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I. INTRODUCTION

On 24 May 2012, the Permanent Mission of the Kingdom of the Netherlands to the OSCE invited the Office for Democratic Institutions and Human Rights (ODIHR) to observe the early parliamentary elections scheduled for 12 September 2012. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to the Netherlands from 20 to 22 June. The mission was composed of Dr. Armin Rabitsch, Senior Election Adviser and Mr. Raul Muresan, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-electoral environment and the preparations for the early parliamentary elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, the election administration and municipal authorities, as well as with political parties and media representatives. A full list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs and the Ministry of the Interior and Kingdom Relations for their assistance and co-operation in organizing the visit. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the mission.

II. EXECUTIVE SUMMARY

Early parliamentary elections will take place on 12 September 2012 to elect 150 members to the House of Representatives, the second chamber of the Dutch parliament. They will be elected under a proportional representation system, on the basis of open candidate lists with preferential voting. The early elections were scheduled after the two-party minority government lost support in the parliament in April 2012 over proposed austerity measures.

Parliamentary elections are regulated primarily by the Constitution, the Charter of the Kingdom of the Netherlands, and the Elections Act. A number of previous OSCE/ODIHR recommendations have been considered by the authorities and while draft amendments to the Elections Act are being discussed, they will not effect the current elections.

The administration of elections is shared between national and local governments and electoral committees. The Ministry of the Interior and Kingdom Relations oversees the conduct of elections at the national level and municipalities oversee them within their jurisdiction. The electoral committees comprise an Electoral Council, 20 Principal Electoral Committees and some 10,000 polling station electoral committees which administer polling on election day. All interlocutors met with by the OSCE/ODIHR NAM, confirmed high levels of trust and confidence in the work of the election administration.
Voters can cast their ballots in person at any polling station in the municipality where they reside, or can vote by proxy. Out of country voters must register before each election and can vote by post, proxy or in person at a number of the country’s diplomatic representations.

A high degree of political pluralism exists and a total of 50 political groups have been registered for the upcoming elections. The political parties met with by the OSCE/ODIHR NAM stated that they expect the campaign to be focused on economic issues, with television debates playing a crucial role in structuring voters’ choice. There are no limits or restrictions on campaigning or campaign finance. A new bill on campaign finance was approved by the House and is before the Senate, but will not be applicable for these upcoming elections.

The media landscape is diverse, with some 600 television and radio broadcasters (including 20 public broadcasters), and numerous print outlets. The media has a tradition of editorial independence and operates largely on the basis of self-regulation, including during campaigns. Parliamentary parties receive free airtime on public television and radio. Parties that field candidates in all 20 electoral districts receive additional free airtime during the campaign.

The legal framework provides for election-related complaints on a limited number of issues while excluding appeal on certain issues, including voting procedure, vote counting and the election results. According to authorities, however, any electoral complaint otherwise not specified can be heard by the Civil Court, provided that there was a ‘gross’ violation of electoral procedures.

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration, and expressed no concerns with regard to election day proceedings. At the same time, the NAM noted that the continued use of proxy voting, elements of the campaign finance regime, and certain limitations on complaints and appeals during some parts of the electoral process might benefit from further scrutiny. Accordingly, OSCE/ODIHR recommends the deployment of an Election Assessment Mission for the upcoming 12 September 2012 early parliamentary elections.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The Netherlands is a constitutional monarchy with a parliamentary system of government. It consists of 12 provinces, and the Netherlands Antilles and Aruba. The Netherlands, the Netherlands Antilles and Aruba elect their own independent parliaments and conduct their internal affairs autonomously.

Political pluralism is a key feature in the Netherlands. Ten parties were represented in the House after the 2010 early parliamentary elections. The government consisted of the People's Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie, VVD), with 31 seats in the House and the Christian Democratic Appeal (Christen-Democratisch Appèl, CDA) with 21 seats). The minority coalition was supported by the Party for Freedom, (Partij voor de Vrijheid,
PVV) with 24 seats. The coalition collapsed in April 2012 over the government's proposed austerity measures. Following the call for early elections, a coalition of VVD, CDA, the Green Left (GroenLinks, GL) Democrats 66 (Democraten 66, D66) and the Christian Union (ChristenUnie, CU) agreed on a draft 2013 budget.

