

# Strengthening the role and impact of petitions as an instrument of participatory democracy

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Lessons learnt from a citizens'  
perspective 10 years after the entry  
into force of the Lisbon Treaty





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## **Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the PETI Committee, evaluates the state of play of the right of petition ten years after the inclusion of the principle of participatory democracy in the EU treaties. After contextualising the right of petition within the broader EU participatory infrastructure, its ultimate objective is to provide a set of recommendations aimed at unleashing its democratic potential while overcoming its major structural limitations.

This document was requested by the European Parliament's Committee on Petitions.

## **AUTHORS**

Alberto ALEMANNO, Jean Monnet Professor of European Union Law, HEC Paris.

## **ADMINISTRATOR RESPONSIBLE**

Ottavio MARZOCCHI

## **RESEARCH AND EDITORIAL ASSISTANT**

Sybille PECSTEEN de BUYTSWERVE

## **LINGUISTIC VERSIONS**

Original: EN

## **ABOUT THE EDITOR**

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

Email: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

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## LIST OF ABBREVIATIONS

<b>AFCO</b>	Committee on Constitutional Affairs
<b>AGRI</b>	Committee on Agriculture and Rural Development
<b>DG PRES</b>	European Parliament's Directorate General of the Presidency
<b>EC</b>	European Communities
<b>ECI</b>	European Citizens' Initiative
<b>ECSC</b>	European Coal Steel Community
<b>EEA</b>	European Economic Area
<b>EEC</b>	European Economic Community
<b>ENVI</b>	Committee on the Environment, Public Health and Food Safety
<b>EP</b>	European Parliament
<b>EPRS</b>	European Parliament Research Service
<b>EU</b>	European Union
<b>IIA</b>	Interinstitutional Agreement
<b>ITRE</b>	Committee on Industry, Research and Energy
<b>MEP</b>	Member of the European Parliament
<b>MS</b>	Member State
<b>NGO</b>	Non-governmental organisation
<b>PETI</b>	Committee on Petitions
<b>PETIPortal</b>	Petitions Web Portal
<b>SIR</b>	Summary, Information and Recommendation
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TEU</b>	Treaty on European Union
<b>UN</b>	United Nations

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## EXECUTIVE SUMMARY

### Background

Petitioning represents the oldest, most accessible, permanent and general-purpose participatory mechanism for any individual who intends to enter into contact with the EU institutional apparatus. As such, the right to petition provides EU citizens and residents with a simple means of contacting the European institutions with complaints or requests for action in relation to “orphan” or “dormant” issues that fail to get the attention and action of other European Parliament committees or EU institutions, in particular concerning problems related to the application of EU law at the national and local level. The right to petition plays different and complementary functions, from administrative and political oversight over the EU Commission and the Member States to legislative agenda-setting, while offering a unique mechanism of representation for individuals and minorities – such as non-EU citizens, migrants and minors – who currently lack such representation. There are, however, still some major structural issues over effectively ensuring the exercise of the right to petition and the full realisation of its multiple democratic functions within the current EU participatory infrastructure. It does so at time the EU undergoes a major democratic exercise – the Conference on the Future of Europe – that, for the first time since 2007, may lead to institutional reform and put to test democratic innovations, such as citizens’ assemblies at the transnational level.

### Recommendations

Against this background, this study identifies and systematises the EU petition system’s major flaws – focusing on its design, accountability and actual practice – in order to provide a set of recommendations on how to strengthen the role and impact of the right of petition as the privileged instrument of EU participatory democracy.

First, the right of petition, like any other EU participatory channels, remains largely unknown, and little used. To overcome this limited literacy, this study recommends providing newly registered petitions with greater publicity and visibility, and, more broadly, to embrace a pro-active communication and offer material support to petitioners.

The second structural flow is the fragmentation of the EU participatory infrastructure, stemming from the scattered creation of its various participatory instruments across time. As a result, the right to petition has been overshadowed by specialised channels, such as the right to complain to the European Ombudsman – or to the EU Commission – as well as the right to register a European Citizen Initiative (ECI). To overcome such a fragmentation, the study suggests setting up a single-entry point into the EU participatory infrastructure to guide users when trying to engage with the EU.

Another major limitation to the right of petition is its structural dependency on third-party cooperation, notably that by the EU Commission as well as other parliamentary committees and Member States.

To incentivise cooperation, the study recommends raising the political profile of pending petitions by relying more often on fact-finding, questioning, own initiative reports, temporary committees of inquiry as well as intergroups, joint committee proceedings and joint rapporteurship.

Moreover, it suggests to ‘name-and-shame’ failed instances of cooperation (as well as ‘name-and-fame’ successful ones) through the systematic publication of exchanges.

Finally, it advances the idea of strategically relying on the European Ombudsman – through the lodging of MEP’s complaints against the Commission – to improve the Commission’s cooperation with PETI in handling petitions. Indeed, should the Commission fail to motivate a request for information submitted

by the PETI Committee, the Ombudsman could find – as it did in the past in relation to complaints – maladministration on the part of the Commission by failing to provide the petitioner and/or PETI Committee with sufficient reasons for its decision to take no further action on the case.

Last, but not least, the final structural limitation of the right of petition is PETI Committee's limited capacity and, more broadly, the 'attractiveness problem' it faces within the Parliament itself, both among MEPs and staff. On this point, the study recommends enhancing not only the capacity and resources of the PETI Committee, but also to embrace a more proactive approach to make its work more attractive both internally and outside world, by drawing inspiration from the work of the office of the EU Ombudsman.

Ultimately, the study demonstrates that a fully functioning petition system, operating within a more accessible, intelligible and integrated EU participatory infrastructure, could provide a permanent and credible bottom-up cooperation and link between citizens and the EU capable of addressing the current gap existing between them, which is one of the issues at the heart of the Conference on the Future of Europe's *raison d'être*.

# 1. INTRODUCTION\*

This study evaluates the state of play of the right of petition, the oldest channel of citizen participation in the EU<sup>1</sup>, ten years after the inclusion of the principle of participatory democracy in the EU treaties<sup>2</sup>. Its ultimate objective is to provide a set of recommendations aimed at unleashing its democratic potential.

The right to petition allows any individual EU citizen or resident on the territory of the Union, including minors and illegal migrants, as well as companies and organisations to address, acting individually or in association with others, the European Parliament on an issue that falls within the European Union's fields of activity. It may entail the filing of a complaint, request or an observation concerning problems related to the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter, including ongoing legislative matters. A petition may relate to issues of public or private interest.

By drawing the European Parliament's attention, and more broadly that of the EU, to detect an issue on the application of EU law at Member State level or consider a position on a specific EU related matter, it offers a permanent feed-back mechanism turning citizens not only into watchdogs of the application of EU law,<sup>3</sup> but also, more broadly, into actors in the Union's democratic life. As such, petitions belong to the broader EU participatory infrastructure<sup>4</sup>, which is made of a variety of channels of participation that – regardless of their specific and most immediate aims – enable citizens “to participate in the democratic life of the Union”<sup>5</sup>. These include inter alia the European Citizen Initiative (hereinafter, ECI)<sup>6</sup>,

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\* This study benefited from the input of Leticia Zuleta de Reales Ansaldo, David Lowe, Ottavio Marzocchi, Sybille Pecsteen de Buytsverve, Carl Meak, Benjamin Bodson and Nikos Vogiatzis as well as several petitioners who took the time to share their experience in interacting with the PETI Committee, as well as other EU bodies, including the European Ombudsman and the European Commission. The usual disclaimer applies. Email: [alemanno@hec.fr](mailto:alemanno@hec.fr)

<sup>1</sup> While its formal recognition dates back the Treaty of Maastricht and is associated with the EU citizenship Article 24 TFEU (no recognition in the TEU), petitions were already accepted as a custom by Common Assembly of the ECSC and the European Parliament well-before 1992. There was just one petition – in 1958 – in the first five years of activity; just a few petitions, fewer than 10, in the 10 years from 1964 to 1974; and, finally, a progressive increase in the four years from 1975 to 1978. See, The citizen's appeal to the European Parliament: petitions 1958-1979, European Parliament, 2009.

<sup>2</sup> Article 10(3) (Every citizen shall have the right to participate in the democratic life of the Union). See, e.g., Stijn Smismans, The Constitutional Labelling of “the democratic life of the EU”: representative and participatory democracy, in A. Follesdal and L. Dobson (eds), *Political Theory and the European Constitution*, London: Routledge, 122-138; Acar Kutay, Limits of Participatory Democracy in European Governance, *European Law Journal* 21, No. 6 November 2015, pp. 803-818, at 814.

<sup>3</sup> Report on the outcome of the Committee on Petitions' deliberations during 2018 (2018/2280(INI)), Committee on Petitions, January 2019, let. L and M.

<sup>4</sup> Michael Nentwich, 'Opportunity Structures for Citizens' Participation: The Case of the European Union' in Albert Weale and Michael Nentwich (eds), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship* (Routledge 1998) pp. 125 – 140; Alberto Alemanno, Europe's Democracy Challenge: Citizen Participation in and Beyond Elections, *German Law Journal*, Volume 21, Special Issue 1: 20 Challenges in the EU in 2020, January 2020, pp. 35 et seq.

<sup>5</sup> Article 10(3) TEU.

<sup>6</sup> Article 11(4) TEU and Article 24 TFEU. This is the most recent EU participatory mechanism, which in turn represents the first transnational participatory democracy instrument – allowing at least 7 EU citizens coming from 7 different Member States to suggest new policy initiatives in any field where the EU has power to propose legislation (such as the environment, agriculture, energy, transport or trade) after collecting one million signatures.

the right to complain to the EU Ombudsman<sup>7</sup>, complaints to the European Commission<sup>8</sup>, public consultations of the EU Commission<sup>9</sup> as well as requests for access to documents to the EU institutions<sup>10</sup>.

Together, they give expression – as recognised by the Court of Justice – to “the right of citizens to participate in the democratic life of the Union, provided for in Article 10(3) TEU”<sup>11</sup>. When compared to other participatory channels, the right to petition is not only the oldest<sup>12</sup>, but also the most accessible and permanent way enabling virtually anyone to enter into contact with the EU institutional apparatus. Its wide scope makes this mechanism a multi-purpose channel of communication between citizens and EU institutions and bodies. As such, EU petitions represent, at least on paper, the cornerstone of participatory democracy in the EU<sup>13</sup>, by giving citizens a voice and take their policy concerns directly to the heart of Parliament, and of the whole Union, so as to ultimately influence its administrative, legislative and political agenda.

There are, however, still some structural issues over effectively ensuring the exercise of the right to petition and the full realisation of its multiple democratic functions.

This study identifies and systematises these major flaws or weaknesses, within the current EU petitions system – from its design to accountability and actual practice – so as to provide a set of recommendations on how to strengthen the role and impact of petitions as the privileged instrument of EU participatory democracy. It does so at time the EU undergoes a major democratic exercise – the Conference on the Future of Europe – that for the first time since 2007 may lead to institutional reform and put to test democratic innovations, such as citizens’ assemblies at the transnational level<sup>14</sup>.

By building upon the extensive scholarships on participatory democracy in the EU, and the more limited one focusing on the right to petition, this report proceeds as follow.

Section 2 diachronically reconstructs the genesis and evolution of the right to petition, by identifying its multiple functions and contextualising this instrument within the emergence of EU participatory democracy, under EU law. To identify the major flaws of the current EU petition system, from its design, accountability and actual practice, section 3 provides an in-depth, systematic examination of the EU petition cycle, by focusing on its procedures and output. It offers a detailed and systemic examination of the entire life cycle of a petition, starting from its submission and eligibility requirements needed to lodge it until a final decision is taken, including its closing. As such, it contains detailed overview of the process and actors governing the examination of a petition before the European Parliament. The final

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<sup>7</sup> Article 20(2) let. d) TFEU and Article 24 TFEU.

<sup>8</sup> Article 20(2) let. d) TFEU and Article 24 TFEU.

<sup>9</sup> Article 11(3) TEU.

<sup>10</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 , 31/05/2001, pp. 43 – 48.

<sup>11</sup> C-589/15 P, para 24.

<sup>12</sup> See supra note 1.

<sup>13</sup> It is one of the main rights granted by the Treaties to Union citizens, as provided by Articles 20, 24 and 227 of the Treaty on the Functioning of the European Union (TFEU), as well as by Article 44 of the Charter of Fundamental Rights of the EU).

<sup>14</sup> Joint Declaration on the Conference on the Future of Europe, Engaging with Citizens for European Democracy, Building a more resilient Europe, [https://ec.europa.eu/info/sites/default/files/en\\_-\\_joint\\_declaration\\_on\\_the\\_conference\\_on\\_the\\_future\\_of\\_europe.pdf](https://ec.europa.eu/info/sites/default/files/en_-_joint_declaration_on_the_conference_on_the_future_of_europe.pdf)

section 4 identifies, systematises and discusses the major structural flaws that prevent the right of petition from unleashing its democratic, participatory functions. Those structural limitations are:

- a. **Limited petition literacy:** the right of petition, like other EU participatory channels remain largely unknown, and little used, as epitomised by the drop in number of petitions filed over the last years.
- b. **Fragmentation of the EU participatory infrastructure:** due the scattered creation of various participatory instruments, the right to petition has been overshadowed by specialised channels, such as the right to complain to the European Ombudsman and the European Commission as well as the right to register a European Citizen Initiative (ECI).
- c. **The European Parliament's structural dependency on cooperation:** the handling of petitions is to a great extent reliant on third-party cooperation, be it external to the Parliament, such as the European Commission and the Member States, or internal, such as parliamentary committees. Unless new incentive mechanisms are established, this co-operations risks hijacking the problem-solving potential of the EU petition system and frustrating petitioners' expectations.
- d. **Limited capacity and the 'attractiveness problem':** given the resource-intensive nature of petition's handling and the inherently proactive stance needed to satisfy petitioner's demand, the PETI Committee should have greater capacity and resources than what it currently has. The chronic understaffing has also to do with PETI Committee's limited attractiveness within the European Parliament, both within Members and staff.

To address each of these structural limitations, the final section advances one or more recommendations on how to best address and potentially overcome them.

## 1.1. Genesis and rationale of the EU right of petition

This section traces the genesis and evolution of the right to petition, by identifying its functions and contextualising this instrument within the emergence of EU participatory democracy, under EU law.

### 1.1.1. Genesis of the right to petition: from a custom to a right

Petitioning is one of the first political rights granted to citizens in history<sup>15</sup>. Its underlying concept and practice go far back into human past, with records of ancient Egyptian workers petitioning for improved working conditions. It finds its origin in the ancient right to appeal to the sovereign to urge action in case of abuse or to obtain support in case of adversity. With the English Petition of Rights (1628) and the Bill of Rights (1689),<sup>16</sup> the right to petition was expressly provided by law. As sovereignty moved to the people, petitions have been redirected to parliament where the new holders of sovereignty sit. That is where petitions must now be addressed to.

<sup>15</sup> Stephen Higginson, A Short History of the Right to Petition Government for the Redress of Grievances 96 Yale L.J. 142 (1986-1987); WS Holdsworth, History of Remedies Against the Crown, 38 L. Q. Rev. 141 (1922); Durelle-Marc, Y-A., 2008, "Nature et origines du droit de pétition" in Journée d'études, L'individu face au pouvoir : les pétitions aux assemblées parlementaires", in Revue administrative (n° spécial L'individu face au pouvoir : les pétitions aux assemblées parlementaires), pp. 47-60.

<sup>16</sup> Maggie McKinley, Petitioning and the Making of the Administrative State, The Yale Law Journal, 1538.

Petition's ultimate goal has always been to allow those in power to maintain a relationship with the community they govern and vice versa<sup>17</sup>. In the US, historically, the petition process has been for a long time the primary infrastructure by which individuals and minorities participated in the law making-process<sup>18</sup>. In so doing, it performed a democratic function: that of representing the political powerless, including the unenfranchised.

In the EU, the right of petition traces its origins as far back as 1953 when the Common Assembly of the European Coal Steel Community (hereinafter ECSC)<sup>19</sup>, deeming itself to be a real and proper parliament, recognised itself competent and willing to receive petitions in its own rules of procedure<sup>20</sup>. Those were then – following the creation of the European Communities – taken up by the European Parliament<sup>21</sup>. Due to the absence of European Parliament records on the insertion of a dedicated regime for citizen petitions, it remains impossible to assess what considerations inspired it<sup>22</sup>.

In any event, the right of petition to the European Parliament is the oldest participatory mechanism in the Union<sup>23</sup>. Despite being present from the very beginning of the European parliamentary history, the right to submit petitions to the European Parliament was not explicitly provided for in the Treaties establishing the European Communities until the 1992 Maastricht Treaty.

- *Petitions from 1958 to 1979*

There was just one petition – in 1958 – in the first five years of activity<sup>24</sup>; just a few petitions, fewer than 10, in the 10 years from 1964 to 1974; and, finally, a progressive increase in the four years from 1975 to

<sup>17</sup> Richard Hough, 'Do Legislative Petitions Systems Enhance the Relationship between Parliament and Citizen?' (2012) 18 *Journal of Legislative Studies*, 479, 491.

<sup>18</sup> Mckinley, *supra* note, 1538.

<sup>19</sup> Rule 39 of the Rules of Procedure of the Common Assembly of 12 January 1953, amended on 12 May the following year (Article 42).

<sup>20</sup> The literature on the right to petition is extremely limited in EU studies, with a few notable exceptions. See, e.g., Helene Surrel, 'Le "droit de pétition" au Parlement européen' (1990) *Revue du marché commun*, No 335, 219; Asteris Pliakos, 'Les conditions d'exercice du droit de pétition', 29 *Cahiers de Droit européen*, 1993; Epaminondas Marias, 'The right to petition the European Parliament after Maastricht', *European Law Review*, 1994, 19(2), 169-183; Saverio Baviera, 'Les pétitions au Parlement européen et le médiateur européen' (2001) *Revue du marché commun et de l'Union européenne*, 445, 129; Ian Harden, 'What future for the centralized enforcement of Community law?' (2002) 55 *Current Legal Problems* 495, at 507-508; Franco Piodi, 'The citizen's appeal to the European Parliament: Petitions 1958-1979', *European Parliament Archive and Documentation Centre (CARDOC)*, European Parliament 2009; Rule 39 of the Rules of Procedure of the Common Assembly of 12 January 1953, amended on 12 May the following year (Article 42).

<sup>21</sup> Rule 45 of the Rules of Procedure of the European Parliamentary Assembly, as the new Assembly was called, substantially followed the petition's practice introduced by the regulatory structure of the ECSC Common Assembly. For an analysis of the original EU petition system, Franco Piodi, 'The citizen's appeal to the European Parliament: Petitions 1958-1979', *European Parliament Archive and Documentation Centre (CARDOC)*, European Parliament 2009.

<sup>22</sup> Email correspondence with the Publication Office of the European Union, May 2021.

<sup>23</sup> While its formal recognition dates back the Treaty of Maastricht and is associated with the EU citizenship Article 24 TFEU (no recognition in the TEU), petitions were already accepted as a custom by Common Assembly of the ECSC and the European Parliament well-before 1992. See, *The citizen's appeal to the European Parliament: petitions 1958-1979*, European Parliament, 2009.

<sup>24</sup> Originally, the admissibility assessment belonged to the President of the ECSC's Common Assembly, who forwarded the petition to the competent committee – the Committee on Rules of Procedure –, which decided whether the petition fell under the competence of the ECSC. Only in the affirmative, the petition was forwarded to the High Authority (today's EU Commission), to the Council or to one of the committees of the Assembly, for the preparation of a report.

1978<sup>25</sup>, with an average however of fewer than 10 petitions per year. By then a total of 128 petitions were lodged to the European Parliamentary Assembly, renamed European Parliament from 1962 on<sup>26</sup>.

While the Rules of Procedure determined the formal conditions for their submission, admissibility, and examination, they did not provide a definition of what a petition was. In a 1973 opinion of the European Parliamentary's Committee on Legal Affairs to the Bureau, however, a distinction is made between three different types of petitions:

1. Petition-complaint (to denounce the disapplication of EU law)
2. A non judicial appeal (to protect the petitioner's right)
3. A petition record (to provide information or a request to EU institutions)<sup>27</sup>.

In this first phase of development (1953-1979), over half of the petitions came from two categories of actors: associations representing organised interests – mostly universal as opposed to private interest – and EU (then Community) officials<sup>28</sup>; two groups more likely to be aware of – and accustomed – to make their voice heard within the European decision-making bodies. Some petitions were submitted by national members of parliament. When it comes to the subjects involved, over half of the total dealt with four subjects: international affairs (such as the defense of civil rights in countries ruled by dictatorships), European institutional matters, animal protection and issues related to the European civil service (virtually all submitted by Community officials)<sup>29</sup>; other subjects included: the environment, rights of mobile European citizens, health and regional matters. When it comes to the geographical provenance of the petitions, the vast majority of petitions came from the four largest Member States: Germany<sup>30</sup>, France, Italy and the United Kingdom<sup>31</sup>.

As regards their outcome, one third of the 128 petitions filed, were dismissed (either because inadmissible (21), already covered by a Parliament resolution, the subject was no longer relevant); another third was transferred to another institution (29 to the Commission, 6 to the Council), while the Parliament took direct action on 21 petitions. Overall the Parliament followed up on (by forwarding or direct action) in 59 of the 128 petitions submitted between 1953 and 1979. It is worth mentioning that from 1958 until 1976 all incoming petitions were treated by the parliamentary committee competent for the subject area of the petition and not – unlike originally foreseen under the ECSC regime – centralised in one dedicated committee (i.e. the Committee on Rules of Procedure)<sup>32</sup>. This changed in 1976 when a new Committee for the Rules of Procedure and Petitions was established<sup>33</sup>.

