



Eerste Kamer *der Staten-Generaal*



*The Senate of the
States General*



ALBA
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General



The Senate



and the House of Representatives together form the States General (the Dutch Parliament). In the parliamentary system the Senate has its own specific place, which in some ways resembles and in other ways differs from that of the House of Representatives.

This brochure deals primarily with the functions and role of the Senate in today's political system. It also contains a brief history of the Senate and information about the historic building in which it is housed. It is worth noting that the official Dutch name of the Senate is 'Eerste Kamer', literally 'First Chamber'. As it would generally be referred to in English-speaking countries as the upper or second chamber, the term Senate is used here to avoid confusion.

A special section of this brochure is devoted to the Dutch Senate and Europe. It explains what role the Senate plays in relation to the European Union and Europe as a whole. As such, it reflects the Senate's awareness that in the 21st century policies and legislation do not end at national borders and that national parliaments play an important and independent role in the European debate.

'Key function of the Senate is to test the quality of legislation in terms of its legitimacy, feasibility and enforceability.'



01 *The Senate in session.*



Role of the Senate

The Senate has a special place in the Dutch form of government. Its principal function is to give an overall opinion on a bill at the end of the legislative process. The Senate does not have the power to amend a bill. It may, however, reject a bill and to this extent it therefore has the last word. Another function of the Senate is to scrutinise the Government, this being a function which is often carried out in conjunction with the assessment of bills.

The Senate tends to operate less in the spotlight than the House of Representatives. Members of the House of Representatives (MPs) are full-time professional politicians, whereas the members of the Senate are part-timers who often hold other positions as well. The House of Representatives is mainly engaged in day-to-day politics, whereas the Senate functions more as a 'chambre de réflexion'.

Legislative function

All bills must be approved by the Senate before they can become law. The key function of the Senate is to test the quality of legislation in terms of its legitimacy, feasibility and enforceability. Such review or scrutiny by the Senate has proved valuable in practice. For example, the practical consequences of a bill are not always realised by the drafters. Situations may also occur in which a bill has been altered in the course of the parliamentary procedure, to such an extent, that it has lost some of its coherence, and further interpretation is needed in order to establish what the legislator precisely intends.

Judiciary

It is important to note here that the deliberations in the Senate play a far from negligible role in the interpretation of

legislation, for example by the judiciary. For although the text can no longer be amended, its meaning can be clarified. In some court judgments reference is therefore made to the reports of the Senate on the debates on draft legislation.

Sword of Damocles

The idea that many people have of the Senate as a body that ultimately rubber-stamps almost all bills (97% on average) needs to be put in perspective. This is because until the Senate actually says 'yes' to a bill, the threat of a 'no' hangs like a Sword of Damocles over the head of the Government. The Senate has the following ways of making its influence felt.

'Novelle' - proposal to supplement a bill

Although the Senate unlike the House of Representatives does not have the right of amendment, it may put such pressure

'Until the Senate actually says 'yes' to a bill, the threat of a 'no' hangs like a Sword of Damocles over the head of the Government.'





on a government minister by cogent arguments and reasoned criticism that he or she chooses to present a supplementary bill (known as a ‘novelle’). The Government takes account of the criticism of the Senate in the supplementary bill.

The supplementary bill goes through the same procedure as every other bill, i.e. it is submitted to the Council of State for its opinion and is then debated and passed by the House of Representatives and the Senate.

Motion

Although it makes little use of this option, the Senate can also pass a motion to induce the Government to do something. However, the Government can, if it wishes, simply ignore a motion. In fact, the Government is unlikely to do this precisely because the Senate makes so little

use of motions (at most 10 to 20 per year, compared with many hundreds in the House of Representatives) and they often have cross-party support. After all, this might then lead to rejection of the bill.

Pledges

In the knowledge that the bill could be rejected if it does not adequately meet substantial objections of the Senate, the Government can try to find some other solution. One solution which is used much more often than the offer of a ‘novelle’ is a pledge given by the Government during the passage of a bill through the Senate, as a result of which the Senate ultimately passes the bill. Such pledges may relate to technical implementation or to the organisational or financial aspects or may amount to a promise to evaluate the operation of the legislation after a given period. These pledges are in many cases of direct importance to citizens, civic organisations and institutions charged with implementing and/or enforcing the legislation.

Scrutinising function

Responsibility for scrutinising government policy rests first and foremost with the House of Representatives. The Senate therefore adopts a low-key approach in this respect. It scrutinises above all the broad outline of policy and the mutual coherence of the different government plans. It has, for example, never exercised the right of inquiry and only infrequently exercised the right of interpellation (the right to call a government minister to account directly in the Senate). Moreover, few written questions are submitted by the Senate.

Right to approve or reject the budget

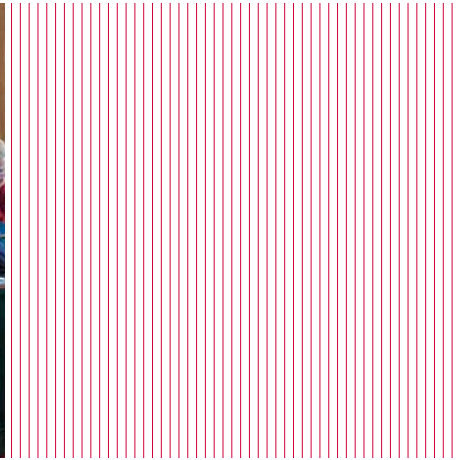
By the same token, the Senate exercises in its own way the classic parliamentary instrument for controlling the actions of the executive: namely the right to approve or reject government budgets. Although here too the Senate has right of veto, it will seldom use it.



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*Proceedings of the Dutch Senate.
At the interruption microphone.*

This is because rejecting a budget has enormous and far-reaching consequences, which can paralyse the work of government in the policy fields concerned.

