first time or did not acquire any seats in the previous election, supporting declarations have to be presented. The number of declarations required depends on the number of council seats.⁹⁰

When elected, the candidate has to make an oath in Dutch or Friesian.⁹¹

2.5. Turnout

EP elections

For the 2014 EP elections, 48,169 non-national resident EU citizens were registered for the EP elections held in the Netherlands (see Table 2 below).⁹²

⁸⁶ A list without a party name is called 'blanco'.

⁸⁷ Model H 4.

⁸⁸ Article H 7 *Kieswet*

⁸⁹ Upon accepting the position to which one is elected, a non-resident has to prove Dutch nationality according to Article V 3(3) *Kieswet*. Consequently, it cannot apply to non-resident non-national EU citizens. It is, however, unclear from the law whether a non-national EU citizen who resides in another municipality in the Netherlands could use this declaration of intention. In the absence of a specific provision that they cannot, it should be considered that for this category it is possible.

⁹⁰ 30 for over 39 seats, 20 for 19-38 seats and 10 for less than 19 seats.

⁹¹ Article 14 *Gemeentewet*.

⁹² Information received from the Ministry of Interior.

Table 2. Number of registered voters by EU Member State nationality⁹³

Member State of nationality	Number of registered voters	Member State of nationality	Number of registered voters
Austria	816	Italy	3,766
Belgium	8,206	Latvia	124
Bulgaria	430	Lithuania	192
Croatia	63	Luxemburg	73
Cyprus	5	Malta	24
Czech Republic	286	Poland	2,685
Denmark	611	Portugal	1,623
Estonia	47	Romania	603
Finland	369	Slovakia	226
France	3,069	Slovenia	66
Germany	13,008	Spain	2,329
Greece	780	Sweden	502
Hungary	464	United Kingdom	6,971
Ireland	831		

There is no data available on how many of these registered voters actually voted.

Local elections

There is no data of non-citizen resident voter participation. In the media there have been discussions on the impact of the migrant vote, which however concerns only Dutch nationals with a migration background.⁹⁴

⁹³ Information received from the Ministry of Interior.

⁹⁴ E.g. <https://www.nu.nl/weekend/5189777/hebben-gemeenteraadsverkiezingen-partijen-gebracht.html>; <https://www.volkskrant.nl/nieuws-achtergrond/strijd-om-migrantenstem-bij-gemeenteraadsverkiezingen-groter-dan-ooit-hoe-komt-dat-~b11f6287/>

3. Non-resident Citizens' Franchise in National and EP Elections when Residing in Other EU Member States

3.1. Overview of Relevant Administrative Regulations

The relevant administrative regulations for both national and EP elections for non-resident citizens are the Electoral Act and the Electoral Decree. The Ministerial Regulation on certain rules on the execution of the Electoral Act and Electoral Decree (the Electoral Regulation) contains the required forms.⁹⁵

Several experimental laws are also applicable; specifically, the Act for temporary rules for experiments with ballot papers and central counting,⁹⁶ the Decree for temporary rules for experiments with ballot papers and central counting⁹⁷ and the Ministerial Regulation on experiments with ballot papers for voters abroad.⁹⁸ Some older experimental laws providing for the possibility of internet voting are no longer in force.⁹⁹

3.2. Voter Registration

Until April 2017, Dutch nationals who were resident abroad had to submit a new registration for every election to be able to vote. With the change of the law, the registration is now permanent and therefore automatically renewed for every election. However, changes of the information that is provided in the registration, especially concerning a change of address, still have to be notified by the voter.

The municipality of The Hague has since June 2017 actively contacted all eligible persons registered in the Non-Resident Registry (RNI)¹⁰⁰ (approximately 420,000 non-resident citizens) and all those who registered for the 2017 national elections to become permanently registered.¹⁰¹

According to Article D 2 of the Electoral Act, the mayor and aldermen of the municipality of The Hague are responsible for the registration of non-resident citizens who have the right to vote in accordance with Article B1, concerning the national elections. This also applies to EP elections based on Article Y5a of the Electoral Act. However, the

⁹⁵ Regeling van de Minister van Binnenlandse Zaken en Koninkrijksrelaties van 6 november 2013, nr. 2013-0000435969, houdende regels ter uitvoering van de Kieswet en het Kiesbesluit (Kiesregeling)