<sup>25</sup> See, The citizen's appeal to the European Parliament: petitions 1958-1979, European Parliament, 2009.

<sup>26</sup> Ibidem.

<sup>27</sup> European Parliamentary's Committee on Legal Affairs to the Bureau, Draft opinion on the principles applicable to the examination of the petitions addressed to the European Parliament, PE 32158 of 30.01.1973 stored in CARDOC PE AP RP/JURI.1961 A0-0076/73 0040.

<sup>28</sup> Franco Piodi, The citizen's appeal to the European Parliament: petitions 1958-1979, European Parliament, 2009, p. 16.

<sup>29</sup> Ibidem, p. 18.

<sup>30</sup> It is worth noting that the extensive use of the petitions process through the Bundestag has not prevented German petitioners being among the most numerous at EU level.

<sup>31</sup> Piodi, supra, p. 17.

<sup>32</sup> Helene Surrel, 'Le "droit de pétition" au Parlement européen' (1990) *Revue du marché commun*, No 335, 219.

<sup>33</sup> OJ C 28 of 09-02.1976.

In 1977, the European Parliament adopted a resolution demanding that the right of petitions be conferred to the citizens of the Community<sup>34</sup>. According to some observers, the limited success of the European Parliament petition right until its formal recognition in the Maastricht Treaty should be viewed in the context of a broader decline in the use of petitions<sup>35</sup>.

- *Petitions from 1979 to 2020*

After the first direct elections to the European Parliament in 1979, the Parliament amended its rules of procedure and, in 1981, formally recognised the right of (then) Community citizens to submit petitions. The European Council subsequently adopted the report of the Adonnino Committee on a Citizens's Europe<sup>36</sup> and acknowledged for the first time the political significance of the right of petition. In 1987, a dedicated committee of the European Parliament – the Committee on Petitions – was established and entrusted with an exclusive competence to deal with “matters relating to petitions, the examination thereof and the action to be taken thereon”<sup>37</sup>.

However, it was only in 1989, with the signing of the Interinstitutional Declaration by the Presidents of the Parliament, the Council and the Commission, that a competence to receive and examine petitions was conferred onto the Parliament by the other institutions<sup>38</sup>.

Yet, despite such an interinstitutional support for the instrument over time, petitions remained a *custom* not a right deriving from EU law (then referred to as Community law). While the other Community institutions agreed that when petitions related to matters of Community competences they could be sent to the EU Commission, in its capacity of guardian of the Treaties, or to the relevant Member States<sup>39</sup>, neither the Commission nor the Member States were legally obliged to cooperate directly with the European Parliament on the issues brought up by the petition.

However, in these circumstances, the Commission could as a matter of principle bring an infringement procedure (then Article 169 EEC) against a Member State for breach of the principle of loyal cooperation.

The right to petition the European Parliament – in any EU language - was only recognised in 1992 in the Maastricht Treaty, as one of the rights associated to the European Union citizenship. This coincided with the establishment of the European Ombudsman and the creation of the associated right to complain to this new office to deal with maladministration on the part of the EU institutions. The right of petition was then formally integrated by the Maastricht Treaty into the EU Treaties.

<sup>34</sup> Resolution on the allocation of special rights to citizens of the European Community, Paris Summit 1974, DOCE n° C 299/27 of 12 December 1977.

<sup>35</sup> Nikos Vogiatzis, *The Past and Future of the Right to Petition the European Parliament* (manuscript on file with the author), June 2021.

<sup>36</sup> [http://aei.pitt.edu/992/1/andonnino\\_report\\_peoples\\_europe.pdf](http://aei.pitt.edu/992/1/andonnino_report_peoples_europe.pdf)

<sup>37</sup> PETI committee main webpage: <https://www.europarl.europa.eu/committees/en/peti/home.html>

<sup>38</sup> OJ C-120/90, 1989.

<sup>39</sup> That Interinstitutional Declaration renewed “the wish expressed by the European Council that all support be given to the European Parliament’s efforts to encourage and assist the custom of petitioning” and was pleased to note that the custom was becoming widespread.

This right has been successively confirmed and reinforced in the different versions of the rules of procedure of the European Parliament. As of 2000, the petition's right is also contained in the European Charter of Fundamental Rights<sup>40</sup>.

As a result, the right to petition the European Parliament has been recognised in the Treaties as one of the entitlements of every citizen of the Union, in parallel to "the right to apply to the European Ombudsman, and right to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language"<sup>41</sup>.

This development reflects at the EU level the increase in the number and range of opportunities for citizens' participation established and witnessed in modern democracies at the end of the 20<sup>th</sup> century<sup>42</sup>.

As a result of this 'participatory turn'<sup>43</sup>, the European Union provides today a wide array of participatory opportunities to its citizens to engage with – and potentially influence – EU decision-making<sup>44</sup>.

Seen from such a perspective, petitions became not only "*one of the channels for direct dialogue between Union citizens and their representatives*"<sup>45</sup>, but also the original, common-purpose mechanism enabling all individual EU citizens (or residents) to participate in the Union's democratic life.

After witnessing some growth in 1980s and 1990s, the number of petitions steadily increased until 2014 but it has been declining. After a record-high peak in 2013 and 2014, the overall number of petitions lodged before the European Parliament has dropped, and that despite the possibility to lodge the petitions online<sup>46</sup>, where a summary of registered petitions can also be read and supported by other citizens<sup>47</sup>.

<sup>40</sup> Article 44 CFR : « which states that "Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament".

<sup>41</sup> Article 20(2) TFEU.

<sup>42</sup> Nentwich, Michael, Opportunity Structures for Citizens' Participation: The Case of the European Union. European Integration online Papers (EIoP), Vol. 0 No. 1, 1996, available at SSRN: <https://ssrn.com/abstract=302082>

<sup>43</sup> See, e.g., Sabine Saurugger, The Social Construction of the Participatory Turn: The Emergence of a Norm in the European Union, 49 EUR. J. OF POL. RES. 471 (2010).

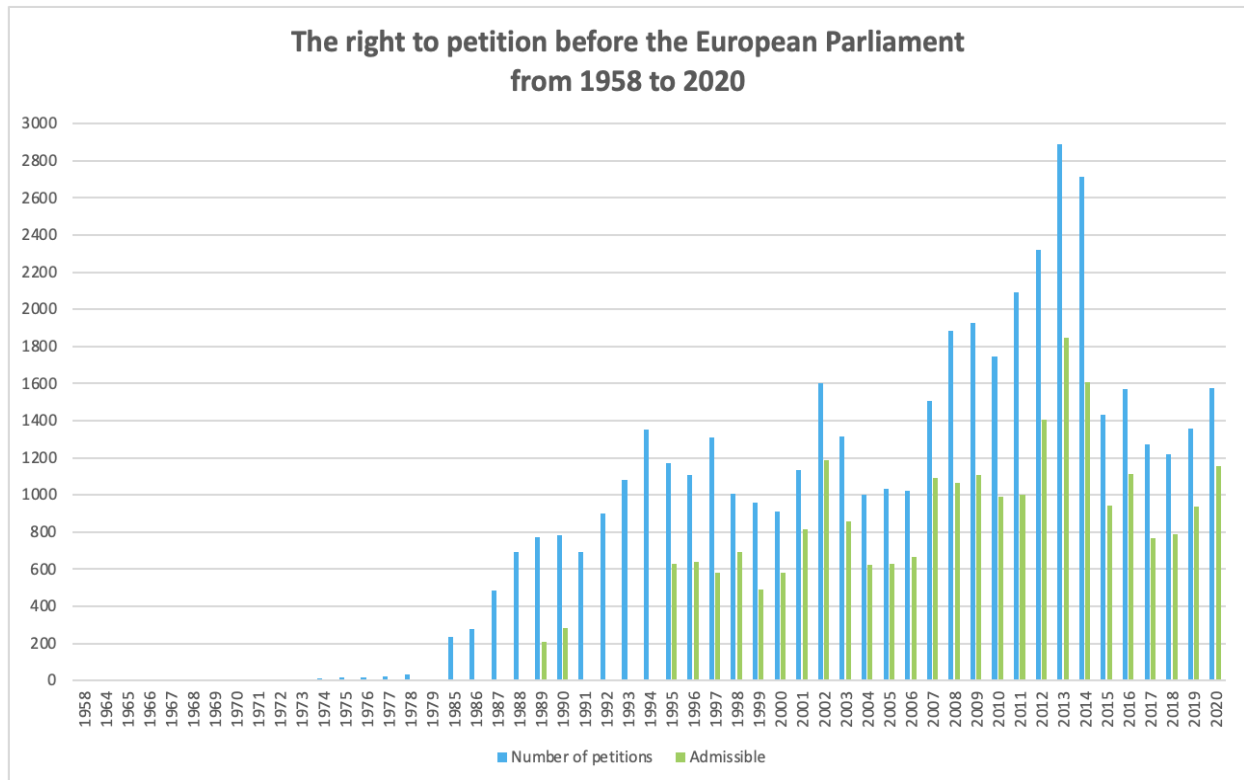
<sup>44</sup> In normative theory, participatory democracy entails the multiplication of opportunities for citizens' participation beyond elections. See, e.g., D. Della Porta, Can Democracy be Saved? (Polity Press, 2012), 187.

<sup>45</sup> Case C-261/13 P, Schönberger v/ European Parliament ECLI:EU:C:2014:2423.

<sup>46</sup> The Petitions Web Portal, which came into operation on 19 November 2014, was established during the 2009-2014 legislature to allow for an easier submission of petitions, more interaction and information services. It also however, initiated a filter mechanism designed to 'prevent non-petitions' from being registered.

<sup>47</sup> These actions of support to a petition entails the registration to the dedicated platform, and are therefore not immediately open to anyone.

Figure 1: Total number of petitions submitted (1958-2020)



Source: Alberto Alemanno, based on raw data provided by the PETI Committee

More recently, the right to petition has been highlighted in the framework of the idea of the “Europe of citizens” and the crisis of democracy denounced by many citizens who do not believe in politics anymore, whether it be national or European politics.

Indeed, since the Lisbon Treaty, the Union derives its democratic legitimacy not only from representative democracy – which remains its founding democratic principle –, but also from participatory democracy.<sup>48</sup> Under the former, citizens take part in the political process through their elective representatives—the European Parliament and the governments gathering in the Council—whereas under the latter, citizens participate directly via a multitude of channels of participation.<sup>49</sup> As such, citizens – with their actions and omissions – are also entitled “to *participate* in the democratic life of the Union”<sup>50</sup> and form an additional source of legitimacy for the Union<sup>51</sup>. This outcome, as crystallised by Article 10(3) TEU, originates in an earlier, two-decade effort, initiated by the Maastricht Treaty, to define the democratic nature of the EU legal order, in particular its own specific democratic model. One of the answers to such a quest for a more democratically legitimate Union has been to enhance citizen

<sup>48</sup> See Article 10 TEU.

<sup>49</sup> See Annette Schrauwen, *European Union Citizenship in the Treaty of Lisbon: Any Change at All?* 15 *Maastricht Journal of European & Comparative Law* 55, 2008 ; S. Besson & A. Utzinger, *Introduction: Future Challenges of European Citizenship*, 13 *EUR. L. J.* 573, 586 (2007).

<sup>50</sup> Article 10(3) TEU (“Every citizen shall have the right to participate in the democratic life of the Union”).

<sup>51</sup> A. Warleigh, *On the Path to Legitimacy? A Critical Deliberativist Perspective on the Right to the Citizens’ Initiative*, in C. Ruzza & Della Sala, *Governance and Civil Society in the European Union: Normative Perspectives*, Vol. 1, Manchester University Press, 2007, p. 64.

participation through broader access to the EU<sup>52</sup>, on the assumption that this could make up for EU citizens' inability to signify – under the current arrangements – their desire for change in the EU political agenda and, more broadly, close the gap between power and electoral accountability in the Union<sup>53</sup>.

From such a perspective, an effective and more visible petitions process is essential and creates a situation whereby participatory democracy, properly conducted through the petitions process, has the potential to reinforce representative democracy.

While participatory practices always existed in the history of the Union to legitimise EU policymaking<sup>54</sup>, the 'Provisions on Democratic Principles' of the Treaty of Lisbon<sup>55</sup> – by giving "expression to the principle of democracy in the EU legal order"<sup>56</sup> – recognised for the first-time participation as an autonomous, democratic principle upon which the Union is founded. This is further empowered and operationalised by principles such as openness and transparency<sup>57</sup> as well as equality<sup>58</sup>.

As a result, in constitutional terms, participation is no longer expected to play an exclusively instrumental role – to ensure the delivery of EU regulatory functions through the collection of information–, but it also carries an autonomous, non-instrumental meaning – to allow citizens<sup>59</sup> to take part in – and possibly control – the process of governance to which they are subject<sup>60</sup>. This entails having 'a say' and possibly also some forms of control.

Ten years after the introduction of participatory democracy as one of the democratic foundations of the Union, this introductory section to the study attempts at shedding some light on this complementary, often overlooked, source of democratic legitimacy of the Union. Since the Lisbon Treaty, the Union derives its democratic legitimacy not only from representative democracy – which

<sup>52</sup> Jürgen Habermas, *Three normative models of democracy*, 1 *Constellations* 1 (1994); Stijn Smismans, *New Modes of Governance and the Participatory Myth* (2008) 31 *W. Eur. Pol.* 874; Beate Kohler-Koch, *Governing with European civil society*, in Beate Kohler-Koch et al., *De-mystification of Participatory Democracy*, OUP 2013. On whether participation results in increased democratic legitimacy, see Acar Kutay, *Limits of Participatory Democracy in European Governance*, *European Law Journal* 21, N° 6 November 2015, pp. 803-818.

<sup>53</sup> P. Craig, *EU Administrative Law* (Oxford University Press, 2012), at 295, 297-298; Cornelia Moser, *How open is 'open as possible'? Three different approaches to transparency and openness in regulating access to EU documents*, Institute for Advanced Studies, Vienna, 2001, pp. 5-6.

<sup>54</sup> For a detailed, historical reconstruction of the EU participatory practices and rationale, see J. Mendes, *Participation in European Union Rulemaking: A Rights-Based Approach* (OUP, 2011).

<sup>55</sup> Articles 9-12 TEU.

<sup>56</sup> Koen Lenaerts, *The Principle of Democracy in the case law of the CJEU*, *ICLQ* 62, April 2013, pp. 271-315, at 275.

<sup>57</sup> Alberto Alemanno, *Unpacking the Principle of Openness in EU Law: Transparency, Participation and Democracy*, 39 *Eur. L. Rev.* 72 (2014).

<sup>58</sup> Alberto Alemanno, *Leveling the EU Participatory Playing Field: A Legal and Policy Analysis of the Commission's Public Consultations in Light of the Principle of Political Equality*, *European Law Journal*, 2020.

<sup>59</sup> On whether such a right of participation is limited to EU citizens, see e.g. Annette Schrauven, *European Union Citizenship in the Treaty of Lisbon: Any Change at All?* 15 *MJ* 1 (2008), pp. 56-58.

<sup>60</sup> See P. Craig, *EU Administrative Law*, p. 296.

remains its founding democratic principle<sup>61</sup> –, but also from participatory democracy<sup>62</sup>. If citizens are directly represented at EU level in the European Parliament and indirectly by the Member States in the Council, they are also entitled “to participate in the democratic life of the Union”. As such, citizens – with their actions and omissions – form a source of legitimacy for the Union<sup>63</sup>.

Seen from such a perspective, petitions being “one of the channels for direct dialogue between Union citizens and their representatives”<sup>64</sup>, they represent an instrument of participatory democracy.

On this point, the European Parliament has recently stated that “it considers that the ability to ensure transparency, direct citizen involvement, full protection of fundamental rights, a clear improvement in the response from the EU institutions in terms of addressing and resolving the problems brought to their attention by citizens, in addition to enhanced cooperation of EU institutions and other EU bodies with national, regional and local authorities, are a vital means of strengthening the democratic legitimacy and accountability of the Union’s decision-making process”<sup>65</sup>.

European citizens expect to regain power to decide and embody the democracy, the *kratos* of *demos*.

### 1.1.2. Rationale : the multiple functions of the right to petition

Etymologically, ‘*petition*’ means request. In Latin this word comes from *petere* which means to *ask*. It consists of a written request addressed to a public authority from which we hope to obtain satisfaction. By now the right of petition is a central figure of parliamentary systems and is available in a vast majority of jurisdictions as a form of political supervision over the administration<sup>66</sup>. The EU is no exception, having drawn its own petition system and practice from national parliaments, while also inspiring others.

People who launch a petition want to connect, possibly influence, the work of their representatives, while the latter want to hear from their constituencies.

The right of petition has therefore developed substantially over time and acquired many more functions than that of a mere instrument of administrative oversight.

<sup>61</sup> Stijn Smismans, *European Civil Society: Shaped by Discourses and Institutional Interests*, 9 *European Law Journal* 473-495 (2003). See also the German Constitutional Court in its judgment of June 30, 2009, BVerfG, 2 be 2/08, para 172 (“neither the additional rights of participation, which are strongly interlocked as regards the effects of their many levels of action and in view of the large number of national parliaments, nor rights of petition which are associative and have a direct effect vis-à-vis the Commission are suited to replace the majority rule which is established by an election”).

<sup>62</sup> See, e.g., Stijn Smismans, *The Constitutional Labelling of “the democratic life of the EU”: representative and participatory democracy*, in A. Follesdal and L. Dobson (eds), *Political Theory and the European Constitution*, London: Routledge, 122-138; Acar Kutay, *Limits of Participatory Democracy in European Governance*, *European Law Journal* 21, No. 6 November 2015, pp. 803-818, at 814.

<sup>63</sup> Annette Schrauven, *European Union Citizenship in the Treaty of Lisbon: Any Change at All?* 15 *MJ* 1 (2008), p. 55; S. Besson and A. Utzinger, *Introduction: Future Challenges of European Citizenship*, 13 *Eur. L. J.* 573 (2007), 586; A. Warleigh, *On the Path to Legitimacy? A Critical Deliberativist Perspective on the Right to the Citizens’ Initiative*, in C. Ruzza & Della Sala, *Governance and Civil Society in the European Union: Normative Perspectives*, Vol. 1, Manchester University Press, 2007, p. 64.

<sup>64</sup> Case C-261/13 P, *Schönberger v/ European Parliament* ECLI:EU:C:2014:2423.

<sup>65</sup> European Parliament resolution, 14 December 2017 on the deliberations of the Committee on Petitions during 2016 (2017/2222(INI)) p.3.

<sup>66</sup> Herwig C.H. Hofmann et al., *Administrative Law & Policy of the European Union*, OUP, 2011, p. 773.

- *Administrative and political oversight*

First, petitions are useful tools for detecting breaches of Union law and enable Parliament and potentially other EU institutions and bodies to assess the transposition and application of EU law and its impact on EU citizens and residents. As such, they provide a path towards remedy by initiating the most appropriate course of action, including by opening a dialogue with the concerned institutions or Member States, by filling in legislative or policy gaps, or by taking any other appropriate initiatives.

Petitions offer a unique and very specific tool for the Parliament, and provide it with some additional authority of oversight, which entails some investigatory power<sup>67</sup>, for the purpose of ascertaining whether Community objectives are being met. The Treaties have attributed several instruments to the European Parliament in order for it to fulfil its duty of political control vis-à-vis the European Commission, but also vis-à-vis the Council of the EU, the European Council, the European Central Bank, and agencies and bodies. These tools are varied in their scope, form and strength and they range from Parliament's role in the designation of the European Commission, to its possibility to ask questions and to conduct inquiries, with its most powerful tool being its right to adopt a motion of censure against the whole European Commission.

The petitions process therefore, in the context of a participatory democracy, is a valuable scrutiny instrument for the Parliament and it is important to note that in fact most admissible petitions do in fact deal with problems relating to the lack of proper application of EU law. By providing specific and concrete examples of misapplication of EU law, they can help ensure EU law to be better and more transparently applied across all the countries of the Union in the same way.

In the European Union, the aim of a petition is therefore to "provide people with an open, democratic and transparent mechanism for obtaining a non-judicial remedy for their formal complaints addressed to their directly elected representatives, notably when this relates to the fields of activity of the European Union"<sup>68</sup>.

Petitions represent "an *extra guarantee* for EU citizens and residents" compared to complaints directly to the Commission which are treated through the administrative channel, as they involve Parliament in the process and allow for better, more open and transparent scrutiny of the Commission's performance of its inquiry duties, as well as providing transparent debates on the matter, normally in the presence of petitioners, Members of the European Parliament and the Commission, as well as any other authority concerned where appropriate.

- *Law making and agenda-setting.*

A petition can also – although indirectly – play an important law-making function in allowing the aggrieved to be heard, by expressing their concerns, as well as putting forward some legislative preferences.<sup>69</sup>

<sup>67</sup> See for a summary of Parliament's powers: Eeva Pavy, Fact Sheet on the European Union, 'The European Parliament: Powers', European Parliament, 2020, available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.2.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.2.pdf).

<sup>68</sup> Report on the outcome of the Committee on Petitions' deliberations during 2018 (2018/2280(INI)), Committee on Petitions, January 2019.

<sup>69</sup> See Report on the Activities of the Committee on Petitions 2013 (2014/2008(INI)), Rapporteur: Jarosław Leszek Wałęsa, p.4 ("whereas such petitions as have been addressed to the Committee on Petitions have often provided useful inputs to other committees of the European Parliament which have the responsibility of formulating legislation designed to establish a socioeconomically and environmentally more secure, sound, fair and prosperous basis for the future of all European citizens and residents").