The OSCE/ODIHR last deployed an Election Assessment Missions (EAM) to the Netherlands for the 2010 early parliamentary elections, which found that the elections “were conducted in the context of a high level of confidence in the election administration. The pluralistic political and electoral system provided voters with a broad choice among diverse political options. Overall, the largely unregulated campaign and media environment gave political parties ample opportunity to communicate their views to voters”.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Elections are primarily regulated by the Charter of the Kingdom of the Netherlands, the Constitution, and the Elections Act that was last amended in 2009. The legal framework provides a sound basis for the conduct of democratic elections. The authorities are currently in the process of addressing a number of previous OSCE/ODIHR recommendations; however the 2012 elections will be conducted under the same legal framework as the previous 2010 elections.

All citizens who have reached the age of 18 are entitled to vote in the House elections, except those who are under a final court decision depriving them of the right to vote. Citizens residing in the Netherlands Antilles or Aruba are not entitled to vote in parliamentary elections in the Netherlands unless they have resided in the Netherlands for 10 years, are Dutch civil servants or their dependents.

One characteristic of the legal framework is that it provides citizens below the age of 18 with the right to stand for election. If elected, such a candidate is placed on a ‘reserve list’ and assumes the seat upon turning 18.

The parliament (Staten Generaal) is bicameral. The first chamber (Eerste Kamer or Senate) comprises 75 members indirectly elected by 12 provincial assemblies. The House (Tweede Kamer or House of Representatives) consists of 150 members, directly elected for a four-year term under a proportional representation system with open candidate lists and preferential voting.

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1 Other parties in the parliament include the Labour Party (Partij van de Arbeid, PvdA) with 30 seats), the Socialist Party (Socialistische Partij, SP), 15 seats, D66 - 10 seats, GL - 10 seats, CU - 5 seats, the Reformed Political Party (Staatkundig Gereformeerde Partij, SGP), 2 seats, and the Party for Animals (Partij voor Dieren, PvdD) 2 seats. One MP elected from PVV left this party and formed his own fraction.

2 All previous OSCE/ODIHR reports on the Netherlands are available at: [http://www.osce.org/odihr/elections/netherlands](http://www.osce.org/odihr/elections/netherlands).

3 The legal framework for elections also includes the General Administrative Law Act, the Civil Code, the Penal Code, the Political Parties Subsidisation Act, and regulations issued by the Ministry of the Interior and Kingdom Relations (MoIKR).

4 The OSCE/ODIHR EAM 2010 recommended that “consideration could be given to introducing additional safeguards to ensure the integrity of the exercise of the right to vote by persons deprived of legal capacity for severe mental disability, particularly as relates to proxy voting”. The Netherlands signed but is yet to ratify the UN Convention on the Rights of Persons with Disabilities; see at: [www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx).
On 19 March 2012, the parliament decided that the monarch will no longer have the prerogative to appoint a *rapporteur* to assist in the formation of governments; parliament will first debate the election results and then appoint a *rapporteur* to negotiate a possible coalition government among parties and then report back to parliament. However, the prime minister is still to be appointed by the monarch, while the new government may be subject to a vote of no-confidence in the parliament upon its investiture.

For elections, the country is divided into 20 electoral districts.\(^5\) A party can choose to have different candidate lists for each district; in practice, parties running in all districts tend to have identical lists. The electoral system provides for preferential voting, with each voter listing their choice of particular candidate in numerical order. A voter can vote for any candidate on a list, and his or her choice results in a vote for this list as well. While there is no legal threshold, there is an effective electoral quota which is determined by dividing the total number of votes cast by the 150 seats in the House.

