

Governance Committee

CG-GOV(2023)2-02

The role of second parliamentary chambers in Europe in enhancing the representation of regions and local authorities

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Summary

The representation of territorial interests is widely considered as one of the main functions of second parliamentary chambers.

Currently 15 Council of Europe member states have Second Chambers in Parliament. Bicameralism helps to conciliate representation of citizens and of territorial entities. It consolidates and enhances democracy. Its key feature is diversity.

The report analyses composition and representative nature of second chambers, their selection, legitimacy and powers; relationship between the two chambers in the bicameral parliaments and existing conciliation mechanisms as well as second chambers' ability and efficiency in representing territorial interests.

Finally, the report reviews dilemmas relating to the second chambers' role in representing territorial interest and indicates possible ways for a better and more effective representation of regional and local interests in the second chambers. Thus, constitutional and legal reforms can be undertaken notably to extend the competences of the upper house in matters directly affecting territorial interests. Furthermore, operational arrangements, including consultation and representation mechanisms, ensure that the second chambers are better informed about the real interests and needs of the local and regional authorities.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC/G/PD: Socialist/Green/Progressive Democrats Group
ILDG: Independent and Liberal Democrat Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

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Introduction²

1. This report examines the representation of territorial³ interests in the upper house of parliament in Council of Europe member states. It analyses how the parliamentary second chambers⁴ represent territorial interests in terms of their composition, legitimacy, powers and working methods particularly regarding their relationship with the lower house. These characteristics form the basis of recommendations for better and more effective representation of regional and local interests in the parliamentary decision-making process.

2. This report has been prepared within the framework of cooperation between the Congress of Local and Regional Authorities and the European Commission for Democracy through Law (Venice Commission). The Venice Commission issued a report on the subject in 2008, but developments since then have made it necessary to revisit the issue.

3. Part 1 compares the second chambers in Council of Europe member states in terms of their composition, their representativeness, the way they are selected and their powers. Part 2 examines the relationship between the two chambers in the bicameral parliaments and the procedural forms that exist to reconcile any differences of opinion. This takes account of the capacity of the upper houses to assert their position and its limitations. Part 3 briefly describes some other characteristics that may affect the capacity of second chambers to voice territorial interests. Part 4 then analyses which legislative institutions and procedures are most effective in representing territorial interests. Part 5 reviews the dilemmas relating to strengthening the role of the second chambers to make the representation of territorial interests in the upper houses more effective. While these may arise primarily from proposals for institutional change, they should be addressed to reinforce the commitment to reform. The final chapter addresses the theoretical and practical issues raised by the representation of territorial interests in parliaments and considers possible reforms to strengthen the representation of such interests in legislative decision-making.

1. TYPES OF SECOND CHAMBERS

4. Today, a total of 15 out of 46 Council of Europe member states have a so-called bicameral parliamentary system, that is a legislature that consists of two chambers.

5. Second chambers in parliamentary systems of Council of Europe member states vary widely in terms of their composition, powers and working methods. To better understand their role in modern political and constitutional systems and how they work, it may help to classify them, especially in assessing them from the point of view of their representation of territorial interests.

6. Upper houses can be classified in several ways, depending on the purpose of their analysis, most often on the basis of:

- their composition and their resulting representative nature;
- the method by which their members are selected,
- their powers and their relationship with the lower house.

7. This report examines the second chambers in Council of Europe member states primarily from the point of view of how and to what extent they represent territorial interests. Internationally most upper houses are the legislative representation of the territorial units of the state, but a number of second chambers have a different representational role.

² Report prepared with the contribution of Zoltán Szente, Expert, Member of Group of Independent Experts (GIE).

³ In the terminology used in this report, "territorial" and "regional" are interchangeable terms which apply to the Council of Europe member states appropriately, according to their own middle-level units.

⁴ In this report, the term "second chambers" is used interchangeably with "upper houses", separating these chambers from the "first chambers" or "lower houses" (elected directly, by universal, equal and secret suffrage). An exception to this is the Dutch upper house, traditionally called as "first chamber" (*Erste Kamer*).

8. There is a significant difference, mainly in constitutional terms, between the federal and unitary states as to how their second chambers represent territorial interests. In some countries, certain territorial interests are also represented in the lower house through special parliamentary means, for example the Faroe Islands and Greenland are represented in the Danish *Folketing*, and there are special procedural rules for representatives of the Overseas Territories and Corsica in the French National Assembly.

9. The capacity of a parliamentary second chamber to represent and promote territorial interests depends primarily on how it is constituted, its legitimacy, and, beyond that, the country's traditions. The following subsections will discuss second chambers, classified according to their composition and other principles, which may affect the ability of such chambers to represent territorial interests.

1.1. The composition and representative nature of second chambers

1.1.1. Federal second chambers

10. The upper house representing the constituent units of a federation, is a typical characteristic of a federal state. A fundamental feature of federalism is that sovereignty is shared between the federation and the member states. Federalism generally means the constitutional division of power between a federal government (that have a power extending over the whole territory of the country) and territorial governments (that have autonomous authority over their own territory).⁵ The representation of the federated states in the federal legislature, as the supreme decision-making body of state power, is also a constitutional guarantee of their autonomy and constitutional status.⁶

11. There are two types of representation of the constituent units in federal upper houses. The principle of *equal representation of unequal states* means that federated states have an equal representation in the second chamber, regardless of their size or other factors. That is, each constituent unit sends the same number of delegates to the second chamber of the federal legislature. This principle applies in the US Congress, where each of the 50 states sends two senators to the Senate. It is also the way in which the Australian and the Swiss (with some restrictions) upper houses are constituted. For example, in Switzerland the smallest canton Uri, population about 35,000, has two representatives, just like the largest, Zurich. The equal legislative representation of the constituent states was based on the 18th and 19th century concept of federalism, which regarded the legislature as the supreme branch of power among the state powers and therefore saw parliamentary representation as the strongest guarantee of the sovereignty of the constituent units. The equal representation of constituent parts in the upper house is not only based on tradition but also serves to compensate for the territorial imbalance reflected in the composition of the lower house, where, because of universal suffrage, the more populous federated states are overrepresented.