This is because petitions may cover topic areas that are currently part of the parliamentary work of a legislative committee. Sometimes the committee receiving the petition – be it for opinion or information – may be in the process of taking a position on the subject of the petition. Or the Petitions Committee may be authorised to prepare a formal opinion for the legislative committee responsible. For example, the Petitions Committee provided an opinion for the Environment Committee when it was revising the Directive on Environmental Impact Assessment, (the *Chountis* Opinion) which contained many convincing examples of the weaknesses of the then existing Directive derived specifically from the many petitions received on the subject<sup>70</sup>.

Another illustration comes from the revision of the Renewable Energy Directive<sup>71</sup> – with a petition calling the EU to take account of the negative environmental effects of geothermal energy and the ITRE Committee introducing an amendment to such an effect<sup>72</sup>.

In particular, by bringing to the EU institutions' attention new policy ideas, needs and preferences, also beyond ongoing legislative files, petitions may play an agenda setting-role, not unlike from that sought by an ECI.

From such a perspective petitions may provide valuable input for the work of parliamentary committees<sup>73</sup> as well as MEPs who can present a legislative own initiative report under Article 227(3) of the Rules of Procedure<sup>74</sup>.

Proof of the agenda-setting function that may potentially be played by petitions comes from the very rules of procedure of the Parliament. Those foresee the possibility for one or more parliamentary committees to team up with the petitions committee so as to co-prepare a joint report<sup>75</sup>. Despite some attempts in the past, upon the initiative of the PETI Committee, this opportunity has yet to materialise fully, often as a result of the reticence of the legislative committees themselves in sharing their competences with other committees.

<sup>70</sup> Opinion of the Committee on Petitions for the Committee on the Environment, Public Health and Food Safety on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (COM(2012)0628 – C7-0367/2012 - 2012/0297(COD)), Rapporteur: Nikolaos Chountis, 27 June 2013.

ENVI report: [https://www.europarl.europa.eu/doceo/document/A-7-2013-0277\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-7-2013-0277_EN.html).

See on this, Europolitics, Environmental Assessment: EP Vote Postponed, 12/09/13

<sup>71</sup> Opinion of the Committee on Petitions for the Committee on Industry, Research and Energy on the proposal for a directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast) (COM(2016)0767 – C8 0500/2016 – 2016/0382 (COD)), Rapporteur: Eleonora Evi, 3 October 2017 :

[https://www.europarl.europa.eu/RegData/commissions/peti/avis/2017/597694/PETI\\_AD\(2017\)597694\\_EN.pdf](https://www.europarl.europa.eu/RegData/commissions/peti/avis/2017/597694/PETI_AD(2017)597694_EN.pdf)

<sup>72</sup> See Amendment 37 :

[https://www.europarl.europa.eu/RegData/seance\\_pleniere/textes\\_deposes/rapports/2017/0392/P8\\_A\(2017\)0392\\_EN.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_deposes/rapports/2017/0392/P8_A(2017)0392_EN.pdf)

<sup>73</sup> Ina Sokolska, Cooperation of the Committee on Petitions with the Committees of the European Parliament and impact on their work, Study requested by PETI Committee, June 2021, p. 11 and 20.

<sup>74</sup> Legislative own-initiative reports are one of several types of own-initiative reports. The procedure for authorising committees to draft own-initiative reports is set out in a decision of the Conference of Presidents of 12 December 2002 and governed by Rules of Procedure 37, 4652Annex XIII.

<sup>75</sup> Article 58 of the Rules of Procedure of the European Parliament.

- *Mechanism of participation in Union's democratic life*

Ultimately, the bottom-up, political scrutiny and oversight, as well as the law-making function inherent to the EU petition system, unveil yet another and broader role played by the right of petition: that of a mechanism of participatory democracy<sup>76</sup>. This has been confirmed by the Court of Justice of the European Union, in *Schönberger v/ European Parliament*, where it qualified the right to petition as an “instrument of participation of citizens to the European Union democratic life. It is one of the channels for direct dialogue between Union citizens and their representatives”<sup>77</sup>.

The European Parliament acknowledged in multiple occasions that petitions have a role to play in “raising awareness through a continuous public debate and wider information about the actual competences of the EU, its functioning and its need for future improvements, in order to ensure that citizens and residents are well informed about the levels at which decisions are taken, so that they can be also involved in discussions about possible reforms and to prevent the ‘blame Brussels’ phenomenon used by some irresponsible Member States”<sup>78</sup>.

The right to petition is therefore intended to give individuals a voice, to take their policy concerns directly to the heart of the EU – through the Parliament – and to influence the parliamentary and more broadly political agenda of the Union, by shaping up its priorities.

This bottom-up dynamic forces those institutions to position themselves in relation to these very issues, thus advancing or at least enriching the political agenda.

As stated by the EU Ombudsman in her 2008 Annual Report, “the way an institution reacts to complaints is a key indicator of how citizen-centric it is”<sup>79</sup>.

- *Mechanism of interest representation*

Petitions, being open to any EU resident, regardless of nationality, legal status or age, as well as any resident association or movement, also offer a unique mechanism of representation for individuals and minorities, who currently lack it.

Neither minors nor illegal migrants – as well as EU mobile citizens who regularly reside in another EU country different from that of which they carry the nationality – are entitled to exercise political rights within and across the European Union. Yet, these politically disenfranchised persons may all turn to the EU petition system to participate in the Union's democratic life, thus allowing the Parliament to represent also the needs and interests of citizens who are not part of the political community.<sup>80</sup> As such, petitions offer the political powerless, as well as to a variety of diffused interests, a means of participation that is formal, public and does not presuppose a legal status. A petition supported by one and sole individual is enough to bring an issue to the Union's attention – via the EU Parliament – and trigger a response of the latter, and that regardless of the legal status and political power of the petitioner. This suggests that the EU petition system offers - by design - a structural protection for

<sup>76</sup> Alberto Alemanno, Unpacking the Principle of Openness in EU Law: Transparency, Participation and Democracy, 39 Eur. L. Rev. 72 (2014); Michael Nentwich, Opportunity structures for citizens' participation: The Case of the European Union, in Albert Weale and Michael Nentwich, Political Theory and the European Union, Routledge, 1998, p. 125.

<sup>77</sup> Case C-261/13 P, *Schönberger v/ European Parliament* ECLI:EU:C:2014:2423, para 17.

<sup>78</sup> European Parliament resolution of 13 December 2018 on the deliberations of the Committee on Petitions during the year 2017 (2018/2104(INI)) OJ C 388, 13.11.2020, pp. 169–176, para 3.

<sup>79</sup> Annual Report of the EU Ombudsman, 2008, p. 10.

<sup>80</sup> See Report on the Activities of the Committee on Petitions 2013 (2014/2008(INI)), Rapporteur: Jarosław Leszek Wałęsa, p. 3.

minority participation, be it in terms of individuals and diffused interests represented, in EU decision-making. Ultimately, the right to petition is a political right conferred to a wider community of individuals than EU citizens and third-country nationals, aimed at ensuring that the Union operates democratically and takes into account the needs and aspirations of its inhabitants.

This is reminiscent of the concept of 'advocacy democracy' as developed by Dalton, Scarrow and Cain as an additional mode of democracy to the more traditional ones, which are representative democracy and direct democracy<sup>81</sup>. Indeed, Dalton, Scarrow and Cain distinguish three modes of democracy, according to the type of participation: representative democracy, direct democracy and advocacy democracy (semi-direct democracy). The first, linked to the electoral process (e.g. elections); the second, concerns direct forms of deliberation by citizens that bypass (or complement) the process of representative democracy (e.g. referenda); finally, the third mode seeks to "expand the means of political participation through a new style of advocacy democracy, in which citizens participate in policy deliberation and formation - either directly or through surrogates such as public interest groups - although the final decisions are still made by elites" (e.g. participation in public consultations, petitions or other participatory channels). As argued elsewhere, although less direct and not always easy to quantify in terms of institutional changes, "democracy advocacy" clearly developed from the 1990s onwards and is finding its way also within and across the Union<sup>82</sup>.

In the following sections, we will look into the functioning of the EU petition system and examine its overall cycle, before turning to its major limitations.

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<sup>81</sup> Dalton, R. J., Scarrow, S. E. and Cain, B. E., 2004, "Advanced Democracies and the New Politics", *Journal of Democracy*, Vol. 15 (Number 1), pp. 124-138.

<sup>82</sup> For a further attempt at developing 'advocacy democracy' through a new bottom-up approach, see Alberto Alemanno, *Lobbying for Change: Find Your Voice to Create a Better Society*, Iconbooks, 2017.

## 2. THE EU PETITION CYCLE

This section provides for a detailed and systemic examination of the entire life cycle of a petition, starting from its submission and eligibility requirements needed to lodge it until a final decision is taken, including its closing. It provides a detailed overview of the process and actors governing the examination of a petition before the European Parliament. The section takes as a point of departure the EU Treaties, the European Parliament Rules of Procedure, the PETI guidelines, and other internal EP administrative procedures, in order to highlight its current administrative and political practice<sup>83</sup>.

### 2.1. Submission of the petitions

Petitions can be submitted either electronically through the dedicated, Petitions Web Portal (hereinafter PETI Portal)<sup>84</sup>, where a summary of registered petitions, which have been declared admissible, can also be read and supported by other citizens<sup>85</sup>. Alternatively, but less frequently, they can be submitted by post to the postal address of the EU Parliament<sup>86</sup>. Petitions are entered in a register in the order in which they are received<sup>87</sup> by the Documents Reception and Referrals Unit of the European Parliament's Directorate General of the Presidency, which assigns each of them a unique identification number accompanying the petition throughout its lifecycle. This number is shared with the petitioner in a confirmation letter and email.

Simultaneously, petitions are scanned or downloaded into the ePetition management system which is an essential administrative tool, developed in-house by the secretariat of the Petitions Committee in 2004, and which provides access to all petitions and related documents to all Members and political groups staff following the works of the Committee. It has extensive research and reporting functions and allows the whole petitions process to be both visible and accessible to those dealing with petitions while constituting an important historical record of all petitions received and their outcome. It is managed entirely by the Committee secretariat.

After a preliminary screening aimed at verifying whether the petition satisfies its formal requirements<sup>88</sup>, they are forwarded (by the President of the European Parliament) to the committee responsible for petitions (PETI Committee)<sup>89</sup>, which shall first establish the admissibility.

<sup>83</sup> See the study by Tiago Tiburcio, "The Right to Petition", European Parliament, Policy Department on Citizens' Rights and Constitutional Affairs,

[https://www.europarl.europa.eu/RegData/etudes/STUD/2015/519223/IPOL\\_STU\(2015\)519223\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/519223/IPOL_STU(2015)519223_EN.pdf)

<sup>84</sup> The Petitions Web Portal, which came into operation on 19 November 2014, was established during the 2014-2019 legislature to allow for supporting a petition and an easier submission of petitions, more interaction and information services.

<sup>85</sup> These actions of support to a petition entails the registration to the dedicated platform, and are therefore not immediately open to anyone.

<sup>86</sup> No form to be filled in or standard format to be followed when acting on paper. Important to mention that most substantive petitions, generally the more complex ones – the ones which really provide a lot of information up front – are often still 'paper' petitions. These and the accompanying annexes and documents, proofs, tables etc, are scanned at registration and entered into the ePetition system. Instead, electronic petitions tend to be shorter while many submit as well additional supportive documents, either at the time of submission, either later.

<sup>87</sup> 226(9) Rules of Procedure.

<sup>88</sup> Petitions must state the name, nationality and address of each petitioner and be written in one of the official EU languages. Submissions to Parliament that do not satisfy these formal requirements or clearly are not intended to be a petition are not registered as petitions. Article 226(3) Rules of Procedure.

<sup>89</sup> As laid down in Rules 226 to 230 of, and Annex VI (XX) to, Parliament's Rules of Procedure.

This dedicated Committee acts as “the bridge between EU citizens and the EU institutions, thus the Committee should be the door for the citizens of Europe to bring their concerns and ideas to the attention of their elected representatives”<sup>90</sup>.

The Petitions Web Portal offers, in all EU languages, a one-stop shop for any citizen, after registration and simple creation of a user account, to submit petitions online, or provide support to petitions already deemed admissible without them having to create a new petition<sup>91</sup>. It also allows the petitioner to upload supporting documents and check the status of the petition after it has been declared admissible.

Over time, technical improvements of the Petitions Web Portal were made in order to render it more user friendly and more accessible for citizens, but as its current search function proves, it remains difficult to use for most of its potential users, not to mention persons with disabilities who have no access to it.

The Portal also strives to guide citizens seeking solutions by directing them towards the competent, most appropriate or swifter avenue of redress through both formal mechanisms (e.g. complaints to the Commission, petitions to Parliament, and complaints to the European Ombudsman, national ombudsmen and petitions committees of national parliaments) and informal mechanisms such as SOLVIT, the European Consumer Centres Network, FIN-Net, etc., and it should be easy to find and use<sup>92</sup>.

Since its introduction at the end of 2014, the Portal has become main instrument for petitions submission (in addition to submission by regular post).

It also promotes participation in the petition process as it allows other citizens to add their support to petitions already deemed admissible without them having to create a new petition.

## 2.2. Examination of petitions

Once a petition is received and registered, the Secretariat of the PETI committee starts the procedure aimed at its examination. The examination takes place in different stages and is entirely driven by and owned by PETI, the only committee responsible for petitions’ treatment. Where several petitions are received on a similar subject matter, they may be dealt with jointly<sup>93</sup>.

### 2.2.1. Formal admissibility

Petitions that are assessed to be “potentially non-compliant” - as falling outside of the Union’s fields of activity -<sup>94</sup> are placed on a specific list (“List 3”) by the office of the President (DG PRES) and communicated to Members separately for decision<sup>95</sup>.

<sup>90</sup> PETI Guidelines (Introduction), p. 2.

<sup>91</sup> Approximately 20-25 petitions – out of the 1200-1400 introduced every year – receive the support of other citizens. The most successful petition ever (since end 2014) – in terms of number of supporters reached – is “Petition No 1072/2020 by Erich Mähner (Austrian) on maintaining different pigments in Regulation (EC) No 1907/2006 (REACH)”, with 19596 signatures. Thus, for instance, 15 540 users of Parliament’s Petitions Web Portal supported one or more petitions in 2017, as compared to 6 132 users in 2016 and 16 902 users in 2015.

<sup>92</sup> The Portal “shall be made available on Parliament’s website and which shall guide the petitioner to formulate the petition in a manner that complies” with the eligibility requirements. See Article 226 (7) TFEU.

<sup>93</sup> At this stage of the procedure, it means that they are grouped under the same identification number.

<sup>94</sup> Article 227 of TFEU

<sup>95</sup> Under the PETI Guidelines, “Members may request that a petition be taken off List 3 within a deadline set by the Chair. The deadline is usually the day of the next Coordinators’ meeting. Such requests should be made in

### 2.2.2. Material admissibility

For each registered petition, the PETI Secretariat prepares a document of 'Summary, Information and Recommendation' (SIR), which contains a summary of the petition itself, information regarding any previous petitions on the same subject or other relevant issues and a recommendation on the material admissibility/inadmissibility and on the follow-up to be given<sup>96</sup>. SIR documents are translated into the Committee working languages and circulated monthly<sup>97</sup> to all Members sitting in the PETI committee<sup>98</sup>. This offers them the chance to study the petitions and express their support or disagreement with any of the proposed action. When the subject of the petitions falls within the European Union's fields of activity, it is declared admissible otherwise the petition is declared inadmissible. The petitioner is then immediately informed accordingly.

When compared to other EU avenues of participation – in particular ECIs, one of the major features of the right to petition is its open access, and therefore generous admissibility requirements.

Petitioning is not only open to any EU citizen but also to any natural or legal person that is resident or has a registered office in a Member State, either individually or in association with others<sup>99</sup>. Indeed, Article 44 of the European Charter of Fundamental Rights provides a *common* right to any citizen of the Union and a resident<sup>100</sup>. The Rules of Procedure explicitly foresee that even petitions addressed to Parliament by natural or legal persons who are neither citizens of the European Union nor reside in a Member State nor have their registered office in a Member State are considered<sup>101</sup>.

In order to be admissible, petitions must concern matters which fall within the EU's fields of activity and which affect the petitioners directly. The latter condition is interpreted very broadly<sup>102</sup>. As for the former, the requirement that the petition addresses a matter within the Union's field of activity extends to matters within the purview of Member States' authorities, provided they fall under EU law. This provides a rather wide scope *ratione materiae*.

As a result, petitions may deal with legislative issues, with the aim being to induce the EU to pass legislation in a given field, or enforcement issues, such as revealing infringements of EU law, its incorrect or non-application, or even of breaches of fundamental rights. Over the last decade, the thousands of petitions examined by PETI touched upon issues in all areas of EU activity: fundamental

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writing to the Chair and the Secretariat. The request should contain justification. After the deadline has expired, List 3 is deemed to be approved and all petitions that remain on List 3 are deemed inadmissible and subject to a shortened procedure".

<sup>96</sup> Consider that SIR documents are sent to all Members of the Committee on Petitions first in English, then translated into all languages as soon as they are available. Members may contest recommendations within a set deadline (usually 16 working days). If no contestations are received until the expiry of the deadline, the recommendations are deemed to have been approved and the Secretariat proceeds with the implementation of the recommendation on behalf of the Chair. See PETI Guidelines, p. 8.

<sup>97</sup> To be more accurate, with an average of four times a month.

<sup>98</sup> In English first, then into all languages when they become available. The full text of the petition is of course accessible to Members through the ePetition system should they wish to refer to it in its entirety.

<sup>99</sup> Article 20(2) TFEU.

<sup>100</sup> Article 44 CFR : "which states that "Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament".

<sup>101</sup> 226(15). Those are registered and filed separately, and the President sends a monthly record of such petitions received during the previous month, indicating their subject-matter, to the committee. The committee may ask to see those which it wishes to consider. In practice this is a very rare occurrence.

<sup>102</sup> This language has been interpreted quite generously by the European Parliament, certainly more than the Court of Justice when interpreting similar language in the context of the eligibility of action for annulment under Article 263 TFEU.

rights, migration, the right to petition, citizenship, free movement; discrimination; European Citizens' Initiative; children's rights; the environment; animal welfare; disability; social policies and employment; Brexit; better law-making and application of EU law; openness, transparency, access to documents, conflicts of interest; international agreements<sup>103</sup>.

The main subjects of petitions consist of fundamental rights and justice, environment, and health<sup>104</sup>.

The most common reasons why petitions are declared inadmissible are that petitioners confuse EU competences, responsibilities and possibilities for action and redress with those of Member States and other international organisations and bodies (such as the UN and the Council of Europe), including in relation to the applicability of the EU Charter of Fundamental Rights.

Table 1: Number of petitions breakout

Year	Admissible	Inadmissible	Inadmissibility rate	Withdrawn before decision	Total number of petitions
<b>2020</b>	1154	393	25,4 %	26	<b>1573</b>
<b>2019</b>	938	406	30,2 %	No data	<b>1357</b>
<b>2018</b>	788	409	33,5 %	No data	<b>1220</b>
<b>2017</b>	765	495	39 %	11	<b>1271</b>
<b>2016</b>	1110	450	28,6 %	10	<b>1570</b>
<b>2015</b>	943	483	33,8 %	5	<b>1431</b>

Source: Alberto Alemanno, based on row data provided by the PETI Committee.

Approximately, one petition out of three is declared inadmissible, either on formal or substantive grounds. Petitioners are often encouraged to contact another national, European or international body.

This suggests that approximately 2/3 of the petitions received every year are examined in substance. This is in marked contrast to, for example, the proportion of admissible cases investigated by the European Ombudsman or the European Court of Human Rights, which have a very much lower proportion of admissible cases.

<sup>103</sup> Jos Heezen and Ottavio Marzocchi, Achievements of the Committee on Petitions during the 2014-2019 parliamentary term and challenges for the future, European Parliament, 2019.

<sup>104</sup> Ibidem.

Ultimately a petition may address both a general interest (*res publica*) and a private grievance regarding possible maladministration within the EU institutions (*res privata*), but the latter tend to be directed or re-directed to the European Ombudsman<sup>105</sup>.

### 2.3. Urgency procedure

In the normal procedure (SIR document), petitions are summarised and a decision on their admissibility is taken based on the order in which they arrived. However, if a Member considers a petition to be "particularly urgent"<sup>106</sup>, he/she may seek the Coordinators' approval concerning the question of admissibility on an ad hoc basis, before the petition is included in a SIR document. In that regard, it is also possible to request an answer from the Commission in an accelerated manner. Requests for application of such "urgency procedure" should be sent to the Chair and the Secretariat by e-mail, with clear and duly substantiated justification as to why the petition should be treated urgently<sup>107</sup>.

For each urgency procedure request the Secretariat provides a summary and a preliminary recommendation for the Coordinators.

If the Coordinators agree to the urgency request, the SIR document concerning the petition is sent to all Members for adoption, within a deadline of 6 working days.

The PETI Committee recommends that the urgency procedure should be used restrictively and coherently.

### 2.4. Publicity and notice of petitions

Petitions, once registered (which happens only if they comply with formal submission requirements), become public documents, with the name of the petitioner, possible co-petitioners and the contents of the petition. The petition numbers are published by Parliament in the minutes of each plenary session for reasons of transparency<sup>108</sup>, hereby giving notice of them in Parliament.<sup>109</sup> They are subsequently entered into the petitions' register.<sup>110</sup>

However, a petitioner or a co-petitioner may request that his, her or its name be withheld in order to protect his, her or its privacy, in which case Parliament shall comply with the request. Where the petitioner's complaint cannot be investigated because of the petitioner's anonymity, the petitioner must be consulted on the further steps to be taken<sup>111</sup>.

