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**The Bundesrat is one of the five permanent constitutional bodies of the Federal Republic of Germany. In Germany's federal system, the Bundesrat represents the 16 federal states as constituent states within the overall state, the Federation.**

**While the Bundesrat functions as a link between the Federation and the federal states, it is simultaneously a counterweight to the Bundestag and the Federal Government. Within the federal system, separation of powers entails oversight of how power is used. That exemplifies stability in federal democracy.**

**This brochure offers a sound, factual overview of the Bundesrat's organisational structure and complex remit, complete with explanatory infographics.**



# The Bundesrat and the Federal System

## The Bundesrat of the Federal Republic of Germany

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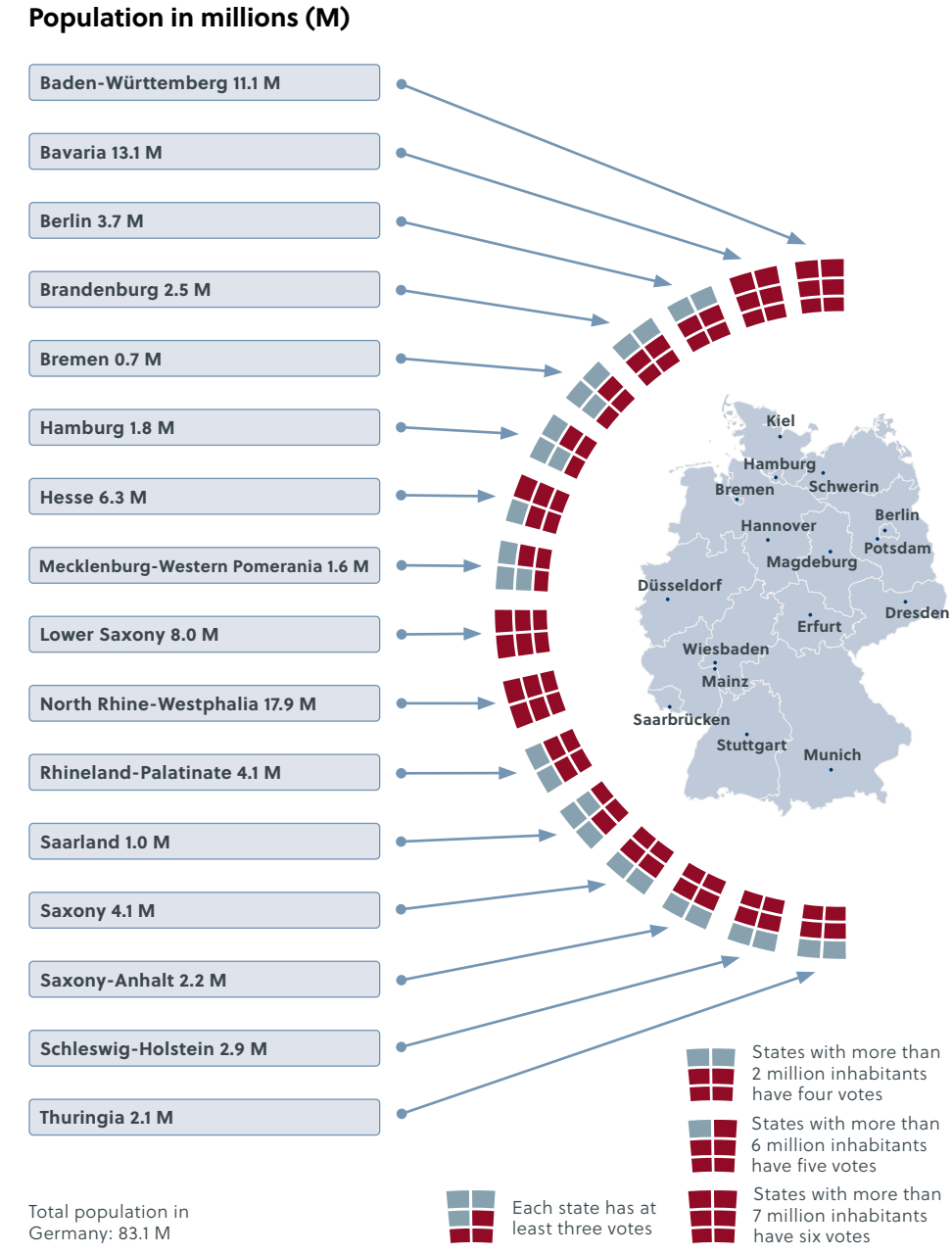
# The Coats of Arms of the 16 Federal States

 Baden-Württemberg Area: 35,748 km <sup>2</sup>	 Bavaria Area: 70,542 km <sup>2</sup>
 Berlin Area: 891 km <sup>2</sup>	 Brandenburg Area: 29,655 km <sup>2</sup>
 Bremen Area: 419 km <sup>2</sup>	 Hamburg Area: 755 km <sup>2</sup>
 Hesse Area: 21,116 km <sup>2</sup>	 Mecklenburg-Western Pomerania Area: 23,295 km <sup>2</sup>
 Lower Saxony Area: 47,710 km <sup>2</sup>	 North Rhine-Westphalia Area: 34,112 km <sup>2</sup>
 Rhineland-Palatinate Area: 19,858 km <sup>2</sup>	 Saarland Area: 2,571 km <sup>2</sup>
 Saxony Area: 18,450 km <sup>2</sup>	 Saxony-Anhalt Area: 20,454 km <sup>2</sup>
 Schleswig-Holstein Area: 15,804 km <sup>2</sup>	 Thuringia Area: 16,202 km <sup>2</sup>

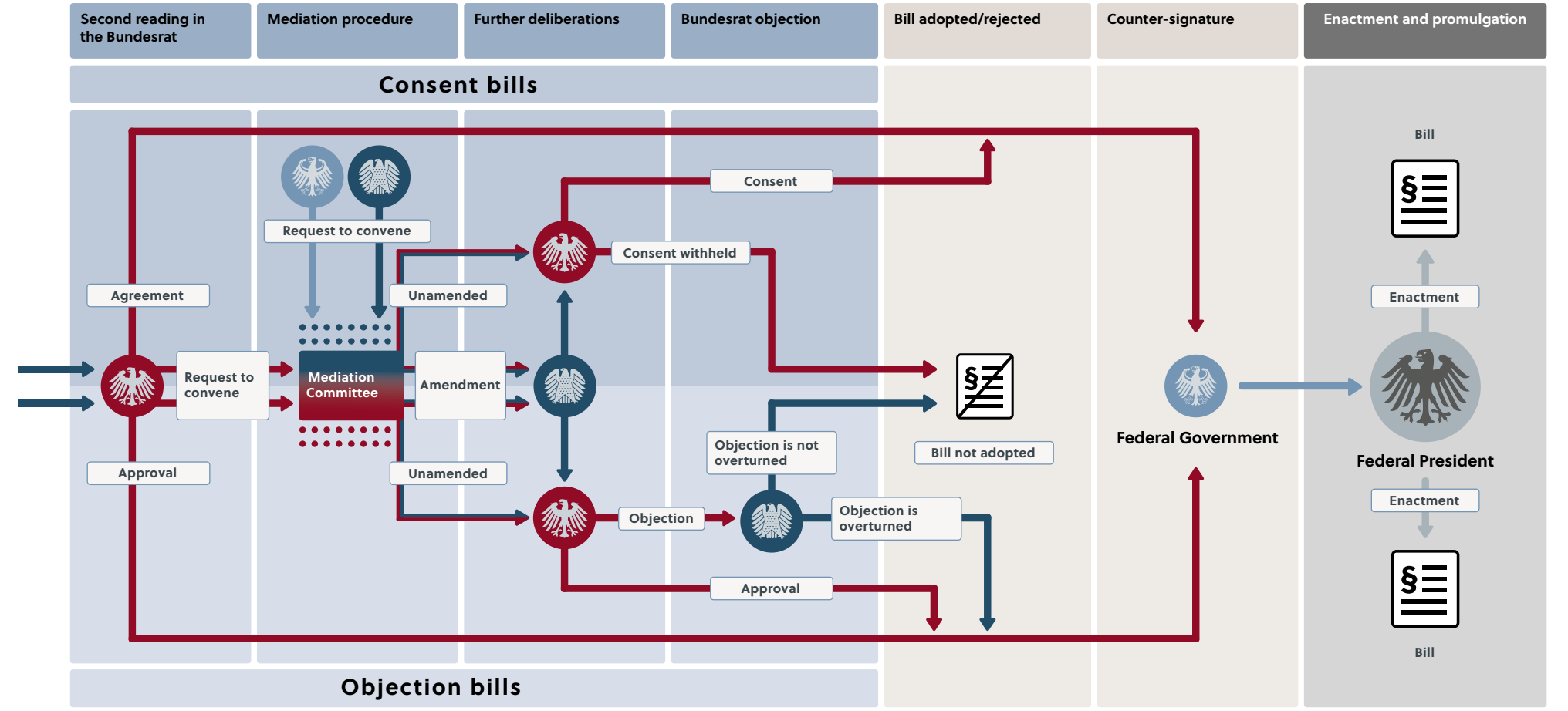
Population figure (status 30.06.2019) – Source @ Statistisches Bundesamt 2019

# Distribution of Votes in the Bundesrat

69 votes in total



Population figure (status 30.06.2019) – Source @ Statistisches Bundesamt 2019  
Map based on data from: Bundesamt für Kartographie und Geodäsie



- All bills approved by the Bundestag are transmitted to the Bundesrat (second reading). The Bundesrat's scope for participation depends on whether the bill is a consent bill or an objection bill. The Basic Law explicitly lists the categories of bills that require Bundesrat consent. Bills that do not fall into one of the categories enumerated there or do not address one of the subject areas cited are classed as objection bills.
- If the Bundestag and Bundesrat are not in agreement concerning a draft bill, the matter may be referred to the Mediation Committee. The Mediation Committee comprises 16 Bundesrat members and 16 Bundestag members. The Bundesrat can request that it be convened and, if the Bundesrat withholds its consent to a consent bill, the Bundestag and Federal Government may also refer the matter to the Mediation Committee. That means that several mediation procedures are possible.
- If the Mediation Committee proposes that changes be made to the bill, Bundestag confirmation is needed to adopt this proposal. The Bundesrat must also deliberate once again on this proposed amendment. If the Mediation Committee does not propose any changes to the bill, it is only transmitted to the Bundesrat for further deliberations. The Bundesrat may then decide whether it will approve the bill or raise an objection, whether it will consent or withhold its consent.
- A Bundesrat objection can be overturned by the Bundestag with an absolute majority, i.e. the majority of Bundestag members. If a two-thirds majority supports the objection in the Bundesrat, a two-thirds majority is also required in the Bundestag to overrule this objection.
- A law can be adopted if the Bundesrat consents to it, does not request referral to the Mediation Committee (approval), does not raise an objection when a mediation procedure has been concluded or if the Bundestag overrules the objection. A law cannot be adopted if consent is withheld (possibly after one or several mediation procedures) or if the Bundestag does not overturn an objection.
- The bill is counter-signed by the Federal Chancellor and the relevant minister.
- The bill is subsequently transmitted to the Federal President for enactment. It is promulgated in the *Bundesgesetzblatt* and can subsequently enter into force on the date stipulated by the legislator.

# **The Bundesrat and the Federal System**

The Bundesrat of the Federal  
Republic of Germany

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# The State and Federalism

The Bundesrat's meaning and significance arise from Germany's federal system. That is why this brochure begins by describing the basic features of federalism. That entails addressing the

advantages and disadvantages of federalism compared to more centralised systems. This analysis will reveal the crucial role of the twofold separation of powers for the functioning of a democratic state with a federal system.



## The five permanent constitutional bodies of the Federation

- Federal President
- Bundestag
- Federal Government
- **Bundesrat**
- Federal Constitutional Court



## Federal constitutional body

The Bundesrat is one of the five permanent constitutional bodies of the Federal Republic of Germany, alongside the Federal President, the Bundestag, the Federal Government and the Federal Constitutional Court. The Bundesrat acts as a representative of the *Länder* (federal states) at national level and participates in decisions on policy adopted at this level i.e. by the Federation as a whole. It thus acts as a counterweight to the Bundestag and the Federal Government, which are the political bodies that represent this central federal tier. At the same time, the Bundesrat also provides a link between the Federation and the federal states. The Basic Law describes its status and function in Article 50, which since 1992 has also referred explicitly to the European policy dimension:

The best way to understand the significance of this constitutional provision is to first consider its background: the way in which the state is structured, with the Federation, or central tier of government, and the federal states – the particular form of federalism that exists in Germany. Federalism, the form of state organisation adopted in Germany, creates state unity yet also sets boundaries to ensure that the notion of unity is not given excessive weight. It is also an expression of the federal system and thus the federal order of the Basic Law, as laid down in Article 20 (1), Basic Law.

### ► Article 50, Basic Law

**“The *Länder* shall participate through the Bundesrat in the legislation and administration of the Federation and in matters concerning the European Union.”**

### ► Article 20 (1), Basic Law

**“The Federal Republic of Germany is a democratic and social federal state.”**

# Federalism

## Unity in diversity

The term federalism (from Latin foedus: "league", "alliance" and "pact") refers to an organisational principle in which essentially equal, independent state units come together to form an overarching political entity. The most intensive form of such an association is the federalist state: several individual states forge an alliance that creates one single state structure (federation, union) while maintaining their own characteristics as states (*Länder*, cantons, Member States). In keeping with the provisions of such an alliance, the sub-units can act in unison as a single structure or separately in their capacity as independent constituent states. This contrasts with a looser form of association, the confederation. In that system, the individual states retain full independence (sovereignty), so their union is not a state. One example is the German Confederation, which existed from 1815 to 1866.

