

PARLIAMENTARY ELECTIONS IN THE NETHERLANDS DURING THE COVID-19 PANDEMIC

Case Study, 9 March 2022

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INTRODUCTION

In March 2021, the Netherlands held parliamentary elections during a nationwide Covid-19 pandemic. The Election Act prescribes that regular parliamentary elections are held every four years in March. In the event they were held on 15–17 of that month, but not without debate on whether they should be postponed and some last-minute changes to the electoral law. Decisions surrounding these elections were made in the middle of winter 2020–2021, when the number of Covid-19 cases was extremely high. During the election period itself, questions arose concerning the validity of postal votes. This had two causes: (a) the rapid introduction of postal votes for voters who were not used to this voting channel led to the potential for a high number of invalid votes; and (b) in order to remedy this, during the election period the government changed its interpretation of the wording of the article on invalid postal votes. Both became issues of debate.

This Case Study looks at the decisions made before, during and after the 2021 contest regarding the way elections are run and the voting options available to the Dutch electorate. It also looks at the lessons that can be taken away from the Netherlands' management of its elections during the pandemic. Important questions in that regard are whether the option of postal voting will be offered for voters living in the Netherlands in future, and whether the option of early voting will become permanent.

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1. NORMAL ELECTIONS IN THE NETHERLANDS

In the Netherlands, responsibility for the administration of elections is divided between the Ministry of the Interior, the Electoral Council and the municipalities.

The Minister of the Interior is responsible for the Election Act. The Act is quite detailed and leaves very little room for regulation on a lower level. If the Act needs to be changed the Minister, with a mandate from the Council of Ministers, can introduce a Bill, but both chambers of Parliament have to agree with the proposal. It is also possible for a Member of the Lower House to initiate a change in the Election Act. In that case, after both Houses of Parliament agree on the change, the government has to determine if it also agrees with the change. If so, it becomes law, after the King signs the Bill.

The Minister of the Interior is also responsible for the provision of money to the municipalities for election day. Municipalities are responsible for the actual organization of polling. They have to ensure that there are enough polling stations and poll workers, they send voters their voter card and, on election day itself, the municipalities have to provide all the materials that are necessary for voting. Counting is done in the polling stations after the vote closes; the results of all polling stations within a municipality are then added up at the municipal level. Those municipal results are then combined at the level of 19 administrative election districts and, finally, these 19 results are sent to the Electoral Council.

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The Council is responsible for the ultimate results, determining the seats that go to each of the parties and naming the candidates that are elected. The Council can state that the counting process in one or more polling stations has to be redone, but they do not have the power to invalidate the outcome of the election. The only institution that has that power is the sitting Parliament. So far, this has never happened. In the Netherlands, it is not possible to challenge the results of an election before a judge (OSCE/ODIHR 2021).

During regular elections, voters in the Netherlands vote on a Wednesday in a polling station. Voters who cannot vote in person because they are ill, incarcerated, etc. can give a proxy vote to another voter. Such a voter can accept up to two proxy votes, which must be cast at the same time as their own. For voters living abroad, there is the option of postal voting. A voter can request to be included in the register for voters living abroad. If they do so, they will be sent the necessary materials to cast a mail ballot. This includes a voter card and two envelopes (the inner envelope in which the ballot paper must be placed and the outer envelope which has to contain this plus the signed voter card). Since the ballot paper is only available shortly before the elections, voters living abroad can choose to download and print this, or wait for its arrival in the mail.

2. POLITICAL AND PUBLIC HEALTH CONTEXT

In 2021, the sitting government was called Rutte III (after Mark Rutte, Prime Minister since 2010) and was formed by four parties. It came into power on 26 October 2017 and consisted of a coalition of the People's Party for Freedom and Democracy (VVD), the Christian Democratic Appeal (CDA), Democrats 66 (D66) and the Christian Union. After the general election had already been scheduled for March 2021, the cabinet fell on 15 January 2021 (in the wake of the *'kinderopvangtoeslagaffaire'*—a scandal concerning wrongful prosecutions against welfare claimants). Due to the system of proportional representation with a nationwide district, elections' results in the Netherlands tend to be close and predictions are not very easy to make.