In any event, to protect the rights of third parties, the Parliament may, on its own motion or at the request of the third party concerned, anonymise a petition and/or other data contained therein, if it

<sup>105</sup> Tiago Tiburcio, The Role of Ombudsmen and petitions committees in detecting breaches of EU law, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, November 2018, p. 2.

<sup>106</sup> PETI Guidelines, section 5.

<sup>107</sup> Ibidem. Such a request should be made at least 10 working days before the next Coordinators' meeting.

<sup>108</sup> 226(12) TFEU. Names of supporters are not published, not even with their consent.

<sup>109</sup> 229(1) TFEU.

<sup>110</sup> 226(9) TFEU. Petitions appear in the internal database ePetition and the Peti Web Portal.

<sup>111</sup> 226 (13) TFEU.

sees fit to do so<sup>112</sup>. Ultimately, when it comes to its publicity, this is only guaranteed for petitions that have been held admissible.

The title and a summary of the texts of petitions entered in the register, together with the texts of the opinions and the most important decisions forwarded in connection with the examination of the petitions<sup>113</sup> are made available to the public on the Petitions Portal on Parliament's website<sup>114</sup>.

## 2.5. Initial investigation of the petitions

There is no exclusive course of action with regard to the treatment of petitions. Depending on the circumstances, the Committee on Petitions may take – either through discussion at a regular meeting or by written procedure – a variety of actions, taking individual, specific or particular circumstances into account<sup>115</sup>. The various courses of action may run in parallel as they are complementary.

Under the current practice, the PETI Committee decides on the first steps to be taken with regard to the treatment of a petition at the same time as it decides on admissibility, based on the recommendation by the Secretariat (SIR document)<sup>116</sup>. If the committee fails to reach a consensus on the admissibility of the petition, it shall, at the request of at least one-third (it used to be ¼) of the Members of the committee, be declared admissible<sup>117</sup>. This rule expresses a clear favour towards the admissibility of petitions addressed to the European Parliament<sup>118</sup>.

Generally, the substantive examination entails an initial investigation phase.

During the initial investigation phase, the Committee may send the petition and/or gather information within the European Parliament or outside of it.

### 2.5.1. Outside of the European Parliament

When it needs to elicit reactions and information outside of the Parliament, the PETI Committee is entitled to:

- request assistance from the **Commission**, via 'a request for a preliminary investigation', with a view to assessing the subject matter of the petition in relation to relevant policies, and defining the issue it wants the Commission to investigate upon, or via 'a request for information' if it could be helpful, for example, in preparing new legislative initiatives or assessing the implementation of existing legislation. It is the Commission Secretariat-General to act as a contact point for the PETI Committee within the Commission. The latter sends the request to the Commission Secretariat-General who coordinates the distribution of petitions and information requests to the relevant Commission's services for a reply and

<sup>112</sup> 226(14) TFEU.

<sup>113</sup> At the time of publication this functionality has been disabled because of technical issues and will be restored soon.

<sup>114</sup> 229(2) TFEU.

<sup>115</sup> In addition to Article 226-230 Rules of Procedure, see Guidelines – Committee of Petitions, 2015, updated in 2018 "These guidelines are without prejudice to Title IX of the European Parliament's Rules of Procedure concerning the work of the Committee on Petitions and to any other provision of the Rules of Procedure, and are not, under any circumstances, binding on the Members or the Secretariat of the Committee".

<sup>116</sup> PETI Guidelines, section 6 (initial investigation).

<sup>117</sup> Article 226(10) Rules of Procedure (amended in January 2017)

<sup>118</sup> Petitions already declared inadmissible are not summarised, but their title, a short reference to List 3 and the reason for classification is included in the SIR document.

forwards the Commission's replies to the secretariat of the Committee. Under the PETI Committee Guidelines, a reply is expected within the three months, but this is not prescriptive for the Commission. If no reply has been received within the deadline, the PETI Secretariat sends a reminder to the Commission and – in some cases – invites it to the PETI meeting in which the petition is discussed. No petition can be closed if the Commission has not replied<sup>119</sup>.

The Commission may either provide an opinion to the request of the PETI Committee, bring observations describing ongoing actions or decide to act by putting forward the proposal of a new legislative measure, revising existing legislative acts or undertaking an infringement action against the relevant Member State.

- request assistance from **other EU institutions, bodies and agencies** asking for an opinion. A deadline for a reply (usually three months) is indicated in the request.

When a petition relates to the internal market (e.g. if a petitioner's EU rights as a citizen or as a business have been breached by public authorities in another Member State), a recommendation may be made to the petitioner to contact the **SOLVIT** helpdesk in his/her Member State. SOLVIT is a service provided by the national administration in each EU country, which serves citizens directly. PETI does not forward the petition directly to SOLVIT as it should be the petitioner's choice to do so.

While the PETI Committee does not refer petitions to the **European Ombudsman** directly<sup>120</sup>, the Committee may advise the petitioner to do so if it considers the subject matter to fall under the Ombudsman's remit.

- request assistance from a **Member State**, if the petition concerns a specific situation within it. The PETI request must contain concrete questions to the Member State concerned or even to a specific authority within it. Generally, the request is sent by letter via the Permanent Representation, which will then dispatch the request to the right national or local authorities. In order to ensure the timely processing of the Committee's inquiry by the Member State, the Secretariat liaises with the relevant staff of the Permanent Representation prior to its submission.

The Secretariat keeps the Coordinators informed twice a year on pending replies from Member States. In case of a persistent refusal by a Member State to provide information, the Committee may turn to the Commission with the information request. At the later stages of investigation, the Committee may get in direct contact with the national/local authority whilst keeping the Permanent Representation informed.

### 2.5.2. Within the European Parliament

When it needs to elicit reactions and information within the Parliament, the PETI Committee may send the petition to:

- **other committees of the European Parliament** for an opinion or, what it occurs more frequently<sup>121</sup>, for information<sup>122</sup>. Only the former requires a reply. Opinions may be provided in the form of a letter or other written documents, and the content and the form of the reply being left at the discretion of the committee concerned. Through the Secretariat, and under the political leadership of the Chair within

<sup>119</sup> PETI Guidelines, section 6 (initial investigation).

<sup>120</sup> The idea being that it should be the petitioner's choice whether to submit a complaint to the Ombudsman. Ibid.

<sup>121</sup> Ina Sokolska, Cooperation of the Committee on Petitions with the Committees of the European Parliament and impact on their work, June 2021, p. 13.

<sup>122</sup> In accordance with the decision of the Conference of Committee Chairmen of July 1998.

the Conference of Committee Chairs, the Committee may call for regular and adequate feedback from all the committees. For obvious reasons, the committees receiving most petitions are competent in subject areas where issues arise more frequently in petitions.

- **Policy Departments**, which can provide studies and briefings and organise workshops. While the Committee adopts an annual programme on research and workshops, it may also request other studies during the year if new important topics emerge.

In addition, Members may also request information from the **European Parliament Research Service** (EPRS).

Researches and studies from the Policy Department and the EPRS are transmitted, to the Secretariat so that they are presented during a Committee meeting and uploaded to the internal treatment petitions' data base – 'ePetition' - and also be made available to all Members and staff following the work of the Committee.

The PETI Committee set up a **Petitions Network** within the EP to strengthen cooperation between committees and to raise awareness of the issues brought up in petitions so as to ultimately facilitate the treatment of petitions<sup>123</sup>. The Network was established by decision of PETI Coordinators in 2017. Its aim is to structure and streamline the process of collaboration between committees on the issues raised by petitions, while maintaining the PETI committee the sole responsible of the processing of the petitions.

All other committees have been invited to join by nominating at least one Member<sup>124</sup> plus a substitute to this Network. A similar, supporting network has been created at the staff level to ensure the regular functioning of the Petitions Network.

This two-level network – among Members and staff – offers an informal infrastructure that facilitates cooperation and streamlines communication about petitions within and across EP committees. Its objective is to expand the ownership of the petition system beyond the PETI committee.

## 2.6. Follow-up of the investigative work

Once the investigation phase comes to an end, all the information received from both within and outside of the Parliament is assessed within the PETI Committee<sup>125</sup>.

When examining the information collected, in most cases the response of the EU Commission, the Committee follows a template called "Notice to Members", which is the preliminary result of the request to the Commission. As a result, the Committee Secretariat classifies the petition as:

- A (for discussion)
- B (to be closed)<sup>126</sup> or

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<sup>123</sup> For a detailed examination of the Petitions Network, Ina Sokolska, Cooperation of the Committee on Petitions with the Committees of the European Parliament and impact on their work, Study requested by PETI Committee, June 2021, pp. 17-19.

<sup>124</sup> Ideally not a Member of PETI.

<sup>125</sup> This information is entered onto the ePetition database, an internal data base gathering all relevant documentations for each petition.

<sup>126</sup> The list of B-items is deemed to be approved at the end of the Committee meeting. If a Member objects to the inclusion of a petition on the B-list, he/she informs the Chair and the Secretariat at the latest on the day of the

- P (pending further information) item.

The petitioner is informed of the content of the reply by the Commission. Unfortunately, this information is not made available on the Web Portal, although it could (and should)<sup>127</sup> provide real-time notifications to enable supporters and other observers, such as the media, to follow the petition's handling.

Petitions marked as "A" (for discussion), being worthy of further discussion, are subject to an oral discussion in the Committee, to which are invited the petitioners - who as a matter of principle have the right to attend the Committee meeting when their petition is being debated<sup>128</sup>; the Commission, which is always invited to attend the Committee meeting; and the Member State concerned by the petition<sup>129</sup>, which generally participates through its Permanent Representation to the EU, but that in reality is rarely attending.

Once the petition is considered, the Committee may formulate a recommendation for further action and decide to keep the petition open. Petitions that remain open are further investigated by the Committee in accordance with the follow-up decision taken during the meeting. If the Committee concludes that a petition has been sufficiently discussed, the petition will be closed. If the Committee is not able to reach consensus on further follow-up or on closing the petition, a vote is taken by simple majority<sup>130</sup>.

### 2.6.1. Fact-finding visits

Upon the conclusion of a committee's discussion of an admissible petition, its Members may ask for a fact-finding visit. When investigating petitions, establishing facts or seeking solutions the PETI committee may organise – at any time – fact-finding visits to the Member State or region that are concerned<sup>131</sup>. Fact-finding visits are one of the most important investigation tools that the Committee on Petitions has, as foreseen in the rules, since they generally lead to clear recommendations focused on the resolution of petitioners' problems.

As a general rule, fact-finding visits must cover issues raised in several petitions and are rarely justified by the examination of just one petition.

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Committee meeting. Such requests must be accompanied with full justification and a proposal for further action. The Secretariat circulates after each meeting the list of requests concerning petitions to be moved from the B-list (petition number, name of the MEP making the request, justification provided, suggested action for further treatment) to all Members of the Committee. If the suggested action is to give an opportunity to the petitioner to provide more information within the next two months, the Member and/or petitioner must provide new information which allows for further treatment of the petition. In the absence of further information the petition is closed. All other suggested actions are submitted for approval to the Coordinators at the following Coordinators' meeting.

<sup>127</sup> Article 226(12) of the Rules of Procedure of the European Parliament.

<sup>128</sup> If a petitioner accepts the invitation and is present at the PETI Committee meeting, he/she is given the opportunity to speak first, usually for 5 minutes for one petition, in order to present the case and provide additional information. The petitioner may address questions to other participants if the Chairman agrees and also is provided with an opportunity to respond to the discussion before conclusions are drawn or proposals made.

<sup>129</sup> This is notified in advance and the Permanent Representation is encouraged to attend the Committee meeting and make a statement.

<sup>130</sup> In the absence of a quorum, the decision may be referred to the Coordinators. PETI Guidelines, section 11 (Discussion of petitions).

<sup>131</sup> Article 228 Rules of Procedure.

Another general rule is that Members elected in the Member State of destination shall not be officially part of the delegation. They may however be allowed to accompany the fact-finding visit delegation in an ex officio capacity.

After each visit, a mission report is drafted by the Secretariat, following consultation with the leader of the delegation and the official members of the delegation. The Head of the delegation shall coordinate the drafting of the report and shall seek consensus on its content among the official members on an equal footing. Failing such a consensus, the mission report shall set out the divergent assessments.

The mission report, including its draft recommendations, is then submitted to the committee, at the latest 3 months after the visit. Members of the Committee may table amendments to the recommendations, but not to the parts of the report concerning the facts established by the delegation. The committee shall first vote on the amendments to the recommendations, if any, then on the mission report. The latter, if approved, is then forwarded to the President for information, as well as to the petitioners, the Commission and other interested parties such as those persons met during the visit.

### 2.6.2. Public hearings and Workshops

The PETI Committee may also decide to organise a public hearing to get information from stakeholders, NGOs and experts on a relevant topic for the work of the Committee. However, as a general rule and established practice, hearings cover areas of broad interest to many petitioners<sup>132</sup>. The Committee often aims at inviting or co-host hearings with the legislative committees responsible for the subject matter.

The speakers invited to hearings must be representative of a broad spectrum of stakeholders.

The PETI committee can also ask the Policy Department to organise a Workshop on a certain subject, notably when more specialised expertise from professors or experts is required.

Independently of the treatment of petitions, following the reform of European Citizens' Initiatives (hereinafter ECIs)<sup>133</sup>, within three months of the submission of a successful ECI the group of organisers is entitled to present the initiative at a public hearing held by the European Parliament. It is the PETI Committee that holds the responsibility of co-hosting such parliamentary hearings alongside the lead and associated committees in order to ensure consistency and fairness in treatment among ECIs<sup>134</sup>.

## 2.7. Decisions on petitions

On the basis of the outcome of its investigative efforts and answers received, the Committee on Petitions may take - one or more of the following actions.

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<sup>132</sup> Decisions on hearings are taken by the Coordinators. See PETI Guidelines, para 12 (Public hearings).

<sup>133</sup> Article 14(2) of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, PE/92/2018/REV/1, OJ L 130, 17.5.2019, p. 55–81.

<sup>134</sup> It was the PETI Committee which was responsible for the inclusion of this provision as co-legislator of the original ECI Regulation.

### 2.7.1. Short resolutions

The PETI committee may decide to submit a short motion for a resolution to Parliament<sup>135</sup>. The first draft of such resolutions is prepared at technical level, by political group advisors supported by the Secretariat<sup>136</sup>. The draft text is then circulated to Members specifically designated by each group to act as "shadow rapporteurs" (one per group). These Members work on the draft until they reach an agreement on the final version. The agreed text is put to a single vote<sup>137</sup>. As for the modalities of the vote, the Conference of Presidents generally proposes not to have a full debate but a short presentation in plenary by the rapporteur instead<sup>138</sup>.

### 2.7.2. Oral questions

The PETI Committee, like any other parliamentary committee, has the right to put questions to the Commission as well as the Council. This may allow it to gather information for the purpose of reviewing policies and single-case measures<sup>139</sup>. Questions to the Commission may be put by a committee, a political group or Members reaching at least the low threshold, accompanied with a request that they be placed on the agenda of Parliament. While this is not common practice for petitions, it is expressly foreseen in seven EU/EEA member states for ombudsmen complaints<sup>140</sup>. The relevant EU institution is obliged to "reply orally or in writing"<sup>141</sup>.

### 2.7.3. Own initiative report

With regard to an admissible petition, the PETI committee may decide to draw up an own initiative report<sup>142</sup>. This generally deals with the application or interpretation of Union law or proposed changes to existing law. The committee responsible for the subject-matter must also be associated<sup>143</sup>.

The PETI committee may ask the President of the European Parliament to forward its opinion or recommendation to the Commission, the Council or the Member State authority concerned for its action or response.<sup>144</sup>

<sup>135</sup> Provided that the Conference of Committee Chairs is informed in advance and there is no objection by the Conference of Presidents. See Article 227(2) Rules of Procedure.

<sup>136</sup> PETI Guidelines, para 14a (Short resolutions). The maximum length of a short resolution to be tabled to plenary is four pages (with 1500 characters per page), including recitals and paragraphs

<sup>137</sup> See Rule 160, Rules of Procedure.

<sup>138</sup> The Chair of the PETI Committee.

<sup>139</sup> Article 230(2) TFEU; Rule 136 Rules of Procedure of the European Parliament.

<sup>140</sup> Austria, Bulgaria, Luxembourg as well as Norway foresee those complaints can be debated in a plenary session of the parliament. In some systems the possibility for questioning is shaped by the number of supporters gathered by a petition through the introduction of a threshold.

<sup>141</sup> Article 230(2) TFEU.

<sup>142</sup> Rule 54(1) of the Rules of Procedure: "A committee intending to draw up a non-legislative report...on a subject within its competence on which no referral has taken place, may do so only with the authorisation of the Conference of Presidents".

<sup>143</sup> Where the policy-relevant committee put forward suggestions dealing with the application or interpretation of Union law the PETI committee should accept those. If the committee does not accept such suggestions, the committee responsible for the subject matter may table them directly in plenary. See Article 227 Rules of procedure.

<sup>144</sup> 227(6) TFEU.

#### 2.7.4. Re-opening a petition

Finally, a petition may be re-opened by committee decision, if relevant new facts relating to the petition have been brought to its attention and the petitioner so requests<sup>145</sup>.

#### 2.7.5. Closing a petition

As already anticipated, petitions may be closed by the PETI Committee at various stages of the procedure, and not only in the final phase of the examination cycle<sup>146</sup>. It can occur after a decision on admissibility has been taken by the Committee, after a discussion in a committee meeting, when a petition is withdrawn by the petitioner or when no further action can be taken on the petition<sup>147</sup>.

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<sup>145</sup> 227(9) TFEU.

<sup>146</sup> PETI Guidelines, para 15 (Closing a petition).

<sup>147</sup> Generally, it is the PETI Chair who makes a proposal for closure - and/or other possible follow-up measures-, with the aim of reaching consensus. If no consensus emerges to support the proposal by the Chair, it is put to vote by simple majority. If no quorum exists to allow a vote, the decision is referred to the Coordinators.

### 3. THE LIMITS OF THE EU PETITION SYSTEM AND HOW TO COUNTER THEM

After having described the theory and practice of the EU petition system, this final section identifies, systematises and discusses its major structural flaws that prevent it from unleashing its democratic and participatory functions as previously described<sup>148</sup>.

Those are:

1. Petition illiteracy.
2. Fragmentation of the EU participatory infrastructure.
3. The European Parliament's structural dependency on cooperation.
4. Limited capacity and 'attractiveness problem'.

#### 3.1. Petition illiteracy and low visibility

Evidence suggests that most of the EU citizens' participatory channels mentioned remain unknown<sup>149</sup>, scattered, and underused by the average European citizen. Petitions are no exception. Only a small number of EU citizens and residents are aware of the right to petition<sup>150</sup>, confirming the need for greater efforts and appropriate measures to increase public awareness and achieve a substantial improvement regarding the exercise of this right<sup>151</sup>. This might explain the modest number of petitions received in relation to the total population of the EU.

Some figures speak volumes about the realities of participation in the Union.

Despite its unique user-friendliness, and overall openness – at least when compared to other participatory tools – petitions filed with the EU Parliament remain in the low digit, with an average of approximately 1,200 per year over a population of approximately 450 million – while in 2019 alone around 13,500 petitions were addressed to the German *Bundestag*<sup>152</sup>.

More critically, the number of petitions lodged before the European Parliament has not only been plateauing but also decreasing in recent years.

These low figures appear all the more surprising insofar as petitions – as virtually all other EU avenues of participation, including public consultations and various forms of initiatives, complaints and requests – have moved online since the early 2000s. In other words, although the advent of the PETI Portal in November 2014 has greatly facilitated participation by individual members of the public and

<sup>148</sup> See section 1.

<sup>149</sup> Approximately 63% of EU citizens have little or no knowledge of their EU rights. See "Standard Eurobarometer 89, Spring 2018," European Commission, June 2018, p. 47.

<sup>150</sup> In 2011, a special Eurobarometer survey demonstrated that only 20% of respondents believed that the petition right (among the options that were provided) was the most important 'European citizen right'. See Special Eurobarometer, 'European Ombudsman', 2011, p. 23 available at: <http://europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2011/the-european-ombudsman-and-citizens-rights/aggregate-report/en-aggregate-report-ombudsman-and-citizens-rights-201104.pdf>

<sup>151</sup> See on this point, Kris Grimonprez, *The European Union and Education for Democratic Citizenship: Legal foundations for EU learning at school*, Nomos Verlagsgesellschaft 2020, pp. 432-433.

<sup>152</sup> <https://www.bundestag.de/en/committees/a02>

all types of interest representatives, this has not necessarily increased the rate of participation and opportunity structure of the policy process<sup>153</sup>.

Indeed, despite the variety of communication channels available today to reach multiple target audiences, the EU institutions – including the European Parliament – continue to privilege a centralised, and static online platform over other communication channels, such as social media, to reach out. If social media tools have entered – and are now part of – the EU communication policy, their use remains top-down, ineffective and shifting from the policy of multilingualism towards a hegemonic language policy where English dominates.<sup>154</sup> Therefore, an overhaul of the European Commission's strategy in this field would thus be beneficial.