The pendant to these forms of federalism is the unitary state (centralised state). Instead of independent sub-structures with state status, it has only administrative subdivisions (districts, provinces, departments). In federalist systems, the state as a whole is responsible for policy areas that need to be regulated uniformly across the country. It should, however, do no more than that, for all other policy issues fall within the remit of the individual

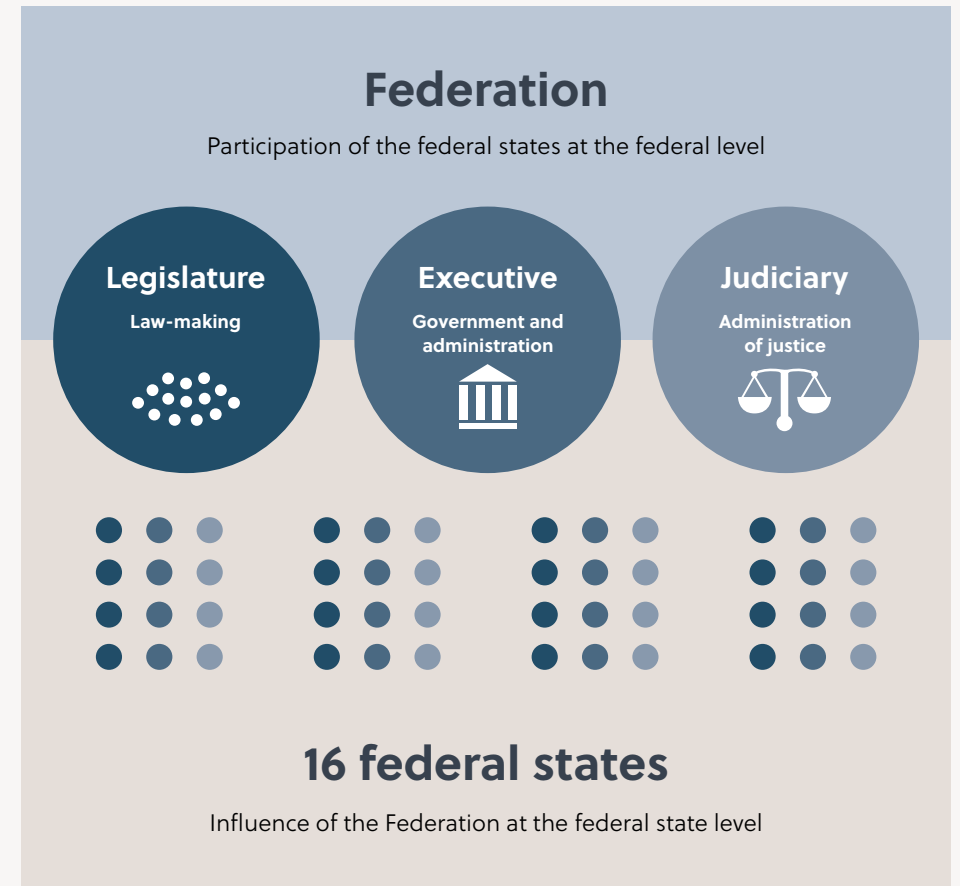
constituent states. As a result, in a federal system many aspects are harmonised, yet many also differ. Unity in diversity is the essential principle in every true federal state.

### A modern form of government

When drafting the Basic Law in 1949, the Parliamentary Council decided to maintain the federal state principle, which is traditional in Germany. As federalism entails an additional division of state power, which is shared between the Federal Government and the federal states ("vertical separation of powers"), complementing the classic separation of powers into the legislative, executive and judiciary ("horizontal separation of powers"), this twofold separation of powers serves as an effective means to prevent abuse of power. The constitution even declares that this basic principle is essentially inviolable and irrevocable.

► **Article 79 (3), Basic Law states:**  
**"Amendments to this Basic Law affecting the division of the Federation into *Länder*, their participation in principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible."**

# Twofold separation of powers in the federal system



In accordance with the Basic Law, the fundamental federal structure must be maintained. However, reforms to refigure relations between the Federation and the federal states remain an option. Since the Federal Republic of Germany

was founded, several reforms have adjusted how responsibilities are shared between the Federation and the *Länder*, reflecting changing circumstances and modernising the way in which the tiers of the state are interlinked.



## Advantages of the federal system vis-à-vis the unitary state

### Sharing power

In addition to the horizontal separation of powers (legislature, executive and judiciary), the federal system also entails a vertical separation of powers between the state as a whole and its constituent states. That ensures oversight of how power is used and protects against its abuse.

### More democracy

A structure made up of smaller political units fosters active participation and engagement with policy, as the state's activities are closer to hand and more comprehensible for the public. As to the quintessence of democracy, the right to vote, citizens can participate on two levels; in a federal system, elections are held for the national parliament and for the parliaments in the constituent states.

### More options

This gives political parties greater opportunities and fosters competition, for parties in the minority nationally can nonetheless assume political responsibility in the constituent states. This offers them a chance to test and demonstrate their leadership skills and overall performance.

### Closer to the issues

In a federal system, state bodies are nearer to regional problems than in more centralised systems. There are no forgotten "provincial backwaters".

### Closer to citizens

Citizens are spared long trips to government offices. They are more likely to get in touch with politicians and the public authorities than in a centralised state with a distant, anonymous bureaucracy.

### Competition

The constituent states inevitably compete with each other over ideas and concepts (policy-shaping within federalism). Competition is invigorating. Sharing experiences fosters progress and helps avert undesirable developments nationwide.

### Solidarity

The organs of state at the federal level and the *Länder* owe loyalty to the Federal Republic and must uphold its interests by cooperating and displaying mutual consideration and aid. In return, the federal states are also entitled to support to assist their citizens.

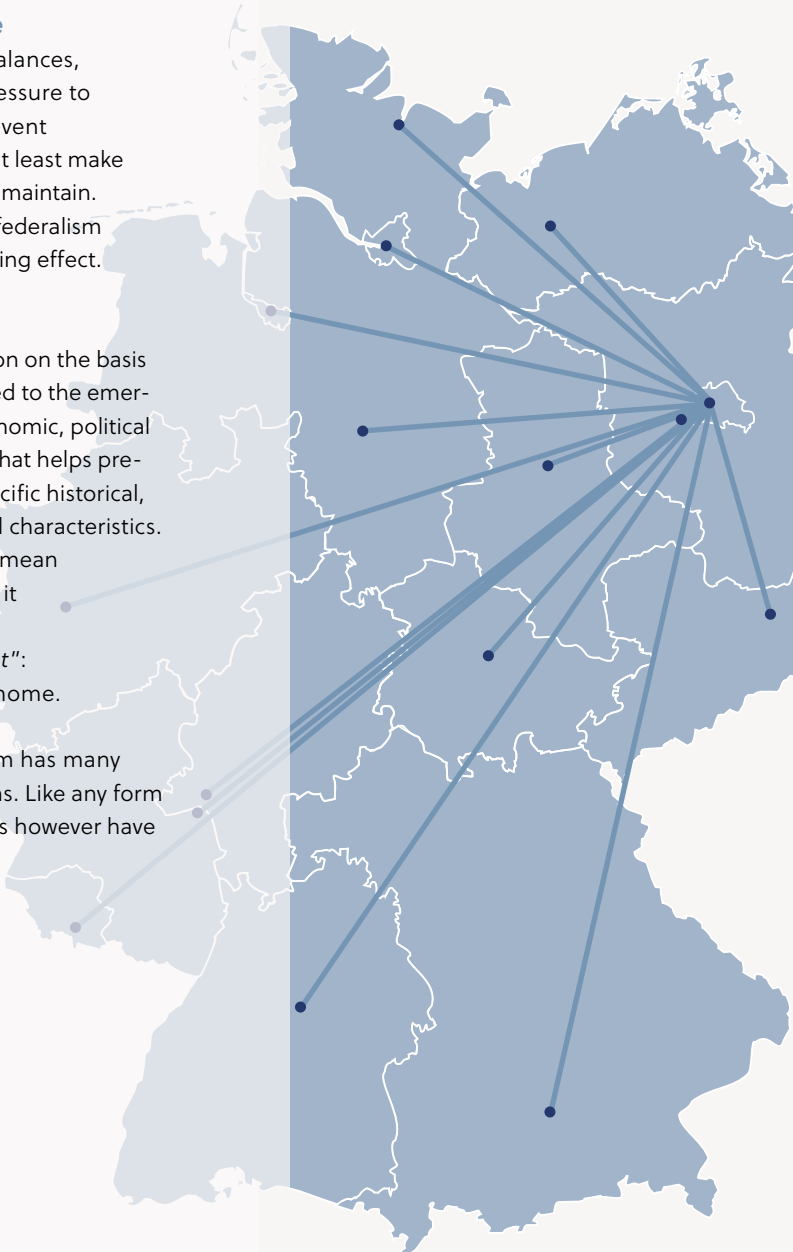
### Striking a balance

Mutual checks and balances, consideration and pressure to compromise help prevent extreme positions or at least make them more difficult to maintain. By striking a balance, federalism thus also has a stabilising effect.

### Diversity

Germany's organisation on the basis of federal states has led to the emergence of multiple economic, political and cultural centres. That helps preserve and nurture specific historical, economic and cultural characteristics. This diversity can also mean greater freedom. And it helps safeguard what Germans call "*Heimat*": a sense of feeling at home.

That means federalism has many advantages for citizens. Like any form of government, it does however have some drawbacks too.



## Disadvantages of the federal system?

### Lack of uniformity

The federal states' autonomy inevitably leads to differences. Diversity is the opposite of uniformity. Difficulties can arise, for example for school children if their family moves to another federal state. However, uniformity is not a value in itself – uniform regulation nationwide also has drawbacks.

### Coordination processes

The parliaments, governments and public administration at the national and federal state level must wait for input, decisions or consent from each other, as well as conducting lengthy negotiations to arrive at shared solutions. That can be rather time-consuming.

### Complex

The way in which responsibilities are divided between the Federal Government and the

*Länder* calls for cooperation, consideration, reciprocal oversight and mutual checks and balances. State activity intertwined in this way is complex and sometimes hard for the general public to understand.

### Expensive

Running parliaments, governments and administrative structures nationally and within the federal states is usually held to be more expensive than maintaining the corresponding institutions in a unitary state. However, this assumption is debatable, as institutions in the federal states could not simply be abolished in a more centralised system without being replaced in any way. In the final analysis, it remains to be seen whether gigantic central authorities with a nationwide substructure would really be cheaper.

## A bright future for federalism

While federalism is a longstanding historical tradition in Germany, it also remains a modern form of government, not least because of its adaptability, even in the 21st century. Germany is one of a number of countries with a federal structure, although there are pronounced differences in the details of their systems. Canada, the USA, Mexico, Brazil, Argentina, Australia, India, Russia, Austria, Belgium and Switzerland all have a federal system.

Even such centralised states as France, Spain and Italy have begun to focus more on regionalisation, which, although it does not constitute federalism, is nonetheless a step in that direction. And one thing is certain: a united Europe will only be able to function as a federal alliance of states, not as something akin to a centralised state. Federalism is therefore a form of government with a bright future, particularly in Europe.



# Clear responsibilities and interdependencies

## Distinct and interlinked roles

The Basic Law assigns specific responsibilities to the Federal Government and to the federal states (*Länder*) in the legislative, executive and judicial areas. Generally speaking, the Federation is responsible for legislation in most spheres, administration is essentially dealt with by the federal states and responsibilities in the judicial sphere are closely coordinated, involving both the Federation and the federal states. However, the federal states also have significant legislative powers, especially for the *Land* constitution, for culture, science and education policy, including schools and universities, as well as local government law and the police. Similarly, the Federal Government also has a fully fledged administration in certain fields, for example for the foreign service, the armed forces and employment placement services.

### As a general rule:

**Legislation is largely within the remit of the Federal Government; public administration is generally a matter for the federal states.**

This division of responsibilities puts the Federal Government in a powerful position, as its extensive legislative competence enables it to adopt uniform provisions that apply to everyone across Germany, in all the federal states. However, the Basic Law stipulates a

mechanism to strike a balance: Through the Bundesrat, the federal states can influence the Federal Government and its policy-making.

## The Bundesrat connects

The Bundesrat is the link between the Federal Government and the federal states. Its role is to prevent irreconcilable differences from arising between the state as a whole and the federal states, despite the emphasis on the national tier of government in the division of responsibilities. It also helps ensure the *Länder* do not become jaded with the federal system. The Bundesrat's mediating function determines its constitutional status and its composition:

▶ Although it is a constitutional body of the Federation, the Bundesrat is made up of representatives from the federal states. Through the Bundesrat's participation in national legislation, the federal states are to some extent compensated for the extensive legislative competences transferred to the Federation. In addition, it enables them to have a say in the Federation's administration and participate in deliberations on European Union affairs.

▶ The Bundesrat is a body of the federal legislature, but is made up of members of the executive bodies in each *Land*. This structure means the federal states' experience in governance and administration can be incorporated directly into federal legislation.



# Organisation and working methods

Who are the members of the Bundesrat?  
Who can take part in its debates and who can vote? How do its decision-making processes function? This chapter presents the

Bundesrat's members and its various organs.  
It describes this constitutional body's day-to-day work, shaped by the distinctive rhythm and style with which the Bundesrat operates.



## The Bundesrat's seat The plenary session

Since 1st August 2000, the Bundesrat has been based in Berlin, in the former Prussian House of Lords building at Leipziger Strasse 3–4. It had previously met in the Bundeshaus in Bonn, in the very plenary hall where the Parliamentary Council drafted the Basic Law in 1949. Today the Bundesrat only maintains a small local office in Bonn.