The seats are allocated in three steps. The first step is the allocation of the 150 seats to the party lists and independent candidates that have reached the electoral quota, on the basis of the number of votes received. Then, candidates who obtained preference votes exceeding 25 per cent of the electoral quota are declared elected regardless of their position on their party list, in decreasing order of preference. Thirdly, any remaining seats are awarded to candidates by list order.\(^6\)

International observers are entitled to be present in polling stations, thus enhancing transparency of the electoral process and accountability of the election administration at the local level. In addition, any voter is authorized to observe PSEC sessions, provided they are not disruptive.

C. **ELECTION ADMINISTRATION**

The administration of elections is shared between national and local governments and electoral committees. The Ministry of the Interior and Kingdom Relations (MoIKR) oversees the conduct of elections at the national level and the municipalities who are responsible for the administration of elections. The electoral committees are the Electoral Council (EC), the 20 Principal Electoral Committees (PEC) and some 10,000 polling station electoral committees (PSECs).

The EC acts as a central election commission, although it has no formal authority over lower-level commissions. Its primary functions are to certify the registration of candidates and lists and to tabulate results. The EC also acts as a state advisory body on electoral reform. The EC is composed of seven members, selected by the government and appointed by the monarch through a competitive application process. Members are appointed for up to two six-year terms. Its meetings are closed to the public, except those related to the numbering of candidate lists and to the discussion of final results.

PECs consist of five members and three alternates, appointed by the MoIKR. The chairperson of the PEC is the mayor of the largest municipality of the respective district. The PEC registers candidates’ lists for the district. The PEC determines the votes for each candidate and the total for each party, and announces the results based on the information received from the municipalities.

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5. This includes a new district established in Bonaire after the 2010 elections, where some 13,000 voters are registered.
6. In the 2010 elections, only two candidates were elected by preferential votes who would have otherwise not won a seat due to their list order.
PSECs are temporary bodies appointed by the municipal executive. A municipality has at least one PSEC, composed of a chairperson and between two and six members, together with a ‘sufficient’ number of alternates. The PSECs are responsible for conducting election day voting.

The MoIKR oversees the overall conduct of elections at national level. Municipal executives administer the elections at the local level, as they maintain the computerized voter registers, distribute voting cards, decide the number and location of polling stations, and compile the results for the municipality. After elections, the House Credentials Committee reviews the final results and recommends the certification of those elected. It may recommend a recount or repeat voting in some or all PSECs. It can also recommend improvements to the MoIKR on the electoral process.

All OSCE/ODIHR NAM interlocutors expressed a high level of confidence in the electoral process, as well as in the impartiality and professionalism of the election administration.

Voter can cast their ballots at any polling stations in the municipality of residence. This can be done in-person or, upon request, by proxy and for those living abroad by post. To vote at a polling station, each voter must present an identification document and a voting card. Such voting cards containing security features are mailed to the voter before each election at least two weeks before election day.

The Elections Act provides for proxy voting in cases where a voter does not expect to be able to vote on election day. Such voters can nominate other voters to cast votes on their behalf until the end of election day. In practice, there don’t appear to be any limitation to who can vote by proxy. A voter may cast up to two proxy votes, and must vote him/herself at the same time. The election authorities estimate that proxy votes represent some 10 to 15 per cent of all votes cast at each election. The exact figures have not been calculated, although the number of proxy votes is recorded on the results protocol at each polling station.

Postal voting will be organized by the municipality of the Hague. Voters from out-of-country must register for each election. For the first time in the upcoming elections, they will be able to download application documents from the internet and also send in their application in electronic format. The Hague municipality will mail the ballots starting some 10 days after candidate registration concludes (i.e. some 30 days before election day). All ballots received by 15:00 hours on election day will be counted.