Literacy is not only modest within the general population but also among civil society organisations, which represent – in average – less than 10% of the overall number of petitions submitted<sup>155</sup>. Given the general purpose, openness and 'low-cost' nature of this participatory instrument, one might reasonably expect civil society to rely more often on petitions. This appears all the more true as the composition of civil society that engages at EU level is largely dictated by which groups the Commission chooses to fund and set up in the first place.<sup>156</sup>

Last but not least, the European Parliament lacks data regarding the profile of those individuals who take the time to file a petition. In other words, we don't know who the petitioners are in terms of demographics. The only information collected are the geographical provenance and gender, not the socioeconomics of petitioners. Yet, it would be important to know better who the citizens are who attempt to participate in the Union democratic life through these instruments. It is equally key to learn about what they think of their experience.

### **Recommendation 1:** *Greater publicity and visibility of newly registered petitions*

The limited level of literacy regarding the right of petition is multi-factorial in nature, but can in particular be associated to a broader publicity problem surrounding the use of petitions.

The unique level of openness guaranteed to the exercise of the right of petition does not translate into an equivalent level of publicity of this instrument. This becomes particularly apparent when one examines the petition's lifecycle and the limited instances of publicity accompanying it. As of today, the public is not in the position to find the web link access to the Petitions Web Portal directly from the Home page of the European Parliament<sup>157</sup>, nor to gain access to a list of all petitions filed, nor to documents and information generated and exchanged during the handing of a petition.

As previously discussed, all petitions become public at the time of their registration, which occurs upon their declaration of admissibility. However, besides the petitioner, who is notified of its decision, the current publicity policy of PETI does not necessarily entail a pro-active publication of a new petition. While all registered petitions are available to the PETI Portal, its access requires a registration login. This

<sup>153</sup> The EU petition system has also been facing the competition with all sorts of other on-line petition platforms often created for commercial purposes. These platforms tend to be more attractive and visible to people especially on social media.

<sup>154</sup> K. Koskinen, 'Social media and the institutional illusions of EU communication', (2013) 23 International Journal of Applied Linguistics 1.

<sup>155</sup> Since 2013 the percentage of petitions submitted by NGOs went down to 10% or less. Before it was significantly higher. However, their admissibility rate tends to be higher than the average petition.

<sup>156</sup> R. Sanchez Salgado, 'Giving a European dimension to civil society organisation', (2007) Journal of Civil Society 3(3), 253-69.

<sup>157</sup> Currently, one has to find the PETI web page to gain access to the Portal, but this is not even very noticeable. Another option is to go through the 'Another request ?' at the bottom of the European Parliament Home page.

makes it more difficult than it should for media and observers to gain access to the list of petitions and their summaries.

PETI sometimes publicises some petitions<sup>158</sup>. Communication on petitions is however related to the public interest in the subject in question and may be directed at just the relevant national or local audiences. This may take the form of press release, social media posts, summaries of debates in committee/plenary or video statements by MEPs. However, this tends to occur at an advanced stage of the procedure, generally when a fact-finding visit or even a resolution has been adopted. By then however, the petitions have already attracted some media attention. This tends to be local in nature in the case of a fact-finding visit, or sectoral in the case of a resolution, and only exceptionally transnational<sup>159</sup>.

A more proactive publicity policy might help draw media – and, as a result, public – attention to the matters object of petitions. This has already been hinted at by the European Parliament when it called “for a more focused and active press and communication service and a more active social media presence, making the work of the committee more responsive to public concerns”<sup>160</sup>.

But there is something more foundational, and therefore structurally problematic, in the publicity of petitions that transcends the actual registration and public knowledge of the existence of a petition. As of today, the public is not in the position to gain access to all documents and information generated and exchanged during the handing of a petition. Even the full text of a petition is not made public, but exclusively a brief summary on the PETI Portal. This prevents the right of petition to become an instrument for fostering public debate in addition to its multiple roles of administrative and political oversight as well as participatory mechanism.

Yet a standard of proactive publicity appears to be required by the possibility introduced in 2016 – yet not frequently used – of ‘collectivising’ a petition, as foreseen in the Rules of Procedure<sup>161</sup>

To improve literacy, the publicity policy on petitions – be it about their existence, use, outcomes and individuals who have actually filed them – could be improved by :

- inserting a web link on the Home page of the European Parliament leading to the Petitions Web Portal;
- publishing proactively in open access of all (admissible) petitions, documents and information generated and exchanged during the handing of a petition. This could easily be done by making the ePetition database publicly available through the PETI Portal.
- creating a PETI helpdesk service advising both potential and actual petitioners and accompanying them along the process of tabling a petition, and playing a pedagogical function;

<sup>158</sup> Communication on petitions is related to the public interest in the subject in question and may be directed at just the relevant national or local audiences. This may take the form of press release, social media posts, summaries of debates in committee/plenary or video statements by MEPs.

<sup>159</sup> An example is provided by cross-border issues, such as purging the Baltic Sea from chemical weapons and their residues, and involving six Member States. See Petition No 1328/2019 by Jānis Kuzins (Latvian), on behalf of SDK Dzintene and Petition No 0406/2020 by Nélia Pinto (Portuguese) on chemical residues from ancient World War shells in the Baltic Sea.

<sup>160</sup> European Parliament resolution of 13 December 2018 on the deliberations of the Committee on Petitions during the year 2017 (2018/2104(INI)) OJ C 388, 13.11.2020, p. 169–176, para 32.

<sup>161</sup> Article 227(4) of the Rules of Procedure.

- creating a community newsletter to be sent to all individuals having submitted a previous petition, or simply endorsed it,<sup>162</sup> or that opted in to remain informed about incoming petitions. This could also be extended to the communities that exist around other participatory channels, such as a complaint to the Ombudsman, a registered ECI or a Commission public consultation. This would create a sense of community similar to the one existing within non institutional online platforms, such as Avaaz, Change, or WeMove ;
- further establishing a community around a given petition, an online forum could also be established. This would enable an online discussion among petitioners, supporters, observers and the broader public<sup>163</sup>;
- sending targeted emails to the media community based on the country;
- for petitions having gathered a significant number of signatures (e.g. above 10,000), holding a ceremonial submission and pre-hearing could be envisaged so as to publicise the registration of the petition;
- embracing a more pro-active engagement with social media, media outlet as well as civil society organisations, and the development of publicity format that transcends the current institutionalised and conventional press releases<sup>164</sup>.

It is submitted that some of these proposals may remedy the current limited literacy and awareness about the existence of petitions. As such, by playing a pedagogical role, these reforms could also overcome the current mismatch between the expectations of petitioners and the ability of the exercise of their right to petition to lead to a full satisfaction of their demand. Time has come to leverage on the online platform to make the petition process not only more accessible (what it is not) but also more public, by providing in real time the information produced during the process both to the petitioner and the public.

#### Box 1: Prime-time TV and documentaries to showcase the political oversight work

In Austria, the Ombudsman office launched a TV show “BURGERANWALT” (‘Advocate for the People’) to publicise its existence and work to the citizens, thus raising awareness and visibility. This show was broadcasted every Saturday on national prime time TV and showcases real-life examples of complaints as well as solutions found for citizens.

<sup>162</sup> The European Parliament has already expressed its favour regarding the possibility for “supporters who have endorsed or expressed an interest in a petition....to receive the same feedback and information as the petitioner, particularly when it comes to debates in Parliament or replies by the EU Commission”. See European Parliament resolution of 13 December 2018 on the deliberations of the Committee on Petitions during the year 2017 (2018/2104(INI)), OJ C 388, 13.11.2020, p. 169–176, para 31.

<sup>163</sup> For a few illustrations of online discussions provided by petition systems, see T. Tiburcio, The Role of Ombudsmen and petitions committees in detecting breaches of EU law, Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, November 2018, p 7.

<sup>164</sup> Social media can enhance visibility for parliamentary petition bodies. See, e.g., Inter-Parliamentary Union, 128th Assembly and related meetings, Quito (Ecuador), 22 – 27 March 2013.

**Recommendation 2:** *Beyond formal equality of access through pro-active, communication and material support to petitioners*

While greater publicity of the right to petition may contribute to promote it as the privileged, permanent participatory mechanism within the EU, this alone might not suffice to address the root causes of today's limited use of petitions, that is the unequal access to EU participatory opportunities.

Upon decades of participatory practice, the EU endures on the working assumption that each and every individual affected by the action or inaction of public authorities in a Union's field of activities is equally able and likely to gain access to the Union, by inter alia filing a petition, or through other participatory channels.

Yet, the current use of petitions – as well as other participatory channels, such as the EU Commission public consultations or the very same ECIs – must lead us to question such assumption.<sup>165</sup> Indeed, any evaluation of democratic institutions requires to review their substantive effects on the organisation of power in society and not just their formal structure<sup>166</sup>. Although socio-economic data of petitioners are very limited – as they are for most other institutional avenues of participation –, it can be safely assumed that individuals that rely on petitions tends to be more informed and educated than those who don't<sup>167</sup>. This is backed up by the general literature on citizen participation, which constantly shows how participatory infrastructure tends to be skewed towards the well-educated<sup>168</sup>.

Likewise, statistics typically show a geographical imbalance, with a gradient of participation between the Member States in the North and Western Europe and those in the South and East<sup>169</sup>.

The overall legal and policy framework of participatory avenues, including that of petitions, notably their publicity, design, format, and feedback policy, as well as their overall participatory environment, suggest unequal access among potential participants<sup>170</sup>. There is no reason to believe that the Conference on the Future of Europe, due to its different format (essentially a major, meta public

<sup>165</sup> For an early analysis of the issue of equal access to public consultations, see Christine Quittkat, 'The European Commission's Online Consultations: A Success Story?' (2001) 49 *Journal of Common Market Studies* 653, 655.

<sup>166</sup> For a 'democratic power approach' as opposed to 'liberal proceduralism', see Steven Klein, *Democracy Requires Organised Collective Power*, *The Journal of Political Philosophy*, 2021, pp. 1-22.

<sup>167</sup> Scott Wright, 'E-petitions' in Stephen Coleman and Deen Freelon (eds) *Handbook of Digital Politics* (Edward Elgar 2015) 136-144. More specifically, see, Tiago Tiburcio, *The Role of Ombudsmen and petitions committees in detecting breaches of EU law*, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, November 2018, pp. 4-5.

<sup>168</sup> See, e.g., Alberto Alemanno, *Leveling the EU Participatory Playing Field: A Legal and Policy Analysis of the Commission's Public Consultations in Light of the Principle of Political Equality*, *European Law Journal*, 2020.

<sup>169</sup> See, e.g., *Report on the deliberation of the Committee on Petitions during the year 2017* (2018/2104(INI)), Committee on Petitions, Cecilia Wikström, 27 November 2018.

<sup>170</sup> While greater resources do not automatically equate with disproportionate influence over EU policy,<sup>170</sup> policymakers tend to afford disproportionate attention – and therefore greater access – to the most vocal stakeholders. See, e.g., J. Greenwood, 'Organized Civil Society and Democratic Legitimacy in the European Union', (2007) 37 *British Journal of Political Science* 2, 333-357 and, more broadly, P. Pansardi, 'Democracy, Domination and the Distribution of Power', *Revue Internationale de Philosophie*, March 2016, at 99-100 ('it is reasonable...to assume a certain degree of correlation between the possession of certain resources and the potential for exercising power of those who possess them.')

consultation)<sup>171</sup>, might overcome this structural issue by drawing a different audience<sup>172</sup>, notably through its electronic platform (future.europa.eu).

Given the structural disparities of access and resources, participation to and engagement with the EU has become a prerogative of those who are not only epistemically but also financially better placed and therefore can afford to contribute to the technocratic, highly technical and generally resource-intensive forms of participation. Yet if representative democracy is based on formal equality, participatory democracy underlines the need to create the conditions for substantive, real equality<sup>173</sup>.

The European Parliament shows some awareness about the role socio-economics play in the operation of the EU petition system, when it acknowledged that “in order to avoid any socio-economic discrimination, petitioners whose petition is to be debated in a public committee meeting and who are willing to participate in the discussion, should be entitled to a reimbursement of the related costs, within reasonable limits”<sup>174</sup>. Yet this remedy kicks in too late in the procedure, when the petition has already been filed.

A broader, and more proactive approach might be needed in order to equalise access to petitions (as well as all other EU participatory channels). It is only by lifting up particular constituencies that a reformed EU democracy could mitigate unequal opportunities of access. Hence the need to embrace power-shifting reforms capable of reshaping or refocusing the overall EU participatory environment through the Parliament and in particular the petitions process.

As argued elsewhere, a substantive understanding of the principle of political equality requires the EU institutions to *procedurally* ensure that everyone, in equal terms, will effectively be given a voice and access to the policy process<sup>175</sup>. While not all inequalities can be offset by positive measures due to the lack of experience in petition drafting, or limited exposure to and knowledge of (EU) institutions, the advocacy capacity of any relevant actor can be enhanced so as to equalise opportunities of access over time.

The below proposals could be considered:

- A systematic and wider collection of data on petitions, and in particular on the profile of citizens who use their rights, could be made. This could be linked to similar ones that could be established within the European Ombudsman Office, the Commission Secretariat General services dealing with the registration of complaints, or ECIs. This is a pre-requisite for any serious evaluation of the EU petition system (and of any other similar participatory system).
- A proactive publication of all petitions and their related documents to empower other individuals to support a given petition, and maintain actual supporters informed<sup>176</sup>.

<sup>171</sup> Joint declaration, on the Conference on the Future of Europe, 5<sup>th</sup> March 2021, <https://data.consilium.europa.eu/doc/document/ST-6796-2021-INIT/en/pdf> and <https://futureu.europa.eu/>, the digital platform acting as the hub of the Conference.

<sup>172</sup> The sole exception is the European Citizens' Assemblies, which are set to gather randomly selected citizens who will be debating and deliberating upon a set of themes and offer recommendations to the conference plenary. This is unprecedented in EU policy-making and might potentially lead to some institutionalisation within the EU institutional architecture.

<sup>173</sup> See, e.g., D. Della Porta, *Can Democracy be Saved?*, Polity Press, 2012, 36-36.

<sup>174</sup> Deliberations of the Committee on Petitions 2017, European Parliament resolution of 13 December 2018 on the deliberations of the Committee on Petitions during the year 2017 (2018/2104(INI)), (2020/C 388/19).

<sup>175</sup> Ibidem.

<sup>176</sup> As of today, supporters of petitions are not notified by email of the main steps and stages of the procedure.

- A PETI-helpdesk entailing the possibility to submit a complaint by phone or email (not only by online form)<sup>177</sup> and to receive support and advice in exercising the right to petition, so as to avoid both the literacy and digital divides, and more broadly a two-way communication in the preparation and instruction of a petition. This could and should be done in close co-operation with civil society organisations insofar as those are in close contact with the underrepresented, be they migrants, refugees and other minorities.
- A permanent user's assessment of the system of petition, by constantly surveying petitioner's satisfaction during and after the petition process. This is key insofar as citizen's opinion on political institution is widely influenced by the treatment they afforded to her/his request<sup>178</sup>.

Ultimately, to turn EU participatory democracy into a reality requires to proactively support unorganised citizens and to facilitate their access to both electoral and participatory opportunities within and outside EU channels<sup>179</sup>.

### 3.2. Fragmentation of the EU participatory infrastructure

Another major yet overlooked structural issue curbing the use of petitions is represented by the highly fragmented EU participatory infrastructure.

While participatory democracy entails the multiplication of opportunities for citizens' participation beyond elections<sup>180</sup>, the creation of those opportunities within the EU has occurred in scattered fashion. As a result, the aims and scope of the different EU participatory channels have not necessarily been considered. More critically the EU legislator has not necessarily contemplated how these mechanisms relate to one another<sup>181</sup>.

Given its general-purpose nature, the right to petition is the participatory instrument that has suffered the most from the multiplication of EU participatory channels.

Historically, the wide scope (both *ratione personae* and *ratione materiae*) of the right to petition made it the most suitable entry point into the EU participatory infrastructure. However, following the creation of the right to complain to the EU Ombudsman and the right to register a European Citizen Initiative, the right to petition has *de facto* been considerably reduced in scope. As a matter of principle both a complaint to the Ombudsman<sup>182</sup> and a request underlying an ECI fall under the scope of a petition under Article 24(2) and 227 TFEU. In other words, what citizens seek to obtain through these

<sup>177</sup> This is a relatively common practice among national ombudsmen. See on this point, Tiago Tiburcio, *The Role of Ombudsmen and petitions committees in detecting breaches of EU law*, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, November 2018, p. 5.

<sup>178</sup> See, e.g., C.J. Carman, *Assessment of the Scottish Parliament's Public Petition System 1999-2006*, Scottish Parliament, 2006.

<sup>179</sup> For a first attempt at theorising the normative value of the principle of political equality under EU law through a series of recommendations aimed at operationalising it, see Alberto Alemanno, *Leveling the EU Participatory Playing Field: A Legal and Policy Analysis of the Commission's Public Consultations in Light of the Principle of Political Equality*, *European Law Journal*, 2020.

<sup>180</sup> In normative theory, participatory democracy entails the multiplication of opportunities for citizens' participation beyond elections. See, e.g., D. Della Porta, *Can Democracy be Saved?* (Polity Press, 2012), p. 187.

<sup>181</sup> On this point, Alemanno, Alberto and Organ, James, *The Case for Citizen Participation in the European Union: A Theoretical Perspective on EU Participatory Democracy*, in Alemanno & Organ, *Citizen Participation in Democratic Europe: What next for the EU?*, ECPR Press /Rowman & Littlefield, 2021.

<sup>182</sup> H. Hofmann et al., *Administrative Law & Policy of the European Union*, OUP, 2011, p. 773.

mechanisms could be attained through a petition. However, by carving out special areas from within the petition's scope, the EU legislator has introduced dedicated instruments, notably the right to complain to the Ombudsman in order to protect citizens from EU maladministration<sup>183</sup>, and the right to register an ECI in order to enable citizens to set the political agenda<sup>184</sup>. As a result, having been construed as special (*lex specialis*) instruments with a narrower focus than that of petitions, notably EU maladministration and legislative initiatives respectively, the right to petition plays today a residual role.

This suggests that the right to petition has historically been overshadowed by the multiplication of participatory specialised channels, such as ECIs and Ombudsman complaints. By failing to enlarge the user base, the EU has enabled these new instruments to cannibalise the scope of action and therefore the problem-solving ability of petitions vis-à-vis the citizens. Ultimately, rather than enhancing the visibility of petitions as the ultimate, last resort for citizens to engage with the EU, these instruments have outshined the petitions system. When measured against the goal pursued by the whole EU participatory infrastructure, this outcome appears not only unintended but also paradoxical.

The bottom line is that citizens are not offered with a clear menu of participatory choices, that might clarify why one channel should be chosen over another one and when. Unless a citizen is already aware of the existence of the participatory tool suitable to her/his need, she/he won't be assisted in identifying the appropriate one.

This is structurally problematic insofar as the separate participatory infrastructures are inherently competing one with another. This is particularly the case for complaints to the Commission<sup>185</sup> and petitions to the European Parliament.

Fragmentation does not occur exclusively at the substantive level – with citizens failing to distinguish the merits of each participatory mechanism and institutional level –, but also institutionally.

While the coordination between PETI and the office of the Ombudsman and the Secretariat General regarding ECI guarantees a rather smooth cooperation among these bodies, this does not address per se the actual, inherent competition existing among those instruments as well as respective institutions and offices<sup>186</sup>. Such a competing dynamic, both at the level of instruments and institutional actors, negatively affects the overall intelligibility of the EU participatory infrastructure. As such, it also taints its ultimate goal: to facilitate and foster greater citizen participation in the Union's democratic life, as required by Article 10(3) TFEU.

<sup>183</sup> Under Article 228 TFEU, the European Ombudsman's remit is confined to the EU institutions, bodies, offices and agencies and matters pertaining to national administrations, even when they are implementing EU law, are excluded from its office. See also Alexandros Tsadiras, *Of celestial motions and gravitational attractions: The institutional symbiosis between the European Ombudsman and the European Parliament*, (2009) 28 Yearbook of European Law, p. 435.

<sup>184</sup> Under Article 11(4) TEU, an ECI is an invitation to the Commission "within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties".

<sup>185</sup> Complaints to the European Commission for any measure or practice attributable to a Member State which they consider incompatible with a provision or principle of EU law are registered through a dedicated webpage ([https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/)) and complaint handling system, generally referred to as CHAP.

<sup>186</sup> It is worth mentioning the negative opinion expressed by Sir Derek Walker-Smith on behalf of the European Conservative Group on the draft Opinion by Mr. Rivierez on the appointment of an Ombudsman for the European Community' (1978) PE 54.056 and PE 56.100. See also Jean-Pierre Jarry, 'The European Parliament and the establishment of a European Ombudsman: Twenty years of debate', 1974-1995' (2015) PE 538.885.

Today's fragmentation of the EU participatory infrastructure entails a further negative consequence. It prevents actual users from being aware to be part of a broader community of individuals and organisations that tries to engage with the EU institutional machinery. When one sums up the total number of individuals and organisations that rely on the EU participatory infrastructure to gain access to the EU, that figure is considerably higher than the communities that gather around each of the existing instruments<sup>187</sup>. An example being provided by the hundreds of thousands who support an ECI or the thousands that support a petition to the Parliament.

Yet, the existing fragmentation among and within participatory channels prevent the EU from naming, assisting, and bringing together such a broader community of citizens. This larger community remains not only invisible to the many – not being salient to the public – but also deeply unaware of its own existence. The ensuing lack of self-awareness represents another obstacle towards the full recognition and use of these participatory instruments.