12. The *proportional representation of the constituent units* is the other widespread principle of federal legislatures. According to this principle, the federated states send members to the upper house of parliament in proportion to their population. For example, according to the German Federal Constitution, “[E]ach *Land* shall have at least three votes; *Länder* with more than two million inhabitants shall have four, *Länder* with more than six million inhabitants five and *Länder* with more than seven million inhabitants six votes”,⁷ and the *Länder* can appoint as many members as they have votes. The composition of the Austrian *Bundesrat* (Federal Council) is even more proportional, with the largest *Land* having 12 members in the second chamber, while the minimum representation each *Land* is entitled to is 3. However, to avoid *Länder* with large populations gaining decisive influence in the upper house, strict proportionality is not usually applied, instead of which “weighted representation” is in use, where the larger constituent units have more seats than the smaller ones.

⁵ Ivo D. Duchacek: *Comparative Federalism. The Territorial Dimension of Politics*. Lanham–New York–London, University Press of America, 1987. 194.

⁶ Usually, in the federated states, unicameral legislatures exist, as they are themselves similar to unitary states, therefore there is no special reason for maintaining a bicameral system. The United States and Australia, however, have bicameral legislatures at the level of the member states (with one exception).

⁷ Basic Law, Article 51 (2).

13. The representation and participation of the constituent units or federated states in federal decision-making and the exercise of power at the federal level is also achieved through other constitutional (executive or judicial) bodies, but most characteristically it takes place in the upper house of the federal legislature.

14. The following federal second chambers exist in Council of Europe member states:

- the Austrian Federal Council (*Bundesrat*);
- the Belgian Senate (*Sénat, Senaat*);
- the House of Peoples (*Dom Naroda or Дом народа*) of Bosnia and Herzegovina;
- the German Federal Council (*Bundesrat*); and
- the Swiss Council of States (*Ständerat, Conseil des États, Consiglio degli Stati, Cussegl dals chantuns*).

1.1.2. Second chambers of regionalised (decentralised) countries

15. Representation of territorial interests in the upper house is also found in so-called “regionalised” or “decentralised” states and in some other countries. France, Italy, Spain and, with increased devolution, the United Kingdom are usually included in this category (as was Belgium until the 1993 constitutional reform that made it a federal state) because their regions (“nations” in the UK) which are larger territorial units within the state, have a special constitutional and administrative status that includes their autonomous provincial (regional) legislature and executive. With increasing regionalisation, some regional states (primarily Spain and Italy) can be seen as a transition between unitary and federal state structures. In these countries, regional autonomy and the structure and operation of the autonomous institutions are, to some extent, similar to those in the federal states. Nonetheless, there remains a significant constitutional difference between federal and decentralised countries. In the latter the state sovereignty, unlike decentralised authority, is not divided between central government and the constituent parts. In other words, the regions (autonomous communities, provinces, etc.), despite their wide-ranging autonomy, do not have *sui generis* state sovereignty.

16. Notably, not all decentralised countries have a legislative second chamber that primarily represents territorial interests. There is also an example of an upper house in a non-regional state representing territorial units. Thus, the British House of Lords has a mixed composition, with a substantially different representational content from the other second chambers in this group, while the members of the Dutch First Chamber are elected by the provincial councils and the overseas electoral colleges.

17. It should be noted that, formally, decentralised countries are unitary (i.e. non-federal) states, with two forms of representation of territorial interests in their parliamentary second chambers. A distinction can be made between the upper houses that represent the territorial interests in general, and those that give voice to the (regional, provincial) self-government of those territorial units. The representation of territorial interests in general (i.e. the population of the constituent units) leads to the upper houses of popular representation (see below). In such second chambers the members are elected directly, just as in the lower houses. In practice, the only difference is in the division of constituencies and the electoral rules.

18. This group of second chambers includes the Dutch First Chamber (*Eerste Kamer*); the French Senate (*Sénat*); the Italian (*Senato*); and the Spanish Senate (*Senado*).

1.1.3. Second chambers based on popular representation

19. These second chambers are elected at least largely in the same way as the lower houses, that is by universal, equal, direct and secret suffrage. Consequently, party politics plays a dominant role in the functioning of these upper houses, which does not, however, exclude the representation of special interests.

20. This group includes the Italian Senate and, largely based on popular representation, the second chamber of the Spanish *Cortes*. Among the post-communist countries, this kind of senate was established in Romania and the Czech Republic, where advocates of the bicameral system have mostly invoked the familiar arguments of following the old European models and making legislation more robust. Of course, there were also political considerations linked to specific situations.⁸ In both countries, the introduction of a two-chamber system was very controversial, with the result that in the Czech Republic, for example, members of the Senate were elected only in the autumn of 1996, years after the formal introduction of bicameralism. However, bicameralism eventually became part of the constitutional order. In Romania, members of both houses are directly elected under the same electoral system. The simultaneous application of variants of the principle of popular representation in the Czech Republic is interesting. The Czech Senate is created by first-past-the-post elections, which, from the point of view of the electoral system, counterbalances the proportional system of the Chamber of Deputies.

21. In all the new democracies that emerged in the late 1980s and early 1990s in central and eastern Europe, the newly formed and now democratically elected parliaments were given the significant legislative burden of transforming the former legal system, in line with changes in the political and economic systems. The main objections to the bicameral system were that the organisational division of the legislature and the resulting rigidity of the legislative mechanism slowed down the process of law-making and therefore delayed the establishment of a democratic legal system. For this reason, and because the small size of most post-communist countries made it impractical, a second chamber was not established during the democratic transition in most post-communist countries.

22. As already noted, the Italian and Spanish senates can be included in this group because of the way in which they are elected, although in these countries, because of historical traditions and political specificities, the representation of territorial interests is much stronger than in the second chambers of the central and eastern European countries.

23. The Czech (*Senát*), Italian (*Senato*), Polish (*Senat*), Romanian (*Senat*), and Spanish (*Senado*) senates fall within this category of second chambers.

1.1.4. Second chambers based on other organisational principles

24. Federalism, the representation of territorial interests and popular representation are the most common organisational principles for European second chambers. In addition, there are also upper houses structured according to specific or multiple principles, that have a different representative nature compared to those discussed so far.

