

Address by the President of the Austrian Federal Council

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on the occasion of the XIth meeting of the
Association of European Senates in The Hague

on

“The Role of the Senates on the European Continent” (draft)

Madam President,

Ladies and gentlemen!

Let me begin by expressing my sincere thanks to the President of the First Chamber of the States General of the Dutch Kingdom, Ms Yvonne Timmermann-Buck, for the gracious hospitality which has been extended to us and for organising this meeting in such an excellent manner.

To be able to adequately address the topic of our meeting, I will start out with some introductory remarks: If we want to discuss the role of the Senates on the European continent today, we should first ask ourselves what exactly we mean by European continent. Do we want to understand the term “continent“ in its Anglo-Saxon meaning, i.e. continental Europe excluding the British Isles? Or do we mean “continental Europe“ in the sense of German geographical terminology, which includes neither the British Isles nor the Scandinavian Peninsula? Do we, by continent, mean a continent that extends to the orographic

border of the Urals, such as has been defined by geographers?

Or does our understanding stretch even further? Is our usage of the term based on a well-founded understanding of intellectual and cultural history which perceives the “European continent” not as a geographical, but as a political concept? And if so, how do we want to capture this notion in institutional terms? In the structures of the European Union? In the further reaching structures of the Council of Europe?

Ladies and gentlemen!

I believe that the development and current composition of the Association of European Senates reflects a comprehensive and inclusive understanding of the notion of “European continent“. As a case in point, let me remind you of the most recent extraordinary meeting of this Association, which was held in St. Petersburg at the invitation of the Federation Council of the Russian Federation, a parliamentary body which represents the regions of the Russian Federation from Kaliningrad to Vladivostok.

What makes up our conception of a “European continent“? In recent years, Europe has ever so often been defined as a “community of values“. And indeed, we can derive values or concepts from documents elaborated and adopted by the

Council of Europe, including the European Convention on Human Rights, which we consider as being rooted in the tradition of European political and legal thinking as well as an expression of a common European understanding of the human being and of human dignity.

But then: To what extent can values, be they embedded in international law instruments or not, create identity? To what extent can the existence of e.g. a common European set of values be corroborated by public opinion polling? Do tools like *Eurobarometer* not actually show a broad spectrum of attitudes and values within Europe?

And finally: Should values not invariably be open to discourse? Should we not always be prepared to put them to a critical debate? Should we not from time to time review these values to ascertain whether they are used to lace given ideas with ideology? And should we not be ready to modify them if this becomes necessary on account of how the discourse develops?

Is it not the development of a distinct culture of discourse, a distinct culture of conflict resolution, which would be suggestive of a common European culture? Europe has in fact developed such a culture, a culture of national decision-making in collegiate bodies that draw their legitimacy from representative

democracy, i.e. parliaments. Rooted in Europe, the concept of democratic parliamentarianism has meanwhile spread all over the world as a common political good. Its understanding as well as its form are based on European traditions, just as the bicameralist model is.

Today, 13 out of 27 Member States of the European Union - or almost half of its members - have bicameral parliaments. The bicameral principle is still an integral notion of political theory and political practice in Europe: on the one hand, it attributes to the Second Chamber the function of improving the quality of legislation as the product of the parliamentary process; on the other, it ascribes it the function of representing distinct interests, with the latter function being the older one.

Exercising this interest representation function is based on the theoretical notion that a political system requires checks and balances, in other words that not even the principle of popular sovereignty implies that the majority of the moment can rule without control.

The theoretical notion of federalism, equally a part of traditional European political thinking, complements this model of a horizontal separation of powers by a concept of vertical separation: A balance of political powers should be sought not only across one level, but several levels of power should be

subject to mutual checks and balances to ensure further fragmentation of political power and thus prevent its abuse. The federal principle such rests on the assumption that common decisions that are made closer to the citizen ensure greater transparency and wider opportunity for democratic control.

It is especially this type of Second Chamber which has gained acceptance in the theoretical debate and in political practice in the 20th century that makes visible how the constitutional precepts of separation of powers and of federalism are interlinked, i.e. in a regional chamber which, in a federalist system, is called upon to ensure the regional freedom of the constituent states vis-à-vis the abstract majority at central level. In a number of countries which, by their constitution, do not even have a federalist structure, such as Italy, France or Spain, the Second Chamber is strongly endowed with the function of representing the regions today.

A Second Chamber to which a central function is ascribed in a system of checks and balances must of necessity enjoy a procedurally equal or near-equal position as the First Chamber, especially in the legislative process. This does not automatically apply to the other function of Second Chambers which I mentioned, namely improving the quality of the legislative process:

This notion is based on the assumption that the separate deliberation of a matter in two chambers, regardless of their political composition, will lead to a more profound study of a matter in question, and that the involvement of a Second Chamber further downstream in the legislative process as a “review chamber“ allows for the rectification of rash or ill-considered decisions before they take legal effect. As a chamber of reflection, the Second Chamber is moreover attributed the function of raising matters of a general nature, for the deliberation of which the First Chamber, being intricately involved in day-to-day politics, cannot afford the time, and such assures the quality of the political process in the long run.

To be able carry out the quality assurance function, it suffices that the Second Chamber be endowed with lesser competences than the First Chamber; in the legislative process this regularly means a suspensive veto right. The functional shift towards quality assurance in the 20th century has given rise to a constitutional set-up in which the Second Chamber tends to enjoy lesser rights than the First Chamber.

Ladies and gentlemen!

To summarise: With both its functions, representing distinct - notably regional - interests and assuring quality in the legislative process, the Second Chamber remains a valuable, if not

indispensable element of the representative democracy model in national decision-making.

Let me elaborate further and refer to another, additional function of the Second Chambers, which they will have to fulfil in the process of European integration. In the political Europe of “concentric circles”, the innermost circle, the European Union, is characterised by a growing shift of law-making from the national to the supranational level. According to relevant protocols in the Reform Treaty, national parliaments will be given a major role in this European law-making process, namely that of reviewing legislative projects.

Now that the Second Chambers have developed a legislative reflection competency at the national level, they will be able to make a substantive contribution to the European legislative process. And they will be able to use their reflective competency at an early stage to perform future formal subsidiarity reviews to help enforce the new requirement of the legislative process being responsive to the citizens!

Ladies and gentlemen!

As a regional chamber, the Austrian Federal Council which I have the honour to represent is called upon to contribute regional perspectives to national and, beyond that, European

legislation. The Austrian Parliament has already been intensely considering how it can make an effective contribution to the future subsidiarity reviews in unison with the other European parliaments.

As a result, Second Chambers such as the Austrian Federal Council will be integrated even stronger in existing communication networks. For one, Second Chambers engage in communicative interaction with the citizens in an effort to ensure that political decision making really takes their interests into account; second, they closely interact with other state bodies at different levels. Third, interaction with European bodies has become essential ever since Austria's accession to the European Union. And finally, close cooperation with other national parliaments has gained a new quality and new weight as a precondition for improving the European legislative process in a joint effort, in particular to ensure that it remains responsive to citizens' needs.

Therefore, ladies and gentlemen, organisations such as the Association of European Senates are more warranted and more important than ever. Let us give some thought to how, as part of the community of democratic European states, we can help – both within and outside of the structures of the European Union – to create laws that meet the citizens' needs, needs which are common to all, and needs which epitomise Europe's regional

diversity! Let us work together for a European legislative process that is appropriate to human needs.

Thank you for your attention.