The Bundesrat is tantamount to the plenary assembly, which brings together all its members. Its composition is stipulated in Article 51, Basic Law:

► **Article 51 (1), sentence 1, Basic Law**  
**“The Bundesrat shall consist of members of the *Land* governments, which appoint and recall them.”**

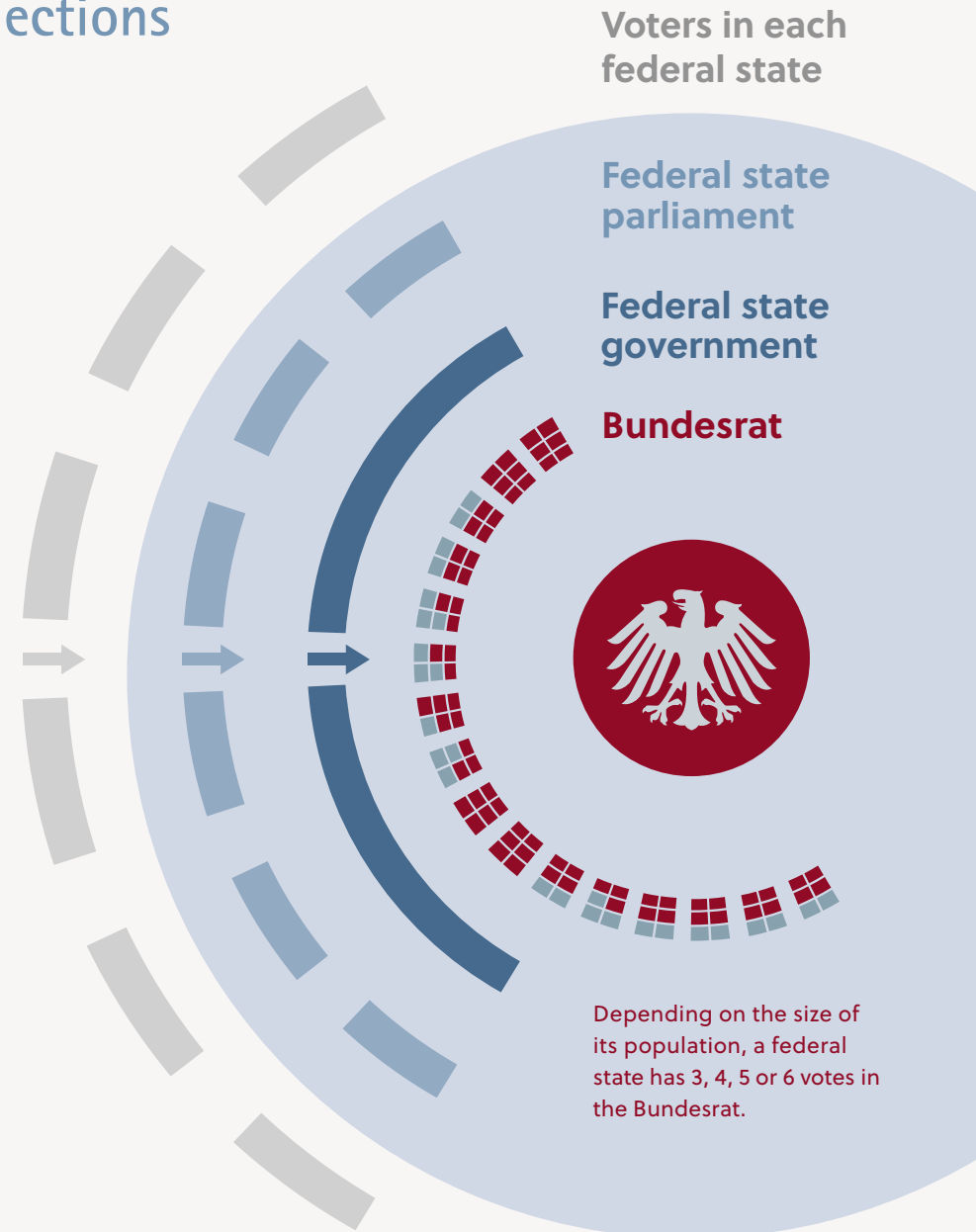
That means that only politicians who belong to the government in one of the federal states can be members of the Bundesrat. Each federal state government takes its own decisions about which members will be sent to the Bundesrat. However, each federal state can only appoint as many full members to the Bundesrat as it has votes there. The other members of the *Land* governments are usually appointed as alternates, which in practice means that all members of a federal state government generally belong to the Bundesrat. As the Bundesrat's Rules

of Procedure grant alternate members the same rights as full members, all of the approximately 170 members appointed essentially have the same rights. The Bundesrat is a “parliament of the federal state governments”. The opposition in the various federal states does not have an opportunity to make its voice heard directly in the Bundesrat.

### “Permanent body”

There are no elections to the Bundesrat. The Bundesrat therefore does not have legislative terms as such. In constitutional parlance it is a “permanent body”, which is renewed from time to time as a result of elections in the federal states. Elections to a regional parliament, a *Landtag*, therefore always have nationwide political significance too. Although voters are first and foremost concerned with determining the composition of the parliament in their federal state and therefore who will govern there, their choices also indirectly decide who will have a seat and a vote in the Bundesrat. That is because the majority in each *Land* parliament establishes that federal state's government, which in turn appoints members from among its ranks to the Bundesrat. That also underpins the Bundesrat's democratic legitimacy, for its composition is determined through elections, expressing the wishes of the electorate. The political power exercised by the Bundesrat emanates from Germany's citizens.

## Seats in the Bundesrat reflecting federal state elections



# Distribution of votes

## Federal states and population size

Should all constituent states have the same number of members in the body representing them at the national level, or is it more democratic if population size determines how many votes are held by particular federal states? In 1949 the Parliamentary Council opted to stipulate a tiered system in the constitution to ensure equal treatment for the federal states: As a function of each federal state's population size, it was allocated three, four or five votes. In adopting this method, the Parliamentary Council picked up on German constitutional tradition, for a similar tiered system was applied in the 1871 Bundesrat and later in the Reichsrat during the Weimar Republic. This system also ensures that large states cannot out-vote smaller ones. Compared with their population size, the smaller states received a greater proportion of votes.

Article 51 (2) of the Basic Law adopted by the Parliamentary Council therefore constitutes a compromise between aspirations to equal treatment for the federal states and the democratic ideal that the weighting of votes should precisely reflect population size in the *Länder*.

## New provisions after unification

The allocation of votes to small, medium-sized and larger federal states had to be re-calibrated when the federal states from the former GDR joined the Bundesrat.

This restructuring aimed to ensure that the four largest federal states would retain at least a blocking minority against constitutional amendments – more than a third of the votes. Article 51 (2) of the Basic Law was therefore amended in the Unification Treaty of 31st August 1990.

That amendment added a fourth tier to the system, granting six votes to federal states with over seven million inhabitants.

► **Article 51 (2), Basic Law**  
**“Each 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.”**

The diagram on the front inside cover of this brochure shows how many votes each federal state holds. The Bundesrat has a total of 69 votes and therefore has 69 full members.

That means the absolute majority needed to adopt resolutions is 35 votes. The two-thirds majority sometimes required signifies 46 votes in the Bundesrat.

# The Members

## Only government members

Only the Minister-Presidents and *Länder* ministers can be members of the Bundesrat; for Berlin, Bremen and Hamburg, the city-states, that means only the mayors and senators. State Secretaries at *Land* level may also be Bundesrat members if they are part of the federal state cabinet. The government in each federal state adopts a resolution on membership; Bundesrat membership ends automatically if a member leaves the *Land* government or if the latter revokes appointment to the Bundesrat.

## Dual function

That means all Bundesrat members have a two-fold role. They simultaneously hold an office in their federal state and at Federation level; they are politicians in their *Land* and nationally. Bundesrat members therefore have wide-ranging political responsibilities. They cannot simply ignore the impact on national policy of decisions taken within their particular federal state, whilst they experience first-hand in ministries in the federal states the consequences of policies they pursue at the national level.

## The mandate

Since each federal state must cast its votes in the Bundesrat in a uniform manner, individual members cannot simply vote as they see fit. Bundesrat membership does not mean having *carte blanche*, yet it is also not a binding mandate. The Bundesrat's members vote in accordance with a uniform line they have worked out jointly in their

federal state's cabinet. Their role is to represent their federal state.

## Scope for a veto position

If representatives from a federal state do not all vote in the same way in the Bundesrat, having failed to reach a voting agreement in their cabinet at *Land* level, that federal state's vote is not valid. That means those voting can veto a decision, as such non-uniform voting enables any Bundesrat member to prevent his or her federal state from voting in favour of a motion, which may mean that motion does not attain an absolute majority.

Bundesrat members are not remunerated for their work in the Bundesrat. They merely receive a subsistence allowance and reimbursement of travel expenses.

## Right to speak in the Bundestag

Members of the Bundesrat enjoy an important right and indeed privilege pursuant to Article 43 of the Basic Law: they may attend all Bundestag sessions and committee meetings and have the right to be heard there at all times. Furthermore, they may also appoint representatives to exercise this right on their behalf. Bundestag members do not enjoy similar options to be informed and represented in the Bundesrat. In practice, Bundesrat members make extensive use of this right, which is an essential part of cooperation with the Bundestag. Dual membership of the Bundesrat and Bundestag is prohibited. The two offices cannot be combined (i.e. are incompatible).

# President and Presidium

All the federal states have equal rights when it comes to the Bundesrat's most senior representative. Every year, the head of government from a different federal state is appointed by the Bundesrat to hold this office; the order in which a representative from each *Land* assumes this role is based on the federal states' population figures. The federal state with the largest population is at the start of the rotation system. This is stipulated in an agreement reached by the Minister-Presidents in Königstein/Taunus in 1950. Thanks to this system, each federal state holds the Bundesrat presidency once every 16 years. The agreement also ensures that appointments to this office are not subject to shifting majorities in the Bundesrat or to party-political considerations.

The President's main duty is to convene and chair the Bundesrat's plenary sessions. In legal terms, he or she represents the Federal Republic of Germany in all Bundesrat matters. The President of the Bundesrat is assisted by two Vice-Presidents who advise the President in the conduct of his or her official duties and deputise if the President is not available. The President from the previous year is always elected as the first Vice-President, and the Minister-President who will be President in the following year is the second Vice-President. This procedure thus entails three-year membership of the Presidium, ensuring a certain degree of continuity.

All the Bundesrat's employees are ultimately accountable to the President of the Bundesrat. The Bundesrat Secretariat, which has around 200 staff members, is mainly entrusted with practical support for preparing and running plenary sessions and committee meetings. It reports to the Secretary General of the Bundesrat.

## Powers as Head of State

In addition to responsibility for the Bundesrat, the Basic Law assigns the President of the Bundesrat a special role in a broader context:

### ► Article 57, Basic Law

**"If the Federal President is unable to perform his duties, or if his office falls prematurely vacant, the President of the Bundesrat shall exercise his powers."**

This representative role is crucial, particularly if the Federal President is abroad or is taking leave. In such cases, the President of the Bundesrat assumes responsibility, for example, for signing legislation, accepting diplomatic credentials from foreign ambassadors or appointing and dismissing public officials.

Due to this representational role, in protocol terms the President of the Bundesrat is often considered to rank as "No. 2" after the Federal President. However, there is no binding definition of protocol rankings in the Federal Republic of Germany. That means there is no straightforward answer to the question of which of the supreme representatives of the constitutional bodies – the Bundesrat, the German Bundestag, the Federal Government and the Federal Constitutional Court – would rank second after the Federal President, who is indisputably the highest-ranking representative of the state in protocol terms.

## The Bundesrat's budget

The Presidium of the Bundesrat, i.e. the President and the two Vice-Presidents, is responsible for drawing up the Bundesrat's draft budget. At around 39 million Euro, "Section 03 – Bundesrat" is one of the smallest budget items within the Federation's overall budget, which in 2020 amounts to around 362 billion Euro.

## Permanent Advisory Council

A Permanent Advisory Council, formed by the sixteen plenipotentiaries of the federal states to the Federation, assists the Presidium. Like the Council of Elders in other parliaments, this body advises the President and the Presidium. Above all, however, it plays an important role in information and coordination activities.

A member of the Federal Government regularly informs the Permanent Advisory Council about the Federal Government's deliberations and decisions after cabinet meetings on Wednesdays.

## Länder Representative Offices

**Each federal state has a Representative Office in Berlin to safeguard its interests vis-à-vis the Bundesrat, Bundestag, Federal Government and other relevant bodies based in the capital.**

Each of these offices is headed by that federal state's authorised representative to the Federation, known as a plenipotentiary. If they are members of the government in their federal state, these plenipotentiaries generally also become members of the Bundesrat.

# Voting

Each federal state can only cast its votes uniformly, en bloc, as stipulated in the Basic Law. Each federal state government must therefore reach an agreement on how its votes are to be cast before the vote is held in the Bundesrat. For coalition governments in particular, decisions on how to vote in the Bundesrat can prove a huge strain and even become a crucial test of a coalition.

## Instruction by the federal state government

The Bundesrat should reflect the position of the federal states rather than the views of individual members. In addition, the system of casting votes en bloc also ensures votes cast by a federal state's representatives do not cancel each other out. Voting instructions can only be issued by the government in each federal state. As stated in the Basic Law, the Minister-President cannot issue such instructions, despite being competent to issue guidance under federal state law, and nor can the federal state parliaments. However, the government of each *Land* is also accountable to the parliament in that federal state, which could remove it from power in response to positions it adopts in the Bundesrat.

## Voting

A federal state's votes are cast by its Bundesrat members. Generally, the federal state governments decide before a

Bundesrat session who will take charge of casting the votes; alternatively, members may decide themselves during the plenary session. Votes are usually cast by just one member for each federal state, known as the vote-caster. In the vast majority of cases, a resolution from the federal state government determines how the votes are to be cast. Sometimes, however, the cabinet grants the vote-caster leeway to coordinate with other federal states, offering scope to find compromise positions or take account of new circumstances that arise after the cabinet meeting.