Policy debates

Until a few years ago the submission of budgets was seized upon as an opportunity to debate with the Government on subjects relevant to the policy field concerned; in such cases all spokespersons for the various parliamentary parties set their own priorities in choosing points for discussion. Nowadays the budget debates are increasingly organised by reference to jointly chosen themes in order to maximise the value of the exchange of ideas with the Government. Instead of a very large number of disparate topics there is increasingly a coherent whole, thereby allowing the debates to have greater depth. Sometimes a theme is chosen that involves more than one government minister, in order to break down the partitions and achieve breadth of vision and effectiveness.

Less party politics

The Senate is much less of a political arena than the House of Representatives and, owing to its correspondingly low-key approach, it is sometimes able to deal effectively with particular problems by putting less emphasis on party politics. For example, the Senate is not bound by a coalition agreement. It is precisely because its statements do not have direct political consequences that the Senate can take a longer view – in other words, a view that extends further than the term of office of the government at the time in question.

It is also striking that members of the Senate are much more likely than their counterparts in the House of Representatives to speak on behalf of a wider group than their own parliamentary party. In a few cases one spokesperson may even speak on behalf of the entire Senate. In such a case, it is immediately clear to the Government that there is little if any difference of opinion

between the parliamentary parties and that it must therefore have very good reasons to ignore the wishes and concerns of the Senate.





'International agreements, including the European directives, rank higher than national legislation.'

Special section: The Dutch Senate and Europe

In the 1950's Jean Monnet, one of the founding fathers of European integration, advised European governments to be decisive, energetic and persevering in their approach to European cooperation. He called for problems and challenges to be dealt with step by step. The Dutch Senate has acted in Jean Monnet's spirit and adopted this approach in dealing with European challenges, policies and proposals.

The Senate puts much effort into its involvement in the European integration process. It does this not only by holding constructive debates about the future of Europe but also and above all by putting ideas into action. Actions speak louder than words.

After the Second World War the basic principle of European cooperation was 'no more war'. This was widened after the Fall of the Berlin Wall in 1989 to include

the principle of 'no new dividing lines on the European continent'. The Senate observes these principles in how it thinks and acts in relation to Europe. Europe extends beyond the borders of the European Union.

Members of national parliaments represent the citizens of their country. Parliaments not only deal with national policies and legislation but also have a specific responsibility to deal with cross-border policies and legislation. In the 21st century policies and legislation do not end at national borders.

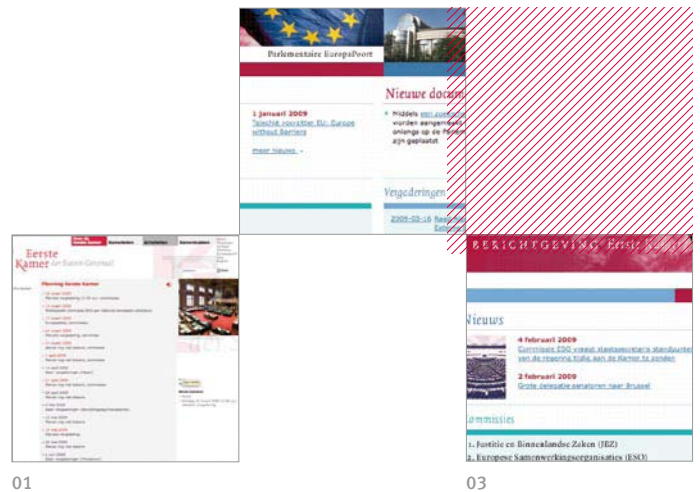
National policy is partly European policy. For the most part European policy becomes national policy.

This section illustrates the Senate's dealings with Europe by describing the procedures followed and giving striking examples that reflect our guiding principle

of putting ideas into action. We hope that they will serve as best practices and inspiration for other parliaments, organisations and people.

As an institution the Dutch Senate prides itself on an approach and commitment which underline and respect the importance and interdependence of European and national policies. In recent years the Senate has committed itself to improving and strengthening the role of national parliaments in Europe.

There is a strong awareness that Europe is more than just 'Brussels', 'Strasbourg' and 'Luxembourg'. Europe continues to provide us, as it has done for the last 50 years, with many challenges and opportunities. We have an obligation to reap the fruits of European cooperation and take advantage of the opportunities it provides. This is a duty we owe not only to our predecessors, who built Europe



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01 - 03 Screenprints of the European website of the Senate www.europapoot.nl

as we know it today, but also to present future generations. We need to honour the past and inspire the future.

Special European website

At the turn of the century the Senate launched its own special European website, www.europapoot.nl. All the European activities of the Senate can be found on this website, for example the agenda and meeting documents of the Senate's two most Europe-oriented standing committees¹, the meeting documents of the European Council and the General Affairs and Foreign Affairs Council of the European Union and news items of the Senate.

Specific web pages are built for specific topics, such as the intergovernmental conferences of the EU, the Treaty of Lisbon and the enlargement process of the

European Union. Every proposal of the European Commission of the EU is processed into a special file. This file contains all relevant documents, such as the opinion of the European Parliament, deliberations of the Council and, of course, the views of the Dutch parliament and government.

The website is open to the public and can therefore be visited by anyone interested. People are invited to comment on European proposals and on the activities and opinions of the Senate and its members. The website provides an excellent forum for everyone to communicate with the Senate on European matters. Much use is made of this opportunity by members of the public, NGOs, civil society and academia. The European website is an instrument to bring Europe closer to our citizens.

How the Senate deals with Europe: instruments and characteristics

The Senate plays a distinctive role with regard to Europe in the Dutch bicameral system. Various instruments and procedures have been created in order to meet expectations and allow the members to perform the Senate's role successfully, including the important task of creating greater awareness and improving effectiveness.

The website www.europapoot.nl is one of these instruments.

Proposals presented by the European Commission are communicated to the national parliaments as soon as they are sent to the national governments. In the Senate, these European proposals are dealt with first by the Standing Committee

¹ Standing committee on European Cooperation Organisations and the Standing Committee on the Justice and Home Affairs Council.



