

European Parliament, Committee on Petitions.

Public Hearing: May 26, 2021.

Inter-Institutional relations in the treatment of Petitions; the role of the European Commission.

How could petitions be better referred to in political decisions?

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- *How could the interests of European citizens and residents be better served by the European Parliament, which naturally, and according to the Treaty, has the primary responsibility for responding directly to their concerns as expressed through their right to petition?*
- *What could and should be done in order to encourage and oblige the European Commission to recognise more fully, its Treaty responsibility towards cooperating loyally with the Petitions Committee especially as regards the full and proper application of the Treaty and the implementation of EU law?*
- *What ought to be done to further enhance the visibility and the focus of the actions on behalf of EU citizens by the Petitions Committee?*

As this key study portrays, the relationship between the Petitions Committee and the European Commission has always been important, and this cooperation and interaction have developed as a means to better respond to petitioners' concerns than would have been the case had the Parliament attempted to respond alone.¹ This partnership is therefore a valuable one, and a unique one, when compared to petitions processes in many national parliaments.

Indeed, the petitions process in the European Parliament is often seen by outside observers as a model given its participatory ethos, its involvement of petitioners in its deliberations and in the transparency and openness of its procedures. It should be proud of this.

Nevertheless, both institutions have expressed at times their frustrations because of the fact that the petitions process and procedures are not yet at their full potential, especially as far as the Petitions Committee is concerned. There are a number of reasons for this and the Commission can legitimately be questioned for not having been willing to do more to follow through on recommendations by the Committee is a most important one.

¹ All parliamentary committees work with the European Commission of course, although with the Petitions Committee their cooperation is fundamental as its preliminary response regarding petitions referred to it may strongly condition the Committee's own reaction especially if there is an absence of other expertise or information, which normally should be provided for Members principally by the Committee secretariat and political group advisors.

Indeed, in some respects there has been a regression in recent years, and I am pleased that the study has highlighted this.

It has always been an important foundation of the Committee's treatment of petitions that each and every petition receives due process, dealing with each one on its merits while bearing in mind its level of support – from petitioners and from the Members of the Committee. Each petition is guaranteed a considered response from the Committee, following its investigation and an assessment of the issues raised by petitioners.

(The "Guidelines", which are published, are quite explicit regarding the life cycle of each petition.)

The response which each petitioner receives is demonstrably from the Petitions Committee, not the Commission (even though the Commission's response in the form of a Notice to Members is often attached), **and it is the Committee's responsibility which is engaged.** The Committee, moreover, uses its own authority to obtain information from Member states when preparing its proposals and as Members know, frequently the Chairman will write to Ministers directly when it is considered necessary.

Therefore, the Committee itself, primarily its members, but also importantly its secretariat, have to ensure that they have the means at their disposal to do their job effectively and efficiently. I remain convinced that this is still not the case in spite of the efforts of the Committee to remedy this situation, - partly because within the Parliament it has not been accorded the priority it deserves compared to legislative committees, neither by the political organs nor the administrative authority.

Over the years they have failed to take seriously enough the scrutiny role which the Petitions Committee plays and the extent to which it is an important barometer of the successful implementation (or otherwise) of the legislation which the Parliament itself has adopted. All the more so because it is the European citizen who draws so many shortcomings and inadequacies, or indeed violations of EU law to its attention. Providing lip service to European citizens is not what is required; more concrete action is.

More could be done to provide this. The study refers to the over-due further development of the web-portal (developed by the Committee, allowing petitioners to submit and support petitions on-line while providing visibility to all petitions received) and the ePeti software (developed from scratch, by the Committee secretariat, as an essential management tool providing full transparency to all members and staff as well as status and reporting facilities) and their potential integration.

It refers also to the shortcomings in the Commission's internal "*tableau de bord*" for petition management. Neither have been prioritised by the respective institutions for many years now when it comes to the allocation of the IT budget.

This clearly needs to be remedied because whereas once the Parliament was well in advance in on-line petitioning, it is now falling behind as one can easily see when comparing for example the petitions portal of the British House of Commons, at least as far as user-friendly procedures are concerned.

Members know of course, as does the Commission, that petitions vary enormously both in their subject matter and their complexity and there cannot easily be established a 'one size fits all' response. There is therefore a graduated response regarding petition analysis and the recommendations which emerge – recommendations which the Committee makes to the Commission (which has a duty of loyal cooperation,) and to the member states or their regional or local authorities.

(Petitions, because of the number received, are inevitably prioritised by the level of political significance they attract and the impact of the subject matter on the general public interest, which the parliamentary committee is well-placed to judge. The Commission should therefore be aware and able to respond as the executive authority and as guardian of the Treaties, when it is called upon to do so.)

Yet, it is increasingly apparent that the Commission has often failed to do so. The Annual Report on the Implementation of European law, which is published by the Commission and debated in Parliament (under the authority of JURI and PETI Committees) used to refer to the significant impact of petitions in deciding on infringement proceedings, though changes in Commission procedures have now minimised this input.

The Commission fails, as we learn again in the study, to treat the information received from petitioners with the seriousness it undoubtedly deserves in many cases as it considers that the examples do not point to any "systemic" breach. At the same time, it more often than not, ignores what can be an accumulation of problems of individual situations dealing with, for example, the lack of proper environmental impact assessments, poor waste-management, destruction of natural habitat and failure to protect bio-diversity - and these are well documented by the Committee.