The Basic Law expects that votes will be cast en bloc. It does not specify precisely how voting should be conducted. The Federal Constitutional Court therefore ruled in 2002 that another member of the Bundesrat from the same federal state can object at any time to the way in which the vote-caster has voted. If that happens, the vote-caster is no longer entitled to hold this role. That means, the President of the Bundesrat accepts the vote of an individual member as constituting a vote for the whole federal state, unless another member of that federal state votes differently. If the votes from a federal state are not uniform, its vote is recorded as invalid; divided opinions within a federal state are not taken into account in the Bundesrat's voting results.

## Decisions by absolute majority

Adopting a neutral stance by abstaining – as generally envisaged in coalition agreements should political disputes arise – is essentially not an option in the Bundesrat. Pursuant to Article 52 (3) of the Basic Law, decisions in the Bundesrat may only be taken with an absolute majority, whilst a two-thirds majority is required for constitutional amendments. Abstaining therefore has the same effect as voting against a motion – and the specific impact of that in any particular case will depend on how the motion put to the vote is formulated.

## Votes

Voting in the Bundesrat is usually by a show of hands. As many votes have to be taken in each session, the President of the Bundesrat usually simply counts the votes in favour in order to determine if there is a majority for a motion. Votes against and abstentions, which are not significant for the absolute majority, are therefore not recorded separately. In the case of constitutional amendments and other particularly important decisions, the vote is taken by a roll-call of the federal states. In this case, the votes, which are called out, are taken in the alphabetical order of the federal states and voting positions are recorded in the session minutes. Secret ballots are not foreseen in the Bundesrat's Rules of Procedure.



# The Plenary Session

On Fridays at 9.30 a.m., the Bundesrat meets for its public plenary sessions, which are usually held every three weeks. Members sit in 16 blocks of seats in the Bundesrat plenary chamber. There are no parliamentary groups. The seating is arranged according to the alphabetic order of the federal states' names – just like the *Länder* coats of arms adorning the front wall of the chamber. The President, the Secretary and the Secretary General of the Bundesrat sit in the middle of the chamber facing the members, on a slightly raised platform. Members or representatives of the Federal Government are seated to the right of the Presidium, and Bundesrat officials to the left. Speeches are made from the lectern.

## Agenda

The Bundesrat's usually substantial agenda – with 40, 50, sometimes more than 80 items to be addressed – is worked through with steady concentration. After debates and individual speeches, there is generally an extensive voting session. Votes on several items are combined as far as possible to save time and ensure the number of individual votes does not become excessive.

Although there is no limit on speaking time in the Bundesrat, speeches are nevertheless kept to a reasonable length. Speeches are often "noted in the minutes" rather than being presented during the session. In most cases, a Bundesrat plenary session lasts between three and four hours.

## Objective

The atmosphere during the plenary sessions is remarkably calm and disciplined. Heated debates, loud arguments or applause are unusual. That is because the special features of the Bundesrat's decision-making procedures mean that efforts to drum up votes or set a particular mood are generally to little or no avail. That makes objectivity a top priority. The Rules of Procedure assume that the Bundesrat will be accommodating and considerate in procedural matters as a matter of course and thus dispense entirely with provisions on numerous matters that are otherwise regulated in parliaments. Customary Bundesrat practice is the yardstick applied. The focus is on reaching agreements when conducting business rather than relying on confrontation, as, even without specific rules, no decision can be made by "fighting matters out in a vote".

## Careful preparation of the votes

Despite this calm tone, the sessions are anything but leisurely. The generally large number of items on the agenda requires very strict procedures. Voting in particular is so rapid that even knowledgeable observers in the public gallery can scarcely keep up.



# The Committees

Work in the committees lies right at the heart of parliamentary activity. Every bill is first discussed in the committees, regardless of whether it is initiated by the Federal Government, the Bundestag or a federal state. The draft legislation is examined thoroughly by ministers from the federal states with relevant expertise or officials instructed by them.

## Responsibilities

Each federal state appoints one member to each committee and has one vote there. The Bundesrat has 16 committees. Their areas of responsibility essentially correspond to the portfolios of the federal ministries.

## Specialised committees

The federal states are usually represented by their Minister-Presidents in the Foreign Affairs and Defence Committees, which are therefore known as “political committees”. In contrast, the competent ministers from each federal state sit on the other specialised committees, such as the Committee on Economic Affairs or the Finance Committee. Officials or employees from the *Land* ministries with know-how in the relevant field can also stand in for the ministers. In practice, specialised committees are almost always attended primarily by these public officials. The representatives may change during the meeting, depending on the topic, to ensure that the relevant experts from the *Länder* can discuss each specific agenda item.

## Political decisions

The committees naturally take political decisions. However, the main focus is on the substantive issues; it is all about meticulous, practical work. The most minute details of draft legislation are discussed in the committees. This is where the federal states can help shape, monitor and improve federal and European Union legislation.

The Bundesrat committees enjoy an excellent reputation thanks to the expertise they bring together, which stems from experience in implementing legislation gleaned by the executive in each federal state.

## Dialogue between the Federal Government and the federal states

Part of the ongoing dialogue between the Federation and the federal states occurs in the committees. Members of the Federal Government are entitled – and, at the request of the Bundesrat, are obliged – to attend committee meetings, as well as plenary sessions. They have the right to speak at any time.

Envoys of the Federal Government, i.e. public officials from national ministries, may also attend the meetings. As a result, the relevant experts from the executive bodies at national and federal state level come together around the same table in the Bundesrat’s committee rooms. These meetings are held in camera, as discretion is crucial for open and candid discussions.

- ▶ Committee on Agriculture and Consumer Protection
- ▶ Committee on Cultural Affairs
- ▶ Committee on Defence
- ▶ Committee on Economic Affairs
- ▶ Committee on the Environment, Nature Conservation and Nuclear Safety
- ▶ Committee on European Union Questions
- ▶ Committee on Family and Senior Citizen Affairs
- ▶ Finance Committee
- ▶ Committee on Foreign Affairs
- ▶ Committee on Health
- ▶ Committee on Internal Affairs
- ▶ Committee on Labour, Integration and Social Policy
- ▶ Committee on Legal Affairs
- ▶ Committee on Transport
- ▶ Committee on Urban Development, Housing and Regional Planning
- ▶ Committee on Women and Youth

# The Chamber of European Affairs A small-scale Bundesrat

Decisions that are to have an external legal effect must be adopted by the Bundesrat plenary session. There is one exception to this general rule: Article 52 (3a) of the Basic Law states that the Bundesrat may establish a Chamber of European Affairs for matters concerning the European Union; its decisions are to be considered decisions of the Bundesrat. The Chamber deals with urgent and confidential matters pertaining to the European Union, particularly draft legislation. To date, the Chamber of European Affairs has held very few meetings. However, it can also adopt decisions without holding a meeting, using a written

procedure. It is only convened at the express request of the President of the Bundesrat and is conceived to avoid the need to organise special sessions of the Bundesrat.

Its meetings are public, although it may meet in camera if confidential issues are to be addressed. Each federal state appoints one member of its government to the Chamber, but has the same number of votes in this body as in the plenary session. The Chamber of European Affairs is thus a kind of small-scale Bundesrat to deal with exceptional circumstances.



# The Mediation Committee

## A bridge between the Bundestag and the Bundesrat

Legislation is developed in a cooperative process involving both the Bundestag and the Bundesrat. Approximately 40 percent of all legislation – consent bills – can only enter into force if both assemblies agree. If divergences of opinion threaten to hamper adoption of a bill, the Mediation Committee's role is to reach a consensus between the two institutions.

## Joint Bundestag and Bundesrat committee

This is a joint committee in which the Bundestag and the Bundesrat are equally represented. Each federal state has one seat. As there are 16 federal states, the committee thus has 32 members. The 16 Bundestag seats are allocated to its parliamentary groups as a function of the size of each group. A named alternate is appointed for each member but may only attend meetings if the member they represent is unable to attend.

Each parliamentary group and each of the federal states may replace their representatives at most four times during a Bundestag legislative term. The meetings are strictly confidential. One Bundesrat member and one Bundestag member serve as committee chairs. They take turns in heading the meetings every three months and each can stand in for the other.

## Party-political balance of power

Members of the Committee are not bound by instructions. Nevertheless, majorities in the federal states and party-political concerns do play a role in the Mediation Committee's deliberations. After all, the Mediation Committee's work is only successful if its proposals are ultimately adopted by the Bundestag and the Bundesrat.

## When does mediation occur?

The Mediation Committee only becomes involved if it is called upon by the Bundesrat, the Bundestag or the Federal Government to address a particular bill. Since the final decision in the legislative procedure lies with the Bundesrat, it is typically also the body that refers disputes to the Mediation Committee. The Bundesrat can request that any bill adopted by the Bundestag be addressed by the Mediation Committee. The Bundestag and the Federal Government may only convene the Committee if the Bundesrat has withheld its agreement to a consent bill. A series of three mediation procedures may in some circumstances be required for this category of bills. That is however the upper limit, for each constitutional body is only entitled to refer the same bill to the Committee once. Mediation Committee decisions are taken on a majority basis. That means all members do not by any manner of means have to support a particular "mediation proposal" – the term used to describe all the Committee's decisions.

The Rules of Procedure stipulate that there are four potential outcomes to a mediation process:

- ▶ The Committee may recommend that a bill passed by the Bundestag be revised, i.e. that provisions not accepted by the Bundesrat be reformulated, that additions be made or provisions deleted.
- ▶ A bill passed by the Bundestag may be confirmed. In this case, draft amendments submitted by the Bundesrat are rejected.
- ▶ A proposal may be made that the Bundestag repeal the bill in question. This signifies that the Bundesrat has rejected a bill in its entirety and has succeeded in having this position upheld in the Mediation Committee.
- ▶ The proceedings may be concluded without a mediation proposal. This occurs, for example, if a tied vote means it is not possible to reach a majority decision in the Committee.

The Mediation Committee may only make proposals to resolve conflicts between the Bundesrat and Bundestag but cannot adopt bills itself. It is not a "superordinate parliament".

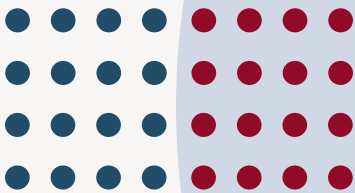


# The Mediation Committee

## Finding compromises

Building bridges

Reaching agreement



Bundestag



Bundesrat

Discussing frankly

Negotiating fairly

# Working methods in the Bundesrat

Two factors characterise the Bundesrat's way of working and distinguish it from other legislative bodies: the twofold functions of its members and the deadlines set for most decisions. As a consequence, the bulk of the Bundesrat's work is done in the federal states' capitals rather than at its seat and faces permanent time pressure.

## Tight deadlines for deliberations

The Bundesrat has extremely short deadlines for deliberations on legislation. As a rule, six weeks are scheduled for the first reading of Federal Government bills and three weeks in the second reading, which considers the version of the bill approved by the Bundestag. The Bundesrat has two weeks to raise objections. These tight deadlines mean the Bundesrat must work at a strenuous pace. If a bill is particularly voluminous, the Bundesrat may exceptionally request nine weeks for deliberations. It also has a nine-week deadline to comment on proposals concerning amendments to the Basic Law or transfer of sovereign rights to the European Union or intergovernmental organisations.

## Around 11 plenary sessions a year

The plenary sessions are held every three weeks, about 11 times a year, always on a Friday. The dates of plenary sessions are stipulated in advance for each calendar year with due consideration to the weeks

in which the Bundestag sits. Before each plenary session, the Federal Government and the Bundestag submit their legislative proposals to the Bundesrat in accordance with the respective six-week and three-week consultation periods. These draft bills are immediately allocated to the relevant committees, printed and forwarded to the members. Deliberations in the committees must be concluded two weeks before the plenary session. That makes for a tight timeframe to examine the proposed legislation. It means committees have three weeks to appraise draft bills from the Federal Government and less than a week to consider Bundestag legislative resolutions.

## Preparatory work in the federal states

These extremely short deadlines are only viable because Bundesrat members and experts from the federal states' ministries obtain information through other channels beforehand. This is crucial, as the ministries in each federal state need to reach an agreement on their federal state's position before the Bundesrat committee meeting. If there are political issues, the cabinet in each federal state also needs to address the broad outline of the draft bill. However, the real groundwork for decisions on legislation can only be completed in the Bundesrat committees.

### Political decision-making by governments in the federal states

Voting recommendations for the plenary session are drawn up on the basis of intensive discussions in the Bundesrat committees between committee members and their representatives (public officials). The secretary of the lead committee for each bill compiles an official recommendations document, which forms the basis for further decisions in the federal states' capitals. In formal terms, the cabinet in each federal state is now responsible for addressing all the draft legislation and recommendations on the Bundesrat's agenda. In practice, however, other bodies at public-official level are involved prior to this, which means the cabinet need only take decisions on particularly significant or controversial issues. The cabinet in each federal state stipulates on a case-by-case basis whether Bundesrat members from that *Land* will be bound by instructions, how the votes are to be cast and whether additional motions should be introduced.

### Seeking alliances

Two days before the plenary session, the officials responsible for liaison with the Bundesrat from the federal states' Representative Offices discuss the plenary

session with the Bundesrat committee secretaries again in the light of the cabinet deliberations. At this stage, the federal states use various channels to seek allies for their position.

A brief confidential meeting of Bundesrat members, known as the preliminary discussion, is organised immediately before the plenary session.

### Resolutions and Official Documents

The Bundesrat adopts resolutions on the various draft bills in the plenary session, which is open to the public. These are transmitted to the Federal Government or other competent bodies on the same day and are subsequently published as an official printed document along with the minutes of the session; both are also available online. In the following week, the committees generally begin work in preparation for the next plenary session.





# The Bundesrat's responsibilities

The constitution mandates the Bundesrat to participate in the Federation's legislation and administration, as well as in policy on European Union affairs.