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on European Cooperation Organisations. With or without the views of the Dutch government on the proposal, this committee quickly evaluates the proposal to decide whether or not it is sufficiently relevant and important to warrant asking another standing committee of the Senate to study it in more depth. As such, the Standing Committee on European Cooperation Organisations performs the job of ‘gatekeeper’.

This way of treating European proposals is currently under discussion in the Senate. The gate keeper function performed by the Committee on European Cooperation organisations will probably be phased out as standing committees will decide autonomously on their way of dealing with European proposals as they claim ownership of EU-dossiers.

European proposals that will be discussed in the European Union by the Council for Justice and Home Affairs (JHA) are dealt with in the Senate by the special Standing Committee on the JHA Council. This committee has been in existence since the

national parliaments obtained the right of approval in this policy area.

Discussion of a European proposal can result, for example, in oral and/or written questions to the Dutch government or in a plenary debate in the Senate with the government. It may even become the subject of written deliberations between the Dutch parliament and the European Commission. Several of the European files subject to continuous and intense scrutiny by the Senate² were selected by means of this procedure.

Annual debate

Another important instrument of the Senate is the annual debate on Europe. Every year the Senate debates the main developments in Europe with the Dutch government. As Europe extends beyond the borders of the European Union, the annual debate on Europe deals with the entire European continent, and pays specific attention to the policies and goals of the Council of Europe. Usually the debate is thoroughly prepared by the relevant spokespersons, who select

specific topics, hold meetings with knowledgeable parties and pay working visits to Brussels. The annual debate gives the Senate the opportunity to discuss the current and future stance to Europe. As such, the Senate can debate the long-term future of Europe and bring this to the attention of the Dutch public.

Besides holding its annual debate on Europe, the Senate aims to bring certain selected topics to the specific attention of the government, civil society and the public at large. The instrument it uses for this purpose is a public symposium. Several successful symposiums have been held by the Senate on a variety of topics in recent years³. The Senate subsequently takes account of the findings when carrying out its legislative and other duties, including political scrutiny.

International forums

The President of the Senate and many of its members attend international conferences and take part in international interparliamentary assemblies such as the Parliamentary Assembly of the Council of

² See the section on examples.

³ See the section on examples.



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- 01 Stand with texts of law in the Assembly Hall
- 02 Table flags of the countries of the Association of European Senates

Europe. Their participation in these international forums is well prepared. A report on the conference deliberations is discussed later in the standing committee of the Senate responsible for the topics debated at the conferences. After every plenary session of the Parliamentary Assembly of the Council of Europe, the Senate's Committee on European Affairs discusses the adopted resolutions. If necessary, the resolutions are brought to the attention of the Senate committee responsible for the policy concerned. This is a simple but effective approach. The approach ensures that interesting information from the conference that may be useful for the Senate's deliberations is shared with all members of parliament. Information-sharing is an important way of enhancing the quality of the Senate's work.

Characteristics

The instruments described above can be successful only if account is taken of the basic characteristics of the Dutch Senate's procedures. First of all, the Senate checks whether draft legislation meets the criteria

of enforceability, lawfulness and feasibility. These criteria are also seen in the broader context of integral, long-term policies. These standards are not just applied to draft national legislation as the Senate also scrutinises the drafts of European and international legislation in the same way to see whether these criteria are met.

Second, the Senate has a tradition of using its parliamentary instruments with care. In other words, the instruments are used only when there is a strong and broad (political) conviction that they will be successful and that the intended effect will be achieved. A prime example is the Senate's instrument of moving a motion. In the spring of 2008, the Senate unanimously moved a motion urging the government to do its utmost to improve the financial position of the Council of Europe in keeping with the activities of the Council. This is evidence of the great value attached to this parliamentary instrument.

The Senate's third characteristic derives from the second. If possible, the Senate

tries to speak with one voice. The value of opinions and deliberations increases if views are put forward on behalf of the entire Senate. Letters and questions to the government are often written by standing committees of the Senate rather than by the political parties or members. For example, the matter of EU accession to the European Convention on Human Rights was dealt with in this manner⁴. Situations also occur in which a specific topic is raised in a plenary debate by one member speaking on behalf of the entire Senate.

The fourth characteristic is the method by which the Senate manages dossiers. A dossier on a specific subject is always dealt with by the same members of the Senate at every level (national, European and international). The example of the EU accession to the European Convention on Human Rights is once again pertinent, as this topic was raised and debated on the initiative of just a few members of the Senate at three levels: the European Union, the Council of Europe and national level. And not just once, but over and over again.

⁴ See the section on examples.



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01-07 *Impressions of the conference in the Ridderzaal to mark the 50th anniversary of the treaties of Rome March 2007.*

The Senate succeeds in creating greater awareness and enhancing effectiveness at national and European level by combining all these instruments and characteristics into the following three guidelines:

- 1 – agenda-setting: the agenda should be set at both national and European level;
- 2 – ‘frapper toujours’: arguments should be constantly communicated, and
- 3 – no dividing lines: the various platforms should be integrated and inter-linked.

The greater the effectiveness, the stronger the awareness – the stronger the awareness, the greater the effectiveness.

Last but certainly not least, it is necessary to realise that none of the above can really work without the strong commitment and dedication of the members of the Dutch Senate. In spite of differences in critical attitude, all political groups are very much involved in Europe.

Best practices: examples of the work of the Senate

In recent years the Senate has undertaken many initiatives to increase European awareness, to put Europe higher on the (national) political agenda and to strengthen parliamentary cooperation at the European level, in other words to strengthen the European continent. Some of these initiatives will be discussed below.