### **Recommendation 3:** *One-stop-shop to the EU participatory infrastructure*

No ready-made solutions can address the historically embedded fragmentation of the EU participatory infrastructure. However, one might consider whether time has come to devise an online one-stop-shop centralising all public input, be they ECIs, complaints, petitions, into the EU institutional participatory architecture<sup>188</sup>. First, this common entry point into the EU institutional architecture would streamline the use of different participatory channels, by offering one as opposed to many bridges to the Union. Second, it would provide real-time advice to citizens seeking to engage, either to complain, propose solutions or hold the Union accountable, by guiding them towards the most appropriate participatory channel. A similar, while partial solution, has been adopted by the office of the European Ombudsman. By addressing a set of direct questions to the complainant (e.g. Is your complaint against an EU institution or body? Is your complaint about maladministration?), it does not only help avoiding the filing of requests that are likely to be judged inadmissible, but also advises individuals towards the most appropriate participatory channel<sup>189</sup>. Now imagine an advice system capable of orienting individual requests across all EU (and potentially national) participatory channels. This could be done through a mix of automatised and human processes. An analogue attempt has been made by the European Commission when it regrouped the formal and informal mechanisms of complaint under the 'Your Rights' page of the [www.europa.eu](https://europa.eu)<sup>190</sup>. However, despite the similar centralising feature, this is exclusively focused on EU internal market-related rights. Therefore, it does not include any reference to the EU participatory channels.

<sup>187</sup> When one considers the yearly average number of petitioners (1200, plus thousands of supporters), complainants to the EU Ombudsman (900), ECIs (50 initiators plus hundreds of thousands of supporters), requests for access to documents (7.500), and participants to the EU Public Consultations (several thousands), the number of individuals engaging with the EU appears suddenly greater than generally perceived. The EU institutions do not provide such as data.

<sup>188</sup> For an initial proposal, see Alberto Alemanno, *Europe's Democracy Challenge: Citizen Participation in and Beyond Elections*, German Law Journal, Volume 21, Special Issue 1: 20 Challenges in the EU in 2020, January 2020, pp. 176 et seq.

<sup>189</sup> Thus, when it is not about maladministration, the European Ombudsman's form advises the individual in the following terms: "For broader issues that come under the EU's field of activity, the European Parliament can help in some cases. It can hear 'Petitions' about any potential infringement of European citizens' rights by a Member State, local authorities or another public institution".

<sup>190</sup> See, [https://europa.eu/youreuright/home\\_en](https://europa.eu/youreuright/home_en). For a brief mention, Achievements of the Committee on Petitions during the 2014-2019 parliamentary terms and challenges for the future, Policy department for Citizens' Rights and Constitutional Affairs, July 2019, p. 9.

Third, by playing a pedagogical function, a one-stop-shop entry point into the EU participatory infrastructure accompanied by an advice system would also have the merit to make its existence, together with that of each and every of its channels, more visible.

The ongoing Conference on the Future of Europe has launched the first AI-supported multilingual platform common to the three main EU institutions and enabling citizens to engage with the EU. It is based on the open source *Decidim* technology<sup>191</sup>. As such it could offer a good basis for hosting such one stop shop guide assisting citizens in seeking solutions when engaging with the EU institutions<sup>192</sup>.

Ultimately, this solution would not only mitigate the current fragmentation among EU participatory channels, but also enhance public literacy around their existence and use.

### **3.3. The EU Parliament's structural dependency on third-party cooperation**

Under the existing legal framework, the European Parliament alone carries the obligation to examine and respond to petitions, by seeking a solution<sup>193</sup>. This makes the European Parliament – via its PETI committee – not only functionally and institutionally autonomous in its handling of the petitions, but also the only institution legally responsible for that handling vis-à-vis the petitioners.

However, as most issues and questions raised by petitioners cannot be addressed by the PETI Committee alone (as it does not have executive powers), its work and success rely heavily on third-party cooperation. In particular, the solution sought by the petitioner depends on both internal (other parliamentary committees) and external cooperation, notably the Commission, other EU bodies and agencies, as well as the Member States' national, regional and local authorities. When a petition raises problems related to the transposition and application of EU law, its effective treatment is linked to the level of cooperation that the EU Commission, sometimes other EU bodies, and Member States will offer to the Parliament.

The Parliament's Rules of Procedure have been modified multiple times to improve the petitions procedure to optimise the ability of the Committee on Petitions to address and satisfy citizens' concerns. As previously discussed, it disposes of some investigatory powers, such as fact-finding visits, and persuasive instruments (such as own initiative reports and resolutions), which however remain less developed than those in the hand of the European Ombudsman<sup>194</sup>. None of these reforms has been able to alter the high level of dependency existing between the European Parliament – notably its PETI Committee – and other institutional actors. In particular, the incentive's structure that guides the collaboration needed for the petitions' success has remained the same. This explains why the European Parliament has been regularly calling on the EU institutions and the Member States to do their utmost to provide prompt and effective solutions to issues raised by petitioners<sup>195</sup>. Thus, for instance, the Parliament has asked multiple times the Commission to "identify the means of enhancing cooperation

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<sup>191</sup> Decidim is a Free Open-Source participatory democracy platform for cities and organisations. It's a common free and open project and infrastructure involving code, documentation, design, training courses, a legal framework, collaborative interfaces, user and facilitation communities, and a common vision.

<sup>192</sup> A good, user-friendly template is AskTheEU.eu managed by AccessInfoEurope.

<sup>193</sup> Article 227 TFEU. See also Article 44 of the Charter of Fundamental Rights.

<sup>194</sup> Nikos Vogiatzis, *The European Ombudsman and Good Administration in the European Union*, Palgrave Macmillan, 2017.

<sup>195</sup> See, lastly, Annual Report 2019.

with Member States' authorities when it comes to responding to inquiries regarding the implementation of, and compliance with EU law"<sup>196</sup>.

In the report of activities between 2014-2019, the European Parliament enumerated among the challenges of the Committee on Petitions the need to obtain "more commitment and action" from other EU institutions and the Member States.<sup>197</sup>

While established procedures ensure such an external cooperation to occur, ultimately neither the Commission is obliged to act according to PETI's wishes, nor are the Member States. In other words, the EU institutions (notably the Commission) and the Member States are not bound to take any specific action vis-à-vis the Committee on Petitions and/or the petitioners. When it comes to the internal cooperation, the same is true for other parliamentary committees, whose relationship with the PETI Committee remains – despite being facilitated by the PETI Network – somehow problematic. In particular, other parliamentary committees face a tension between their work focusing predominantly on legislative activity and that, more residual in nature, on non-legislative issues such as petitions<sup>198</sup>.

While it is true that both the EU institutions and bodies (including the parliamentary committees) and the Member States (when acting within the EU's field of activity) are subject to the principle of loyal cooperation<sup>199</sup>, this has historically proved insufficient to guarantee the required level of cooperation<sup>200</sup>. The same can be said about the multiple Interinstitutional Agreements (IIAs) that have been concluded over time<sup>201</sup>. Yet all EU institutions have certain responsibilities in ensuring implementation and enforcement of EU law. Under the signed Interinstitutional Agreement on Better Law-Making<sup>202</sup>, the European Parliament, the Council and the Commission reiterated their commitment to promote the proper implementation and enforcement of existing legislation. In particular, they stated that: "The three Institutions agree on the importance of a more structured cooperation among them to assess the application and effectiveness of Union law with a view to its improvement through future legislation"<sup>203</sup>.

In the next section, we will unpack how PETI Committee's dependency on third-party cooperation – both external and internal to the European Parliament – prevents the EU petition system from

<sup>196</sup> P8\_TA(2017)0502, Deliberations of the Committee on Petitions 2016, European Parliament resolution of 14 December 2017 on the deliberations of the Committee on Petitions during the year 2016 (2017/2222(INI))

<sup>197</sup> Jos Heezen & Ottavio Marzocchi, Achievements of the Committee on Petitions during the 2014-2019 parliamentary term and challenges for the future, European Parliament, 2019, p. 31.

<sup>198</sup> Ina Sokolska, Cooperation of the Committee on Petitions with the Committees of the European Parliament and impact on their work, June 2021.

<sup>199</sup> Article 4 (3) TEU. See, e.g., M. Klamert, The principle of loyalty in EU law, in P. Craig & G. de Búrca (Eds.), Oxford University Press, 2014.

<sup>200</sup> Maxime Moulac & Marta Ballesteros, Inter-institutional relations in the treatment of petitions: the role of the Commission, European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, April 2021.

<sup>201</sup> Framework Agreement on relations between the European Parliament and the European Commission, OJ L 304/47 of 20 November 2011, as amended by Agreement between the European Parliament and the European Commission amending point 4 of the Framework Agreement on relations between the European Parliament and the European Commission, OJ L 45 of 17 February 2011; Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123 of 12.5.2016, p. 1).

<sup>202</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123 of 12.5.2016, p. 1).

<sup>203</sup> Ibidem.

delivering on its full democratic potential, before suggesting some possible remedies aimed at improving it.

### 3.3.1. Commission's cooperation with PETI

Due to its role of guardian of the Treaties<sup>204</sup>, the Commission is the 'natural' partner of the Committee on Petitions in processing petitions. As most petitions have to do with the application of EU law by the Member States, the cooperation of the Commission is therefore required. In other words, this is a *sine qua non* to ensure the EU Parliament's problem-solving needed to achieve the highest level of social justice and full and effective protection of the economic, social and cultural rights of individual petitioners and organisations.

However, despite a well-established cooperation largely driven by path-dependency, the European Parliament, and notably its PETI Committee, have repeatedly asked the EU Commission to improve the handling of petitions<sup>205</sup>.

In particular, the Parliament has been highlighting over the year the current shortcomings in the Commission's handling of petitions. In particular, it has had the chance to underscore :

- the information asymmetry between the Commission and Parliament in relation to enforcement<sup>206</sup>, as epitomised by the lack of a proper system to collect information on petitions, and how they link with infringement procedures or EU acts<sup>207</sup>;
- the quality of the responses obtained from the Commission upon the requests for information and/or opinion raised by the PETI Committee while handling a petition<sup>208</sup>;
- concerns over the Commission's practice of referring a significant number of petitioners to other bodies at national, regional or local level in light of the Commission's enforcement responsibility;
- the lack of a binding agreement framing the co-operation between the Commission and the PETI Committee.

It is undisputed that all these issues do contribute – although to a different extent – to undermine, or at least weaken, the cooperation between the European Parliament (notably the PETI Committee) and the Commission. However, behind the Commission's difficult relation with PETI, there is a broader, overlooked and unsolved issue.

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<sup>204</sup> Article 17 TEU.

<sup>205</sup> P8\_TA(2017)0502, Deliberations of the Committee on Petitions 2016, European Parliament resolution of 14 December 2017 on the deliberations of the Committee on Petitions during the year 2016 (2017/2222(INI)), para 8.

<sup>206</sup> This is one of the main obstacles to establishing genuine accountability and an effective discourse between Parliament and the Commission. In the absence of ex post studies, no system exists that screens the impact of petitions.

See, e.g., Melanie Smith, Administrative procedures linked with Article 258 TFEU proceedings: an academic perspective, European Parliament, 2011.

<sup>207</sup> Maxime Moulac and Marta Ballesteros, Interinstitutional relations in the treatment of petitions: the role of the Commission, European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, April 2021, pp. 23-24.

<sup>208</sup> Ibidem. See also the parallel debate around the duty of motivation existing upon the European Commission vis-à-vis the initiators of an ECI. See, e.g., see Anastasia Karatzia, The European Citizens' Initiative and the EU Institutional Balance: On Realism and the Possibilities of Affecting Lawmaking, Common Market Law Review 54, 177-208, at 197-98 (2017).

The European Parliament is the only institution that – via the petition system – is authorised to exercise some oversight over the Commission's almost unlimited discretion in ensuring the application of EU law (through inter alia the triggering Article 258 TFEU)<sup>209</sup>. According to Article 17 TEU, the Commission is charged with the duty of ensuring the application of EU law, by acting as 'guardian of the Treaties'<sup>210</sup>. In this area, it has powers of investigation, prevention, sanction and authorisation. One of their primary tools in that regard is the capacity of launching infringement proceedings.<sup>211</sup> This is the only procedure that allows the European Court of Justice to measure the conduct of a Member State directly against EU law<sup>212</sup>. An infringement proceeding consists of several steps, and is initiated either on the Commission's own initiative, or in response to complaints or even a petition. In practice, it means that when the Commission finds that a Member State has failed to fulfill an obligation under EU law, it first consults with the State concerned<sup>213</sup>. Only if these informal consultations do not lead to a termination of the breach, the Commission may open a formal (pre-litigation) dialogue, which if unsuccessful, may lead the Commission to bring the State before the Court of Justice.

Under settled case law, the Commission has discretion whether to start or discontinue an infringement proceeding.<sup>214</sup>

However, if the EU Commission enjoys a wide discretion in determining whether to start an infringement proceeding against a Member State, the EU Parliament – via its PETI Committee – may actually supervise, at least politically, the exercise of the Commission's discretion. By virtue of the principle of institutional balance<sup>215</sup>, this supervision does not (and cannot) extend to the EU Parliament replacing the Commission in the exercise of its prerogatives and, as a result, reaching a different conclusion as to the merits of the case brought to its attention. In any event, neither an institution – such as the European Parliament –, nor an individual, has a vested legal interest in the infringement procedure under Article 258 TFEU<sup>216</sup>.

Being limited to political oversight, the supervisory function played by the EU Parliament has therefore a lower intensity than the one exercised by the Commission over the Member States' compliance with EU law. However, despite being legally constrained, it inevitably conflicts with the almost unlimited discretion enjoyed by the Commission and the corresponding lack of accountability for such an exercise. This occurs because the examination by the PETI Committee of a petition dealing with a Member State's application of EU law, inherently intersects with the assessment which the Commission alone is tasked to provide. Throughout the examination and investigation of a petition, the PETI

<sup>209</sup> The other being the European Ombudsman but whose mandate is limited to 'maladministration', as will be discussed below.

<sup>210</sup> Consolidated Version of the Treaty on European Union [2008] OJ C115/13 ("TEU"), Article 17(1) establishes the Commission as the "Master of the Treaties" and Article 4 TEU establishes the principle of sincere cooperation.

<sup>211</sup> Article 4 TEU; Article 17 TEU; Articles 258-260 TFEU.

<sup>212</sup> K. Lenaerts, I. Maselis and K. Gutman, *EU Procedural Law*, Oxford University Press, 2014, 161.

<sup>213</sup> Article 258 TFEU.

<sup>214</sup> Communication from the Commission to the Council and the European Parliament, "Updating the handling of relations with the complainant in respect of the application of Union law", COM [2012] 154 final, p. 8; see Joined Cases C-514/11 P and C-605/11 P *Liga para a Protecção da Natureza (LPN), Republic of Finland v European Commission* [2013] ECLI:EU:C:2013:738, para 7; C-329/88; C-317/92; *Lefebvre/COM T-571/93* C-531/06.

<sup>215</sup> The principle of institutional balance in the EU implies that each of its institutions has to act in accordance with the powers conferred on it by the Treaties, in accordance with the division of powers. See, e.g., Case C-70/88 *Parliament v Council (Chernobyl)* [1990] ECR I-2041.

<sup>216</sup> Case 247/87 *Star Fruit Company SA v Commission of the European Communities*, ECLI:EU:C:1989:58; Order, Case C-111/11 P, *Ignacio Ruipérez Aguirre and ATC Petition v European Commission*, ECLI:EU:C:2011:491.

Committee inevitably sheds light on the Commission's exercise of its discretion in determining whether or not to start proceedings against a country.

This suggests that the European Parliament – via the PETI Committee – may potentially hold the Commission into account for the exercise (or its omission) of the prerogatives it enjoys as the 'guardian of the Treaty'. This sits uneasily with the traditional, judicially sanctioned and judicially protected administrative discretion entrusted to the Commission.

From a Commission's perspective, the public scrutiny brought forward by the publicity which is inherent to the handling of any petition conflicts with its own rather confidential, secretive handling. It is worth highlighting that the Commission regularly receives complaints by individuals signaling instances of misapplication of EU law. Yet, neither the number nor the provenance of complaints received by the Commission, and denouncing the misapplication of EU law, is generally public. Likewise, the Commission does not publish systematically the number of petitions that might have led – or contributed – to an infringement or any other action taken by the Commission<sup>217</sup>. This is because the procedure followed by the Commission to deal with requests for opinions on petitions is not publicly available nor subject to transparent rules<sup>218</sup>. Still, petitions should offer – by definition – an extra guarantee for individuals over complaints brought to the Commission insofar as the former entail the involvement of the EU Parliament, via the PETI Committee.

This tension finds the most dramatic expression in those circumstances in which the PETI Committee, based on its examination, collection of information, and fact-finding, calls on the Commission to take action against a Member State, but the Commission refuses to follow suit.

In those circumstances, the European Parliament's duty to satisfy petitioners' right – as it is imposed on the PETI Committee – conflicts with the EU Commission's freedom in exercising its administrative discretion.

After being left to the serendipity inherent to any case-by-case approach, this tension has however crystallised over time. In 2017, the Commission has established a new policy determining in which situations it intends to open infringement actions. In the Communication "EU Law: Better Results through Better Application", the Commission states that it would "give high priority to infringements that reveal systemic weaknesses which undermine the functioning of the EU's institutional framework"<sup>219</sup>.

Individual cases by typically not falling under this category are not considered – as a matter of principle – by the Commission as a potential trigger for an infringement action. Thus, for instance, a petitioner who denounced the serious health problems caused by the emissions of a ceramics factory over 5000 of the 6849 inhabitants of an Italian village (Borgo Val di Taro) saw his petition being de facto blocked by the Commission<sup>220</sup>. In its response to the PETI Committee, the Commission argued not to have

<sup>217</sup> In the past however, the Commission annual reports on the implementation of EU law provided tables indicating the number of petitions that were considered the "means of detection of infringements". See, e.g. Annex I "Detection of infringement cases" of the 2002 Commission report on monitoring the application of EU law,

<sup>218</sup> The Commission's annual reports on monitoring the application of EU law refer to petitions in a very general way, which evidences a lack of a proper system to collect information on petitions and how they link with infringement procedures or EU acts. The EU Citizenship Report 2020 "Empowering citizens and protecting their rights" does not even mention petitions.

<sup>219</sup> Communication from the Commission — EU law: Better results through better application, C/2016/8600, OJ C 18, 19.1.2017, p. 10–20.

<sup>220</sup> Petition No 0661/2018 by Matias Eduardo Diaz Crescitelli (Italian) on the alleged violation of environmental EU law by an unhealthy industry in Borgo Val di Taro (PR), Italy.:

enough evidence to prove a systemic breach of EU environmental law and refers the petitioner to the national competent authority as the only responsible to implement EU law on their territory<sup>221</sup>.

Yet, as highlighted by the European Parliament, "the refusal to investigate citizens' complaints, including individual cases, thoroughly and promptly in line with the Commission's approach in its 2016 communication ... may *prevent a rapid understanding of possible serious systemic shortcomings*, thereby perpetuating multiple rights infringements at the expense of numerous citizens". Moreover, the provisions of Article 227 TFEU establish that petitions can be filed on matters within the Union's fields of activity, and which affect petitioners directly. That includes not only areas where the Commission has legislative competence but also areas where the EU has competence to 'support, coordinate or supplement' Member States' action. However, the Commission's policy seems to interpret this in a narrow way, namely by taking action only on petitions raising issues related to the application of EU law on which the Union has legislative competence and, therefore, on those which could give rise the necessity to amend or propose a legislative act or initiate an infringement procedure for lack of compliance.

But there is more. As highlighted by the response provided to the Borgo Val di Taro's petition, the Commission strategy leaves to the national courts alone the burden of monitoring possible breaches of EU law. However, unlike the Commission, national courts cannot self-task but require individuals and organisations to pursue lengthy and expensive administrative and judicial procedures in their Member States. Such an approach (for instance, on environment, industrial emissions, waste and related serious health issues suffered by hundreds or thousands of people as experienced with petitions received, including the petition mentioned above) is not only harmful but also in breach of the Commission's duties of "Guardian of the Treaties" as arising from provisions of Article 17 TEU, risking for a long period to keep unpunished violations of rights, related to the breaches of EU law, for a plurality of citizens. One should not forget that the Commission carries the responsibility to check whether national authorities are taking steps to solve the problem mentioned in the petition and should therefore be ready to step in case of inefficiency of actions of national authorities.

If national courts have primary responsibility for ensuring the proper implementation of EU legislation in the Member States, this should by no means preclude a more proactive role by the Commission, in its capacity as 'Guardian of the Treaties'. This is all the more so when it comes to ensuring compliance with EU law, particularly in cases related to protection of the environment and public health. In many cases, the Commission could take action by providing Member States with guidance and advice, launching awareness-raising initiatives or promoting discussion when there is an approach adopted at national level conflicting with the one adopted at EU level on topics falling within the EU competence of support and coordination of Member States' action. Yet, as shown by the Borgo Val di Taro's petition, the Commission falls short of following up on petitions whose alleged breach of EU does not qualify as 'systemic'.

The European Parliament stated that it "considers such an approach to be a regression from the previous approach to EU environmental legislation implementation and an overall inhibition from its duties of guardian of the Treaties".

Additionally, there is a serious risk that what ultimately governs the exercise of the Commission's discretion in ensuring the application of EU law is its political priorities. Thus, the Commission can – via

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[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/PETI/CM/2019/12-02/1182934EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/PETI/CM/2019/12-02/1182934EN.pdf)

<sup>221</sup> PETI Committee, Notice to Members in Petitions 661/2018, 15.04.2019.

its answers to PETI – nudge the Parliament to close those petitions which it is not ready or willing to take up, but might jump on those that are more aligned to its (political) priorities.