Further details on the responsibilities this entails are stipulated in specific provisions in the Basic Law. This chapter describes these responsibilities.



# The Bundesrat

## A federal body

The Bundesrat is a body involved in Federation policy, in other words, policy at the national level that concerns Germany as a whole. Although the Bundesrat is often referred to as the chamber of the federal states, it is not a body at the federal-state level of the system. The Bundesrat's role as a federal body extends exclusively to exercising powers at the federal (i.e. national) level.

### Responsibilities of the Federation and the federal states

The Bundesrat has no competence to deal with areas within the remit of the *Länder*. That means it is not a coordinating body for

problems or concerns the federal states might wish to address in a harmonised or coordinated manner, such as the dates for school holidays. Agreeing on such matters is eminently sensible. Issues such as the "holiday schedule" are however agreed solely by the Standing Conference of Ministers of Education of the Federal States without any Bundesrat involvement. There are specific Conference of Ministers like this for all the ministries, with a similar format for the heads of government in the *Länder*: the Conference of Minister-Presidents. There is no institutional link between these Conferences of Ministers and the Bundesrat.

## Actively shaping policy

### State activity by the federal level

The Bundesrat's responsibilities pertain to national legislation, administration and policy relating to the European Union, in other words, the whole sphere of state activity by the federal level in crafting policy. Article 50 of the Basic Law refers to the Bundesrat's participation.

This, however, does not merely mean that the Bundesrat can support and advise; it also involves a much more active role in shaping policy and can in some cases signify that the Bundesrat is empowered to take decisions on its own. Specific provisions in the constitution define the details of this participation.

## 1. Position on government draft legislation

### The Bundesrat has the "first say" on government draft legislation.

In the Federal Republic of Germany, most bills originate from the Federal Government. The Bundesrat has the "first say" in parliamentary examination of this proposed legislation. The Basic Law stipulates that the Federal Government shall first submit its draft bills to the Bundesrat. Only the draft budget is submitted simultaneously to the Bundesrat and the Bundestag. The Bundesrat is entitled to comment on these proposals within six weeks, in certain cases within three or nine weeks. The Bundesrat makes use of this right in virtually all cases.

A large part of the Bundesrat's work consists of scrutinising government draft bills and seeking amendments to them through the position it adopts. The experience and insights the federal states have gleaned by implementing legislation, almost all of which is enforced by them, are incorporated into national legislation in this "first round". In this context, the executive bodies in the federal states engage in intensive dialogue

on the substantive issues with their national counterpart, the Federal Government. The Bundesrat's checks-and-balances role within the federal system of government is particularly apparent here.

The Bundesrat examines the draft bills in its committees, taking all constitutional, technical, financial and political aspects into account. It very often proposes amendments, additions or alternatives. Frequently the Bundesrat's opinion is simply that it has "no objections"; only rarely is there no vote. At this stage in the legislative procedure, the Bundesrat's assessment of a bill is not yet binding on the Federal Government and the Bundestag. However, this first opinion is an important indicator of what the Bundesrat's position will be when it has the last word in the second reading. The Bundesrat's opinions can therefore not simply be ignored. The Federal Government responds in a written counter-statement. The draft bill, the Bundesrat's opinion and the government's counter-statement are subsequently submitted to the Bundestag.

## 2. Referral to the Mediation Committee

The President of the Bundestag must submit all legislative decisions adopted by the Bundestag to the Bundesrat. During this

"second round" the issues are again first discussed in the committees. They examine in particular whether the Bundesrat's

opinion in the “first round” has been taken into account and whether the Bundestag has adopted any amendments. If the Bundestag’s legislative decision is based on a draft bill initiated by the Bundestag – i.e. an initiative from a parliamentary group – only this “second round” occurs, although that term is actually a misnomer in this case.

If the Bundesrat does not agree with a bill as approved by the Bundestag, it may refer

the matter to the Mediation Committee within three weeks. Its request for referral, which must be adopted by an absolute majority in the Bundesrat’s plenary session, includes specific proposals for amendments along with detailed substantiation of these. The Bundesrat may however also request more general referral of a bill to the Mediation Committee, with a view to ensuring that this legislation is fundamentally revised.

### 3. Decisions on consent bills

Bills that have a special bearing on the interests of the federal states cannot become law unless the Bundesrat gives its express approval. If the Bundesrat votes definitively against this type of bill, it cannot be adopted. This rejection cannot be overturned by the Bundestag. The only option available to the Bundestag and the Federal Government to salvage the bill is to seek an agreement with the Bundesrat by referring the matter to the Mediation Committee. In the case of consent bills, the Bundestag and Bundesrat must therefore agree before legislation can be adopted.

The provisions of the Basic Law indicate which bills require Bundesrat consent. They can be classified in three groups:

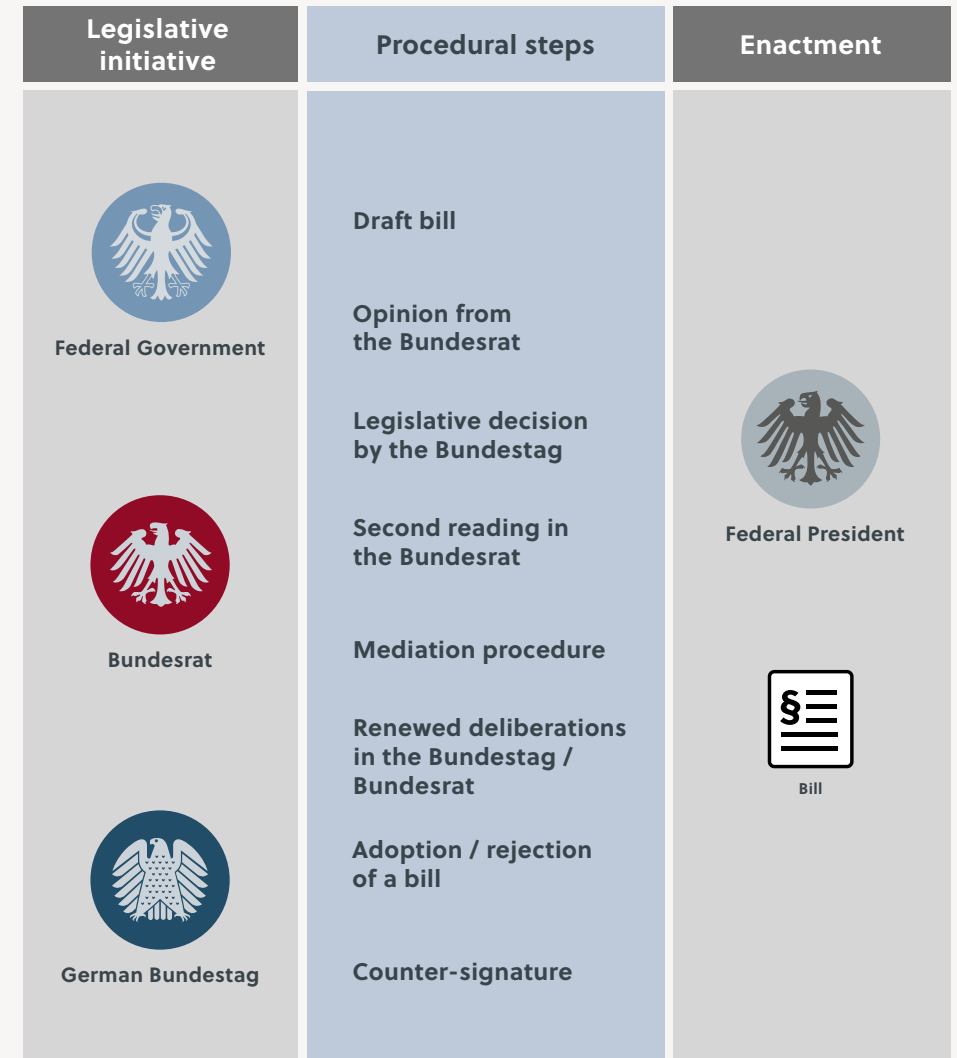
- ▶ Bills amending the constitution or transferring sovereign rights to the European Union. These require a two-thirds majority vote of the Bundesrat in favour of adoption.

- ▶ Bills that have a particular impact on the finances of the federal states. These include primarily legislation relating to taxes for which revenue accrues to the federal states or local authorities: for example, wage and income tax, value-added tax and corporation tax.

- ▶ Bills that impinge on the administrative sovereignty of the federal states.

A single provision may trigger a requirement for Bundesrat consent to the bill as a whole, for example if the provision in question affects the federal states’ finances. That also holds true if national legislation requires the federal states to adopt certain provisions on competences, forms, deadlines or new administrative bodies and does not offer scope for legislation at federal-state level to diverge from this. As a result of specific individual provisions like this, even bills that in essence do not affect the federal states’ interests may require Bundesrat consent.

## Steps in the legislative procedure pursuant to the Basic Law



A detailed overview of the steps in the legislative procedure is presented on the brochure’s inside back cover.

### When is a bill a consent bill?

The Bundesrat can only accept or reject a bill in its entirety, but cannot partially reject a bill i.e. it may not simply delete individual provisions.

If there is any dispute as to whether Bundesrat consent is required for a specific bill, a decision on this point is taken in the first instance by the Federal President when it is promulgated. If differences of opinion on this issue persist, the Federal Constitutional Court must decide on the matter. It may also rule on whether the Bundesrat's right of consent has been inadmissibly circumvented in a particular case.

Bills that have only been categorised as consent bills due to their procedural provisions are sometimes divided into a procedural bill that requires Bundesrat consent and a bill on substantive matters that does not. While the Bundesrat may object to the substantive bill, this objection can be overturned by the Bundestag. The Federal Constitutional Court's case law states that bills may be divided like this at the legislator's discretion. To date, the Federal Constitutional Court has not ruled on the specific extent of these discretionary powers.

The Bundesrat considers that the system has been applied inappropriately if the bills ought to be combined in a single piece of legislation due to the subject-matter addressed.

### Significance

The Bundesrat's constitutional status and significance are primarily rooted in its right of co-decision on consent bills.

This right means the Bundesrat has a great deal of influence on legislation, as in practice almost 40 percent of federal bills are consent bills. That means the Bundestag cannot legislate alone here, but must consider the Bundesrat's opinion.

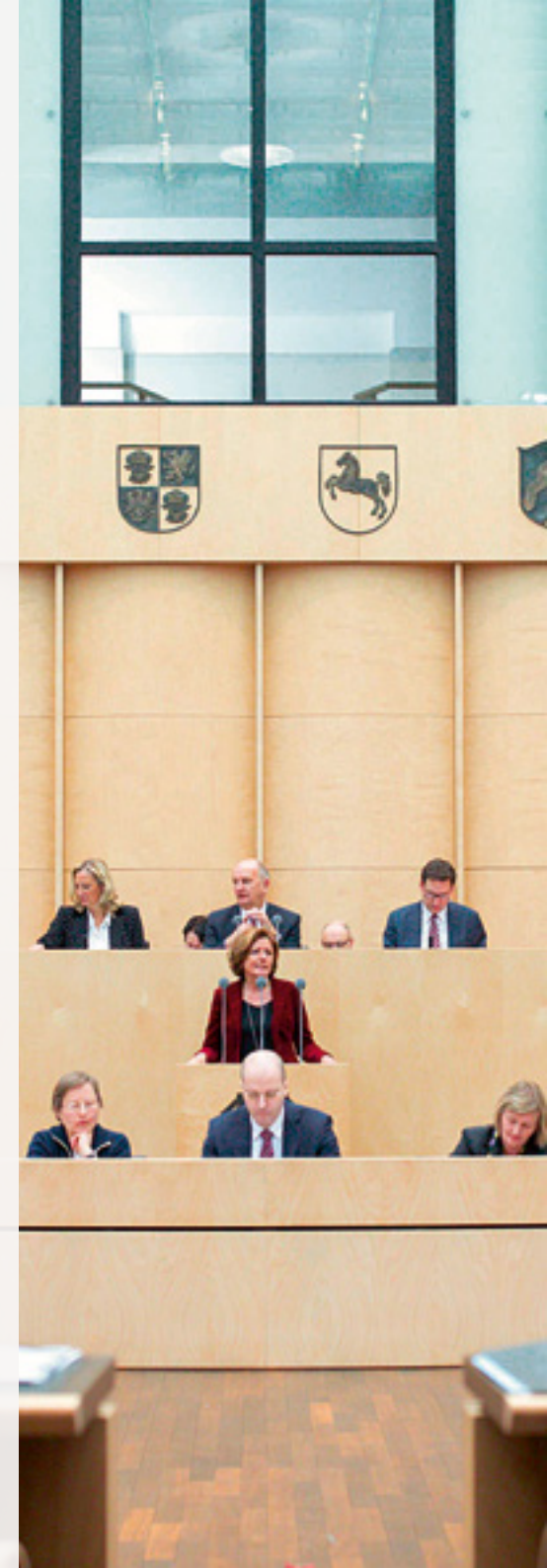
However, the Bundesrat cannot have an impact on its own either; voting against a bill merely hinders its adoption but does not contribute actively to shaping a policy area. Both assemblies therefore need to seek a fair balance of interests. They are expected to show mutual understanding and consideration, recognising these values as political imperatives in the federal system. That certainly holds true in practice: very few bills have failed because the Bundesrat withheld its consent.

## 4. Involvement in objection bills

The Bundesrat is also involved in the genesis of bills that do not require its consent – objection bills. For this category of bills, however, it can only vigorously urge the Bundestag to adopt a particular approach. If the Bundesrat submits an objection within a two-week deadline after mediation proceedings have concluded, the Bundestag must re-examine the bill. If the Bundestag does not share the Bundesrat's reservations, it can override the Bundesrat's objection with an absolute majority of votes in the Bundestag (which is known as "the chancellor's majority").