Symposium on relations between the European Union and Russia

In February 2008 the Senate decided to ask the Dutch Advisory Council on International Affairs (AIV) to draft a report on the future of the relationship between the European Union and Russia. The Senate has the right to request such a report on the basis of the Dutch legislation on advisory boards. This right is exercised only in extraordinary circumstances. In this case, the Senate asked the government to request a report of the AIV, but the govern-

ment decided that there was no urgent need of an extensive report at that time. As the Senate did not share that opinion, it requested a report itself. The official request listed the following arguments for the preparation of a report. Russia is the EU's largest neighbour, the changing geopolitical situation in Europe, the expiry of the strategic partnership agreement between Russia and the European Union and, finally, the mutual challenges and opportunities that should be taken into consideration within the bilateral framework.

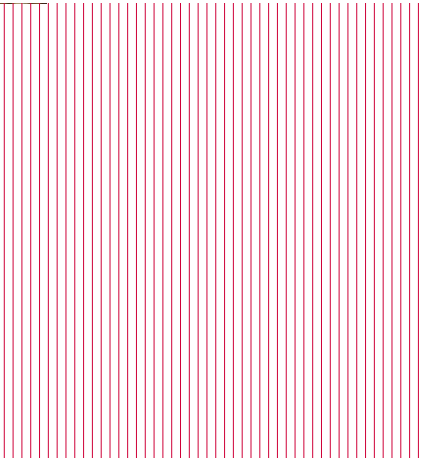
At the beginning of July 2008 the AIV presented its report entitled ‘Cooperation between the European Union and Russia: a matter of mutual interest’. Immediately afterwards the Senate decided to ask the government for its reaction to the report. Given the importance of the report, the Senate also decided to hold a public symposium on the matter in the autumn of 2008. In August, the geopolitical situation on the eastern borders of the European Union changed dramatically as a result of the armed conflict between Russia and



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Georgia. This was an additional incentive for the Senate to proceed with the symposium, which was organised in cooperation with the AIV.

The international symposium on the future of the relationship between the EU and Russia was held in the assembly hall of the Senate on Monday 27 October. International guest speakers were asked to explain their views on the relationship from their own perspective, whether it be European, Russian, academic or political. People from various organisations and institutions and representatives of civil society participated in the symposium. The common denominator of the contributions by the keynote speakers and the input of the participants was the need to emphasise the mutual dependence and the responsibility of all concerned to make a constructive contribution to outlining the future relationship and elaborating this at a later date. The Senate will decide what future steps it should take in this matter. The report and the deliberations of the symposium



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have aroused great interest both in the Netherlands and abroad⁵.

The public symposium underlined the importance of the (future) relationship between the European Union and Russia and showed that responsibility for such matters is not confined to governments; parliaments too must think about the best ways of creating a safe and stable Europe. This requires the awareness and involvement of not only parliaments but also every other organisation concerned: in this sense the symposium held by the Senate therefore made a real contribution.

Celebrations to mark the 50th anniversary of the Treaties of Rome

March 2007 marked the 50th anniversary of the signing of the European Treaties of Rome. All over Europe people celebrated half a century of European cooperation. The Dutch Senate considered that was an event not to be overlooked. On 9 March 2007 the Senate held a conference in the Hall of Knights, which marked the start of the celebrations in the Netherlands.

⁵ The report 'Cooperation between the European Union and Russia: a matter of mutual interest' of the Dutch Advisory Council on International Affairs and the deliberations of the symposium can be found at www.europapoort.nl

Believing that we should honour the past and inspire the future, the Senate invited all universities in the Netherlands and Dutch-speaking universities in Belgium to send their own delegations to the conference. Over 300 students came to The Hague to debate the future of Europe both among themselves and with the Senators. Four motions were put forward for debate, each of them proposed by a member of the Senate and a student.

The motions were:

- 1 – Education in the European freedoms and values should be made mandatory;
- 2 –The European Union should introduce partial membership;
- 3 – Member states of the European Union should transfer all competencies for environmental and energy policies to the European Union and
- 4 – Europe should become a federation.



All participants voted on the motions before and after the debates to find out how persuasive the debaters had been. There were also votes on many other motions concerning the future of the European Union, such as the membership of Turkey, a European army and a European President. At the end of the conference the best debaters were declared the winners.

There were two reasons for the celebrations. First, of course, to mark the success of European cooperation in the past and to look to the future. And, second, to break the silence in the Netherlands on the subject of Europe, which occurred after the Dutch no-vote in the referendum on the constitutional treaty of the European Union. The conference was also intended to create more awareness in the Netherlands and involve the younger generations. The minutes of the conference were printed in a special book on the Senate and Europe that was presented by the President of the Senate to the Dutch Prime Minister.

The format of this conference was explained by the President of the Senate at the Conference of Speakers of the EU parliaments on 'Raising national European awareness' in Bratislava, 24-27 May 2007⁶.

Accession of the European Union to the European Convention on Human Rights

The European constitutional treaty stated that the European Union should accede to the European Convention on Human Rights. For this purpose the European Union needs legal personality, for which provision was made in the European constitutional treaty. When ratification of this treaty was suspended, the accession of the EU to the European Convention on Human Rights was jeopardised. The Senate took the view that the accession process did not have to be suspended.

All EU member states are already party to this convention. The European Union as a supranational organisation is not. In practice, this means that the member states are required to comply with the European Convention on Human Rights,

but the European institutions are not. Accession is believed to be of the utmost importance for the EU's credibility in respect of human rights. It would provide European citizens with the same protection at European level as they currently receive at national level.

In May 2005, at the Third Summit of the Council of Europe in Warsaw, all member states stated that accession was necessary. This was further endorsed by the Juncker report on relations between the European Union and the Council of Europe. Since the principle of accession itself was no longer questioned, the Senate drafted a report on the possibility of rapid accession and the senators in the parliamentary delegation to the Assembly of the Council of Europe filed a motion for a resolution on this matter in the Assembly. In the motion the Council of Europe and the European Union were asked to start the negotiation process so that de facto accession could take place as soon as the legal basis for accession was put in place. The motion was passed by an overwhelming majority.