The Covid-19 virus was first detected in the Netherlands on 27 February 2020, when the first case of illness occurred in Tilburg. It involved a 56-year-old Dutchman who had arrived in the Netherlands from Italy. As of 22 October 2021, there were over 2 million confirmed cases of infections and 18,280 confirmed deaths. The first death occurred on 6 March 2020, when an 86-year-old patient died in Rotterdam. The government took various measures against Covid-19 including mandatory distancing, lockdowns, the requirement to wear a mask and even an evening curfew. Despite these measures, and even with a vaccination level of around 85 per cent (that is, prior to the Omicron wave) there were 3,000–4,000 new cases per day at this time. The Netherlands started a booster campaign in the end of November 2021 but found it necessary to go into a complete lockdown again in the beginning of December 2021.

3. DEBATING THE LEGAL FRAMEWORK

3.1. Whether to postpone

In May 2020 the Interior Minister informed Parliament by letter about the possibilities of postponing the elections (Parliament No. 35165/21). In that letter, she stated that constitutionally, it would be possible to postpone them until March 2022, but that this would require an emergency law. Most political parties—from both the governing coalition and the opposition—immediately stated that they were in favour of going ahead with the elections as planned. More important, this included all the major parties. Since the letter came at a time when Covid-19 numbers were going down, the issue was not much further debated. In January 2021, after the cabinet fell, the question resurfaced. At that time, new variants of the Covid-19 virus emerged in the Netherlands, leading to a rapid increase in infections. But by then, there was not much scope for postponing: partly due to the fact that there was an outgoing government, and partly due to measures that had already been taken to facilitate the holding of safe elections, to which we now turn.

Elections's results in the Netherlands tend to be close and predictions are not very easy to make. This election was not different in that regard. It was the responsibility of the voter to determine whether or not he or she should go to vote.

All voters aged over 70 living in the Netherlands—around 2.4 million citizens were allowed a postal vote.

3.2. Changes in the Election law

Certain temporary changes in the law were proposed by the Ministry of the Interior (Parliament No. 35590), at first limited mainly to measures dealing with hygiene rules. The proposal contained rules on the following: maintaining a 1.5 metre distance within polling stations; clarification that voters did not have to hand over their ID to the poll worker, but only had to show it; making it possible for polling stations in institutions for the elderly and vulnerable people to only be accessible to the residents; and increasing the number of proxy votes a voter could cast from two to three (making proxy voting easier for those who couldn't vote in person due to illness). Also, it was made possible for voters to designate a proxy online, to prevent sick voters from having to have contact with the healthy person they had chosen. The proposal did stipulate that voters should undertake a health check before going to the polling station, but this was not enforced in any way (a voter did not have to show any proof). In the original proposal, polling staff were given the authority to refuse a voter who was clearly showing signs of illness. This led to resistance in the Lower House of the Parliament. A member of the Christian Union entered an amendment to withdraw this authority from the Bill and found majority support. This meant that it was the responsibility of the voter to determine whether or not he or she should go to vote.

During the parliamentary debates most parties agreed on these measures, but there was a majority that wanted more extensive changes. All parties except Forum for Democracy (FvD) asked the government to investigate options for spreading polling over more days. In addition, the government was asked to make it possible to introduce certain time slots for vulnerable voters. Again, all parties except FvD were in favour of introducing postal voting for those living in the Netherlands but unable to go to the polling station due to illness or quarantine, or who would not feel safe because they wanted to avoid contact with other people. The Minister promised to look into these possibilities and to inform both Chambers as soon as possible. The law passed on 15 October 2020 in the Lower House and on 3 November in the Upper House. It became active on 4 November 2020. It was supposed to expire on 1 July 2021 but was extended, first to accommodate a small number of municipal elections held in November 2021 and then again in light of upcoming municipal elections in March 2022.