⁹⁶ Wet van 19 juni 2013 inzake tijdelijke regels voor experimenten met stembiljetten en een centrale stemopneming (Tijdelijke experimentenwet stembiljetten en centrale stemopneming)

⁹⁷ Besluit van 23 september 2013, houdende tijdelijke regels voor experimenten met stembiljetten en een centrale stemopneming (Tijdelijk experimentenbesluit stembiljetten en centrale stemopneming)

⁹⁸ Regeling van de Minister van Binnenlandse Zaken en Koninkrijksrelaties van 11 december 2013 houdende tijdelijke regels voor experimenten met stembiljetten voor kiezers buiten Nederland (Tijdelijke experimentenregeling stembiljetten voor kiezers buiten Nederland)

⁹⁹ E.g. Wet van 11 december 2003, houdende tijdelijke regels ter zake van experimenten in het kader van het project «Kiezen op Afstand» (Experimentenwet Kiezen op Afstand)

¹⁰⁰ *Registratie Niet Ingezetten*. The registry is mostly used for temporary residents, but non-resident citizens can be registered in it as well if they have a certain connection with the authorities, e.g. receiving a Dutch pension abroad.

¹⁰¹ HELDER, Lotte, *Evaluatie Tweede Kamerverkiezingen*, KIESRAAD: 2017, p. 14. See also: Letter of Municipality of The Hague of 6 July 2017, *Uitnodiging tot registratie kiezers buiten Nederland*, BENW/2017.945.

registration is only done upon the request of the non-resident citizen in accordance with Article D 3.

The request itself can either be made directly to the mayor and aldermen of The Hague, or at a consulate in the state where the non-resident citizen resides, or at the permanent representation of the Netherlands in Aruba, Curaçao or Sint Maarten.¹⁰² If the request is made electronically, it has to be made to the mayor and aldermen of The Hague.¹⁰³ If the person falls within the category of persons who work for the public authorities on Aruba, Curaçao or Sint Maarten and who have not resided in the European territory of the Netherlands for a period of ten years, the request has to be handed in to the minister the person works for, who forwards it to The Hague.

The request for the first registration is done by filling in the form “Model D3-1 (Wrr 22)”. This form can be used for the registration for national elections, EP elections and advisory referenda. It is possible to register for more than one type of election at the same time with the same form. One has to select whether to receive the ballot paper by post or by email. If no choice is made the ballot papers will be sent by email.¹⁰⁴ One has to attach to the form a proof of Dutch nationality either with a valid Dutch passport, a valid ID card, a valid ID card from Bonaire, Sint Eustatius or Saba, or a valid ID card of Aruba, Curaçao or Sint Maarten which mentions that the holder is a Dutch national.

The link to the form is available on the website of the municipality of The Hague.¹⁰⁵ One has to print and sign it. One then has three options: (1) upload the form via the link provided;¹⁰⁶ (2) send it by email;¹⁰⁷ or (3) send it by post.¹⁰⁸ In all cases, the registration request also has to include a copy of a valid identity document.

A request for a change of registration has to be done with form “Model D3-2 (Wrr 22)” which is also available on the website of the municipality of The Hague.¹⁰⁹ Attached to this request the same proof of nationality as for the Model D3-1 (Wrr 22) is required, however, in these cases the proof must be a colour copy. This form can also be uploaded, sent by email or by post to the same address.¹¹⁰

The request for registration must have been received six weeks before the polling day. In case there is a change concerning the registration, like a change of address, this request for

¹⁰² Article D 5(1) Electoral Decree.

¹⁰³ Article D 5(4) Electoral Decree.

¹⁰⁴ This automatic selection for email is a bit curious considering that entering the postal address is a required field, whilst providing the email address is optional. Furthermore, on the online form, even if no email address is entered and the field is left open, the registration can continue.

¹⁰⁵ <https://www.denhaag.nl/nl/bestuur-en-organisatie/verkiezingen/kiezers-buiten-nederland/permanente-registratie-voor-kiezers-buiten-nederland.htm> Information in English: <https://www.denhaag.nl/en/municipality-of-the-hague/elections/dutch-voters-abroad/register-permanently-as-a-dutch-voter-abroad.htm> Note: the information is in English, however, if one continues to the form it is only available in Dutch.