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7 There are 415 municipalities in the Netherlands.
8 The MoIKR recommends a maximum of 1,200 registered voters per polling station.
9 Out-of-country voters can also vote in person in 25 embassies and 2 military bases for the upcoming elections. In 2010, there were some 100 such locations; the reason for the reduction (as stated by the MoIKR) is that authorities will organize polling stations only where the number of voters in 2010 was above 50, in order to more fully ensure secrecy of the vote.
10 As was the case in 2010 elections, expired identification documents will be accepted as voter identification. While the 2010 OSCE/ODIHR EAM found that the system in place seems to safeguard against possible multiple voting, it also recommended that if the use of expired identification documents is to be retained, consideration should be given to harmonizing the law with the regulation. This has yet to be effected.
11 The 2010 OSCE/ODIHR EAM recommended to abolish or further restrict proxy voting by requiring in-person application to the municipality prior to election day or by allowing for absentee voting before election day have not been addresses.
D. VOTER REGISTRATION

Municipal authorities maintain a unified voter register, which is based on information from the population register. Citizens who live abroad and are not registered in a municipality can register with the municipality of the Hague until 1 August. The voter registers close six weeks prior to election day. There are approximately 12.5 million voters currently registered.

There are no voter lists in polling stations on election day. Instead, the PSECs verify the numbers of the voting cards used by voters against the lists of voting cards which have been invalidated. Such cards are those that have been replaced, those that have been established as stolen or unlawfully in circulation, or whose holder submitted a written application to vote by proxy, has been issued a postal vote or has died.

E. CANDIDATE REGISTRATION AND CAMPAIGN

The Elections Act provides for the registration of ‘political groupings’ on the basis of a group’s notarized charter. Such groupings have to register their names with the EC and deposit 450 EUR by 19 June. Fifty political groupings have registered for the upcoming elections. Two groups have been denied registration: one for incomplete documentation and one for having a misleading name.12

The registration of the lists, including of independent candidates, will take place on 31 July, when contestants have to submit the names of the candidates from their lists.13 Political grouping can submit lists of candidates to PECs in each electoral district. A deposit of EUR 11,250 and a minimum 30 supporting signatures are required for parties not represented in parliament. The deposit is returned if the contestant receives more than 75 per cent of the electoral quota. Parties in the outgoing parliament and with identical candidate lists in all districts can register centrally with the PEC in the Hague.14

A party list can include a maximum of 50 candidate names, and for parties with more than 15 seats in the outgoing House, a maximum of 80 candidate names. The lists are ordered on the ballot by their number of seats in the outgoing House. They are followed by parties or independent candidates not represented in the House in an order determined by drawing lots.

The verification of candidate eligibility only takes place after the publication of the official election results. As such, a winning candidate may not be installed as member of the House.15

The political parties met with by the OSCE/ODIHR NAM intend to have identical lists in all 20 districts. The internal nomination process for candidates and their order on the party list varies. Most parties have an open system through which an internal board nominates a number of

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12 The ‘Occupy Politiek’ group was denied name registration, as the Electoral Council determined that its name could be misleading to voters as it is not connected to the ‘Occupy’ movement in the Netherlands.
13 A political grouping can also submit a list of candidates without being registered.
14 The Elections Act defines as identical a set of lists which have the same numbers of candidates, same names of the candidates and their order. Such list can differ in the names of the last five candidates, as they may be local to the respective electoral districts.
15 The 2010 OSCE/ODIHR EAM recommended that “in order to ensure full compliance with Paragraph 7.9 of the 1990 OSCE Copenhagen Document …consideration could be given to reviewing the procedures for nomination of candidates with a view to ensuring that prospective candidates comply with the legal requirements to become members of the House before being placed on the ballot.”
potential candidates and the final list is voted upon by all party members or local party branches (either in a congress or by internet and telephone).

According to the SGP’s statute, women were not allowed to be members of the party, or to run as candidates on its lists. Following a 2007 appeals court decision, the Supreme Court decided in 2010 that women have the right to be included on the SGP list and the state has a duty to ensure that they have this right in practice. The government did not respond to the Supreme Court ruling, while the SGP has filed an appeal with the ECHR which is currently pending.

All political parties met with by the OSCE/ODIHR NAM stated that they expected the campaign to be focused on the economy and on EU fiscal policy.

The legislation does not regulate the campaign or campaign finance. The parties represented in the parliament are entitled to public subsidy, as regulated by the 1999 Political Parties Subsidization Act, as amended in 2011. The funds can be used for broadly defined activities and from 2005, also for campaign purposes.