The Minister sent the requested information on additional measures to the Parliament shortly after the debate. Based on this, she proposed an addition to the temporary law (Parliament No. 35654). First, all voters aged over 70 living in the Netherlands—around 2.4 million citizens—were allowed a postal vote. Secondly, the voting period was extended from one to three days, meaning that votes could be cast on the Monday and Tuesday as well as the regular Wednesday. The debate in Parliament focused on the issue of postal voting. Some parties wanted to extend that option to all voters, or at least to all vulnerable voters. Other parties were worried that if mail ballots were sent automatically to all voters over 70 they would be vulnerable to fraud, and asked that these be instead distributed on request. Although the Minister saw merit in both proposals, she pointed out that it would be very hard to execute them,

due to the very limited time frame until polling day and all the demands that Covid-19 had already placed on the municipalities in organizing the elections. The Lower House voted for the proposal on 17 December 2020, the Upper House on 26 January 2021.

3.3. Court case on voter age

One of the parties who had been in favour of expanding the mail voting option to all voters, the Animal Rights Party (PvdD), brought a court case against the government. They claimed that the restriction to voters over 70 was discriminatory. On 19 February 2021, the court ruled that the state was allowed to use such a restriction (*Partij voor de Dieren vs Staat*; see also DutchNews 2021). The judge made the following observations. All voters could vote in the regular manner. If a voter did not feel safe to do so, that would be her or his own choice, not that of the state. The state did its utmost to ensure the safety of voters by imposing extra hygienic measures on polling stations and poll workers. It would be hard to identify the group of extra vulnerable voters under the age of 70 without having access to their medical files. Giving the option of mail voting to all voters would cause major implementation problems for municipalities, especially given the short time frame for organizing this extra voting channel. Therefore, there was a justification for the difference in treatment between voters over and under the age of 70.

4. COVID-19 MITIGATION AND IMPACT

4.1. Election overview

Turnout in 2021 was comparable with that of previous parliamentary elections. At 78.7 per cent under pandemic conditions, it was slightly down on 81.9 per cent in 2017 and slightly up on 74.6 per cent in 2012. Around 30 per cent of voters living in the Netherlands did not cast their vote in the usual way (on a Wednesday, in a polling station): 10 per cent of all voters voted by mail; around 12 per cent used the new option of voting early on the Monday or Tuesday; and about 8 per cent cast a proxy vote. It is interesting to note that the total number of proxy votes during this election (917,698 votes, 8.8 per cent of votes cast) was lower than in 2017 (964,811 votes, 9.1 per cent).

Some research was done to determine what reasons non-voters had for not participating. This showed that fear of the Covid-19 virus was not a significant motivation, being cited by only 10 per cent of non-voters. A lack of trust or interest in politics was stated as a reason by 33 per cent of those who did not vote. The remainder stated that they never vote (Ipsos 2021). Voters who reported non-participation due to Covid-19 were people who tried to avoid all non-essential contact in daily life. They felt that the available alternatives to conventional options during the elections were not good enough. They did not like proxy voting because of the breach of vote secrecy, while the option of early voting meant that they still had to go into a polling station. Eleven per cent of all voters felt that the elections should have postponed (Ipsos 2021).

After the elections, the National Institute for Public Health and the Environment (RIVM) looked into possible cluster contaminations due to the elections. They found one cluster of three positive Covid-19 cases that could be related to the elections. There were no other claims or reports of a relationship between the elections and Covid-19. Overall, it is therefore justified to conclude that the measures taken in polling stations ensured safe elections.

The costs for these elections were a lot higher than usual. Under normal circumstances, municipalities would have received EUR 43 million for conducting them. The Minister allocated municipalities an extra 29 million for the mitigation measures they had to take in the polling stations and 22 million extra for early and postal voting. This more than doubled the total cost, to EUR 94 million (Andersson Elffers Felix 2021).