25. The Irish Senate (*Seanad Éireann*) and the Slovenian National Council (*Državni svet*) are essentially corporatist in nature. In the first half of the twentieth century, as a kind of response to the crisis of bourgeois liberal parliamentarism in Europe, some second chambers were created that were predominated by the representation of corporations. The Italian corporatism of Mussolini and the chambers created by the Austrian constitution of 1934 were the most typical historical examples of this type. The corporatist second chamber is characterised by the legislative representation of specific occupations, activities and professions. This form of representation is not based on citizens as individuals, nor does it take account of the political values or party affiliations of the electorate. Corporatism adapts representation to the interests of the social division of labour, by monopolising the representation of occupational interests and by incorporating them into the national legislature. The role of corporatism was devaluated in post Second World War constitutional and political systems for historical reasons. However, political corporatism continues to be present in most modern democracies to some extent, but even in the countries where it is more strongly present (e.g. in the form of social partnership in Austria and in the system of so-called corporatist pluralism in northern Europe), it manifests itself primarily in the representation of political interests and in conciliation, rather than as an institutional principle.

⁸ For example, during the constitutional design, there was a widespread opinion that the real reason for the creation of the Czech Senate was to find a suitable place for the former Czechoslovak upper house members providing them for new political positions. Milos Calda-Mark Gillis, Czech Republic. Is legislative illegitimacy the price of political effectiveness? 4 East European Constitutional Review 2 (1995).

26. The composition of the British House of Lords is unique because it is not structured according to a particular principle, its membership being based on several different selection methods and entitlements. As a result, this second chamber has a diverse representative character.

1.2. Electing and selecting the members of second chambers

27. Second chambers usually have fewer members than the lower houses which are based on popular vote, partly because of their special representative nature and partly because they tend to have more limited powers compared to first chambers. This may be particularly important when disagreements between the two chambers in parliamentary decision-making are ultimately resolved in a joint session, in which case the lower house may be able to enforce its numerical majority.

28. Members of the second chamber are usually selected in a different way from those of the lower house, because of the difference in their representativeness. Even where the composition of both chambers is based on popular representation, there are differences in their electoral systems or the conditions of the right to vote. There is, of course, a close correlation between the method of selection and the representational nature of the second chamber, but not a perfect correspondence. The same type of representation, in particular the representation of territorial units, can be achieved by several different selection methods.

1.2.1. Direct elections

29. A widespread method used to select the members of the second chamber is direct election. In this case, the upper house represents the citizens or a (linguistic, national or territorial) community of the people. Thus, the representatives are directly accountable to their electorate. Given that the principle of a free mandate applies in almost every second chamber, this political responsibility can be exercised only through elections.

30. Direct elections can take place under different electoral systems. For instance, in Poland all 100 senators are elected in single-member constituencies, according to a single-round first-past-the-post voting system, while members of the Czech Senate are elected in a two-round majority system. In contrast, in Italy, senators are elected directly every five years among citizens over the age of 40 registered on regional lists; 196 senators are from Italian constituencies and four senators are elected by Italian citizens living abroad.

31. In Switzerland, each of the 26 cantons can decide on the electoral system for the seats they hold in the election of members of the Council of States. All cantons except Jura apply a majority electoral system.

1.2.2. Indirect elections

32. In indirect elections, members of the second chambers are elected by the legislatures, the regional or local deliberative bodies, special electoral colleges or the governments of the constituent parts of the state. In such electoral systems, the upper house is accountable to the legislative or executive body that elected it, but it appears as having less democratic legitimacy because its mandate does not come directly from the electorate. In Austria, for example, members of the Federal Council are indirectly elected by the *Länder's* legislatures. The seats are distributed between the federal *Länder* in proportion to their population, so that the *Länder* with the smallest populations are entitled to 3 and those with the largest to 12 seats.⁹

⁹ It is to be noted that the fair proportionality between the federated states are maintained in the way that the number of members to be delegated by the *Länder* are determined by the Federal President following every general census.

33. In federal states this is the dominant election method, but decentralised and unitary states also have indirect elections. In France, most senators are elected by electoral college in each *département* whose members are popularly chosen through a mixed system of voting (partly majoritarian, partly proportional). Members of electoral colleges are elected by different voting systems in metropolitan and overseas territories.

1.2.3. Appointment (selection by the executive body of the federated states)

34. In Germany, uniquely, the *Länder* governments delegate the members of the *Bundesrat*. The *Länder* can send members to the second chamber of the federal legislature more or less in proportion to their population that is according to weighted representation (see Table 1). In this way, the Federal Council is composed of ministers and senior civil servants of the federal *Länder's* governments. Germany has 16 federated states - *Länder*, three of which (Berlin, Hamburg and Bremen) are city-states.

Table 1.
Distribution of seats between the German *Länder*

Federal state	Population (millions)	Number of seats
Baden-Württemberg	11.27	6
Bavaria	13.35	6
Berlin	3.74	4
Brandenburg	2.57	4
Bremen	0.68	3
Hamburg	1.89	3
Hesse	6.38	5
Lower Saxony	8.14	6
Mecklenburg-Vorpommern	1.63	3
North Rhein-Westphalia	18.12	6
Rheinland-Palatinate	4.16	4
Saarland	0.99	3
Saxony	4.08	4
Saxony-Anhalt	2.19	4
Schleswig-Holstein	2.95	4
Thuringia	2.13	4
		69

1.2.4. Mixed systems and other selection methods

35. In some member states, there are several ways of electing members of the upper house, that is there are different routes to the second chamber. In Belgium, for example, since 2014, 50 senators have been elected by the parliaments of the three communities, while 10 members are co-opted by the French- and Dutch-language groups of the Senate from the parties in proportion to their results in the last general elections. In Spain, 208 of the 261 senators are directly elected by voters, while the remaining ones are elected by the 17 autonomous communities.

36. In some second chambers members are elected in other ways than by the general or dominant selection method. However, only a few members can usually get into the upper house through these special means. In the Italian Senate, for example, some members who, despite having a lifetime membership, are not democratically elected but are appointed by the head of state for “outstanding merit” (currently six senators), or who, as former Presidents of the Republic, are *ex officio* members (currently one senator).

37. Membership of the British House of Lords can be divided into several different groups. Since 1999, there have been 91 hereditary peers, elected by and from all hereditary peers (i.e. members of the chamber who, by historical tradition, have acquired the office by succession). The House has more than 600 so-called life peers, who have been appointed for life by the monarch, on the recommendation of the Prime Minister, for their social, political or economic achievement. Although most members represent political parties, there are non-partisan peers, as well as former office holders and spiritual lords, who sit by virtue of their ecclesiastical offices. The number of members of the House of Lords is not fixed by law, and its representative character is very complex.

38. Some member states have gender quotas for the second chamber. In Spain, for example, the gender split must not exceed two-thirds to one-third.