⁶ *The format can be requested on the Senate's websites at www.eerstekamer.nl or www.euro.papoort.nl*



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At the national level, the Senate endorsed the initiative of the delegation to the Assembly of the Council of Europe.

The Dutch government was asked to explicitly support this initiative of the Assembly and hence of the senators. The government pledged that it would do its utmost to press for rapid accession of the European Union to the European Convention on Human Rights. The government viewed the Senate's initiative as providing additional support for its own position.

The Senate subsequently informed all parliaments of the Council of Europe and asked them to discuss the matter at national level. The President of the Senate drew the subject of EU accession to the specific attention of her colleagues at the annual conference of the Association of European Senates. At the request of the Senate, the motion filed in the Assembly of the Council of Europe was placed on the agenda of COSAC, the biannual conference of the parliamentary committees on European Affairs of the European Union member states. COSAC stated in its conclusions that 'COSAC supports the

accession by the EU to the European Convention on Human Rights [...]'.

The 2008 Spring Session of the Parliamentary Assembly of the Council of Europe saw the adoption of resolution 1610 on 'The accession of the European Union/ European Community to the European Convention on Human Rights'.

The rapporteur for this resolution was a member of the Dutch Senate. The resolution stated that 'the accession must be the priority in the dialogue between the two Organisations'. The Senate will monitor very closely the progress made with the accession of the European Union to the European Convention on Human Rights.

Annual legislative and working programme of the European Commission

In the Convention on the Future of Europe (February 2002 – July 2003) the Dutch parliamentary delegation introduced the 'declaration on the role of national parliaments: to increase the national European awareness'. The declaration



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proposed that the annual legislative and working programme of the European Commission should be discussed in the national parliaments. It was argued that besides strengthening the role of national parliaments this would increase the knowledge and awareness of Europe among its citizens, help to put Europe higher on the national (political) agenda and involve civil society. The declaration received great support in the Convention.

On the initiative of the Senate, the declaration was put into practice for the first time in 2005. The parliaments of the European Union debated the annual legislative and working programme of the European Commission. The Senate invited civil society to comment on the programme. These comments were fully taken into consideration in the debate conducted by the Senate with the government on the Commission's programme.

In the intervening period the implementation of the 'Declaration on the role of national parliaments: to increase the national European awareness'

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has produced results. Through the forum of COSAC, every national parliament now scrutinises the annual legislative and working programme of the European Commission and selects European proposals which it believes should be subjected to a joint and simultaneous subsidiarity and proportionality test. When proposals are presented by the European Commission, those selected most often by the different national parliaments are subjected to a Europe-wide parliamentary scrutiny procedure.

Through the Senate's European website, civil society is still asked to comment on the European Commission's annual legislative and working programme. European proposals selected by civil society for scrutiny are put on the Senate's list for COSAC. The declaration introduced during the Convention has thus paved the way for the early warning system procedure incorporated in the Treaty of Lisbon.

European agencies

The Senate has been concerned for some years about the often unwanted and

unnecessary growth in the number of European agencies, which are sometimes established as political concessions. Not only do these agencies increase European bureaucracy and cost European citizens a lot of money but their added value is also often doubtful. In 2005 the European Commission presented a proposal for an institutional framework for the establishment of (new) agencies. The Senate jumped at the opportunity and started an intense scrutiny procedure.

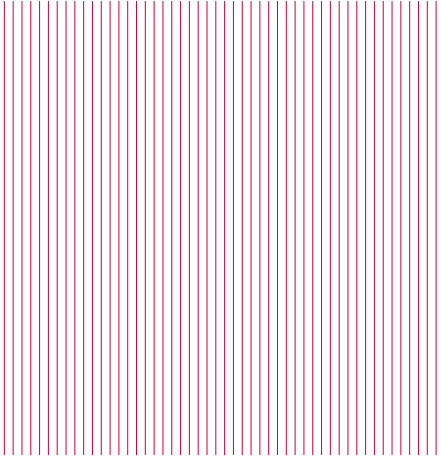
To assist it in this procedure the Senate adopted a constitutional novelty by requesting the government to ask the Dutch Council of State (the country's highest advisory body and administrative court) to prepare a report on the proposed European institutional framework on behalf of the Senate. The Senate asked for explicit advice on the institutional embedding of agencies in the structures of the European Union and on the democratic control on these agencies. The findings in the Council of State's report prompted the Senate to discuss with the government the growth of agencies and the criteria for setting

them up. The Dutch government pledged that it would press for restraint in the setting up of new European agencies and would strictly apply the criteria of added value and democratic control. The Senate also created its own checklist for scrutinising European proposals for new agencies.

Since the concerns of the Senate are widely shared within the European Union, the Council of State's report was translated and brought to the attention of the national parliaments of the European Union. The deliberations on the European institutional framework were postponed at the European level. In 2008 the European Commission withdrew its 2005 proposal and presented a new proposal for the institutional framework. Immediately after this presentation, the Senate embarked on a written deliberation process with the Dutch government to stress the need for greater care and more democratic control when the establishment of new European agencies is considered.



01 *Readingroom at the Senate*



The topic of the unwanted increase in European agencies is a matter of concern to European citizens. As there is often no detailed explanation of the added value of extra European structures, questions and doubts arise. When the principles of subsidiarity and proportionality are applied to the establishment of new agencies, the answer is often negative. The Senate is against the creation of additional bureaucracy before steps have been taken to improve the existing structures.

The European proposal for the establishment of a European Agency for Fundamental Rights

In view of its concerns about the setting up of new agencies, the Senate decided to subject the European proposal to set up an Agency for Fundamental Rights to intense and thorough scrutiny. From December 2004 when the first European talks were held about this proposal until the evening before the final European decision in December 2006, the Senate discussed and debated this specific European proposal on an almost weekly basis.