¹⁰⁶ This possibility was created because between November 2015 and the end of January 2016 the spam filter of the municipality of The Hague had blocked incoming emails with the required documents to register for a referendum. Rapport Gemeentelijke Ombudsman.

¹⁰⁷ To: kbn.verkiezingen@denhaag.nl

¹⁰⁸ To: Gemeente Den Haag, Publiekszaken/Unit Verkiezingen, Postbus 84008, 2508 AA Den Haag.

¹⁰⁹ <https://www.denhaag.nl/nl/bestuur-en-organisatie/verkiezingen/kiezers-buiten-nederland/adres-wijzigen-als-kiezer-buiten-nederland.htm> Information in English: <https://www.denhaag.nl/en/municipality-of-the-hague/elections/dutch-voters-abroad/change-your-address-as-a-dutch-voter-abroad.htm> Note: the information is in English, however, if one continues to the form it is only available in Dutch.

¹¹⁰ Note: on the website it states only that it can be uploaded or sent by email. After completing the form it also gives the address for sending it by post.

a change has to be received nine weeks before the polling day.¹¹¹ If the change of address was registered in the RNI, the mayor and aldermen of the municipality of The Hague will change this in the voter registry and no additional request has to be made.

EP elections

If the non-resident citizen resides in another Member State, an additional declaration is required that he or she is not registered in the Member State of residence and will not take part in the elections there. This declaration is done by ticking the box in section 6 of form Model D3-1 (Wrr 22). This declaration also has to be made in case one makes a request for a change based on Model D3-2 (Wrr 22).¹¹² This declaration is not required if the non-resident citizen resides in a third country.¹¹³

National elections

There are no additional conditions for the registration for national elections, except concerning nationals resident on Aruba, Curaçao or Sint Maarten. These nationals have to fulfil an additional requirement of either having resided in the European part of the Kingdom for ten years, or being employed by the authorities, or their spouse, partner or parent being employed by the authorities. In case they are employed by the authorities and have not resided in the European part of the Kingdom for ten years, the request has to be made via the Minister that they work for.

3.3. Turnout

EP elections

In the 2014 EP elections, 23,799 requests for registration were granted to non-resident citizens. Of these, 21,017 non-resident citizens requested a postal vote, 1,804 requested a 'voter card'¹¹⁴ and 978 requested a vote by proxy.¹¹⁵ In 2009, there were 39,601 registrations. The higher number in 2009 is especially due to the fact that after the *Eman and Sevinger* decision by the European Court of Justice mentioned in the introduction, Dutch nationals

¹¹¹ Note: the Model 3-2 form online seems to still be solely based for the 2018 referendum. Upon completion of the form online it states that the documents have to have been received by the municipality The Hague by 17 January 2018 at 23:59h. "*De documenten moeten uiterlijk op 17 januari 2018 om 23.59 uur (Nederlandse tijd) door de gemeente Den Haag, Unit verkiezingen zijn ontvangen.*" (last checked 28.06.2018) This might lead to confusion.

¹¹² Note: the form online does not require a selection of elections one is registered for and the declaration consequently is automatically required if one resides in a Member State. Consequently, this declaration also has to be made if one wants to make a change of address and has only previously registered for the national elections and/or referenda, but not for the EP elections. This glitch is specific to the 'change of address'. If one selects a change of address and of a change of elections to be registered for (selecting only national elections), the declaration is still required, while if one only requests a change of elections (selecting only national elections), the declaration is not required.

¹¹³ Consequently, it is also not required when the non-resident citizen resides in a third country and has next to the Dutch nationality the nationality of another Member State where (s)he also has the right to vote in European Parliament Elections.

¹¹⁴ 'Kiezerspas' is different to a poll card (*stempas*), as it allows a person to vote in any municipality and not only in the one in which (s)he resides. A request for a *Kiezerspas* means that the person wants to vote in person in a Dutch municipality.