4.2. The campaign

Most parties signed the Dutch Code of Conduct Transparency Online Political Advertisements. All parties except (again) the FvD abided by the 1.5 metre rules and abstained from organizing large, in-person campaign events (Povel 2021). This meant that the main campaign took place through televised debates between the leaders of the parties. Parties were struggling to find ways to reach out to voters under these very difficult circumstances (Klaassen and Winterman 2021). The Prime Minister and leader of the VVD, Mark Rutte, was seen as having an advantage: due to all the press conferences on Covid-19, he was in the news more than any other party leader (Hendrickx 2021).

Most parties signed the Dutch Code of Conduct Transparency Online Political Advertisements, developed by the Ministry of the Interior together with International IDEA (International IDEA 2021). Signatories were: CDA, Christian Union, DENK, D66, GreenLeft, PvdA, PvdD, SGP, SP, VVD and 50PLUS. The Code provides some guidelines to political parties for fair use of social media platforms and online campaigning. In particular it addresses the financial transparency of certain kinds of social media advertising and to tries to prevent foreign-funded influence on the electoral campaign. The Code proved useful in 2021 since restrictions on in-person gatherings had forced parties into greater reliance on digital campaigning. There were differences, however. Parties such as GreenLeft and the CDA were very active on social media, but the two largest parties-the VVD and the PVV-did not use this medium much at the outset of the campaign (Schellevis and Kasteleijn 2021). Towards the end of the campaigning period the VVD, but also the FvD, significantly increased their social media presence (Hendrickx et al. 2021). Although fake news was not much in evidence, the FvD did try to raise doubts about the fairness of the election. They stated that there would be rigging of the ballots, without being able to substantiate this (Holroyd 2021a).

4.3. In-person and early voting

During the preparation of the elections, municipalities struggled to find suitable polling places. Locations that they had used before were often unsuitable: they were too small for social distancing or for roped off queuing areas; there was no separate entrance and exit, or the entrance was too small to allow people to pass each other safely; ventilation within the building was inadequate, etc.

Normally, many polling stations are housed in nursing homes or schools. Because nursing homes were closed to visitors and schools did not want a large influx of voters, many of these could not be used.

Another problem for municipalities was that due to the early voting, they had to provide polling places not only for the Wednesday, but for the Monday and Tuesday as well. The law did stipulate that there was room for a smaller number of polling stations for these two days of early voting. Although the draft law at first allowed for shorter opening hours for early voting, it was decided to use the regular hours of 07:30–21:00 to avoid confusing voters. Eventually, all municipalities managed to find enough suitable places.

It is important to note that the legislation does not prescribe how many polling stations a municipality must establish. As a guideline, there should be one per 1,200 voters, but this is really left to the municipality's discretion. There was some concern that insufficient volunteers would come forward for polling duties, but this turned out not to be the case. On 30 November 2020, the Ministry ran a national campaign asking people to volunteer as poll workers and this was so successful that some municipalities—such as Amsterdam and Leeuwarden—even had to turn people away. The campaign focused specifically on younger people, as they are less vulnerable to Covid-19, and this led to many new poll workers being recruited (Berenschot 2020).

As stated above, about 12 per cent of the voters voted early. The opportunity was taken up especially among voters who were at high-risk of Covid-19: 76 per cent of those who voted on 15–16 March were aged 50 years or older, while 51 per cent were over 70. Focus groups confirmed this pattern, with a majority of older voters stating that the option of early voting was the main reason for their voting in person, instead of by proxy or mail. Some voters, who were not necessarily vulnerable themselves, voted early in the hope of contributing to efforts to decongest polling stations. In some places, voters were allowed to vote from their car in a drive-through polling station (Visscher 2021). One problem that some early voters encountered is that they went to their usual polling place to find it closed. This was because municipalities did not have to open all locations on the first two days of voting. All locations of polling places could be found on the Internet, but apparently not all voters had accessed this information.