If the Bundesrat has decided on the objection with a two-thirds majority, the Bundestag also needs a two-thirds majority of the votes cast to reject the objection; that must also represent at least a simple majority of Bundestag members.

If the objection is overridden, the bill in question can be promulgated. However, if there is not a sufficient majority in the Bundestag to reject the objection, the bill cannot become law, as is also the case if the Bundesrat definitively rejects a consent bill.





## 5. Bundesrat legislative proposals

The Bundesrat is entitled to propose draft bills to the Bundestag. These are transmitted to the Federal Government for comment. The draft bills are then forwarded to the Bundestag within six weeks (or in certain cases, within three or nine weeks).

The Bundestag applies the same procedure when considering this draft legislation as it does for legislation proposed by the Federal Government or by Bundestag members. The Bundestag is free to decide as it sees fit, which means it may also refuse to adopt a bill. In this case, the Bundesrat cannot however refer the matter to the Mediation Committee. That may be one of the reasons why the Bundesrat adopts only a few legislative initiatives. Nevertheless,

some important legal achievements have been initiated by the Bundesrat, such as the more stringent legislation on speeding recently introduced and what are known as “anti-rubbernecking” provisions. The Bundesrat also set the ball rolling for introduction of the legal minimum wage.

The number of draft bills initiated by the Bundesrat has increased in recent years. Complementing such legislative initiatives, the Bundesrat also provides political impetus through resolutions. These are generally addressed to the Federal Government and aim to draw attention to problems that are not yet tackled adequately in legislation. The Bundesrat frequently deploys this instrument.

## 6. Statutory instruments

In addition to bills, statutory instruments determine how we live together in society. One example that everyone knows is the Highway Code. It was adopted by the Federal Minister of Transport with Bundesrat consent. As a rule, the Bundestag is not involved in adopting statutory instruments.

### Oversight and shared decision-making

Statutory instruments are binding provisions to implement legislation. They thus represent the Federation’s administrative activities.

Bundesrat consent is stipulated for most statutory instruments from the Federal Government. A considerable part of the Bundesrat’s workload involves examining such legislation, even though statutory instruments are often much less in the political spotlight than bills. In most cases, the Bundesrat gives its consent “subject to the proviso” that certain amendments should be adopted. The Federal Government must incorporate these Bundesrat amendments if the statutory instrument is to come into force. The only alternative is



to refrain from issuing the statutory instrument. It is not possible to appeal to the Mediation Committee. The Bundesrat's right of consent signifies that it is entitled to determine the content of statutory instruments as an equal partner.

Since the 1994 amendment to the Constitution, the Bundesrat has enjoyed a formal right of motion for statutory instruments.

It may submit drafts of statutory instruments that require Bundesrat consent to the Federal Government.

Activities in this area span a vast range of topics: examples include proposed amendments to statutory instruments on land utilization, animal welfare and animal husbandry, vehicle registration, and occupational health and safety.

### 7. Consent to general administrative regulations

Just like statutory instruments, numerous general administrative regulations also depend on Bundesrat consent if these provisions affect the powers and responsibilities of the federal states.

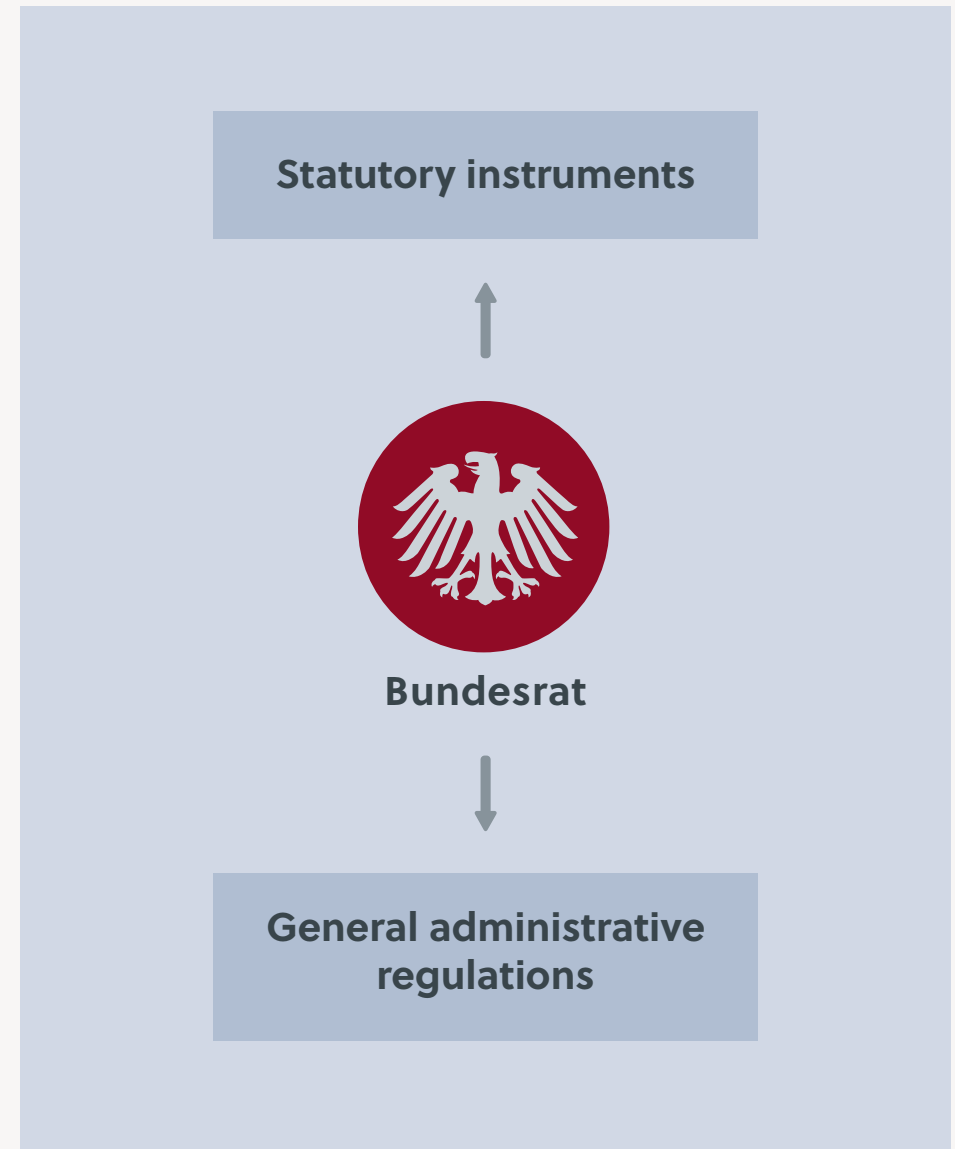
For example, the fine schedule for statutory traffic offences and the penalty points schedule that can lead to withdrawal of driving licences were both enacted with Bundesrat consent.

### 8. Participation in European policy issues

With the European Union's growing integration, national law is increasingly overlaid by provisions decided in Brussels. Pursuant to Article 23 (2) of the Basic Law, the Bundestag and, through the Bundesrat, the federal states participate in matters concerning the European Union. This helps offset the loss of competences that have been transferred to the European Union. The Federal Government must inform the Bundestag and the Bundesrat comprehensively and at the earliest possible time about all European Union draft legislation.

As stated in Article 23 (1) of the Basic Law, a Bundestag bill, which always requires Bundesrat consent, is essential if sovereign powers are transferred to the European Union. The Federal Constitutional Court's case-law stipulates that all constitutional bodies – including the Bundestag and Bundesrat – have a permanent responsibility for integration: they must ensure that national constitutional identity is respected in the design of European decision-making procedures and when sovereign rights are transferred.

## Bundesrat consent when *Länder* interests are affected



After detailed discussions in the committees, the Bundesrat – or, in urgent cases, the Chamber of European Affairs – issues opinions on the draft European Union Regulations and Directives drawn up in Brussels.

### A nuanced system

If European Union legislation affects matters that fall within the remit of the Federal Government at the national level, the Bundesrat's opinion must be "taken into account" by the Federal Government in its decisions in Brussels.

If EU legislation primarily affects the federal states' legislative jurisdiction, the structure of their authorities or their administrative procedures, the Bundesrat's assessment must "receive prime consideration." That means that in such cases the Bundesrat essentially has the final say in determining the German position in the Council of Ministers. In this context however, the Bundesrat must respect "the responsibility of the Federation for the nation as a whole." That alludes to responsibilities arising from the key policy areas of integration, foreign affairs and security. If the Bundesrat's view conflicts with that of the Federal Government in this context, and if an agreement cannot be reached, the Bundesrat's opinion is

decisive, providing that it is based on a decision approved by a two-thirds majority. The Bundesrat's right to take the final decision is restricted in matters that could lead to increased expenditure or reduced revenue for the Federal Government. In such cases, the Federal Government must also agree to the German position as determined by the Bundesrat.

In cases in which EU legislation mainly affects the exclusive legislative powers of the federal states "concerning matters of school education, culture or broadcasting", the Federal Government must delegate the conduct of negotiations and associated voting rights to a *Land* minister appointed by the Bundesrat.

In this scenario, the Bundesrat not only participates in the decision-making process nationally but also determines how the rights to which Germany is entitled as a Member State of the European Union will be exercised.

Some 300 experts from the federal states, designated by the Bundesrat, also take part in EU deliberations as members of the German delegations.



## 9. Participation in foreign affairs

Article 32 (1) of the Basic Law provides that relations with foreign states shall be conducted by the Federation. That provision does not assign responsibility for this to any particular constitutional body and thus excludes neither the Bundesrat nor the Bundestag. Nevertheless, as stipulated in the Basic Law, foreign policy is a central field in which the Federal Government shapes policy and is empowered to take far-reaching decisions without being dependent on the legislative bodies. International treaties regulating Germany's relations with other nations or relating to matters of federal legislation do however "require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law", as stipulated in Article 59 (2) of the Basic Law.

### Consent to ratification bills

In terms of the Bundesrat's rights, this means that a bill on a treaty (referred to as a "ratification bill") requires Bundesrat consent if the adoption of domestic legislation with similar content would require the consent of the Bundesrat

pursuant to the Basic Law. By using its right of veto, i.e. refusing to consent to a law, the Bundesrat can prevent an international agreement from coming into force for Germany.

**Treaties requiring Bundesrat consent generally address disaster relief, administrative and judicial cooperation, tax law, pension law, protection of capital investments and environmental protection.**

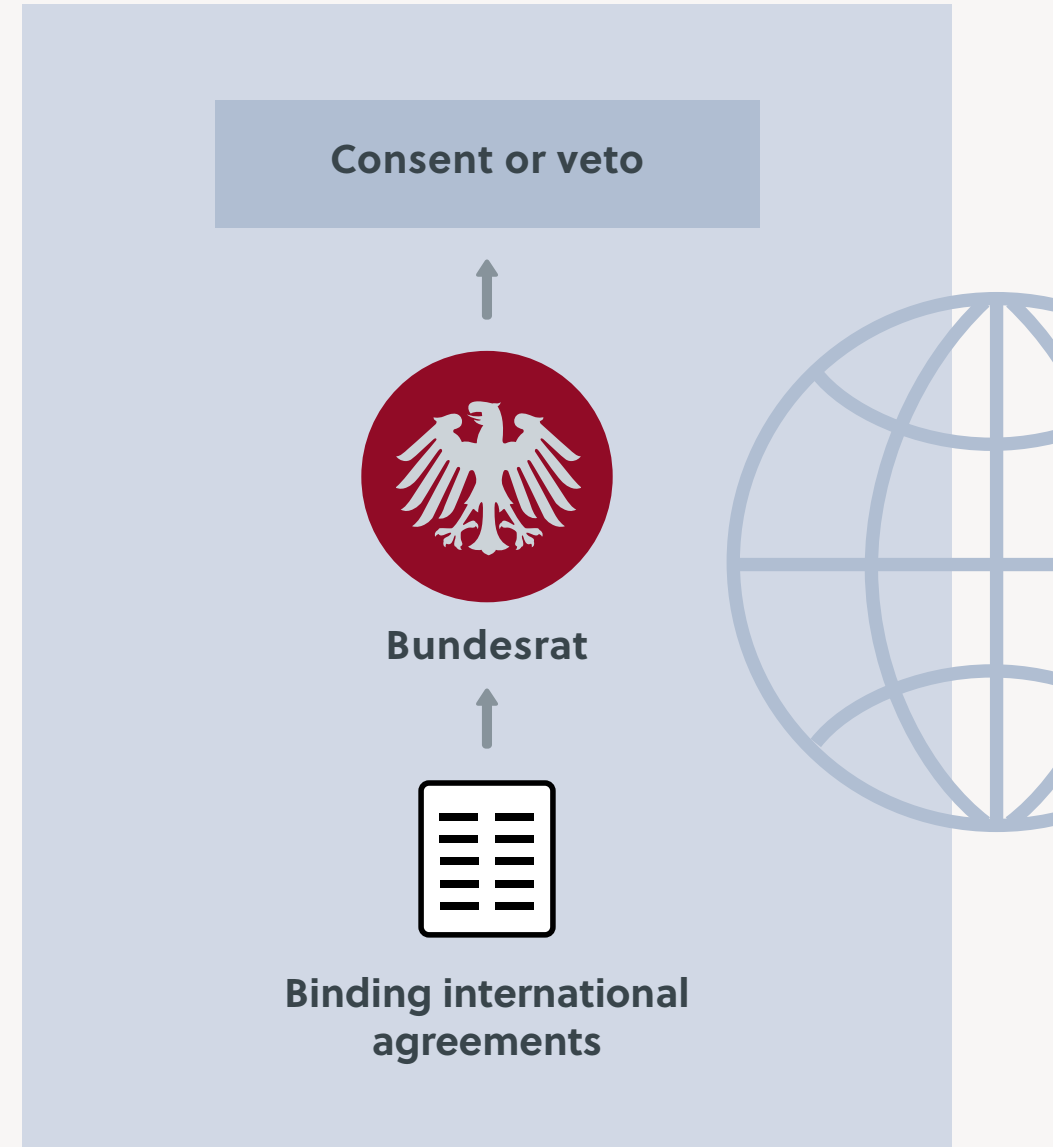
If the Basic Law would not require consent in the case of national provisions pertaining to the subject-matter addressed in an international treaty, the bill on the treaty must nonetheless be forwarded to the Bundesrat. However, in this case the Bundesrat only has the right to object in the second round. The Bundestag is empowered to override the Bundesrat's objections, thus enabling entry into force of the treaty (ratification).