¹¹⁵ KIESRAAD, *Kerngegevens verkiezingen van de leden van het Europees Parlement 22 mei 2014*, p. 9.

resident on Aruba, Curaçao, Sint Maarten and the BES Islands had to be treated as Dutch nationals living abroad, which meant they could register to vote. This was done by 20,944 citizens.¹¹⁶ In 2014, this no longer applied to the BES Islands because of the 2010 reform in which they became special municipalities within the Kingdom.¹¹⁷

It should be noted that at least 50,725 non-resident Dutch nationals were registered for the 2014 EP elections in their Member States of residence (see Table 3).¹¹⁸

Table 3. Number of non-resident Dutch citizens registered vote in EU Member States

Member State of Residence	Number of Dutch registered voters in Member State of Residence elections	Member State of Residence	Number of Dutch registered voters in Member State of Residence elections
Austria	960	Italy	1,205
Belgium	10,196	Latvia	5
Bulgaria	No information	Lithuania	2
Croatia	No information	Luxemburg	624
Cyprus	16	Malta	0
Czech Republic	No information	Poland	15
Denmark	1,078	Portugal	896
Estonia	No information	Romania	No information
Finland	247	Slovakia	0
France	11,710	Slovenia	68
Germany	10,788	Spain	12,372
Greece	513	Sweden	No information
Hungary	30	United Kingdom	N/A
Ireland	No information		

¹¹⁶ KIESRAAD, *Statistische gegevens verkiezing Europees Parlement 2009*, p. 10.

¹¹⁷ Besluit van 23 september 2010 tot vaststelling van het tijdstip van inwerkingtreding van de artikelen I en II van de Rijkswet wijziging Statuut in verband met de opheffing van de Nederlandse Antillen.

¹¹⁸ The information received from UK was not usable. Information received from the Dutch Ministry of Interior. Note: the number of registered Dutch national voters in Germany is curious, if one compares it to the German statistics. The number should be identical. However, according to the exchange between Germany and the Netherlands, 10,788 Dutch nationals were registered to vote in the German EP elections, however, according to the German statistics 17,177 Dutch nationals were registered. It is unclear how this difference of 6,389 voters came about.

https://www.destatis.de/DE/Publikationen/WirtschaftStatistik/Wahlen/AchteDirektwahl2014_72014.pdf?__blob=publicationFile, p. 384.

National elections

For the 2017 national elections, 80,660 Dutch nationals resident abroad were registered to vote. Of these, 68,132 requested a postal vote, 5,680 a voter card and 6,848 a vote by proxy. Of those that had requested a postal vote, 59,857 valid votes were received (88%).¹¹⁹ The number of registrations for the 2017 national elections was extremely high compared to the previous years.¹²⁰ This was also the last election where there was no permanent register.

Indicative for future elections could be the advisory referendum of March 2018. At the time, 57,290 non-resident citizens had registered for referenda, of which 25,857 had voted by postal vote (45.13%).¹²¹ One should note, however, that the number of registrations for referenda is most likely lower than the registrations for national elections.

Additionally for the 2017 national elections, some non-resident citizens brought an action concerning the deadline by which the postal vote had to be received by the authorities in The Hague (by 15:00 on the polling day). However, the court refused to extend the deadline.¹²²

One of the main issues has been the sending of ballot papers and lists of candidates. The problem is that these can only be printed after the date of nomination. However, in 2017, some of the removals from the list of candidates had been challenged, which meant that the printing of ballot papers had to be delayed until there was a final court decision. Consequently, these ballot papers were only sent later and the time to receive and return the ballot papers was much shorter than usual. This affected especially those voters who did not receive the ballot papers by email, but by post.¹²³ It also caused issues for resident citizens who had requested to vote by postal vote due to being temporarily abroad on the polling date. They had to request their postal vote ballots from the municipality of residence who then had to forward the requests to The Hague. Many municipalities waited until the last moment to forward the requests and consequently there was no sufficient time to register and send the documents back.¹²⁴ It has furthermore been noted that, with regard to this group of voters (resident citizen who are temporarily abroad on the polling day), the Electoral Decree specifies that voting materials have to be sent by air mail, which leads to problems where according to Article M 1(2) Electoral Act the material can also be sent to an address in the Netherlands when a resident national will be abroad on the polling day. Within the Netherlands it is not possible to send letters via air mail.

