



Eerste
Kamer *der Staten-Generaal*



Focus on the senate

**Modern concepts in the functioning of senates in
bicameral parliamentary systems**

Memorandum in preparation for the 16th meeting
of the Association of European Senates
in The Hague, the Netherlands on 21–22 May 2015



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Introduction

There is no single or ultimate parliamentary model for democracies. Parliamentary systems reflect the constitutional history and development of each nation. Many European nations have a long tradition of bicameral parliamentary democracy. In 2015, the Netherlands is celebrating the 200th anniversary of its bicameral parliament, the States General. It is important for senates (or upper parliamentary houses) and their presidents to be aware of the similarities and differences between different bicameral systems. Therefore, the aim of this conference is to exchange insights into current developments in the functioning of senates. Those senates that have implemented reforms in recent years are specifically invited to inform their colleagues about their experiences.

General remarks

Currently, 113 countries in the world have a unicameral system and 79 a bicameral system.¹ Many countries that now have a unicameral system previously had a bicameral system but decided to abolish their upper house. In Europe, these countries are Greece (1935), Denmark (1953), Sweden (1970), Portugal (1974), Turkey (1980), Iceland (1991) and Norway (2009).² The main argument for having a bicameral system is to provide an independent *second opinion* on the quality and stability of legislation. The main functions of senates can be categorised as:

1. Scrutinising legislation that has been passed by the lower house.
2. Ensuring stability and continuity in government policy.
3. Performing a role in securing interests of regions and/or protecting minorities against the 'tyranny of the majority'.

¹ www.ipu.org/parlin-e/parlinesearch.asp

² NB. There are also examples of new or reinstated bicameral systems in countries that have reshaped their constitution after a period of autocratic reign, such as Spain or South Africa.



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Worldwide, senates show a wide variety in composition, powers and the role they play in the national political decision-making process. Over the years, the concept of the senate or upper house has changed, which in some cases has led to reform. Upper houses have been criticised both for having too much power and too little, for being too democratic or not democratic enough, or for being a carbon copy of the lower house.

The focus of this meeting will be on changing concepts in the functioning of senates in bicameral parliamentary systems. What legitimises a bicameral system in our time? Should both houses have the same legislative powers? What is the influence of public opinion? To what extent should senates play a role in representing regions? What changes have senates gone through in recent years? These and other questions will be addressed in the 16th meeting of the AES in The Hague in 2015.

Subtheme I: Composition

The political power of a senate is determined by its composition and its formal powers. In some cases members of upper houses serve longer parliamentary terms than members of lower houses. They often have a higher average age and are fewer in number than those in the lower house. Upper houses tend to attract people who have an interest in politics and parliamentary scrutiny, but are often less interested in playing an executive role. Due to their position in society, their experience and their relatively long term of office, senators may prove to be more independently minded. Upper houses therefore provide an important counterbalance in an otherwise executive-dominated parliament.

In France, Italy, Belgium, Ireland, Switzerland and Canada the composition of the upper house has been subject to debate for several years, while in



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the United Kingdom, a debate over the composition of the House of Lords led to the reduction of the number of hereditary peers from 700 to 92 in 1999.³

- Does a composition that differs from the lower house make a senate stronger or weaker?
- To what extent does the system of electing (or appointing) senators affect the democratic legitimacy of the senate?
- What practices are used to reserve seats for representatives of minority groups?

Subtheme II: Hard power vs soft power

While the scrutiny of legislation is at the core of a senate's work, the legislative powers of senates vary immensely. In some countries (e.g. the Netherlands), the senate has a full veto right on all legislation, including the budget. In other countries (e.g. Slovenia), the senate has a legislative function, working as a corrective mechanism with respect to the National Assembly, although it does not have the power to pass acts. Although senates in non-federal states rarely have a veto right, they almost all have a right to initiate a bill or to amend it. In Spain, Ireland, Poland, Austria and the Czech Republic the upper house can send a bill back to the lower house with amendments or objections. Subsequently, the final decision is made in the lower house. In Germany, a special mediation committee that includes members of both houses can propose a compromise. In other countries, the bill goes back and forth between the two houses until a final decision is made (by either the upper or lower house, or by both houses combined).⁴ Many senates have a limited role in scrutinising budgets. However, they of-

³ In 2009, the House of Lords also lost its judicial functions upon the establishment of the Supreme Court of the United Kingdom; those in office became Justices of the Supreme Court of the United Kingdom and lost their right to speak and vote in the House of Lords until their retirement as Justices of the new court.

⁴ This is called a shuttle or *navette*.



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ten do have a distinct role when it comes to constitutional matters.

In Germany in 2006, the veto right of the upper house, the Bundesrat (the Federal Council), was limited to just under 40 percent of all legislation. In return, the Bundesländer were given the right to deviate from certain federal legislation.

- What distinctions in legislative powers can we observe between the two chambers of a parliament?
- What role do senates play in scrutinising the budget?
- Do senates have a specific role in examining the constitutionality of a legislative proposal?
- How can bicameral systems combine sufficient care with vigour when it comes to urgent matters?
- Is there controversy about the division of powers between the upper and lower houses in your country?

Subtheme III: The importance of public opinion

In most countries, the senate attracts less media attention than the house of representatives. Lack of visibility may lead to the indifference of the general public concerning the functions the senate performs, or to a less favourable public image. In some cases, senates are criticised for delaying and duplicating the legislative process and hampering the government in acting decisively and efficiently.

- How do senates strive to provide transparency in their activities?
- Does social media have an impact on a senate's communications policy?
- What are best practices for maintaining a good relationship with the press?