1.3. Powers of second chambers – symmetrical and asymmetrical bicameral systems

39. Second chambers are legislative bodies which perform traditional parliamentary functions. The representation of territorial interests can be achieved through these functions, in particular through participation in the legislative process and public debate on public affairs. In addition, upper houses are usually also involved in the performance of legislative functions in general terms, such as control of the executive, the election of certain senior officials and, more generally, in the checks and balances system.

40. From a constitutional point of view, parliament is always a single body. This means that in a bicameral system the two houses of parliament are two parts of the same body. The question naturally arises as to how parliamentary powers can be divided between two separate and relatively independent bodies. There are two types of bicameral systems: symmetrical and asymmetrical bicameralism.

41. The powers of the second chamber are often linked to their representativeness, that is their perceived democratic legitimacy. Upper houses that are elected directly are seen as having greater democratic legitimacy and tend to have stronger powers, than those that are elected indirectly.¹⁰

1.3.1. Symmetrical bicameralism

42. Where both houses of the legislature have the same or roughly the same powers, there is symmetrical bicameralism. This is particularly the case in countries where the democratic legitimacy of the two chambers is similar, that is both are directly elected by citizens in a general election. A typical example being the US Senate. In Europe, the Italian Senate and the Swiss *Ständerat* fall within this category. Such systems are also known as “strong bicameralism”, because of the equal constitutional rank and significant power of the upper house. However, a symmetrical structure is less common in bicameral parliaments because the second chamber is usually elected in a different way from that of the lower house and thus is perceived as having less legitimacy. A deadlock in decision-making is more likely with two chambers of equal status.

¹⁰ Thibaut Noël, *Second chambers in federal systems*. International Institute for Democracy and Electoral Assistance, Stockholm, 2022. 8.

1.3.2. Asymmetrical bicameralism

43. When one chamber, usually the lower house, is in a stronger position, the bicameral system is *asymmetrical*. In practice, this means that the second chamber has at most a suspensive veto in legislative decision-making, that is it can be overridden by the lower house. This highlights the traditional advisory or reflective role of the upper houses, particularly in countries where the second chamber's democratic legitimacy is considered weaker. This is why such a division of power within the legislative branch is often called "weak bicameralism".

44. Modern bicameral systems, with a few exceptions, are characterised by the dominant role of the lower house in the distribution of legislative power. Indeed, in most cases, two independent chambers can hardly be in an equal position of power. For example, in a bicameral system where the chambers have equal power and the executive is politically responsible to both chambers (i.e. in parliamentary government), governance would be very difficult where the two chambers have different majorities. Moreover, where they disagree about a bill, the legislature as a whole may become gridlocked. In this situation, each house has, in practice, an absolute veto, that is the power to prevent the other house's decision from being validated. The possibility of a constitutional deadlock is probably too much of a risk for the political system: and therefore there are parliamentary techniques to reconcile such disagreements in bicameral systems.

45. Finally, the different positions of the houses may also result from differences in their composition. Where the upper house owes its existence to historical tradition or represents special (e.g. territorial) interests, it is hardly justifiable that it should be in the same position as the lower house, which is based on popular vote. In such cases, it is reasonable to expect that the upper house's powers will be adapted to its composition.

46. Nonetheless, the difference between the powers of the two houses is based not only on the nature of the veto in the upper house. For example, it is a widely accepted that finance bills, especially budget and tax bills, must be tabled in the lower house. In other cases, the possibility of amendments to the budget proposal in the upper house is limited or even excluded, that is the upper house can only reject or accept, but not change, the text put to it.

47. The specific composition of second chambers is not the only reason for the differences in the powers of the two chambers. For example, the term of office of upper houses representing provincial bodies does not have to be aligned with that of the lower house since the term of office is determined on the basis of different representational nature. Even where the two chambers have a similar representative character, there is usually some difference between them. It is common practice to distinguish between the two chambers in terms of active and passive suffrage: the upper house is usually elected with a higher age limit for members than the lower house. This is linked to the symbolic nature of the second chamber, which represents prudence and wisdom in the legislative process.

1.3.3. Mixed systems and specific powers of second chambers

48. In a sense, power symmetry and asymmetry between the two chambers can be combined, if several upper houses have absolute veto rights in certain cases, while in other cases their resolutions can be overridden by the first chamber's own decision. In such instances, the second chamber is not generally inferior to the first but has equal status with the lower house in matters of major importance for territorial interests (but only in those matters). This is typical of federal and regionalised countries where the upper houses represent territorial interests because the will of these chambers is given greater weight in matters that significantly affect the specific interests of territorial units.

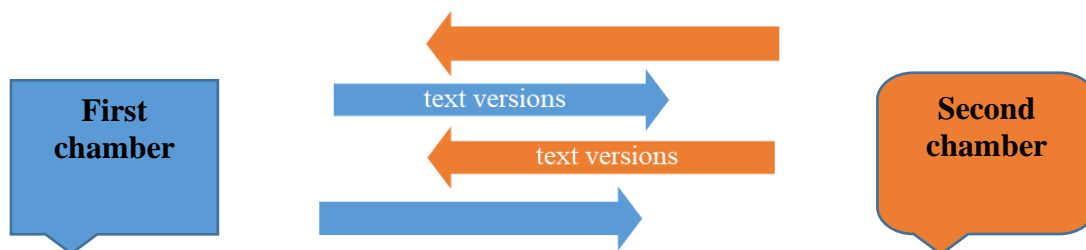
49. Even in asymmetrical bicameral systems, there are often such cases where the second chamber has a prominent role, in co-decision or in absolute power of veto. In federal states, such matters include the most important decisions concerning the fundamental constitutional arrangements of the federation, and decisions relating to the sovereignty of the federal state in general, or at least those parts of them that directly affect the status or powers of the constituent parts. These include, for example, constitutional laws and international treaties affecting the competences of the *Länder* in Austria, constitutional revisions and the special laws on state reforms in Belgium and constitutional revisions in Germany. Nevertheless, constitutional amendments often require the approval of the second chamber not only in federations but also in general (e.g. in France, Ireland, Romania and Spain), or certain changes to the constitution require at least the approval of the upper house of parliament (e.g. those affecting the status of the monarchy in the Netherlands).

2. RELATIONSHIP BETWEEN THE TWO CHAMBERS

50. In any bicameral system, whatever the type of veto in the upper house, and however different the constitutional weight and position of the two houses there needs to be a legislative procedure by means of which the two houses can communicate with each other and attempt to reach a compromise in the event of disagreement.