4. Conclusion

Non-citizen residents from the EU have the right to vote and stand as candidates in local and EP elections held in the Netherlands. Voter registration is automatic in local elections. Non-resident Dutch citizens have the right to vote and stand as candidates in national elections and EP elections. Their electoral registration is not automatic. Both resident non-citizens and non-

¹¹⁹ HELDER, Lotte, *Evaluatie Tweede Kamerverkiezingen*, KIESRAAD: 2017, p. 8-9.

¹²⁰ 34.305 registrations in 2006.

¹²¹ KIESRAAD, *Evaluatie gemeenteraadsverkiezingen en raadgevend referendum 21 maart 2018*, p. 18.

¹²² Rechtbank Den Haag, 09.03.2017, ECLI:NL:RBDHA:2017:2723, para. 4.8.

¹²³ ECLI:NL:RBDHA:2017:2723, paras. 4.5-4.9.

¹²⁴ GEMEENTELIJKE OMBUDSMAN DEN HAAG (2017), *Rapport "Stemmen vanuit het Buitenland" Tweede Kamerverkiezingen 2017*.

resident citizens encounter problems concerning the access to information, in general, and to information available in different languages, more specifically. These issues are intertwined. Whereas the information available might be completed in Dutch, other language versions omit important requirements, like the submission of the Y 32 form. Furthermore, while the required information is provided to get to the correct forms in other languages, the forms themselves are solely available in Dutch.

Non-resident citizens are treated differently to resident citizens on several accounts, which in principle is permitted. One of the differences concerns the ID document that has to be presented to be eligible to vote. While resident citizens can identify themselves at the polling station with an ID that has expired for a maximum of five years, a non-resident citizen is obliged to send a copy of a valid ID with the ballot papers and upon registration.¹²⁵ If the non-resident Dutch citizen is a dual national, he or she might have a residence right in the state of residence based on the second nationality, either by being a national of that state or because of a residence right linked to the second nationality. Consequently, the dual national would not necessarily require a valid Dutch ID as long as he or she has a valid ID from the other state. Getting a new Dutch ID abroad can take several weeks and costs about twice as much as getting it within the territory of the Netherlands.¹²⁶ The validity requirement of the Dutch ID for non-resident citizens therefore constitutes an indirect discrimination of dual nationals. The fact that for dual nationals, Dutch nationality could be lost after ten years of residence in a third country without renewing the ID card or passport¹²⁷ cannot be considered a reason to treat them differently, since the rule on voting can only have effect five years after the expiry of the document.

We end our report with a number of recommendations that follow from our analysis of political participation in the Netherlands by mobile EU citizens:

Language

All the information that is provided by the authorities should be in a language that can be understood by the recipient and should not be available only in Dutch. This should not only apply to the information regarding the required forms, but also to the forms themselves. For the sake of administrative convenience these forms should be directly provided in a multilingual version. Bilingual Dutch-English should fulfil this requirement.

¹²⁵ The reasoning given by the government for requiring a copy of a valid ID attached to the ballot papers was that the voter had to proof Dutch citizenship which would be checked while counting the votes. If it turned out that the voter did not have Dutch citizenship the vote would be set aside. Another goal of this was to ensure that another person would not be able to use the vote. The fact that for resident nationals an expired ID is sufficient to proof citizenship was not considered. See *Kamerstukken* (2015-2016), 34384 nr. 3, para. 3.6 <https://zoek.officielebekendmakingen.nl/kst-34384-3.html>.

¹²⁶ The cost of a Dutch passport in the Netherlands is currently at most €65.30, while a passport abroad costs €130.77. An ID card in the Netherlands costs at most €51.08, while abroad it costs €117.77. <https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/vraag-en-antwoord/wat-zijn-de-kosten-van-paspoorten-en-identiteitskaarten>

¹²⁷ Article 15(1)(c) and 15(4) Rijkswet op het Nederlanderschap (RWN). Until 2014 passports and ID cards were valid for a period of five years. Consequently, when the passport or ID card expired one had still five years to get a new one. Since 2014, passports and ID cards for adults are valid for ten years. Article 15 RWN still has to be adapted to this change by extending the required period to 15 years instead of ten years abroad. The Dutch government is waiting to bring these changes until the Court of Justice has ruled in case C-221/17 *Tjebbes* where the compatibility of this article is questioned in the light of EU citizenship. <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/09/04/antwoorden-kamervragen-van-het-lid-sjoerdsma-d66-over-de-modernisering-van-het-nationaliteitsrecht/antwoorden-kamervragen-van-het-lid-sjoerdsma-d66-over-de-modernisering-van-het-nationaliteitsrecht.pdf>, p. 2.