From the outset, the Senate had several main objections. First, there was no need to duplicate the existing activities of the Council of Europe, which functioned perfectly well. Second, it was felt that the creation of new dividing lines in Europe should be prevented and that it would therefore be undesirable to have a European Union agency responsible for EU territory and the Council of Europe for the continent as a whole. Third, the Senate had concerns about the legal basis on which the agency was to be set up as its mandate was to be decided only after it had been established. There was also the rather strange arrangement that the agency could involve itself in intergovernmental policies, especially justice and home affairs.

The Senate did its utmost to influence the positions of national governments, national parliaments, the European Parliament and the (Parliamentary Assembly of the) Council of Europe by mentioned:

1 – agenda-setting: the agenda should be set at both national and European level;

2 – ‘frapper toujours’: arguments should be constantly communicated, and

3 – no dividing lines: the various platforms should be integrated and inter-linked.

After two years of parliamentary pressure exerted at the different levels, the Dutch government stated that in future it would not accept that countries which only have an association and stabilisation agreement with the European Union could participate in the agency for fundamental rights. Approval of all the member states of the European Union would be needed for the participation of a third country in the agency. This statement of the Dutch government somewhat allayed the concerns of the Senate as regards the dividing lines in Europe. Second, the Dutch government, acting at the urgent request of the Senate, added an official declaration to the proposal to the effect that the Netherlands did not recognise that the agency had any competence in the field of justice and home affairs.

The Senate's involvement in this dossier could be evaluated in two ways.

On the one hand, it might be argued that it demonstrates that it is impossible for one parliament to block a European proposal. The European Council decided to set up the agency even though it costs billions of euros annually and its added value is very questionable. On the other, it might be concluded that the Senate actually succeeded in influencing the draft proposal and helped to limit both the geographical scope of the agency and its remit. From that perspective, damage control was the true goal of the Senate. This is not because the Senate opposes fundamental rights, but because it takes the view that European legislation should be introduced only if it is really necessary, incorporates the requisite measures and has a sound legal basis.

In the end, the Senate's approach reflected the theory that the greater the effectiveness, the stronger the awareness – the stronger the awareness, the greater the effectiveness.

Implementation of the European budget

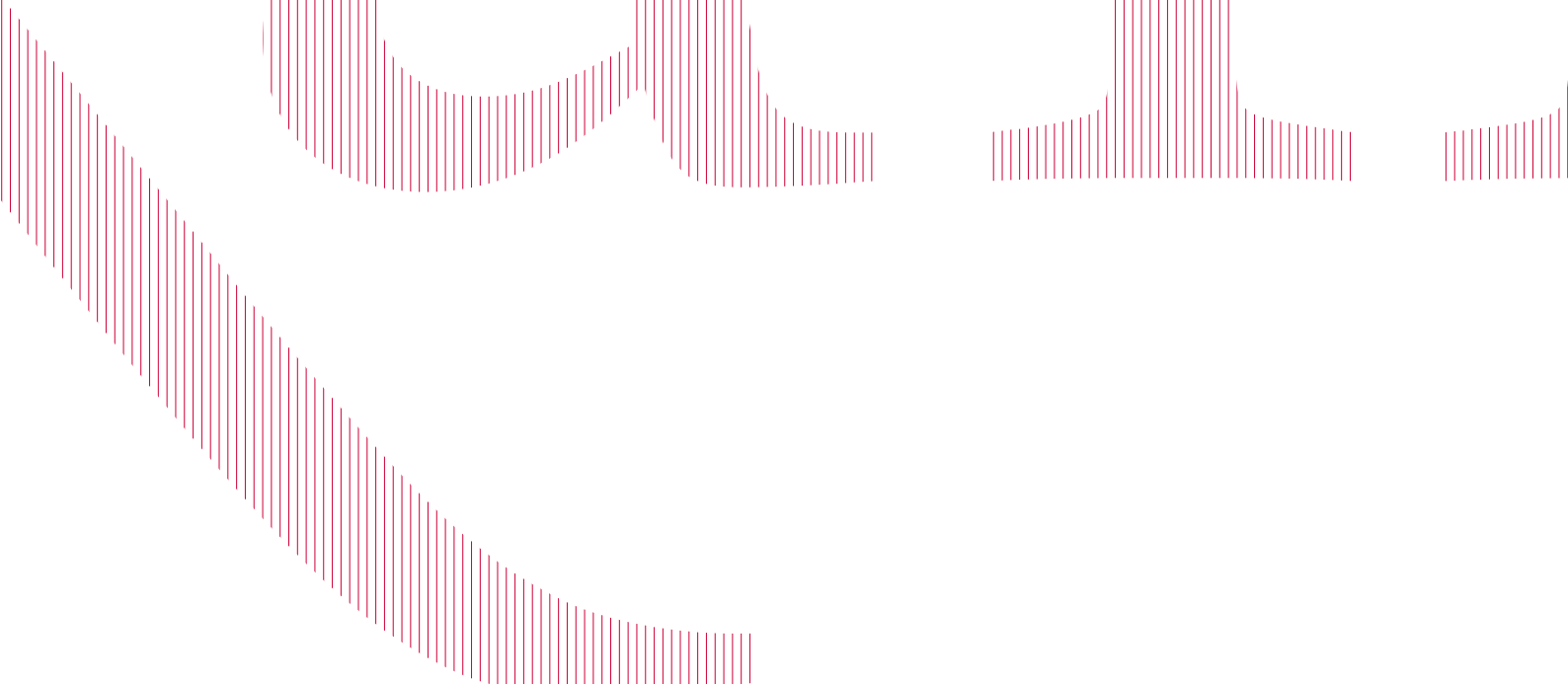
Since 1994 the European Court of Auditors has not been able to give a formal statement of assurance for the expenditure of European budget. This is generally perceived by Europe's citizens as severe criticism of the management of the European budget. Not only do citizens expect the expenditure of European funds to be legitimate but they also require the control of this expenditure to be effective and efficient. The problems with the implementation of the budget adversely affect public opinion on Europe.