Poll workers did not have to be tested beforehand but were asked to do a health check and not come if they had any symptoms. Voters had to wear masks in the polling station. Poll workers did not have to wear masks, but they were stationed behind a screen so that they would not come into close contact with the voters. Voters had to disinfect their hands before entering and pencils, polling booths, tables and other materials were cleaned regularly. Some municipalities chose to give the voter the pencil that was used rather than reuse pencils.

During the two days of early voting, most voters voted during normal daytime hours-75 per cent voted between 09:00 and 16:00 (Ipsos 2021). Hardly any

In some places, voters were allowed to vote from their car in a drive-through polling station. used the option to vote in the later evening hours. On 'election day' proper, 17 March, that was different. In many polling stations voting continued until the closing hours. Due to longer queues than normal, there were quite a number that voted after 21:00. Of those who voted after 16:00 on 17 March, 30 per cent mentioned having to deal with a wait time of 5 minutes or more (Ipsos 2021). Although this is very little compared to other countries, in normal Dutch elections there usually is no wait time at all, with the possible exception of polling stations in very crowed places such as train stations and airports, and approaching the close of polling.

4.4. Postal voting

The biggest issue to emerge during the election itself was postal voting. In total 2.4 million voters had the option to use this channel, of whom around 1.1 million did so. Even though the Ministry had tried to educate the public on how to properly use the two envelopes, from the return of the first mail ballots it became immediately clear that a significant number of voters had not followed the instructions and instead put both the voter card and the ballot paper in the inner envelope. According to the interpretation of the law that had been used in the past, municipalities had to put these aside as invalid ballots. The Minister, pressured by questions in Parliament and in several media outlets, asked for an emergency opinion from the Electoral Council and the Council of State. Both institutions came to the conclusion that the law could be interpreted differently and that the votes could be counted as valid, as long as both the voter card and the ballot paper were present. They came to this conclusion because the law specifically allowed mail ballots to be counted if the voter card and ballot paper were both placed in the outer envelope by the voter. It would therefore be illogical if that same rule was not applied to the near identical situation that had now arisen. The Minister informed both houses of Parliament that she was inclined to follow this advice, and Parliament agreed to count such votes as valid votes (Holroyd 2021b).

5. LESSONS LEARNED

One thing that is clear is that the normal Dutch election law is not written in a way that allows it to deal with crisis situations. At the time of its drafting, it was not foreseen that the temporary law would be used for more than one election. However, since then it has been extended to cater for some municipalities holding elections in November 2021. During these elections, there was no postal voting, but the option of early voting was offered. In March 2022, there will be elections in most municipalities, so once again, the temporary law has been extended to offer early voting in those elections as well.

What will happen after that is unclear. Before the parliamentary elections, the government stated that they were not in favour of maintaining the option of postal voting, due to the risks of family voting, coercion and vote buying. However, voters have responded positively towards postal voting, so this might be reconsidered. Early voting, too, is seen as a good option by the voters. Municipalities are less enthusiastic, due to difficulties in finding suitable polling

The biggest issue to emerge during the election itself was postal voting. locations for those two extra days. It could be, however, that if this channel is used in more elections due to the ongoing nature of Covid-19, then experience and new routines will make this less of a challenge.

One thing that is clear is that the normal Dutch election law is not written in a way that allows it to deal with crisis situations. The law assumes that no major incidents happen during the electoral process that hinder the operation of elections. It specifies in a very detailed manner how elections should be run and does not allow for any deviations. The Covid-19 situation has taught us that there needs to be a more flexible way of managing elections in times of crisis. There are larger discussions to be had, then, about how that might be achieved—whether it should be through case-by-case emergency legislation, as now, or another solution, such as a permanent emergency chapter in the standing legislation that can then be triggered in appropriate circumstances.

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