Since 2017, the EU Commission approach lacks legal clarity, transparency, being based on an inherently arbitrary methodology. Indeed, the criteria used by the Commission to consider a case implying an issue of wider principles or a systematic failure to enforce EU law deserving its further action remain unknown.

Ultimately, by de facto refusing to deal with individual petitions as a valid source of information justifying an infringement proceeding may constrain the citizens' right to petition, to the point of denying its *effet utile*. Based on that Communication, the Commission decided to prioritise and focus its actions to cases reflecting serious systemic shortcomings, excluding individual cases and, thus, individual petitions. As highlighted by the Borgo Val di Taro's petition, the current Commission's policy on infringement actions nullifies even the prospect of a possible infringement action. Yet that action needs to be a credible threat if no other solution is found.

What is the purpose of a petition procedure if this finds itself systematically barred, or at least curtailed, by a policy that may conflict with the very existence of such a right?

This aspect of the Commission's handling of petitions raises a serious legal issue.

While the Commission enjoys full discretion in determining whether or not to commence a proceeding<sup>222</sup>, the question is whether it has a procedural obligation to assess, in an unbiased way, whether and how to exercise its discretion, and to define and explain its position to the petitioner through the PETI Committee. The existence of a policy preventing the Commission to do so on a case-by-case basis may therefore infringe upon the principle of loyal cooperation, which governs its relations and cooperation with the European Parliament.

On this point, one must remember that, as a matter of principle, to guarantee the effectiveness of the rule of law within the Union, the exercise of the European Union institutions' discretion is subject to review by the Court.

In particular, the Court of Justice judged that "the action taken by the Commission in the exercise of that discretion is not excluded from review by the Court"<sup>223</sup>. Therefore, in the case of abuse of discretion, the Court of Justice may find that the institution failed to comply with its duty to fully examine the petition upon the request of the European Parliament.

**Recommendation 4:** *Relying on the European Ombudsman to improve the Commission's cooperation with PETI in handling petitions*

To address and overcome the current shortcomings in the Commission's handling of petitions, several solutions have been proposed over time. These include the possibility of concluding a "more binding agreement" (than the current IIA) between the European Commission and European Parliament, and increase the publicity surrounding the Commission's handling of the petitions through inter alia the

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<sup>222</sup> Communication from the Commission to the Council and the European Parliament, "Updating the handling of relations with the complainant in respect of the application of Union law", COM [2012] 154 final, p. 8; see Joined Cases C-514/11 P and C-605/11 P *Liga para a Protecção da Natureza (LPN), Republic of Finland v European Commission* [2013] ECLI:EU:C:2013:738, para 67; C-329/88 ; C-317/92; *Lefebvre*/COM T-571/93 C-531/06.

<sup>223</sup> Case C-16/90 *Nolle* [1991] ECR I-5163, paragraph 12.

creation of compatible IT tools that would share relevant information on petitions and clarify the link between petitions (and complaints) and infringements<sup>224</sup>.

Based on the previous analysis, this study instead intends to put forward a different, yet complementary approach. Rather than relying predominantly on judicialisation – through the establishment of a legally binding interinstitutional agreement and the possibility of the EU Parliament bringing the Commission to Court –, it puts forwards a less conflictual approach that might produce better results at lower costs.

Virtually all issues previously identified, from the information asymmetry between the Commission and Parliament in relation to enforcement<sup>225</sup>, the quality of the Commission's (little motivated) response to PETI<sup>226</sup> to the categorical exclusion of petitions as valid source for triggering an infringement actions could potentially be addressed as instances of "maladministration".

This suggests that petitioners, but also Members of the European Parliament – notably those sitting in the PETI Committee –, could submit a complaint to the EU Ombudsman – whose mission is to protect citizens' rights, including the right to petition<sup>227</sup>. Even in the absence of a complaint, the European Ombudsman's office can initiate an investigation on her initiative (strategic inquiries) based on its self-tasking authority. Upon the opening of an investigation, Union institutions, including the Commission, are obliged to supply the Ombudsman with any information requested, and to provide access to files, subject to certain exceptions for classified or sensitive documents<sup>228</sup>. The scope of the review is not to replace the Commission in the exercise of its prerogative, but merely to verify whether its handling of the petition, upon the request of the PETI Committee, may qualify as an instance of 'maladministration'<sup>229</sup>. Union officials and servants may be required by the Ombudsman to testify. If as a result of enquiries and findings, the Ombudsman finds a case of maladministration, a number of possible remedies can be adopted. Where an amicable solution is not possible, the Ombudsman closes the case with a reasoned decision that may include a critical remark or, more critically, makes a report with draft recommendations sent to the Parliament and relevant authority. While the Ombudsman's recommendations have no binding effects for the institution concerned (and don't generate subjective enforceable rights in individuals), the Commission may either be persuaded or at least shamed to amend its way. Moreover, they may lead to actions taken by other actors and institutions, within their

<sup>224</sup> Maxime Moulac & Marta Ballesteros, *Interinstitutional relations in the treatment of petitions: the role of the Commission*, European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, April 2021, pp. 47 and 48.

<sup>225</sup> This is one of the main obstacles to establishing genuine accountability and an effective discourse between Parliament and the Commission. See, e.g., Melanie Smith, *Administrative procedures linked with Article 258 TFEU proceedings: an academic perspective*, 2011.

<sup>226</sup> Recitals J, V, Z, and paragraphs 1, 5, 6, 7, 8, 9, 11, 12, 14, 17, 25, 28, and 30 of the European Parliament Resolution, [https://www.europarl.europa.eu/doceo/document/A-9-2020-0230\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2020-0230_EN.html) (paragraph 8 of the resolution: "Calls on the Commission to commit to a more active involvement with the Committee on Petitions in order to ensure that petitioners receive a precise response to their requests and complaints regarding the implementation of EU law").

<sup>227</sup> On occasions the Ombudsman receives complaints about how the Commission responds to a Petition, or, more generally to a question by a Member of the European Parliament. The Ombudsman tends to consider such cases to be outside of its mandate. This is because it qualifies the matter (i.e. whether the response of the EC is or is not adequate) as relating to the political work of Parliament. For an illustration, see Complaint No. 00018/2020/PB to the European Ombudsman.

<sup>228</sup> Article 3(2) of the Statute of the European Ombudsman.

<sup>229</sup> See further on this point Nikos Vogiatzis, *The European Ombudsman and Good Administration in the European Union* (Palgrave Macmillan 2018), pp. 243-279

range of competence, against the Commission. Although the Commission can refuse to take action, it generally complies with the Ombudsman's recommendation.

As a forum of administrative accountability, the Ombudsman's intervention might potentially address the existing and previously identified Commission's flaws in its handling of petitions, thus reinstating the right to petition. The Ombudsman can indeed examine if the explanations are adequate and call on the Commission to give better reasons. In a few instances, the Ombudsman convinced the Commission that it would be wise to open infringement procedures or Pilots. The Italian landfill cases provides an illustration<sup>230</sup>.

In other words, should the Commission fail to motivate a request for information submitted by the PETI Committee, the Ombudsman could find – as it did in the past in relation to complaints – “that the Commission had demonstrated maladministration *by failing to provide the complainant with sufficient reasons for its decision to take no further action on the case and by depriving the complainant of the opportunity to put forward its point of view before the case was closed*”<sup>231</sup>.

This finding was made with reference to a decision, and not a petition. However, given the status of the right of petition as enshrined in the Treaty and Charter of Fundamental Rights, the conclusion reached should be valid a fortiori. Isn't it the Ombudsman's task to protect citizens' rights vis-à-vis the EU institutions?

On this point it is worth highlighting that the abovementioned 2017 Commission's Communication on “Better results through better application” includes an Annex establishing the administrative procedures for the handling of relations with the complainant regarding the application of EU law. No equivalent procedure exists in relation to petitions submitted to the Commission for opinion, including in those cases where there is an infringement case on the same issue.

While it is true that the General Court of the EU seems to have subsequently rejected the existence of a set of procedural duties<sup>232</sup>, such as the duty to motivate, it did so in an obiter dictum and without entering into the merits of the plaintiff's claim.

One could submit that while the Commission enjoys full discretion in determining whether or not to commence a proceeding, it has a procedural obligation to assess, in an unbiased way, whether and how to exercise its discretion, and to define and explain its position to the petitioner through the PETI Committee (e.g. duty to motivate). Should it be the case, the existence of a policy preventing the Commission to do so on a case-by-case basis may therefore infringe upon the principle of good administration and possibly even encroach upon that of loyal cooperation.

It may be argued that if a representative body, such as the European Parliament, had taken up a case, there is even an *enhanced* duty to give reasons not to pursue infringement proceedings. Ultimately, the right of petition is the expression of a right linked to the EU citizenship and enshrined in the Charter of Fundamental Rights.

<sup>230</sup> Judgment in Case C-196/13 Commission v Italy, ECLI:EU:C:2014:2407 ECLI:EU:C:2014:2407.

<sup>231</sup> European Ombudsman, decision of 30 January 2001, mentioned in T- 202/90 (“The Ombudsman...observed that the Commission had demonstrated maladministration by failing to provide the complainant with sufficient reasons for its decision to take no further action on the case and by depriving the complainant of the opportunity to put forward its point of view before the case was closed”).

<sup>232</sup> Case T-202/02, Order of the Court of First Instance (Fourth Chamber) of 14 January 2004, Makedoniko Metro and Michaniki AE v Commission, para 45 (“That conclusion is not undermined by the applicants' argument that during the investigation of the complaint the Commission allegedly infringed general principles of law, in particular the applicants' procedural rights, such as the right to be heard or the duty to state reasons”).

Should the European Ombudsman not qualify as 'maladministration' an instance of lack of motivation by the European Commission upon the request of the PETI Committee, the Parliament remains free to rely on its *political* prerogatives to take action by, for example, adopting a Resolution, or other avenues available to it and described below.

**Recommendation 5:** *Raise the political profile through fact-finding, questioning, hierarchy and own initiative reports*

Another approach that might be followed to improve the Commission's cooperation with the European Parliament, notably with the PETI Committee, is to raise the political profile of a given petition. This might be particularly needed in those individual petitions that, although shedding light on a manifest breach of EU law, do not prompt an effective reaction by the Commission.

*Fact-finding visits and their moral (and political) suasion*

The political profile of petitions could be raised vis-à-vis the European Commission, (but also the Member States), by relying more often on a fact-finding visit<sup>233</sup>. As discussed, when investigating petitions, establishing facts or seeking solutions, the committee may organise fact-finding visits to the Member State or region that are concerned by admissible petitions that have been already debated in the committee. The mere announcement of a visit sheds the light over the petition, by prompting media coverage, thus raising the political profile of the underlying issue. It also offers credibility to the reasons of the petitioner and her/his cause, thus enhancing her/his voice and claims.

Moreover, as the visit is followed up by the drafting of a mission report containing the observations and recommendations of the MEPs taking part in the delegation, possibly leading to a resolution voted by Parliament in plenary, it also enables the Parliament to clearly put forward recommendations aimed at addressing and solving the petitioner's request. The PETI Committee can also, upon the conclusion of a fact-finding visit, decide to submit oral questions to the Commission and/or the Council and to hold a debate in plenary.

*Additional parliamentary questioning including in plenary*

There is another possibility, which is already partly practiced today, for the PETI Committee to further raise the political profile of a given petition that struggles to receive the attention it deserves. This is offered by parliamentary questioning<sup>234</sup>.

As discussed above, this is an ad hoc, additional tool for supervision of administrative activity. It allows the European Parliament, upon the request of inter alia a committee, to gather information for the purpose of reviewing policies, and single-case measures<sup>235</sup>. To do so in plenary would further raise the political profile of the case<sup>236</sup>.

All these activities – be they fact-finding visits and/or parliamentary questioning – are set to draw public attention on a given situation of misapplication of European Union law by a Member State and, as such, do contribute to its resolution.

<sup>233</sup> In the period from 2014 to 2019, only 11 fact-finding missions were organised. See Jos Heezen & Ottavio Marzocchi, Achievements of the Committee on Petitions during the 2014-2019 parliamentary term and challenges for the future, European Parliament, 2019, for a list of visits and details about their subject matters.

<sup>234</sup> Article 230(2) TFEU; Rule 136 Rules of Procedure of the European Parliament.

<sup>235</sup> 136(1) TFEU.

<sup>236</sup> While this is not common practice for petitions, it is expressly foreseen in seven EU/EEA member states for ombudsmen complaints. Austria, Bulgaria, Luxembourg as well as Norway foresee that those complaints can be debated in a plenary session of the parliament.

While the Parliament's oversight is political in nature, when exercised fully – by taking advantage of all the mechanisms at its disposal – it may contribute to the legal satisfaction of the petitioner's demand.

### *Hierarchy*

During the handling of the petitions, the European Parliament engages – via the PETI Committee – with a variety of Commission representatives, including during the committee meetings. However, the practice governing the cooperation between the Commission and the PETI Committee reveals that the Commission officials handling petitions and showing up at meetings tend not to be hierarchically able to fully satisfy MEP's and petitioner's demands. This represents a structural obstacle for a successful cooperation between the two institutions and is often a source of frustration. Upon the questioning of PETI's Members, Commission officials typically acknowledged not to be able, due to hierarchical reasons, to fully address the demand, or not to be in a position to commit their institution. The PETI Committee should not hesitate to aim at raising the political profile of their handling of petitions, notably at the time of the meetings, by expressly demanding for the presence of a Commissioner or a Director General, the only ones politically capable of committing the Institutions<sup>237</sup>. This would have major positive consequences over the quality of the debates and overall accountability of the EU petition system. While it does not belong to the European Parliament and its Members to determine the seniority of the Commission representatives engaged and sent to the Committee, nothing prevents it from explicitly expressing a preference for a senior official higher in the hierarchy. This could be done by sending the request to such officials in addition to the desk officers assigned to the handling of the petitions on the Commission side.

### *Own initiative reports as a further layer of Commission's accountability*

As previously discussed, the most articulated, and politically charged response by the PETI committee to a petitioner's demand is to draw up an own initiative report<sup>238</sup>, notably when this is done in association with the committee responsible for the subject-matter<sup>239</sup>.

Although this remains quite infrequent, it has been used by the European Parliament to force the European Commission<sup>240</sup> to further explain its (unsatisfactory) response to the initiators of European Citizens' Initiative. In so doing, the Parliament's involvement in the continuation of the petition's handling by the Commission sheds light on the interaction between participatory democracy, be it through a petition or an ECI, and representative democracy<sup>241</sup>. This suggests that an own initiative report may provide with another layer of accountability from the Commission vis-à-vis the petitioners. As the European Parliament may call upon the Commission to act in the framework of an ECI to

<sup>237</sup> During the current legislature (2019-2024), at the request of PETI, the Commission has made a significant efforts to send Directors, Directors general or Heads of Unit to the PETI meetings instead of the usual staff representatives.

<sup>238</sup> Rule 54(1) of the Rules of Procedure: "A committee intending to draw up a non-legislative report...on a subject within its competence on which no referral has taken place, may do so only with the authorisation of the Conference of Presidents".

<sup>239</sup> Where the policy-relevant committee put forward suggestions dealing with the application or interpretation of Union law the PETI committee should accept those. If the committee does not accept such suggestions, the committee -responsible for the subject matter may table them directly in plenary. See Article 227 Rules of procedure.

<sup>240</sup> 227(6) TFEU.

<sup>241</sup> For a similar point made in relation to the European Parliament's involvement in the ECI context, see Anastasia Karatzia, *The European Citizens' Initiative and the EU Institutional Balance: On Realism and the Possibilities of Affecting Lawmaking*, *Common Market Law Review* 54, 177-208, 2017.

combine the pressure of participatory with that of representative democracy<sup>242</sup>, it should not hesitate to do the same in relation to the Commission when (failing to) playing its role of 'Guardian of the Treaties'.

### 3.3.2. Member States' cooperation with PETI

While the Commission may play a key role in satisfying the petitioner's demand, it is the relevant Member State that ultimately determines whether a given petition finds a solution. Therefore, PETI Committee's examination of a petition is heavily dependent not only on the cooperation of the EU Commission, but also in a more direct way on the cooperation and goodwill of that Member State. However, unlike the European Parliament itself (notably via the PETI Committee), neither the Commission nor the Member States are subject to a direct obligation vis-à-vis the petitioner.

Ultimately, as previously highlighted, unless the Member State reacts to the EU Parliament's (or Commission's) request, the petitioner risks not seeing her/his demand satisfied.

When one looks at figures, the PETI Committee sends out on a yearly basis approximately 50-60 petitions with one or more letters requesting information. Yet approximately less than half of these requests are actually followed through by the Member States<sup>243</sup>. The response rate varies across countries, with some Member States more responsive than others. This significant level of variation may be ascribed to a variety of factors. Member States that have a petition system tend to be more aware and responsive to PETI's requests. Moreover, different national administrative cultures and their overall organisation to respond to EU requests also play a role. Generally, the involvement of the Permanent Representation favours a response from the public administrations. The PETI Secretariat has no standardised procedure governing its interactions with different national authorities, but adapt to each and every countries, with some favoring direct contact with national administrations and other with the Permanent Representation<sup>244</sup>.

While the European Parliament has called upon the Commission to "identify the means of enhancing cooperation with Member States' authorities when it comes to responding to inquiries regarding the implementation of, and compliance with, EU law"<sup>245</sup>, it has not necessarily developed its own policy when interacting with the twenty-seven Member States' administrations.

#### **Recommendation 6:** *Raise the political profile through temporary committees of inquiry*

One possible initiative that could be taken in those pathological situations in which neither the Commission nor the Member State respond to Parliament requests for information or action in relation to petitions is to tap into the far-reaching powers of investigation of the European Parliament. In particular, the Parliament has the right, at the request of at least one-quarter of its component Members, to set up a temporary committee of inquiry into alleged contraventions or maladministration

<sup>242</sup> Michael Dougan, What are we to make of the Citizens' Initiative?, *Common Market Law Review*, 48 (2001), 1807-1848, at 1844.

<sup>243</sup> Out of the 765 admissible petitions in 2017, 58 petitions were sent to Member States with 1 or more letters requesting information, and only for 35 of them 1 or more reply letters were received. Similarly in 2018, out of the 788 admissible petitions in 2018, 60 petitions were sent to MS with 1 or more letters requesting information, but only for 25 of these petitions 1 or more reply letters were received.

<sup>244</sup> When requests are addressed to regional or local authorities and not to Permanent Representations it is generally because the issue depends on the regional or local authorities' competences. When requests are instead addressed to specific national authorities (specific ministries) the Permanent Representations are usually in cc.

<sup>245</sup> P8\_TA(2017)0502, Deliberations of the Committee on Petitions 2016, European Parliament resolution of 14 December 2017 on the deliberations of the Committee on Petitions during the year 2016 (2017/2222(INI))

in the implementation of Union law <sup>246</sup>. Although this right was only formally recognised to it in the Treaty of Maastricht (1992), Parliament has had this capacity since 1981, coinciding with the first direct elections to Parliament (1979).

The legal basis for the European Parliament's right of inquiry is Article 226 of the Treaty on the Functioning of the European Union (TFEU):

*"In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.*

*The temporary Committee of Inquiry shall cease to exist on the submission of its report.*

*The detailed provisions governing the exercise of the right of inquiry shall be determined by the European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after obtaining the consent of the Council and the Commission."*

A temporary committee of inquiry is an ad hoc body tasked to investigate alleged contraventions or maladministration in implementation of Union law which would appear to be the act of inter alia a public administrative body of a Member State. A committee has 12 months to conclude its work with the submission of a report <sup>247</sup>. This may contain minority opinions as draft recommendations addressed to the Member States and its public administrations. In so doing, the committee has the right to request documents, and to conduct hearings which include the participation not only of Member State authorities subject to the inquiry, but also of the EU Commission – and other institutions if need be <sup>248</sup>.

While this right does not exist when the issue of the inquiry is the subject of legal proceedings, it may actually prompt the relevant EU Member States to comply with EU law, or at last to raise the stake for the EU Commission to re-assess the situation and potentially act, in relation to the issues raised in petitions and actions requested by PETI and the EP.

In essence, a temporary committee of inquiry is the most powerful supervisory tool to exercise political oversight by the European Parliament on Member States. Its mere launch prompts wide media coverage and may contribute to a major political impetus for addressing the petitioner's underlying issues. However, up to date, the instrument of the committee of inquiry has been used only to a limited degree by the European Parliament <sup>249</sup> in comparison with the practice in certain national parliaments <sup>250</sup>. This must largely be ascribed to the failed attempt to replace the Interinstitutional

<sup>246</sup> Article 208 of the Rules of Procedure of the European Parliament.

<sup>247</sup> The European Parliament's right of inquiry into alleged contraventions or maladministration in the implementation of Union law is currently governed by Decision 1995/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission on the detailed provisions governing the exercise of the European Parliament's right of inquiry, OJ L 113 of 19 May 1995, p. 1. The details of its functioning are further defined in an Interinstitutional agreement concluded by Parliament, the Council and the European Commission in 1995 (Framework Agreement on relations between the European Parliament and the European Commission, OJ L 304, 20.11.2010, p. 47–62).

<sup>248</sup> This period can be extended twice (for a maximum of 3 months each time).

<sup>249</sup> Several explanations account for this limited use and political appetite for inquiry committees, ranging from its limited scope (to cases of 'alleged contraventions or maladministration in the implementation of Union law' under Article 226 TFEU) to the very demanding rules governing their set-up (which require an initiative of one quarter of Parliament's Members and a vote of a majority in plenary).