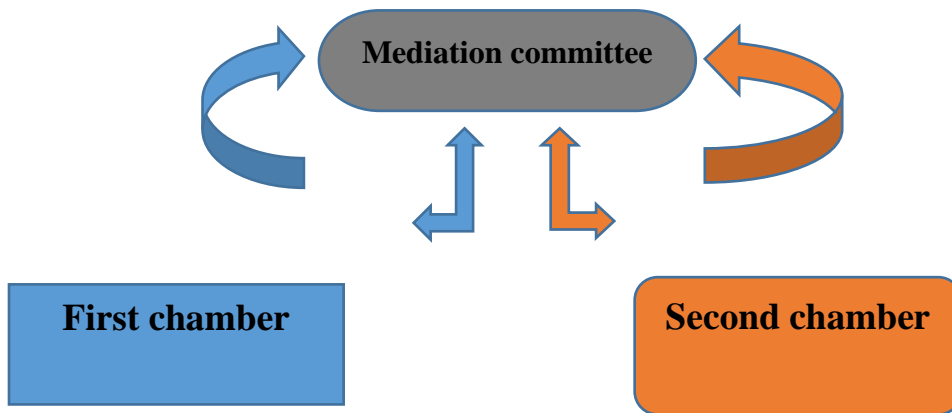
51. There are three main basic mechanisms of coordination. The first is the so-called “navette” system or shuttle, where the two houses exchange a draft text that it is revised by each until a joint text can be agreed by both houses (see Figure 1). The version adopted by each chamber may shuttle between the two houses several times until they reach a text that is acceptable to both chambers. To avoid endless conciliation, the number of rounds is usually limited by parliamentary rules, and if no common version is reached during these rounds, the bill is considered rejected.

Figure 1
The *navette*-system



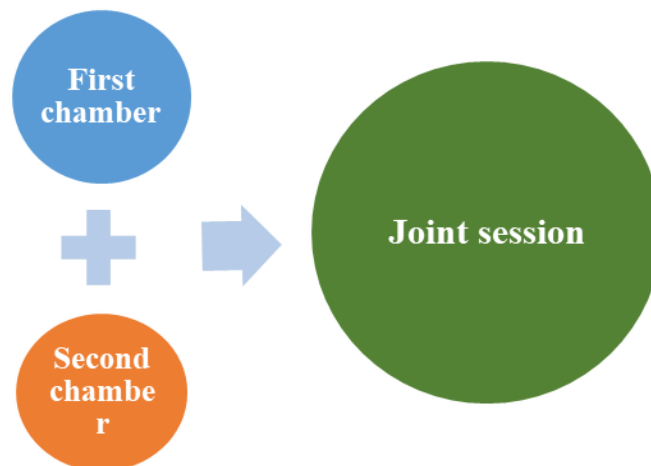
52. Another procedure is where an intermediary parliamentary committee is mandated to draw up a compromise proposal to reach agreement (Figure 2). Members of this mediation committee are usually delegated by the two chambers from among their own members. The task of this body is to reconcile the divergent positions and to work out a compromise text, which must then be separately adopted by each chamber.

Figure 2
Mediation process



53. The third option is to hold a joint session of the two chambers for a common discussion, a direct confrontation between the divergent views (Figure 3).

Figure 3
Joint-session model



54. However, in asymmetrical two-chamber systems the lower house of parliament is most often, or in most cases, able to resolve conflicts on its own by deciding whether to accept or reject the second chamber's amendments or counter-opinions without a separate procedure; in effect, to overrule them. A special majority (absolute or qualified) is often required for a decision in the lower house to override a veto of the upper house. Constraints tend to be more likely placed on the second chamber. For example, the upper house must send any objections to the lower house within a specified time limit (60 days in Belgium and eight weeks in Austria), while failure to do so within this period is deemed to indicate no objection to the bill.

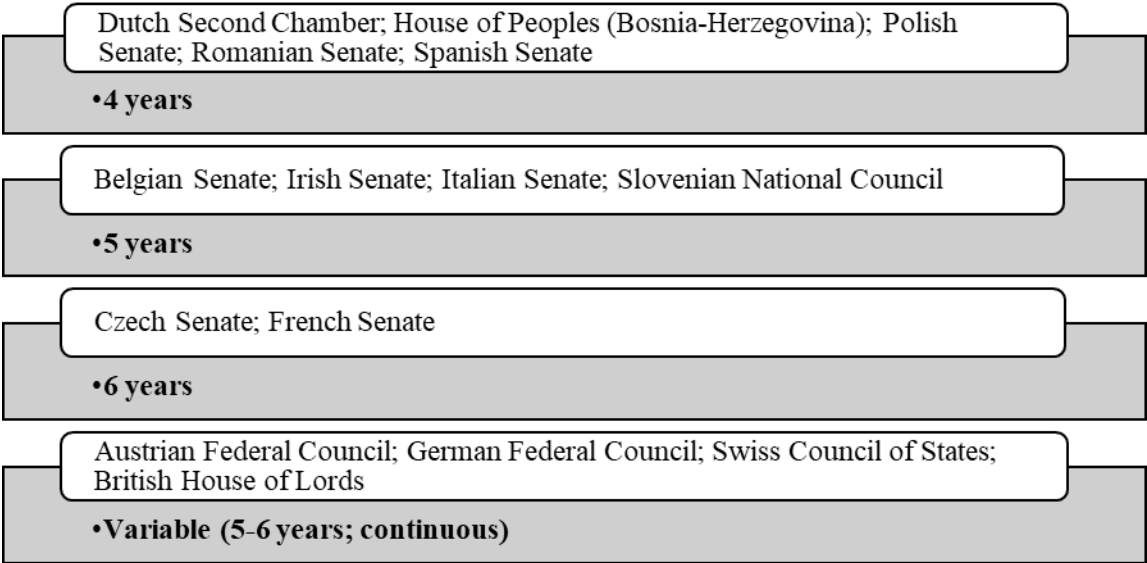
55. In some countries certain powers can be exercised by the two chambers only in a joint meeting, but this is not the same as a joint session to reconcile the opposing views of the two houses. In Belgium, for example, the joint session of Parliament (the United Chambers) is convened only on certain occasions, when the monarch must take the constitutional oath before this united body. For example, only the United Chambers can make provision for a regency if the successor to the Crown is a minor or if the monarch is unable to reign. In Switzerland, the two chambers (*Bundesversammlung*) sit at least once a year, and together they exercise some powers of parliament (e.g. electing the federal judges) and decide on the pardon. To carry out these functions, the two houses have joint committees.