The Dutch Court of Auditors presents an annual report on EU budget expenditure. This report is also presented to and discussed with the Senate. In the spring of 2005 the Senate worked with the Court of Auditors to produce a report entitled 'Management and control of EU finances'⁷. This report was forwarded to the parliaments of the EU member states and placed on the agenda of COSAC. The report stated that parliaments need to pay more attention to the management

and control of this expenditure in order to increase support for Europe among the general public. It also advocated the adoption of a single audit system and an annual ex-post Declaration of Assurance from each member state on the spending of the EU funds. The report was welcomed by COSAC, which endorsed the findings and recommendations.

The Senate is still monitoring this matter closely. The Netherlands was the first European country to actually present an ex-post Declaration of Assurance and has done so in the last few years. As it considers that new steps can and should be taken, the Senate has prepared a new resolution on this matter for discussion with the national parliaments. Establishing better management and control is an ongoing process that needs continuous support and attention. This is what the Dutch Senate proposes should be achieved for the sake of Europe's citizens and the better functioning of the European system.

⁷ The report can be found at www.europapoort.nl



Additional initiatives of the Senate

The Senate has taken many other initiatives besides those discussed. Some of the most important are briefly outlined below.

- Every year the Senate presents its own report on the activities of the latest parliamentary year. Half of this report is dedicated to the international and European activities of the Senate.
- Members of the European Institutions are regularly invited to a meeting in the Senate to discuss current topics and the long-term policies.
- The contributions of the President of the Senate and members of the Senate in international forums very often emphasise the need for the exchange of more information between parliaments in order to enhance the effectiveness of their activities.
- The Senate organised public meetings on the future of (the Netherlands in) the European Union and on data protection.

In conclusion

This special section was written on the occasion of the XIth annual conference of the Association of European Senates, which was hosted by the Dutch Senate in The Hague from 16 to 18 April 2009. The topic of this conference was the role of the Senates on the European continent. Europe is a large continent and does not end at the borders of the European Union. This makes the need for more and stronger European cooperation for the benefit of all European citizens even more pressing. The senates of Europe, or rather the parliaments of Europe, have an important role to play. Awareness of this role needs to be increased and fulfilment of this role needs to be improved and strengthened.

It is the task of those who represent Europe's citizens at the national and European level to increase European awareness and effectiveness. Only then can we truly honour the past and inspire the future.

Composition



The more specific role of the Senate is also reflected in its membership and in the frequency of its meetings. As a rule, the Senate meets only one day – or at most two days – a week. As already noted, membership of the Senate is not the principal job of the senators. In addition to their work in the Senate, most members have a full-time job elsewhere. This puts limits on the time that they have available for their work in the Senate, but it also has the advantage that a wide variety of up-to-date social experience is reflected in the functioning of the Senate.

Variety

The combination of senators' political responsibility and their wide-ranging knowledge and, in many cases, years of

experience in various positions in society has a great added value for the debate with the Government. They are therefore ideally placed to judge the necessity of government policy and to decide whether it is in fact desirable. As a result of their great variety of practical experience in many different fields (for example, academia, public administration, the Bar, teaching and health care) the members of the Senate are able to review policy and legislation from a broader perspective and assess whether it is mutually coherent and geared to the future. The Senate's description as a 'chambre de réflexion' shows that it is an institution ideally placed to combine social rooting and reflection; in short, an institution that pays little heed to ideas that happen to be fashionable at any given time.



01



- 01 *The coffee corner.*
- 02 *State opening of Parliament (on the third Tuesday in September).*



02

The Senate and the formation of governments

Unlike their counterparts in the House of Representatives the parliamentary parties of the Senate are not involved in the formation of governments. It follows that the Senate plays no part in the establishment of a coalition agreement. The only involvement is that the President of the Senate is the first person to advise Her Majesty the Queen after the elections, the next persons being the President of the House of Representatives and the Vice-President of the Council of State. Together these three are the Queen's official advisers during the formation of a government.

Prince's Day

Finally, any description of the functions of the Senate should mention that the President of the Senate also presides over joint assemblies of the Senate and the House of Representatives, the so-called Joint Session of the States General. The best known session is on Prinsjesdag (Prince's Day), the State opening of the parliamentary year, when the Queen addresses the members of the Joint Session. The Senate and the House of Representatives also meet in joint session to approve intended marriages of members of the Royal House and naturally also on the inauguration of a new head of state.

*'The building in which
the Senate meets has a
rich history.'*



01 *One of the committee rooms with the portraits
of the counts of Holland on the wall.*



History

01

J.A. Krusemans' larger-than-life painting of King William II, which hangs behind the presidents' chair in the assembly room.



01

After the fall of Napoleon the Congress of Vienna decided in 1815 to combine the Austrian Netherlands (the modern Belgium) with the Kingdom of the Netherlands in order to create a strong state on France's northern frontier. In Belgium the nobility feared that they would lose their influence as a result and therefore pressed for the merger to be accompanied by the establishment of a house of peers similar to the British House of Lords.

Appointed by the King

Ultimately this led to the establishment of the Senate, whose members (varying in number from 40 to 60) were appointed for life by the King. The members were required to be at least 40 years' old and to rank among the most eminent in the country on account of their birth, wealth or record of service to the State.

Elected by the Provincial Council

The Senate continued to exist after the final separation from Belgium in 1839 and,

as a bulwark of the Crown, to serve as a counterweight to the House of Representatives. The only change was that the number of members was halved. 1848, the year of revolution throughout much of Europe, also caused the pace of political change in the Netherlands to accelerate.

J.R. Thorbecke

In 1848 the constitution was radically revised at the initiative of J.R. Thorbecke, who was then a member of the House of Representatives, and his committee for revision of the constitution. Members of the Senate were no longer appointed by the King and were instead elected by members of the Provincial Council particularly from among those with the highest assessments for direct taxes. This ended the influence of the King over the Senate.