<sup>250</sup> Only very few Committees of inquiry have been set up to date by Parliament (5 since 1992). See, D. Fromage, The European Parliament's Right of inquiry in context. A comparison of the national and the European legal

agreement with a regulation – as required by Article 226 TFEU<sup>251</sup>. Although Parliament made a proposal to this end in 2012<sup>252</sup>, an agreement is yet to be found among Parliament, the Commission and the Council<sup>253</sup>. In any event, the rules currently contained in the Interinstitutional agreement must be updated and upgraded with a view to bringing them in line with the legal framework in place, and to providing remedy to some of the shortcomings that have arisen in the course of previous inquiries<sup>254</sup>. In particular, the adoption of a regulation would finally provide for rules enforceable on ordinary citizens and undertakings as the rules enshrined in the Interinstitutional agreement are only binding on its signatories i.e. Parliament, the Council and the Commission. While sanctions for a failure to appear before a Committee or to provide documents should remain political, a duty to comply – or at least explain orally and in public – should be imposed on EU and national authorities and institutions.

The use of ad hoc committee of inquiry would contribute to enhancing the EU's executive accountability and break the dependency of the European Parliament with Member States' cooperation in handling petitions.

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frameworks, European Parliament Research Service, 2020; H. Hofmann et al., *Administrative Law & Policy of the European Union*, OUP, 2011, p. 773.

<sup>251</sup> The Lisbon Treaty (2009) provided the legal basis for the adoption of a regulation, which is 'binding in its entirety and directly applicable in all Member States'.

<sup>252</sup> Report on a proposal for a Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission, JUR 52 INST 94. If adopted, the Regulation will replace Decision 1995/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission on the detailed provisions governing the exercise of the European Parliament's right of inquiry, OJ L 113 of 19 May 1995, p. 1.

<sup>253</sup> Under the current parliamentary legislature, the European Parliament decided to resume the negotiations based on the non—paper politically endorsed by the Parliament's Committee on Constitutional Affairs in April 2018.

<sup>254</sup> See, D. Fromage, *The European Parliament's Right of inquiry in context. A comparison of the national and the European legal frameworks*, European Parliament Research Service, 2020.

Box 2: The Equitable Life's petition<sup>255</sup>

In the 90s, one of the biggest worldwide insurance companies, the British Equitable Life, faced financial difficulties because of the fall of interest rates and the inflation. In 2001, close to the bankruptcy, the company reduced by 16 % the value of insurance policies for all subscribers.

The European Parliament Committee on Petitions received a petition presented in September 2005 by the Equitable Members Action Group (EMAG), a group of policy holders who had lost savings as a result of Equitable's actions. After having received two additional petitions, the European Parliament decided to set up an Inquiry Committee in February 2006. The Inquiry Committee met 19 times, held 11 public hearings, sent two fact-finding missions in London and in Dublin, interviewed 38 witnesses, analyzed 92 pieces of the case and organised 3 expert studies. In a report published in 2007, the Inquiry Committee recommended better cooperation between U.K. regulators and called on Britain to set up a scheme to compensate policyholders (See the Report on the crisis of the Equitable Life Assurance Society (2006/2199(INI)), Committee of Inquiry into the crisis of the Equitable Life Assurance Society, Diana Wallis, 4<sup>th</sup> June 2007). In the final report (A-6-2007-0203), the Inquiry Committee scolded national regulators for failing to cooperate and do more to enforce standards:

*"Had the UK regulators correctly applied the provisions of the Directive, they would most likely have achieved its objective to 'ensure adequate protection of policyholders' and thus have avoided the crisis at Equitable Life, which caused substantial losses to policyholders".*

In response to this European report, a report of the British Parliamentary and Health Service Ombudsman was published in 2008 and found government maladministration in the regulatory returns of the Equitable Life Assurance Society during the period 1992-2000 (Report of the Parliamentary and Health Service Ombudsman, Equitable Life: a decade of regulatory failure, 16<sup>th</sup> July 2008). Thus, the Equitable Life Payment Scheme was set up in 2010 to make payments to Equitable Life policyholders. According to the British government, on the 31<sup>st</sup> August 2016, the scheme has issued payments of just over £1.12 billion to 932,805 policyholders, meaning that the scheme has issued payments to 90 % of eligible policyholders. (See Corporate report, Equitable Life Payment Scheme: final report, 18<sup>th</sup> November 2016).

**Recommendation 7** *'Name-and-shame' and 'name-and-fame' cooperation through a systematic publication*

When it comes to improving the response by Member States to the PETI Committee's requests, there is one method that hasn't really been fully relied upon. Given the limited publicity surrounding the registration and handling of petitions, and in particular the committee meetings and their limited accessibility, the overall process of cooperation between the PETI Committee and Member States remains quite opaque, or at least difficult to monitor from the outside. This might explain the rather deluding attendance at PETI meetings by Member States' representatives.

As previously discussed, Member States are sometimes directly represented by public authorities and sometimes indirectly by the Permanent Representation of the relevant Member State, but overall, no accountability exists for their contribution and responses to the PETI Committee<sup>256</sup>.

<sup>255</sup> Joined petitions 611/2004 and 29/2005.

<sup>256</sup> In the Minutes of each Committee meeting, in case a Member States' representative was present and took the floor his name (and function) is mentioned under 'Speakers' under the item number concerned as well as on the last pages where all the attendees are listed. If instead a Member State's representative was present and

Yet nothing prevents the PETI committee from registering the absence – not only the attendance of Member States' representatives at the hearing –, and publish that record in the annual report of the committee. As of today, only the names of Member States' representatives participating to the meeting are included into the minutes.

One may equally envisage to publish the number of requests sent by the PETI Committee to each Member State, on a yearly basis, and the number of responses obtained.

Ultimately, the publication should extend to cover the contribution that each response to the PETI committee has had towards the solution sought by the petitioner.

It is submitted that this 'naming' process might have some positive effects on the overall cooperation between the Member States and the PETI Committee. This might occur both as a result of a 'shaming' effect (for the least responsive Member States) and 'faming' effect (for the most responsive ones).

### 3.3.3. Other committee's cooperation with PETI

Most of the admissible petitions concern issues falling under the competences of other parliamentary committees. Therefore, the cooperation of these with the PETI Committee is also crucially important to facilitate the treatment of petitions. As discussed, a Petitions Network was set up within the EP to strengthen cooperation between committees and to raise awareness of the issues brought up in petitions<sup>257</sup>. Although this informal infrastructure – both at Member and staff level – facilitates cooperation and communication about petitions within and across EP committees, this is insufficient to structurally alter the incentive mechanisms of the other committees. Ultimately, the ownership of the petition system remains within PETI committee alone.

As stated by the European Parliament in its resolution of 13 December 2018, "enhanced cooperation between parliamentary committees on issues raised by petitioners should enable Parliament to provide a better and individualised follow-up to petitions and response much more swiftly and efficiently to citizens' concerns, delivering added value to the lives of EU citizens and residents, and on the activities of Parliament and Europe as a whole"<sup>258</sup>. Each committee has its own internal rules and administrative culture defining its responsiveness to petitions. While the vast majority of petitions sent are added to the agenda of the coordinators' meeting for information purposes, they are usually not discussed within the committee. They may be sent to the rapporteurs whose parliamentary activity may involve the issue raised in the petitions. Yet, generally, no further action is taken. As for the petitions sent to the committees for opinion, opinion letters may announce a follow-up action, such as the possibility for a hearing, or taking the petition into account in the consideration of any related legislative or non-legislative report. However, as for the petitions sent for information, petitions are typically not brought up during committee meetings, with few exceptions<sup>259</sup>.

The political sensitivity of the matter, as well as its degree of complexity, are major factors shaping the actual response of the parliamentary committee to PETI. Yet, ultimately, other parliamentary

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didn't take the floor but signalled his presence to the secretariat, her/his name is mentioned as well as on the last pages where the attendees are listed (but with no reference as for which item number).

<sup>257</sup> For a detailed examination of the Petitions Network, Ina Sokolska, *Cooperation of the Committee on Petitions with the Committees of the European Parliament and impact on their work*, June 2021, pp. 17-19.

<sup>258</sup> European Parliament Resolution of 13 December 2018 on the deliberations of the Committee on Petitions during the year 2017 (2018/2014(INI)), p. 7.

<sup>259</sup> AFCO is the only committee that indicated that once they receive a request from PETI, it puts the petition on the agenda of the committee meeting. See, Ina Sokolska, *supra*, p. 27.

committees face a tension between their work focusing predominantly on legislative activity and that, more residual in nature, on non-legislative issues such as petitions.

This is one – if not the – major structural weaknesses in the co-operation between the PETI Committee and other parliamentary committees, and it contributes to make the former very dependent on the latter. This is particularly true for those petitions that aimed at playing an agenda-setting and advocacy role. Unless the relevant committee reacts by taking into account the public input conveyed through the petition, the petitioner's wish won't be fully realised. At the same time, petitions are not often mentioned directly by a committee in its resolutions or report, leaving open the possibility that those might have actually played some role<sup>260</sup> – in providing extra information or even flagging an issue. This might particularly be the case when they cover topic areas that are currently part of the parliamentary work of a committee.

**Recommendation 8:** *Improve parliamentary committee's cooperation through intergroups, joint committee proceedings and joint rapporteurship*

To improve parliamentary committee's cooperation, the PETI Committee could rely more often on interparliamentary intergroups and on public hearings<sup>261</sup>.

#### *Intergroup*

The PETI Committee could use more systematically and widely the practice of sending petitions for information to interparliamentary groups. By definition informal and focusing on cross-cutting subjects – from LGBT rights to anti-corruption – these committees may actually discuss and position themselves on the issues raised. While they are not expected to prepare a formal opinion – but merely review and take petitions into account – nothing prevents these interparliamentary groups from preparing a position document, thus contributing to the solution of the issue raised by the petition. Due to their informal nature, and non legislative activities, Interparliamentary groups appear as particularly apt to assist the PETI Committee to identify satisfactory solutions to the petitioner's demand.

#### *Joint committee proceeding (single draft report)*

The most promising solution to improve parliamentary committee's cooperation with the PETI Committee is the possibility explicitly foreseen by the Rules of procedure of the Parliament on joint committee proceedings. Under Article 58, the PETI Committee can – as well as any other committee – draw up a single draft report together with and in cooperation with another committee. This decision can be taken by the Committee chairs provided that: (i) "the matter falls indissociably within the competences of several committees"; (ii) it is satisfied that the question is of major importance. The single draft report should then be examined and voted on by the committees involved, under the joint chairmanship of the committee Chairs.

While the preparation of a joint report has been relative common practice for most parliamentary committees, it has proven particularly difficult for the Petitions Committee to be engaged in such procedure.

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<sup>260</sup> They typically would provide reference to petitions in the recitals to their motions for resolution on the subject.

<sup>261</sup> It is acknowledged that this might have budgetary implications insofar as the number of individuals for which travel costs are reimbursed is strictly limited per year.

Evidence suggests that while attempts were and continue to be made by the PETI Committee to team up with another Committee to prepare a joint report, Committees tend to resist the idea. One notable exception is offered by the preparation of the report on the draft European Citizen Initiative Regulation, where there were, exceptionally four co-rapporteurs, two from the AFCE Committee (*Lamassoure and Gurmai*) and two from the PETI Committee (*Wallis and Hafner*)<sup>262</sup>.

According to the co-rapporteurs of the Committee on Petitions, G. Häfner and D. Wallis, there has never been such widespread and open debate about a Draft Regulation in the history of the Parliament's activities. It is interesting to note that it was the first time ever for the Committee on Petitions to be directly involved in legislative activity<sup>263</sup>.

#### *Joint rapporteurship*

Petitions are not assigned to individual Members of the European Parliament. They are rather dealt in a collegial way by the PETI Committee and its Members. Therefore, no mechanism associates a given petition to the responsibility of one or more MEP.

Yet it is submitted that the overall cooperation between the parliamentary committee and the PETI Committee could be improved by assigning the political responsibility for the handling of a petition to both a PETI Member and one or more coming from another relevant parliamentary committee.

This possibility was discussed in the past, as was the attribution of thematic responsibility to an MEP for a certain period of time. While the latter was tried out for a short period, it was abandoned quickly. The reason for that was that MEPs couldn't be relied upon to be present at the time the issue was called in committee.

It is submitted that another attempt could be tried, as a personalisation in the treatment of petitions within the European Parliament could engage more MEPs individually on a certain petition upon which they are responsible and possibly facilitate their handling and the reaching of a solution.

### **3.4. Limited capacity and 'attractiveness problem'**

As previously discussed, approximately 2/3 of the petitions received every year are examined in substance by the PETI Committee. To process 700-800 admissible petitions represents a considerable administrative effort that requires appropriate resources. This appears all the more true if one considers that a proactive attitude by the committee significantly enhances the likelihood that a petition's request may be satisfied. In other words, the greater the PETI Committee's involvement in using all its investigatory and moral suasion powers, from fact-finding to public hearings, the higher the chance that the petition may find some form of response and satisfaction.

Yet the size of the committee secretariat appears relatively small when compared to the capacity of the office of the European Ombudsman. Given the broader scope covered by petitions, and their resource-

<sup>262</sup> Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the proposal for a regulation of the European Parliament and of the Council on the citizens' initiative, 23 November 2010. Available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/organes/peti/peti\\_20101201\\_1500.htm](http://www.europarl.europa.eu/meetdocs/2009_2014/organes/peti/peti_20101201_1500.htm), consulted online on 22 January 2010.

<sup>263</sup> Luis Bouza Garcia, *The European Citizens' Initiative-A First Assessment*, Bruges Political Research Papers, 2011.

intensive nature, one might expect the PETI Committee to have greater capacity and resources than what it currently has<sup>264</sup>.

In other words, how to justify that the only general-purpose EU participatory tool, with the broadest scope and easiest access, has the least resources?

The Committee has clearly expressed that “the citizens of the EU, and the culture of service on their behalf, should always have priority in the work of Parliament, and, in particular, of the Committee on Petitions, before any other considerations or efficiency criteria”, while denouncing that “the current level of human resources available within the petitions unit puts at risk the accomplishment of these fundamental principles”.<sup>265</sup>

The limited resources conferred upon of the EU petition system are also the by-product of a deeper and often overlooked, phenomenon surrounding the operation of the PETI Committee. We can call the ‘attractiveness problem’ of the right of petition and its institutional apparatus vis-à-vis the dominant political culture within the European Parliament.

When compared to other committees, the Committee on Petitions has historically been attracting less interest from Members of the European Parliament, as well as from the Parliament’s staff. Traditionally, the PETI Committee has been the springboard for both junior MEPs and staff who have then moved to other committees. The limited attractiveness of this committee, as compared to others, might have to do with the different nature of its work. The handling of a petition entails the exercise of political control as opposed to the exercise of legislative activity, which is perceived as the ‘core business’ of Parliament.

This phenomenon of cultural neglect has been crystalised by the very same European Parliament when it stated: “the EU institutions (including the European Parliament) have not attributed the necessary attention and resources to petitions...and, in turn, with limited resources the Committee on Petitions cannot improve its impact and visibility... This is arguably a vicious cycle”<sup>266</sup>.

In other words, limited publicity combined with limited capacity has been fuelling and perpetuating citizens’ perception of the right of petition as an instrument of limited significance.

Yet as demonstrated by the existence of ‘successful’ petitions, notably those that have led to fact-finding visits, the right of petition can actual deliver on its promises.

**Recommendation 9:** *Enhance the capacity and resources of the PETI Committee to make it more successful and attractive (‘Ombudsmanisation’)*

To ensure the proactive dynamic needed to steer and solve citizen’s problems through petitions, the Committee deserves a greater number of dedicated staff and resources. When one examines the growth of the EU Ombudsman office, it appears that its success – both in terms of number of complaints received and ability to process them in reasonable time – has been a function of its resources. The latter have in turn enabled the Ombudsman to communicate more effectively and in a targeted manner raising awareness among citizens about its existence and improving its visibility in the eyes of European civil society.

The structural dependency of the PETI Committee from third parties, be they internal such as other parliamentary committees, or external such as the European Commission and Member States, makes

<sup>264</sup> See, on this point, also Nikos Vogiatzis, *The European Ombudsman and Good Administration in the European Union* (Palgrave Macmillan 2018) at 255.

<sup>265</sup> Annual Report on the activities of the Committee on Petitions 2014 (2014/2218(INI)), recitals G, H.

<sup>266</sup> Nikos Vogiatzis, *The Past and Future of the Right to Petition the European Parliament* (manuscript on file with the author), June 2021.

the case for greater capacity even more evident. Likewise, the constitutional nature of the right of petition requires a greater, more proactive infrastructure capable of treating speedily and satisfactorily petitioners.

It is submitted that should the PETI Committee receive greater and more adequate resources, this may facilitate its problem-solving ability, which in turn could render its work more attractive to both Members of the European Parliament and its staff.

To sum up, the PETI Committee should undergo a process of 'Ombudsmanisation', by emulating the European Ombudsman's rapid institutional growth and proactive attitude in both the communication and handling of complaints.

## 4. CONCLUSIONS

The steadily decreasing number of petitions addressed to the European Parliament appears to reflect not only their limited stature in the eyes of the public but also their limited effectiveness in solving administrative and other problems with which citizens are faced. As it has been constantly acknowledged by the European Parliament itself over the last two decades, the impact of this right on the Union's democratic life has been, to date, very limited.

This study identifies for the first time the structural reasons that prevent the right to petition to deliver on its democratising function within the Union, and that despite its constitutionalisation over the last decade. These structural shortcomings – ranging from the limited publicity surrounding its use all the way to its excessive dependency on unwilling third-party actors such as the European Commission – explain why the right to petition has never become the primary infrastructure by which citizens participate in Union's democratic life. Yet it appears undeniable that “if fully respected in its essence, the right to petition may strengthen Parliament's responsiveness to EU citizens and resident”.<sup>267</sup>

The right to petition is and remains the most accessible, permanent and general-purpose participatory mechanism within the current EU opportunity infrastructure. By allowing virtually any individual to enter into contact with the EU institutional apparatus, it provides a unique mechanism of representation not only for EU citizens but for all individuals, as well as minorities – such as non-EU citizens, migrants and minors – who currently lack representation. As such, the right of petition may – and should also – become an instrument for fostering public debate. It is the only EU participatory mechanism – together with the ECI – that enables, by design, the initiator to collectivise his/her action. Yet, unlike an ECI, a mere signature – that of one petitioner – may suffice to prompt an institutional response.

The need to connect representatives with their base in the period between elections has been not only publicly, but also politically acknowledged by the launch of the Conference on the Future of Europe<sup>268</sup>. Rather than re-inventing the wheel, the Union might soon realise that the right to petition already provides that kind of bottom-up and permanent mechanism linking citizens and the EU. Yet, for this to occur a major rethinking of the entire EU participatory infrastructure might be needed, through a systematisation and revamp of its individual mechanisms starting from the right of petition itself. The petition's handling and, in particular, the Parliament's interaction with the Commission and the Member States, should become more transparent, visible and open to a greater variety of actors, interests and views. Unless the Commission becomes more accountable vis-à-vis the PETI Committee's requests (and the petitioners themselves), its follow-up positions risk being perceived as arbitrary or even capricious. This outcome would seriously undermine not only the right of petition but – as

<sup>267</sup> Annual Report of the PETI Committee, 2016, let. H.

<sup>268</sup> Joint declaration, on the Conference on the Future of Europe, 5<sup>th</sup> March 2021, <https://data.consilium.europa.eu/doc/document/ST-6796-2021-INIT/en/pdf>. For some initial analysis highlighting the out-of-the-box nature of the exercise, see, e.g., Kalypso Nicolaïdis, A democratic panopticon as citizen involvement in EU decision-making, RSCAS, 2021, Conversations for the Future of Europe, Online lecture 1, Retrieved from Cadmus, European University Institute Research Repository; Federico Fabbrini, The Conference on the Future of Europe A New Model to Reform the EU? (January 7, 2020), DCU Brexit Institute – Working Paper N. 12 – 2019 ; Nicolai von Ondarza and Minna Ålander, The Conference on the Future of Europe, Obstacles and Opportunities to a European Reform Initiative That Goes beyond Crisis Management, SWP Comment 2021/C 19, 17.03.2021 ; A. Alemanno, Releasing Europe's democratic genie, Social Europe, 1<sup>st</sup> July 2021 and A. Alemanno, Unboxing the Conference on the Future of Europe: A Preliminary View on its Participatory Machinery and Democratic Raison-d'être, European Law Journal, forthcoming (2021).

dramatically illustrated by the ECI's first decade of operation<sup>269</sup> – also the entire EU participatory infrastructure. Paradoxically, it would risk doing so at the very same time the EU publicly commits to “enable people from across Europe to share their ideas and help shape our common future”<sup>270</sup>.

By contextualising the right of petition as the default opportunity mechanism for citizen participation within the broader EU participatory infrastructure, this study made an attempt at offering a set of reforms capable of renewing the Union's commitment to participatory democracy.

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<sup>269</sup> See, e.g. Anastasia Karatzia, *The European Citizens' Initiative and the EU Institutional Balance: On Realism and the Possibilities of Affecting Lawmaking*, *Common Market Law Review* 54, 177-208, at 197-98 (2017) (“frustration and disaffection of citizens with the EU institutions – and in particular with the Commission – have been some of the side-effects of the ECI as a participatory experiment”).

<sup>270</sup> Speech by President von der Leyen at the inaugural event of the Conference on the Future of Europe, May 9<sup>th</sup> 2021, Strasbourg.

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the PETI Committee, evaluates the state of play of the right of petition ten years after the inclusion of the principle of participatory democracy in the EU treaties. After contextualising the right of petition within the broader EU participatory infrastructure, its ultimate objective is to provide a set of recommendations aimed at unleashing its democratic potential while overcoming its major structural limitations.

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