56. In addition to formalised procedures, a political solution can also be found, such as dissolving Parliament if the seriousness of a conflict justifies it or if the conciliation process reaches an impasse.

3. OTHER FEATURES

57. In addition to its different composition, representativeness, and powers from the lower houses, second chambers often also differ in how they operate and the status of their members. The terms of office of the second chambers are often longer (see Figure 4), and their renewal does not take place at the same time as that of the first chamber. In some cases, the composition of the second chambers is renewed gradually, that is their members are not all elected (or delegated) at the same time. It is important that the upper houses also function continually, as this is the only way to ensure the smooth functioning of the legislative process, which requires the involvement of the upper house.

Figure 4
Term of office of second chambers in Council of Europe member states



58. The general principles of operation in the second chambers (e.g. how to convene or dissolve the house, debate rules, parliamentary discipline) are for the most part similar to those of the lower houses, as both are ultimately part of the same body.

59. The most common differences in the status of members of second chambers are the different eligibility criteria, especially a higher age limit and a longer term of office.

60. Upper houses tend to be smaller bodies (see Table 2), probably because of the traditionally elitist nature of these chambers and their reflective role in counteracting and moderating the will of the lower house, which operates along party lines.

Table 2

Number of members in legislative chambers and population size in Council of Europe member states' bicameral systems

Country	Size of the second chamber	Size of lower house	Population (thousand)*
Austria	61	183	8,978
Belgium	60	150	11,631
Bosnia and Herzegovina	15	42	3,492 ²
Czech Republic	81	200	10,516
France	348	577	67,842
Germany	69	736 ¹	83,237
Ireland	60	158	5,060
Italy	200 (now 206)	400	58,983
The Netherlands	75	150	17,590
Poland	100	460	37,654
Romania	136	329	19,038
Slovenia	40	90	2,107
Spain	266	350	47,432
Switzerland	46	200	8,736
United Kingdom	791	650	67,025 ³

* Source Eurostat; ¹ 2023. ² 2019. ³ 2020.

4. ASSESSING THE SECOND CHAMBERS' ABILITY TO REPRESENT TERRITORIAL INTERESTS

61. There is little doubt that second chambers which have been created to represent territorial interests, in terms of their composition and representative nature, are the best suited for this purpose. The second chambers of the federal states and the regionalised countries usually represent the interests of the constituent parts of the central state. The upper houses of the federal and regionalised states are in the same category, insofar as the second chambers in both groups usually represent the larger territorial units of the state, even though the constitutional basis of these territorial units' representation may be different. Whereas in the federal second chambers, the constituent units are represented on the basis of their own partial state sovereignty, the upper houses of the other group generally represent territorial interests through the representation of the electorate of the various regions concerned, or the respective local and regional self-governments.

62. The representation of territorial interests can, however, be questionable in the case of upper houses based on the principle of popular representation or corporatism. In the first case, because it is a constitutional requirement that the parliament, and as part of it the second chamber, should represent the people as a whole (i.e. the public interest) and in the second case it is because the chamber is meant to represent specific (professional, vocational or other community) interests. Of course, even in the latter cases, the representation of regional interests can be legitimate, as the public interest or corporative interests are also made up of the interests of the various territorial units, but in parliamentary chambers based on the popular or corporatist principle, regional representation is not as evident, unlike in the legislatures of federal or of decentralised countries.

63. Even in federal and regionalised states, the ways in which territorial interests are represented varies considerably depending on whether they are represented by delegates of the authorities of the territorial entities concerned or by elected representatives of the electorate living those territories. If members of the upper house are directly elected by the voters of the territorial unit concerned, the electorate behaviour may be similar to the way in which the lower house is elected (on a party basis). But if the regional (legislative or executive) authorities elect or delegate members of the second chamber, they will naturally strengthen the national parties corresponding to their own regional majority. However, in both cases, there is a possibility to represent territorial interests.

64. In some cases, even where members of the upper house are selected on a territorial basis, representation is not necessarily based on general territorial interests but rather is organised to promote other interests, such as those of specific communities. For example, in Belgium some senators represent linguistic communities, while in Bosnia and Herzegovina they represent national-ethnic communities.

65. Experience has shown that, when the composition of upper houses is based on popular representation, parliamentary decision-making tends to be dominated by the political struggles of national parties, which does little to give enough voice to territorial demands. This is even more so with corporatist second chambers, whose function is to represent specific socio-economic interests, and who at best represent territorial concerns only indirectly.

66. Accordingly, while the direct election of the members of the second chamber can enhance the democratic legitimacy of the upper house, it does not establish a direct connection between the upper house and the territorial authorities of the constituent units of the state. If the representatives of the second chamber are elected in the same (or very similar) way as the members of the lower house, it is very likely that national party-political struggles will dominate the operation of this chamber too, and that regional interests will be marginalised.

67. The representation of territorial interests is more likely where the second chamber is composed entirely or to a significant extent of local and regional government representatives. This is the case in countries where the various levels of local and regional authorities delegate members to the upper house from among their own members. For example, in France, the electoral college of each *département* is overwhelmingly made up of municipal councillors and members of the various levels of regional self-government, and in the Netherlands, where 75 members of the First Chamber (the upper house) are elected by the members of the 12 provincial councils (and three overseas electoral colleges).

5. CONTENTIOUS POINTS OF DISCUSSION

68. The need for more effective representation of territorial interests in parliamentary decision-making by the upper houses is not self-evident and a number of concerns need to be addressed. The dilemmas and problems are presented to find solutions for a stronger parliamentary representation of territorial interests.

69. One of the key questions is how territorial interests can be represented more effectively, whether through the expression of the will of the population of the territorial unit concerned or through the representation of territorial authorities. The first solution may have the disadvantage of reinforcing partisan representation in practice, that is an elected upper house that functions in a similar way to the lower house. This is particularly the case with larger territorial units or where regional identity is weak (e.g. in administrative regions), as voters are likely to have the same party preferences in electing members of the second chamber as of the lower house.

70. In contrast, where there is indirect representation by regional (legislative or executive) authorities, there is a perceived lack of democratic legitimacy resulting from the first chamber, which is elected based on popular representation, being opposed by an upper house representing the interests of other state bodies. It could, however, be argued that the second chamber can act as a forum for intergovernmental consultation between the central government and the governments of the constituent entities, whose functioning is not transparent to the citizens. Lastly, where the representation of territorial authorities is not proportional, there is a risk that the second chamber will reinforce the capacity of the majority political parties (in their deliberative or executive bodies) to defend their interests at the national level against the complex interests of the individual territorial units.