Now I shall always be with you

Needless to say, this was much regretted by the then king, King William II. And it explains why he presented his portrait to the Senate, on which occasion he is said

to have remarked, 'Now I shall always be with you.' The new constitution also fixed the number of seats at 39; the Members were no longer appointed for life, but for a maximum term of nine years. Elections for a third of the seats were held every three years.

First woman

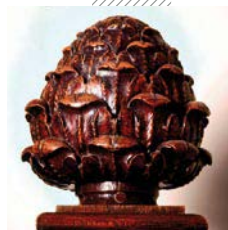
When the constitution was revised in 1917 the requirements for eligibility to stand for election to the Senate were equated with those of membership of the House of Representatives. This meant that from that time onwards women could also become members of the Senate. The first female senator was Carry Pothuis-Smit. She was elected in 1920 and for a long time she remained the only woman in an otherwise male environment.

Maximum term of 6 years

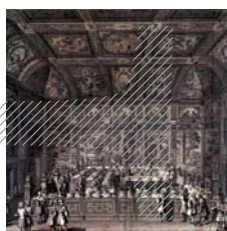
The significance of the Senate once again became topical when the constitution was revised in 1922. Although credence was no longer given to the theory that the



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- 02 *The corridor at the Senate.*
- 03 *Wooden ornament in the stairwell of the Senate.*
- 04 *Assembly hall of the States of Holland and West-Friesland in the seventeenth century, now the assembly hall of the Senate.*
- 05 *The 'Binnenhof', in the seventeenth century.*
- 06 *The ceiling decoration in the assembly hall painted by Andries de Haen en Nicolaes Wielingh.*

Senate served as a bulwark of the Crown, the majority of the States General nonetheless wished to adhere to the bicameral system. It was still felt that it was better not to concentrate all competences and powers in the hands of a single chamber. The term of office was, however, shortened to six years, with half of the Senate being renewed every three years.

bicameral system revived during the preparations for the 1983 constitutional revision. Once again, the majority of the States General supported the bicameral system and the Senate continued to exist with all its powers. Since then, however, the entire Senate has been elected anew by the Provincial Councils every four years.

From 50 to 75 members

The sole change in the following half century was the increase in the number of members from 50 to 75 at the time of the constitutional revision in 1956; in other respects the existence of the Senate remained unchallenged throughout this period. However, the debate on the

06







'The Senate's description as a 'chambre de réflexion' shows that it is an institution that pays little heed to ideas that happen to be fashionable at any given time.'

Building

01 *Detail of the ceiling decoration in the assembly hall.*



01

The building in which the Senate meets has a rich history. However, the Senate has met here only since 1849. Previously it assembled in the Trêveszaal (Truce Room) which is now part of the Ministry of General Affairs and is where the Cabinet meets on a weekly basis.

States of Holland

The handsome assembly hall of the Senate dates from the middle of the seventeenth century. In 1651 Johan de Witt, as leader of the States of Holland, commissioned architect Peter Post to build an assembly room especially for the States of Holland. Before this period this part of the Binnenhof formed part of the residence of the Stadholders. The shell of the assembly room was completed in 1655, after which work on the interior was started.

Ceiling paintings

The ceilings were painted by Andries de Haen and Nicolaes Wielingh. The medallions show nations throughout the world with which the Republic of the Nether-

lands had ties. The figures depicted in the paintings appear to be gazing down with interest at what is happening below them. Tradition has it that they wanted to express how interested the various nations were in what was being debated in the assembly hall. The central ceiling panel depicts some young boys, one of whom has very cheekily swung his leg over the edge. They represent 'the children of State' or, in other words, the future of the nation.

War and peace

Other remnants from that era in the assembly hall are the mantelpieces above the chimneys. On the west side is depicted the goddess of peace by Adriaan Hanneman. And on the east side is Mars, the god of war, in full armour, painted by Jan Lievensz.

Tapestries

The walls were originally hung with tapestries showing Italian landscapes. During the French era, when the assembly room was requisitioned by King Louis Napoleon



02

- 02 The 'Noenzaal' now in use as the restaurant of the Senate.
- 03 Detail of the ceiling decoration of the Noenzaal.
- 04 The cigar or butt box as it is variously known at the entrance to the assembly hall.
- 05 The restoration of the ceiling '94/'95.



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for his Ministry of War, the tapestries were taken from the walls and afterwards disappeared. The present tapestries were hung up during the last restoration (July 1994-September 1995). Their design and colour are based on the 17th century ceiling.

King William II

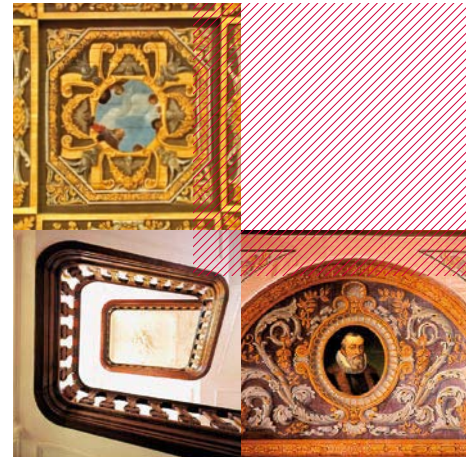
Occupying a prominent position behind the president's chair is the life-sized portrait of King William II. This was painted by J.A. Kruseman. The monarch presented it to the Senate in 1849 when his influence over the composition of the chamber ended. The portraits of Grand Pensionaries (Secretaries General of the States of Holland) in the medallions were painted in the same period.

Open to the public

The Senate still holds its meetings in this assembly hall. The plenary meetings, which are almost always held on Tuesdays, are open to the public. Anyone who is interested can take a seat in the public gallery. The proceedings can also be followed live on the Senate's own website.

For more information please contact the Communication & Protocol Department or visit the website at www.eerstekamer.nl.

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- 06 The central panel of the ceiling in the assembly hall.
- 07 The stairwell of the senate.
- 08 Johan van Oldenbarnevelt, one of the eight portraits of the Grand Pensionaries in medallions on the walls of the assembly hall.



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