## 10. Right to be informed by the Federal Government

Pursuant to Article 53, third sentence of the Basic Law, the Federal Government is obliged to keep the Bundesrat informed about the conduct of its affairs. This relates

to all government business, and is therefore not restricted to legislative and administrative activities, but also includes for example information about the general

## Consent or veto for international agreements



political situation, as well as foreign and defence policy. The Federal Government must provide this information to the Bundesrat of its own accord, promptly and in full on an ongoing basis. Furthermore, the Bundesrat also has a right to “summon” and put questions to any member of the Federal Government in its plenary and committee meetings. Conversely, members

of the Federal Government are entitled to attend all meetings of the Bundesrat and its committees and are entitled to speak there at any time. The Bundesrat nonetheless only rarely makes use of its formal right to question government members in its plenary sessions. It does not use the Bundestag’s system of written questions nor does it have a specific “Question Time”.

The Bundestag can only proclaim an external emergency, a situation known as the state of defence, with Bundesrat consent.

If such an emergency were to arise, the particular provisions for the state of defence laid out in Articles 115a to 115k of the constitution would apply.

## 11. Other tasks – Appointment of officials

The Basic Law assigns numerous other tasks and powers to the Bundesrat. For example, the Bundestag and Bundesrat each elect half of the members of the Federal Constitutional Court.

The Federal Minister of Finance must account annually to the Bundestag and the Bundesrat for revenue and expenditure to allow for “discharge” of the Federal Government.

The Bundesrat can also lodge complaints of unconstitutionality and can testify in cases before the Federal Constitutional Court.

**Legislative emergency**  
Should the Federal Chancellor no longer enjoy the confidence of the Bundestag, without the Bundestag being dissolved, a complex procedure allows the Federal Government to adopt bills with Bundesrat consent. In this type of legislative emergency, as defined in Article 81 of the Basic Law, the Bundesrat constitutes a “reserve of legality” when the Bundestag is unable to act.

The Bundesrat appoints representatives to the governing board of the Federal Employment Agency and to various other public bodies. It is entitled to make proposals or has a right of consent in respect of appointments to various other positions. Bundesrat consent is required for proposals to the Federal President on candidates to be appointed as General Federal Prosecutor, as lawyers in the Public Prosecutor General’s Office or as the President of a Federal State Central Bank, a *Landeszentralbank*.

Monitoring and oversight roles are also ascribed to the Bundesrat in the Basic Law’s provisions concerning federal oversight of the federal states, internal emergencies and natural disasters.



# The Bundesrat's role

The Basic Law stipulates that the Bundesrat is a constitutional body – like the Bundestag, the Federal Government, the Federal President and the Federal Constitutional Court. The Bundesrat plays a special role within this system;

it is more than simply an interface with the federal states, for it is also a counterweight at the federal level. The Basic Law emphasises the separation of powers – the Bundesrat plays a central part in that respect.



## Democratic order

### Separation of powers

The separation of powers is the fundamental concept that underpins Germany's democratic order and federal system. As they go about fulfilling their respective remits, the Federation and the *Länder* work within a checks-and-balances system, while at the same time cooperating and showing consideration for each other's concerns.

In this separation-of-powers system, the Bundesrat has three central functions:

- ▶ It defends the interests of the federal states vis-à-vis the Federal Government and indirectly vis-à-vis the European Union.

- ▶ It ensures that the federal states' political and administrative experience is incorporated into the Federation's legislation and administration and into European Union affairs.

- ▶ Like the other constitutional bodies of the Federal Republic, it shares overall responsibility for the Federal Republic of Germany.

#### Counterweight and connection

The Bundesrat plays a twofold role when exercising these functions: on the one hand, it acts as a federal-level counterweight to the Bundestag and the Federal Government; on the other hand, it links the Federation and the federal states.

## Decision-making as a federal constitutional body

In all states with a federal system of government a natural tension exists between the state as a whole and the constituent states. Endeavouring to maintain and strengthen their own position as much as possible, the Federal Government and the federal states are always keen to make full use of their rights and perhaps also to acquire broader rights. The Bundestag and the Federal

Government are the central bodies in the German system; the Bundesrat functions as a counterweight to them in its capacity as a federal constitutional organ pursuant to the Basic Law. The Bundesrat's prime role is to safeguard the interests of the *Länder* at the national level, while at the same time seeking to ensure these are compatible with the needs of the state as a whole.



# Decision-making as a political constitutional body

**The “interests of the federal states” are concerns that essentially can only be regulated via consent bills, which the Bundesrat is entitled to veto:**

- ▶ **Division of responsibility for state activities between the Federal Government and the federal states; regulation of legislative, administrative and judicial competences; the transfer of sovereign rights to the European Union.**
- ▶ **Allocation of tax revenues to the Federation and the federal states.**
- ▶ **Establishment of the administrative procedures for authorities in the federal states when enforcing federal bills.**

## What is meant by “the interests of the federal states”?

Are such organisational, fiscal and administrative concerns really the whole story when it comes to the interests of the federal states? Shouldn't the governments of the *Länder* look after the interests of the people they represent as well, the citizens

in each federal state? How can a distinction be drawn between the federal states' interests and those of citizens when democratic states are supposed to serve their citizens? It is certainly impossible to draw a clear-cut distinction.

## Responsibility for federal policy

The Basic Law does not restrict the Bundesrat's role to representing the interests of the federal states. Instead, it provides in addition that the Bundesrat shares responsibility for overall federal policy. That is already apparent if we recall that the Bundesrat also addresses objection bills, which do not primarily affect the federal states' interests.

The Bundesrat enjoys a comprehensive right of scrutiny for consent bills and can also reject such bills due to other provisions not directly within the consent category; this has repeatedly been confirmed by the Federal Constitutional Court. Further expressions of the Bundesrat's responsibility for the state as a whole, which extends far beyond safeguarding regional interests, include its right to receive comprehensive information from the Federal Government, Bundesrat participation in determining if the state of defence applies and its status as a “reserve of legality” in legislative emergencies.

## Party politics in the Bundesrat?

The Bundesrat is a political organ. It is made up of politicians and has a political remit. That means the Bundesrat is naturally to some extent in competition with the Bundestag and the Federal Government. Those two constitutional bodies are however more than merely political fora, for they also express the balance of power between political parties. The question arises of whether and to what extent there is scope for party politics in the Bundesrat, considering that, as a body bringing together the federal states at the federal level, it primarily represents the federal states rather than parties. Can the Bundesrat function as a party-political counterweight, should it take on this role and is it authorised to do so?

When the groundwork was being done before adoption of the Basic Law, efforts were made to ascribe to the Bundesrat the role of a “counterbalance to party politics”, guided by “greater objectivity” and the “desire for absolute impartiality”. The Parliamentary Council was however critical of such appraisals, which tend to disparage party politics. In such conceptions of the Bundesrat – also referred to in those days as the “Council of the Federal States” – the Bundestag is cast as “the fount of all the evils of the party system, while the Council of the Federal States is wisdom and goodness incarnate”, to cite criticism from

Hesse-based Social Democrat Hermann Brill. Contrasting “impartial politics” and “party politics” would indeed call the political parties' reputation into question, suggesting that party politics can be equated to biased politics.

## Parties must demonstrate a sense of proportion

The constitution provides that the political parties have a mandate to participate in political decision-making. Within the system defined by the constitution, they are the actual policy makers; Germany is a multi-party democracy. Nowadays there is a clear recognition that Bundesrat decisions, which are after all political decisions, may be influenced by party-political concerns.

In the political debate, however, there is still controversy when it comes to determining how much influence parties should exert on political deliberations, in other words, at which point a distinction needs to be drawn between a political Bundesrat and abuse of the Bundesrat for party-political ends. There are no legal criteria stipulating where this demarcation line lies. Instead, representatives in the Bundesrat and the political parties must help ensure that the Bundesrat can be an independent political force as a constitutional body, while maintaining the requisite sense of proportion about the Bundesrat's constitutional remit and that of the parties.



### Party politics

Party-political concerns are highlighted in the Bundesrat when different parties have a majority in the Bundestag and Bundesrat. If the opposition does not prevail in the Bundestag, it may well have another attempt subsequently in the Bundesrat. However, party-political concerns and the associated polarisation have not to date been a permanent feature in the Bundesrat. The natural tension in Federation-*Länder* relations, which links all the federal states regardless of their party-political loyalties, as well as other factors relevant across the political spectrum, such as regional interests and the specific policy concerns of the federal states, mean divisions into political camps tend to become less clear-cut here.



## Counterweight exercising oversight of the Federation

As stipulated in the German constitution, the Bundestag elects the Federal Chancellor; he or she must enjoy the Bundestag's confidence, enabling the Chancellor and the government to conduct their business properly. The Bundesrat has no influence on the formation or dismissal of the government. Nonetheless the Bundesrat, along with the Bundestag, plays a vital role in monitoring the Federal Government's activities.

This oversight is primarily manifested through Bundesrat involvement in the legislative process. Whilst the principle of separation of powers means that the government cannot simply promulgate bills, it does however initiate most legislation and draws up the statutory provisions down to the last detail in the national ministries. As all government bills must first be forwarded to the Bundesrat for its comments, the Bundesrat can scrutinise draft legislation thoroughly at this juncture – even before deliberations in the Bundestag.

The Bundesrat's composition makes it highly effective in this scrutiny process, for it includes members of the governments in the federal states and also has scope to appoint experienced public officials from the *Länder* to participate directly in committee meetings as representatives. This system means that the federal ministries deal with a highly qualified counterweight on points of substance;

as representatives from the federal states know their policy areas inside out, they can examine all spheres of domestic policy in great detail – even though the state is active in so many different areas and the subject-matter addressed tends to be highly complex. These comments also hold true for European Union affairs, which can no longer be categorised as classical foreign policy, but might well be described as European domestic policy due to increasing European integration. As the EU's structure to date empowers Member States' governments to decide on European law-making and politics, oversight of the Federal Government's activities in this area is crucial. That is why the Bundesrat's rights of participation and scrutiny – as well as those of the Bundestag – have been strengthened by Article 23 of the Basic Law, which was incorporated into the constitution in 1992 and made more specific in 2009 through the bill accompanying the Lisbon Treaty.

The Bundesrat also takes on a comprehensive monitoring role when it comes to the Federal Government's executive activities, i.e. issuing statutory instruments and general administrative regulations, for most of these provisions can only be adopted with Bundesrat consent. As the Bundestag is only involved in these matters in very exceptional cases, government activity in this area is subject to scrutiny exclusively by the Bundesrat, representing the federal states.

### A challenging counterpart

Generally speaking, it is fair to say that the Bundesrat is a more challenging political counterpart for the Federal Government than the Bundestag, for within the parliamentary system the majority in the Bundestag determines which party or parties are in government and thus supports the government. In contrast, other parties may form a majority in the Bundesrat and different viewpoints may influence decisions:

► The party-political mix in the Bundesrat and Bundestag may differ, as the elections to the parliaments in the federal states, which indirectly determine the Bundesrat's composition, are held at different times than elections to the Bundestag and frequently produce different outcomes. As a result, the Federal Government may, so to speak, be confronted with an "opposition"

in the Bundesrat that can take decisions as a majority there, rather than being limited to a traditional opposition role.

- Bundesrat members, particularly the Minister-Presidents with their "local fiefdoms", may enjoy particular independence due to their personalities and the trust their electorate places in them. As a result, the policies they pursue may not be determined by party-political considerations.
- The Bundesrat's decisions are rooted in political and administrative experience gained on the spot.
- The Federal Government must also pay attention to the need to safeguard the interests of the federal states, the key responsibility for the Bundesrat.

## Counterweight and corrective for Bundestag decisions

The Basic Law provides that two legislative bodies shall be responsible for federal legislation. The Bundestag and the Bundesrat are however not accorded entirely equivalent status. The degree of Bundesrat participation varies. In the case of consent bills, the

Bundesrat's corrective role is immediately apparent, but it also plays a part, albeit to a lesser extent, when it comes to objection bills. Furthermore, the Bundesrat may introduce new or additional arguments and decisions into the legislative process.

## Continuity and stability in the democratic federal system





The Bundesrat can, if necessary, also thwart particular bills. The focus, though, is not on saying “no” or on conflict but rather on being able to agree to a “yes” and on compromise through negotiation. This is precisely what distinguishes its corrective function:

### Participation

- ▶ The Bundesrat’s involvement in the legislative process is an expression of the separation of powers and the balance of power within the federal system. As the body that represents the *Länder*, the Bundesrat must safeguard their interests within the federal system. Drawing on the administrative experience that the federal states acquire from enforcing legislation, it can also contribute decisively to ensuring the quality and enforceability of federal legislation.
- ▶ Participation obliges the Bundestag and Bundesrat to weigh up and balance various considerations, to exercise restraint and moderation – to reach an appropriate consensus.
- ▶ Participation enables majorities that reflect the situation in the *Länder* and therefore ensures broader social acceptance of political decisions.
- ▶ Participation means continuity and stability if a balance of interests and broad-based majorities can be achieved, as in that case election

results do not trigger a radical change of course, even in times when competing political camps are almost neck-and-neck.