Some parties are transparent about their campaign incomes and expenditures and post this information on their website. The political party representatives met with by OSCE/ODIHR EAM stated that the campaign finance is not an issue. However, a number of them expressed concerns over the lack of transparency, as media reported on one political party allegedly receiving funds from abroad.

Several organizations play an important role in providing voters with electoral information, particularly CPB Netherlands Bureau for Economic Policy Analysis (CPB), Kieskompas and Stemwijzer. The CPB is an independent part of the ministry of Economic Affairs, Agriculture and Innovation, and analyses the potential economic impact of political party programmes. For the upcoming elections, CPB received request for analysis from all parties in the House, except PvdD. They rejected an application from a non-parliamentary party, as it contained limited data. The 2010 OSCE/ODIHR EAM recommended that the CPB analyses all economical programmes submitted, not just of those represented in the parliament or expected to win minimum one seat according to opinion polls. The CPB informed the OSCE/ODIHR NAM that it intends to implement this recommendation in future elections due to limited resources in a tight calendar of activities specific to the early elections. Kieskompas (or Vote Compass) is a non-partisan web application that aims to engage voters in elections by informing them which political party is closest to their own political preferences. The Stemwijzer (or Vote Match) compares voter’s views with the election programmes of political parties. All OSCE/ODIHR NAM political party interlocutors expressed confidence in the objectivity of these organizations.

F. MEDIA

With almost 600 broadcasters, the media landscape is diverse and the media has a tradition of editorial independence and operates largely on the basis of self-regulation. The public

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16 The 2010 GRECO report stated that “insofar as Theme II – Transparency of party funding is concerned, the overall picture is rather disappointing: no tangible progress has been made in respect of any of the (previous) recommendations”; see at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)5_Netherlands_EN.pdf.
18 See at: http://www.kieskompas.nl.
19 See at: http://www.stemwijzer.nl.
broadcasting system includes 20 independent organizations. They broadcast jointly on six TV and seven radio channels under the umbrella of NPO (Nederlandse Publieke Omroep), which co-ordinates the programme structure and distributes airtime among the broadcasters. There are 15 member-based broadcasting associations and 2 general broadcasters: NOS (Nederlandse Omroep Stichting), and NTR (uniting the former public broadcasters Nederlandse Programma Stichting, Teleac and RVU). The largest private broadcasters are RTL Nederland, Sanoma and Talpa. The newspapers with the largest circulation are De Telegraaf and Algemeen Dagblad, along with several free newspapers.

Parliamentary parties are allocated free airtime in the public media on an annual basis. During the campaign, parties running candidates in all electoral districts receive additional free airtime. The Media Authority (Commissariaat voor de Media) is responsible for the allocation of this airtime, while the quantity is decided by the Ministry of Education, Culture and Science. This allocation is the only regulation of campaign coverage or campaign advertising in public or private media, together with the general requirement that advertising should not exceed 12 minutes in one hour of broadcast.

All political party representatives met with by the OSCE/ODIHR NAM were of the opinion that live, televised debates play a crucial role in the campaign, especially the one on the eve of the election. Such debates will be organized by both public and private broadcasters. NOS will organize three TV debates and one radio debate between the 11 parliamentary parties. The first debate will take place on 22 August. Parties’ representatives expressed full confidence in the objectivity of the debates’ organizers, particularly NOS. At the same time, they noted that the system favours the parliamentary parties.

G. RESOLUTION OF ELECTORAL DISPUTES

The legal framework provides for election-related complaints on a limited number of issues, as specified in the Elections Act. The first instance is the election body in question. Complaints on certain issues, such as voter registration, registration of the name of a political group and the validation of candidate lists can be appealed to the Council of State, the highest administrative court with general jurisdiction, whose decisions are final.

Serious electoral violations are regulated by the Penal Code and fall under the jurisdiction of the criminal courts. The General Administrative Law Act excludes the possibility of appeal on certain issues, including voting procedure, vote counting and the election results. According to the Council of State, and based on a 1970 Civil Court ruling in the case of van Dooren vs. the Hague municipality, a complaint or appeal on any electoral matter otherwise not specified can be submitted to the Civil Court, provided there was a ‘gross’ violation of electoral procedures.