71. The claims for autonomy from territorial units may conflict with the political need for more effective centralised government. Reforms in some Council of Europe member states have attempted to strike a balance between these conflicting interests, one example being the devolution process in the United Kingdom.¹¹ This dilemma can be seen even in a purely territorial approach, as a conflict between integration and autonomy.

72. Another subject of discussion could be the way in which second chambers are elected. While the election by sub-state authorities (mainly sub-national parliaments or regional/provincial councils) may be preferable for a stronger representation of territorial interests, the principle of democracy is more in favour of direct election by citizens.

73. Second chambers representing territorial interests with excessive power can also be risky. One of the classic objections to upper houses slow down the legislative process and make it more cumbersome and expensive. If a second chamber, even acting as a veto player, prevents certain important parliamentary decisions from being taken or obstructs the legislative process because of territorial interests, it can turn public opinion against bicameralism itself and may even lead to the abolition of the upper house.

74. In addition to territorial interests, there may be other (social, economic or corporate) interests that also require parliamentary channelling and that may compete with the voices of the regional entities. If these interests are not reconciled, they could extinguish each other.

75. Can the representation of territorial interests be achieved more effectively through other institutions or procedures? For example, regional interests may be better represented in the decision-making mechanisms of the executive authorities or consultations with local and regional government associations could be made more effective. The strengthening of the representation of territorial interests in the second chambers must consider requirements for consultation with associations of local authorities, as laid down in the relevant provisions of the European Charter of Local Self-Government.¹²

76. If regional interests are channelled through the second chamber, there is also a risk that the powers of the constituent entities (federated states, or regional or provincial authorities) in relation to the relevant matters are removed or at least decreased, ultimately weakening the autonomy of the regional authorities.

6. ENHANCING THE EFFECTIVENESS OF THE REPRESENTATION OF TERRITORIAL INTERESTS IN THE SECOND CHAMBERS

77. Given the diversity of the second chambers in the Council of Europe member states, there cannot be solutions that will work for all the national legislatures. Institutional reforms that work in some countries, may not be at all feasible in other member states because of their historical traditions, institutional design or political circumstances. For example, in Switzerland, the role of direct democracy and the mechanisms of reconciliation and consensus-building, mean that the party-political relations in the chambers are less pronounced than in other countries.¹³ Germany is the only member state of the Council of Europe where members of the upper house have an imperative mandate, because they have been delegated by the governments of the *Länder*. In the United Kingdom, the House of Lords, where some peers become members by birth, has in part retained its aristocratic nature. The list of national characteristics could go on.

78. However, this does not mean that it is not worth considering the principles and requirements for taking greater account of territorial interests or the practical solutions that have been successful in promoting these interests in some countries.

¹¹ Popelier, Patricia, Concluding chapter – Bicameralism in multi-tiered systems, in Richard Albert, Antonia Baraggia, and Cristina Fasone (eds.), *Constitutional Reform of National Legislatures. Bicameralism under Pressure*, Edward Elgar, 2019.

¹² Art. 4(6), Art. 5 and Art. 9(6).

¹³ Riescher, Gisela, *Der Schweizer Ständerat*, in Gisela Riescher, Sabine Ruß, SChristoph M. Haas (eds.), *Zweite Kammern*, 2. Auflage, Oldenburg, München, 2010. 69.

79. Some general principles for better representation of territorial interests can be formulated, but where decision-makers prefer having different interests and needs, these may take precedence. A possible general consideration is that regional interests are more likely to be served if the role of political parties in the second chamber is reduced, because parties often focus on national political interests and pay less attention to local and regional issues. Then, the role of the upper houses representing territorial interests must be strengthened so that they can assert their views effectively against the first chambers in parliamentary decision-making. It is also important to seek broad recognition of the importance of regional interests, for example by stressing that they are not necessarily in conflict, but can be compatible, with national policies.

80. Given that, in the wake of successive global crises, there have been growing demands for centralisation and concentration of public power, and, the second chamber was abolished in several countries in recent decades,¹⁴ it would be an achievement in itself to maintain bicameral systems. The survival of second chambers could be threatened by the worldwide decline of democracy, the spread of populism and the growing need to make the state operations cheaper.

81. Beyond the mere preservation of two-chamber systems and proposals for the development of more effective parliamentary representation of territorial interests, aspirations can be divided into two groups according to the difficulty of achieving them and their chances of implementation. The first group includes reform ideas that require constitutional or legislative i.e. institutional changes. The second group contains proposals that could be achieved by the existing second chambers themselves, mainly by changing their operational arrangements. To make changes in the existing legal frameworks is difficult because it requires the co-operation with and approval of external actors. For example, the system of separation of powers can be modified only by constitutional amendment, which is always a difficult process. The competences of the second chamber within the legislature can be enhanced only by reducing the powers of the first chamber, which will probably be opposed by the lower house. There may also be obstacles to changes that can be made within the powers of the upper houses, where there are competing (e.g. corporatist) interests, or where the change would adversely affect existing power relations.¹⁵ There may be a greater chance of implementation with the use of informal practices that give regional interests a stronger voice and influence in the decision-making mechanism of the second chamber. Most second chambers can decide their own rules of procedure (although in some countries the standing orders are set by law) and, within limits, set their own agendas.

82. Nevertheless, the possibility of constitutional and legal reforms should not be ruled out, given the institutional changes that have taken place in recent years and that some countries are currently considering constitutional changes that could affect the status of their second chambers. Constitutional changes are often also risky for upper houses. In Ireland, for example, a referendum on the abolition of the Senate was held in 2013, with a small majority of voters in favour of retaining it.¹⁶ While in Belgium, the second chamber lost most of its powers in a constitutional reform in 2014.¹⁷ In Italy, a referendum in 2016 rejected the transformation of the Senate from a chamber of equal status to an upper house representing territorial interests, while redistributing legislative competences between the state and the regions.¹⁸

¹⁴ E.g. in Denmark in 1953, in Sweden in 1970 or in Croatia in 2001.

¹⁵ Albert, Richard, Baraggia, Antonia and Fasone, Cristina, The challenge of reforming bicameralism, in Richard Albert, Antonia Baraggia, and Cristina Fasone (eds.), *Constitutional Reform of National Legislatures. Bicameralism under Pressure*, Edward Elgar, 2019. 2.