### Significance

The key determinant of the Bundesrat’s political significance is that it is not simply an advisory body but plays a decisive role in the Federation’s legal order. This is the foundation of its strong position vis-à-vis the Bundestag and within the overall constitutional structure.

### Heated political debates

As is the case generally when it comes to the separation of powers, a degree of tension arises concerning the distribution of competences and this may be expressed in heated political debates. Particularly during election campaigns, those debates can turn rather strident. Bearing in mind, however, that such out-of-the-ordinary situations should not be over-emphasised, particularly as unusual incidents are obviously more “newsworthy” in journalism than placid routine, the overall evaluation is unambiguously positive: extremely few conflicts between the Bundestag and Bundesrat remain unresolved. Just a handful of draft bills have failed due to the Bundesrat.

## Linking the Federation and the federal states

The Bundesrat does not merely function as a counterweight to the Bundestag and the Federal Government, but is simultaneously a link between the Federal Government and the *Länder*. It represents both the overall state, the Federation, as a whole and the 16 federal states as its constituent states. That means that the Bundesrat is the federal-level chamber for the federal states, but at the same time is also the chamber of the *Länder* at the federal level. Given the close intertwining of national and federal state responsibilities – which is much closer than in the USA, for example – this role as “go-between” is especially

important. The Bundesrat must safeguard the federal states’ concerns while at the same time taking into account the requirements of the German state as a whole. Everyone involved in decision-making in the Bundesrat must consider the national interest when appraising the interests of the federal states and vice-versa. That means that through the Bundesrat, which is a body at the federal level, the federal states are very closely involved in policy decisions taken by the German state as a whole. They are not just “underlings” but also participate in decision-making.

## Continuing a positive tradition Forerunners of the Bundesrat

The Bundesrat is not an innovation dreamt up in the Basic Law. On the contrary, it was preceded by a whole host of institutions with membership structures and remits either identical to or at least very similar to the modern Bundesrat.

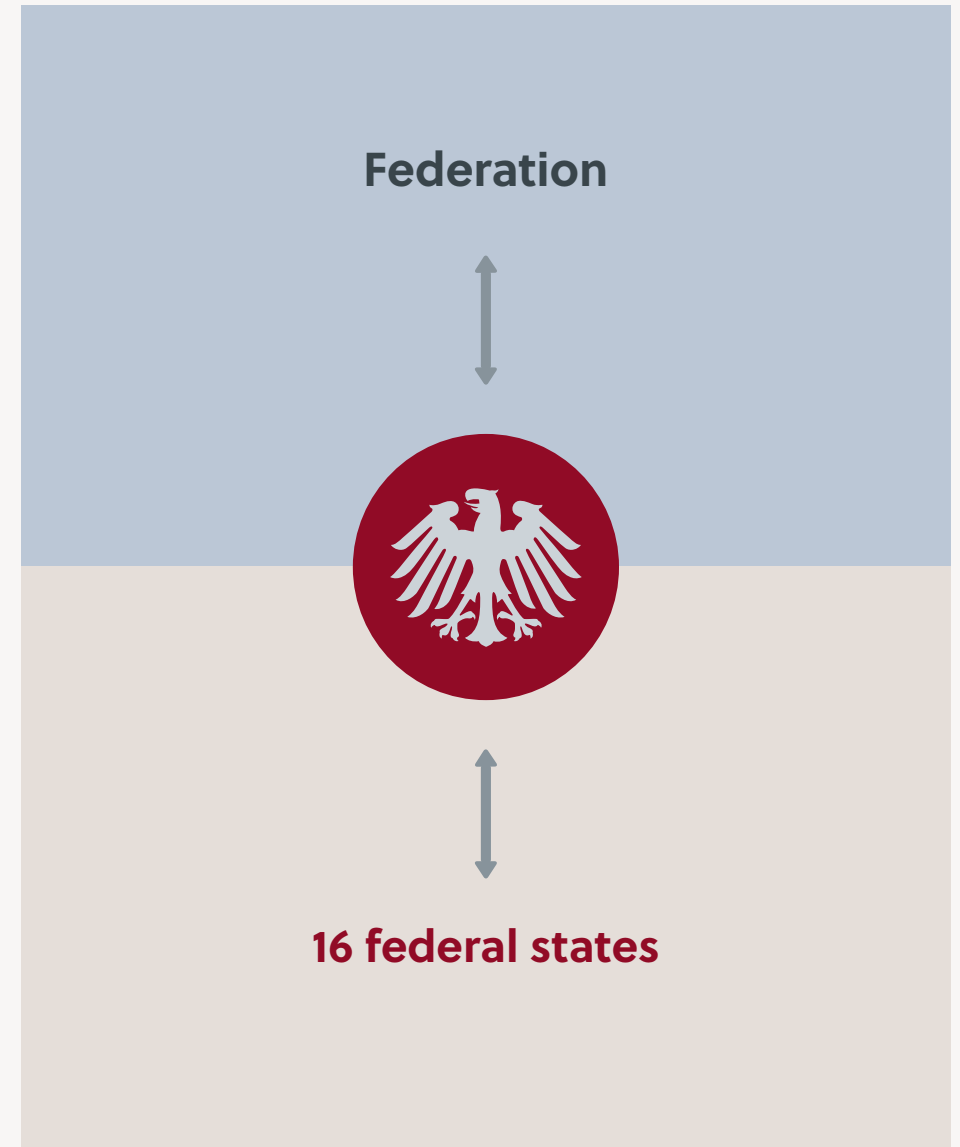
The Regensburg Perpetual Imperial Diet (1663–1806) of the Holy Roman Empire of the German Nation and the Frankfurt Federal Diet of the German Confederation,

established at the 1815 Congress of Vienna, might even be counted as forerunners of the Bundesrat, albeit with certain caveats.

### The Federal Council of the German Empire

The Federal Council of the 1871 German Empire was a true predecessor of the Bundesrat. It was a key component in the constitutional order. Alongside the Kaiser, it was the supreme body of the Reich.

## Link between the Federation and the federal states



Every member of the federation could send delegates to the Federal Council corresponding to the number of votes it held there, which was calculated on the basis of the number of inhabitants. As in the Bundesrat today, each of the constituent states had to cast its votes en bloc. The Federal Council had much greater responsibilities, along with more opportunities to influence policy, than the Reichstag, which represented the people. The Federal Council could even dissolve the Reich Parliament if the Kaiser agreed.

### The Reichsrat in the Weimar Republic

The constitution of the 1919 Weimar Republic stipulated that all state power was vested in the people. That of course meant that the state body that represented the people, the Reichstag (the lower house of parliament), acquired greater political significance. Scope for the Reichsrat (the upper house of parliament) to participate in the legislative process was restricted. It could only object to bills adopted by the Reichstag, but the Reichstag was entitled to reject these objections with a two-thirds majority. In such cases, the President of the Republic decided whether to promulgate the bill nonetheless or to order a referendum on it.

The Reichsrat was dissolved on 14th February 1934 by a government decree based on the 1933 Enabling Act. Prior to this, although the federal states continued to exist in formal terms, their sovereign rights had already

been transferred to the Reich, the *Länder* parliaments had been dissolved and the governments of the federal states placed under the control of the Reich government.

### Constitutional DNA

After the collapse of the Nazi regime, the Parliamentary Council drew the logical consequences from that preceding period of dictatorship when drafting the Basic Law: Federalism became one of the inalienable elements of the state system, with the Bundesrat as the constitutional body representing the federal states. Although the Bundesrat has more limited powers than its counterpart in the 1871 German Empire, it still holds a strong position, while its main hallmarks pick up on the tradition of its two forerunners:

- ▶ constitutional federal body (German Empire/Weimar Republic),
- ▶ composed of representatives from the federal state governments,
- ▶ tiered number of votes per federal state,
- ▶ votes are cast en bloc by each federal state on the basis of instructions from the *Land* government,
- ▶ powers and responsibilities pertaining to both legislation and administration of the state as a whole.

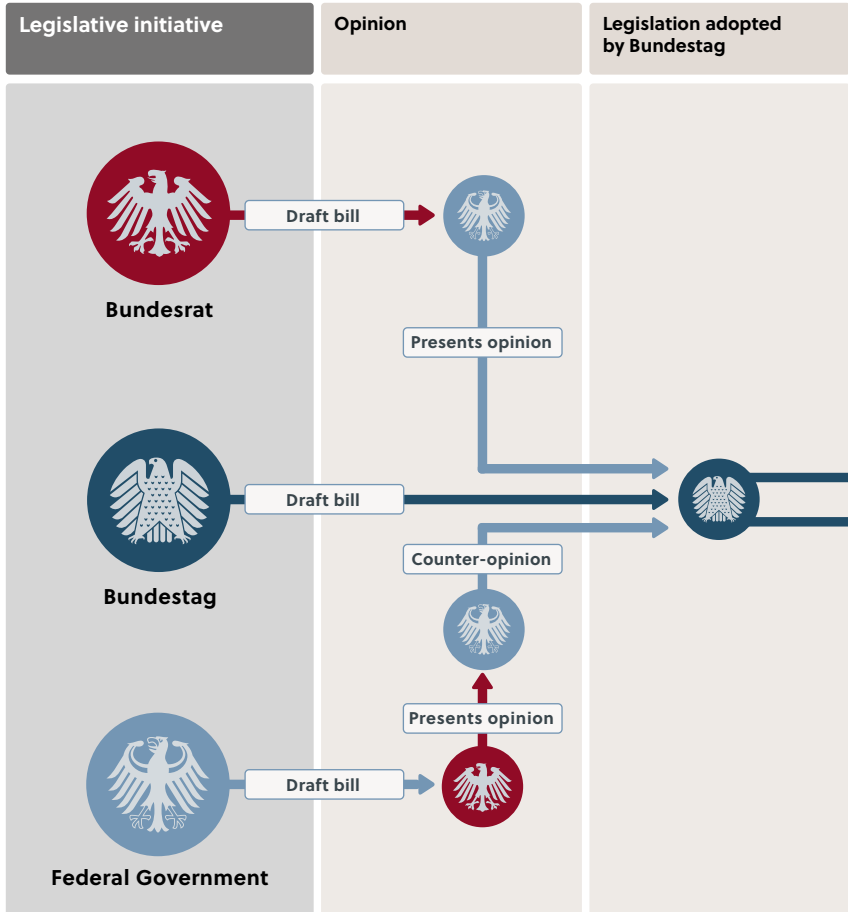


# Bundesrat – A statistical overview

Legislative term of the Bundestag	1949–1953	1953–1957	1957–1961	1961–1965	1965–1969	1969–1972	1972–1976	1976–1980
	1.	2.	3.	4.	5.	6.	7.	8.
Bills introduced by the Federal Government	481	434	391	370	414	350	470	323
Bills introduced by the Bundesrat	29	16	5	8	14	27	75	53
Bills introduced by the Bundestag	301	414	207	245	225	171	136	111
Bills passed by the Bundestag	559	518	428	429	461	334	516	354
Referral to the Mediation Committee	75	65	49	39	39	33	104	77
of which by the Bundesrat	70	59	46	34	34	31	96	69
Laws promulgated	545	510	424	425	453	333	506	339
Laws promulgated requiring Bundesrat consent	42%	50%	56%	53%	49%	52%	53%	54%
Bills denied Bundesrat consent (and not adopted)	8	6	0	3	2	1	8	9
Objections	1	1	3	0	0	1	5	7
of which overridden by the Bundestag	0	1	1	0	0	1	4	5
Statutory instruments examined by the Bundesrat	426	579	471	550	525	471	680	554
Administrative regulations examined by the Bundesrat	110	66	58	72	62	60	81	78
European Community/ Union draft legislation			24	478	826	759	1017	660
Plenary sessions	116	69	54	50	56	43	55	51
Committee meetings	761	604	475	443	545	384	523	503
Sub-committee meetings	331	283	243	262	258	266	297	293
Meetings of the Chamber of European Affairs								

1980–1983	1983–1987	1987–1990	1990–1994	1994–1998	1998–2002	2002–2005	2005–2009	2009–2013	2013–2017
9.	10.	11.	12.	13.	14.	15.	16.	17.	18.
155	283	324	413	443	446	353	509	490	526
38	61	51	108	147	95	116	100	84	106
58	183	227	297	329	328	211	264	278	148
139	320	369	507	565	558	401	616	553	553
20	6	13	85	92	77	102	18	44	3
17	6	13	71	74	66	90	17	34	2
136	320	366	493	551	548	386	613	543	548
52%	60%	55%	57%	60%	55%	51%	42%	38%	36%
2	0	1	10	10	7	5	0	4	2
7	0	1	5	13	5	22	3	1	0
6	0	1	4	12	2	22	3	1	0
298	448	546	639	619	504	436	468	454	400
45	71	61	47	69	58	30	44	29	31
405	634	769	783	746	604	511	567	694	420
28	52	53	51	54	50	35	47	53	45
289	541	593	794	732	683	480	611	584	591
147	287	395	344	199	160	83	84	69	64
		3	4	1	1	0	0	1	0

# The federal legislative procedure



**1**  
Draft bills are submitted to the Bundestag by the Federal Government, from within the Bundestag (submitted by a parliamentary group or at least 5% of the members) or by the Bundesrat. The right to submit a bill is known as the right of initiative.

**2**  
Legislative initiatives from the Bundesrat are transmitted via the Federal Government to the Bundestag. In the process, the Federal Government also indicates its views on the proposed legislation. Draft bills from the Federal Government are first addressed in the Bundesrat (first reading). The Bundesrat may adopt a position on the government's proposals. The Federal Government can also present its views on this opinion (counter-opinion).

**3**  
The draft bill is addressed in three readings in the Bundestag. After the first reading, the proposed legislation is usually allocated to the competent specialised committees. The second round of deliberations is generally followed directly by the third reading with the final vote: The Bundestag either adopts the draft bill or rejects it.