The outgoing House validates the election results and reviews any complaints related to the

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20 A total of 8.5 hours on television and 35 hours on radio are equally distributed to these parties.

21 Complaints may be filed on refusals to register a voter, to register the name of a political group, to recognize the validity of a list of candidates, to issue a voter’s pass to vote in another municipality, to issue a certificate of authorization to vote by proxy, or to issue a postal vote certificate. The 2010 OSCE/ODIHR EAM recommended that “consideration should be given to extending the right of complaint to at least all issues related to the exercise of the rights to vote and to stand for office.”

22 The 2010 OSCE/ODIHR EAM recommended that “consideration should be given to introducing a possibility for appeal to a judicial body of all election-related complaints, including those related to results and installation in office.”
conduct of elections or to the results. The House has the power to order partial or full recounts or to invalidate the results, with subsequent repeat elections.

IV. CONCLUSION

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration, and expressed no concerns with regard to election day proceedings. The high degree of political pluralism, the diverse media, and the checks and balances of the legal framework indicate that limited added value is likely to be brought by a significant presence of the OSCE/ODIHR on election day. While a number of previous OSCE/ODIHR recommendations have been considered by the authorities and draft amendments to the legal framework are being discussed, these will not impact the upcoming elections.

At the same time, the NAM noted that the continued use of proxy voting, elements of the campaign finance regime, and certain limitations on complaints and appeals during some parts of the electoral process might benefit from further scrutiny. Accordingly, OSCE/ODIHR recommends the deployment of an Election Assessment Mission for the upcoming 12 September 2012 early parliamentary elections.
ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs
Jelte van Wieren, Head, Good Governance Division; Human Rights, Gender Equality, Good Governance and Humanitarian Aid Department
Caecilia J. van Peski, Policy Officer

Ministry of the Interior and Kingdom Relations
Diana van Driel, Senior Policy Advisor, Local Government and Democracy
Maria Gonzalez, Programme Manager Travel Documents /Design Election Process
Anneke de Jonge, Policy Advisor, Division of Public Administration
Anton Toebes, Jurist, Constitutional Matters and Legislation
Hedi Schouten, Jurist, Constitutional Matters and Legislation
Rintje Oenema, Policy Advisor, Local Government and Democracy
Joep Severens, Policy Advisor Local Government and Democracy

Electoral Council
Henk Kummeling, Chairperson
Monique Leyenaar, Member
Fatima Arichi, Legal Specialist

Council of State
Henk Lubberdink, Counselor of State in the Administrative Jurisdiction
Mart Poot, Lawyer, Administrative Jurisdiction Division

CPB Netherlands Bureau for Economic Policy Analysis (CPB)
Marcel Lever, Programme Leader Sector 2 Macro-analysis

Political Parties

Christian Democratic Appeal (CDA)
Coskun Çörüz, Member of the House

Christian Union (CU)
Gert-Jan Segers, Candidate to the House

Democrats 66 (D66)
Joost Sneller, Policy Coordinator

GreenLeft (GL)
Jesse Klaver, Member of the House

Labor Party (PvdA)
Pierre Heijnen, Member of the House

People's Party for Freedom and Democracy (VVD)
Joost Taverne, Member of the House

Reformed Political Party (SGP)
Kees van der Staaij, Member of the House

**Socialist Party (SP)**
Arjan Vliegenthart, Member of the Senate

**Dutch Media Authority (Commissariaat voor de Media)**
Wim Groen, Head of Registration, Licensing and Supervision Division
Dirk Oudenaarden, Registration, Licensing and Supervision Division

**Dutch Public Broadcaster (NOS)**
Peter Kloosterhuis, Head NOS Events

**The Hague City Council**
Ester Beneder, Head of Elections Unit
Frans Andriessen, Senior Adviser
Marlies Vulto, Director Customer Contact Centre