This also applies to non-resident citizens. Not only should the information regarding the required forms be available in English, but also the forms themselves. Holding Dutch nationality does not necessarily imply knowledge of the Dutch language. The group this relates to might be relatively small, however, considering the fact that it was considered necessary to provide the information regarding the form in English, it can be non-negligible. This requirement would be fulfilled by providing a bilingual form.

Complete information

The necessity for resident non-national EU citizens to register for the EP elections with a municipality and the submission of the Y 32 form should be mentioned clearly – and, better even, highlighted – on websites and other sources of information that distributed by the authorities. This information should also be available in every offered language versions.

Continued possibility to register for EP elections by non-national resident EU citizens

EU citizens should have the possibility to register for the EP elections at any given moment and not only directly prior to an election. Therefore, the Y32 form should be available at municipalities at any given moment and not only six weeks prior to the date of nomination to the EP elections.

Furthermore, municipalities usually provide information concerning elections only when there is an upcoming election. Resident non-national EU citizens should be able to register for EP elections at any given moment since it is a permanent registration. Consequently, the possibility should also be provided at any time and not only when an election is imminent.

Solving technical issues

Whereas the modernisation and digitalisation of the electoral system is commendable, however, particularly in the case of non-resident citizens, there are still many glitches in the online forms.

There are, for example, complications concerning the change of a registration. It requires a declaration of the non-resident voter of not voting in the Member State of residence, even when one is only registered for national elections. Whilst it should not be a duty to do so, Dutch nationals living abroad should be given the opportunity to register in the Non-Resident Registry (RNI) when moving abroad or at any other moment, even if there is no continued link with a Dutch public authority. This way an address change would only need to be notified once.

Furthermore, the fact that ballot papers are automatically sent by email when no request for receiving the papers by post is made, and even if the voter has not provided an email address, is not very practical. Either the default should be that ballot papers are sent by post or entering an email address should be obligatory.

Identification requirement

To avoid indirect discrimination based on dual nationality, it should either be required that non-resident citizens can send a copy of an expired Dutch ID (maximum five years expired) for the purpose of identification, or resident citizens should also be required to identify

themselves with a valid ID. The fact that a dual national residing in a third country could lose his or her Dutch nationality after ten years of residence abroad if no new ID is requested cannot be considered a valid reason to apply different standards, since a dual national will retain Dutch nationality for at least another five years after the ID has expired.

Restricting the removal off the registry and invalidating votes in case of double registry to the Member State of first registration

The Dutch law provides that where a non-citizen resident is also registered to vote in EP elections in the Member State of nationality, he or she is automatically removed from the Dutch registry. Equally, where a non-resident citizen is also registered to vote in EP elections in the Member State of residence, he or she is automatically removed from the Dutch registry and if the vote has already been received it is deemed invalid.¹²⁸ This means that in such cases the person might not have any vote. In such cases the last registration should count as the valid place of registration.¹²⁹

Continued residency requirement for elected non-national EU citizens for the EP elections

If a non-national EU citizen were to be elected in the EP elections held in the Netherlands, he or she would have to continue to reside officially in the Netherlands during the term in office. This might be a discouragement to stand for elections. Furthermore, it might be problematic to be re-elected. An elected EU citizen should be considered as being resident in the Netherlands, even if he or she does not have an actual residence in the Netherlands. Furthermore, holding a seat in the European Parliament for the Dutch constituency should be considered as waiving the residence requirement to stand for re-election.

¹²⁸ Article 47(1) *Tijdelijk experimentenbesluit stembiljetten en centrale stemopneming*

¹²⁹ At the moment that a Dutch national is automatically registered in another Member State, (s)he already no longer is registered in the Netherlands, because registration is required. Consequently, in cases where the Member State of residence automatically registers a Dutch national as a voter for the EP elections and the Dutch national is also registered for the Dutch EP elections, the latter must always be the last registration.