¹⁶ David Kenny, The failed referendum to abolish the Ireland's Senate: Rejecting unicameralism in a small and relatively homogenous country, in Richard Albert, Antonia Baraggia, and Cristina Fasone (eds.), *Constitutional Reform of National Legislatures. Bicameralism under Pressure*, Edward Elgar, 2019.

¹⁷ Popelier, Patricia, Bicameralism in Belgium: the dismantlement of the Senate for the sake of multinational confederalism, *Perspectives on Federalism*, Vol. 10, No. 2, 2018. 227.

¹⁸ Guastafarro, Barbara, 'Visible' and 'invisible' second chambers in unitary States: 'Territorializing' national legislatures in Italy and the United Kingdom, in Richard Albert, Antonia Baraggia, and Cristina Fasone (eds.), *Constitutional Reform of National Legislatures. Bicameralism under Pressure*, Edward Elgar, 2019. 38.

83. In this context, a change in the electoral system could strengthen the ties of members of the upper house to the region in which they were elected. This could challenge the corporatist selection method and majoritarian electoral systems where the territorial dimension is not significant. Presumably, the upper houses elected or selected by the sub-national authorities could then be more successful in voicing territorial interests, because of the institutional link between the second chamber and the constituent parts' authorities.

84. A constitutional and/or legal change is necessary to extend the competences of the upper house in matters directly affecting territorial interests (especially with regard to legislative bills of this kind). This can be realised in the way presented in Figure 5 below, or, for example, by an extension of the right to initiate legislation.

Figure 5
Possible second chamber contributory powers



85. It appears that greater is the need for an extension of powers, less likely it is to be realised. Therefore, it makes sense to extend the competences of a second chamber only to the matters directly affecting territorial interests. Regionalised states may find it worthwhile to look at the German *Bundesrat*. This federal upper house has differentiated powers depending on the extent to which the various laws affect the autonomy of the *Länder* and their policy-making.¹⁹ A large part of parliamentary laws does not concern specific territorial interests. Therefore, the stronger powers of the second chamber do not have to be general, that is they do not have to cover all laws but may be limited to those matters that significantly impact the life of the sub-national entities. In this way, the second chambers can be influential not only in symmetrical bicameral systems, but also, with competencies limited to matters directly affecting territorial interests.

86. More effective representation of territorial interests by second chambers should be developed in particular through channels of consultation and representation, as in the system of “consociationalism” or “consensual democracy” (“*Konkordanzdemokratie*” in Austria and Switzerland), whose institutional designs show good examples of multi-stakeholder decision-making. Also, this can be reached for example through sitting and voting in territorial groups in second chambers rather than in party groups, or reporting to territorial assemblies, like it is the case in the German *Bundesrat*. Anyway, it is not worth removing or changing models or channels that are already working successfully, even for the sake of parliamentary reform.

87. There are measures that second chambers can take autonomously. For example, they can provide more opportunities for sub-national entities to be involved in their decision-making process because regional authorities know their own regional interests best. This can be achieved, for example, through speaking rights for ministers from territorial assemblies or governments in the upper house or by a committee or informal group of the upper house having regular consultations with territorial authorities, hence maintaining a kind of intergovernmental forum. Such co-operation could in principle involve national or regional associations of local authorities, though contact need not be limited to such a partnership. This type of centralised representation of interests is primarily to promote the interests of local authority members and does not provide much opportunity to represent specific or even individual regional interests.

¹⁹ See the differentiation between those subject-matters, in which the *Bundesrat* has an absolute or only suspensive veto power (making a difference between *Einspruchsgesetze* and *Zustimmungsgesetze*). Eith, Ulrich, Siewert, Markus B., Das „unechte“ Unikat: der Deutsche Bundesrat. in Gisela Riescher, Sabine Ruß, SChristoph M. Haas (eds.), *Zweite Kammern*, 2. Auflage, Oldenburg, München, 2010. 108.

88. Given that direct consultations may be difficult because of the large number of territorial units, consultations may, for example, be organised through intergovernmental conferences where each territorial unit at the same level appoints a delegate. Beyond direct contact on specific issues, second chambers, in general, should also develop more effective channels of communication with regional authorities. Improving the flow of information and communication could help to ensure that territorial interests are more effectively represented in the legislative process at a national level.

89. An institutionalised system of consultations with territorial units is important to ensure that the second chamber is better and more credibly informed about the real interests and needs of the regions, provinces and other constituent parts of the country. But it does not in itself guarantee more effective representation of these interests. Members of second chambers and their political groups should therefore make more active use of their existing rights, in particular their rights to initiate legislation, to question or interpellate, and to hold political debates.

90. Where ethnic, national, linguistic and religious minorities live in certain regions, their representation is particularly important. There are various means and procedures for the involvement of minorities in national parliaments of Council of Europe member states such as linguistic minorities in Belgium or ethnic minorities in Bosnia and Herzegovina. In some cases, the minorities have been granted an institutional representation in their own right. In second chambers it is a matter of representing the voices of minorities that are minorities within individual regions, whose national representation is not guaranteed. The representation of their interests can be achieved by involvement in decision-making in the second parliamentary chambers for example through a parliamentary advocate and / or the establishment of a special parliamentary committee.

91. The representation of territorial interests is particularly important in EU affairs. Clearly the upper house can better represent territorial interests in EU affairs if the territorial dimension is more closely integrated into EU decision-making processes. This can be supported through cooperation with neighbouring countries and territories with more experience on this matter. Second chambers could take initiative in developing such cross-border relations.

92. The representation of regional interests would be more effective if second chambers exercised continual parliamentary supervision over the national implementation of the European Charter of Local Self-Government. They should undertake this activity even if they otherwise do not have the constitutional authority to withdraw the political confidence from the government.

7. CONCLUSIONS

93. Territorial representation constitutes an essential feature for second chambers at the national level in Council of Europe member states. Second chambers consolidate and enhance democracy.

94. While there is a variety of types of second chambers in Council of Europe member states no model can be considered as uniquely effective and successful ("one fits all"). Each model fits its specific context, institutional design and political circumstances. There are different types of selection, representation, legitimacy, composition and powers of second chambers. The role of second chambers in representing regions and local authorities can be enhanced through constitutional and legal reforms, notably by extending the competences of the upper house in matters directly affecting territorial interests, as well as through more flexible consultation and representation mechanisms.

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