(Technical weaknesses in reporting methods of both institutions in their current software relating to the petitions process and the infringement procedure already mentioned above and the fact that this should be addressed is obvious, if only to improve administrative efficiency and political accountability.)

The Commission's prerogatives regarding the infringement procedure under successive treaties have changed very very little since 1958 and it continues to act under its sole discretion. The Committee might wish to consider this further when it makes its input into the discussions under the Conference on the Future of Europe, where it is to be hoped that the further development of the petitions process, and its strengthening, will lead to major positive changes.

One significant omission from the study is the importance which the Committee attaches to fact-finding visits as they count as being probably the most persuasive instrument the Committee has at its disposal for seeking out non-judicial remedies for petitioners.²

The Commission also frequently lacks proper discernment when it comments upon, for example the serious revelations and recommendations which invariably emerge as a result of such visits to member States. In my opinion, the findings of such visits should receive the highest priority of response from the Commission as at one time, following a complex investigation by the Committee in Helsinki, the members of the Petitions Committee delegation were referred to in the very positive coverage it received in the Finnish media as the “Directive Detectives”.

Very often however, it is the case that even recommendations from fact-finding visits, voted upon in Committee, are ignored or neglected by the Commission even when clear violations or potential violations of Community law have been identified. Another example here concerns a visit to the Loiret in France, which found that the Departmental authorities had ignored three EU environmental Directives when approving plans to build an additional and arguably, an unnecessary bridge over the river Loire in Mardie.

A more positive response, concerned the results of a fact-finding visit to Poland where the authorities had greed to build part of the *Via Baltica* through part of the oldest of Europe’s primeval forest, near Bialystok, and protected wetland area. On this occasion the Commission not only demonstrated its support for the Committee’s findings, it did open infringement proceedings and even obtained an emergency injunction from the European Court of Justice to prevent destruction. The plan was subsequently abandoned, and an alternative route chosen by the Polish authorities.

What this shows is that with facts and determination, and with the Commission hierarchy manifestly sympathetic, positive results may be obtained, but quite clearly this relies far too much on the Commission’s discretion and there is a manifest lack of clear criteria, publicly available, on which to build.

Similar considerations apply to reports and recommendations of the Committee, adopted in the form of resolutions by Parliament.

The study submitted to the Committee suggests that a new binding agreement concerning petitions should be established, as petitions do not appear in the current Inter-Institutional Agreement. In order to explore this option more effectively, the Committee should, I suggest, propose a Joint Working Group involving senior members of the Committee, perhaps the Bureau of the Committee, to prepare with senior Commission officials the basis for a more binding and transparent agreement on cooperation in the petitions process bearing in mind the treaty responsibilities and therefore the primacy of the European Parliament and the Petitions Committee in this process. This could then be added to the IIA.

² They also attract considerable press and media attention when they take place which reflects well on the institution of the European Parliament and raises its profile for citizens.

(It should be said however, that one of the reasons that the petitions process does not figure in the current Inter-Institutional Agreement is that the Parliament itself did not fully support the Petitions Committee in its previous attempts in this direction, so specific assurances and authorisation will certainly need to be obtained through the Conference of Committee Chairmen and the Conference of Presidents if further attempts are now to be made.)

Turning to another matter which perhaps partly explains the Commission's methods of responding to the Committee's requests for information is that within the Commission services, petitions (for which clear Treaty provisions apply) are dealt with in very much the same way as complaints addressed by the public to the Commission.

Whereas the petitions process is inherently a transparent, visible and participatory process, dealing with complaints from the public is not. Yet, it is certainly the case that very similar issues are raised.

The reluctance, or the refusal, of the Commission to provide the Parliament with a list of its complaints received which was requested in the past, is indicative of the way the Commission operates. Parliament learns only incidentally, when dealing with the Commission response to requests for information that the petition in question is also the subject of a complaint.

But this is not done systematically at all. In fact, perhaps understandably, the Commission prioritises its complaints procedure over its responses to requests from the Committee. But one of the side-effects of this certainly leads to situations where the Commission, for internal or 'diplomatic' reasons, plays down the significance of issues which may be embarrassing or clearly critical of the action or inaction of member states authorities, raised by petitioners. Whereas it is rare indeed for the Petitions Committee itself to shy away from such criticism when it has clear facts at its disposal which justify such criticism.

When Commission replies indicate that they see no evidence of the violation of Community law, or that they cannot act because a member state has not taken a final decision on a given project which may be the subject of a petition, this is designed in most instances to obtain the closure of a petition by the Committee.

Their replies are often based on a response they have received from Member State authorities (who clearly have their own agenda) and more often than not they pay more attention to 'official' responses from Member States than they do to specific information provided by petitioners. The Committee must therefore always remain vigilant and aware of this and maintain a healthy degree of scepticism when assessing the Commission response to petitions.

The deontology of the Commission and that of the Petitions Committee and the Parliament is not the same, nor perhaps should it be beyond an obligation to administrative efficiency and integrity; one is a bureaucratic executive authority, the other a directly elected authority with its own rights and responsibilities.

This is important obviously and it is also why the petitions process is so important and fundamental to European citizens who must be able to fully trust the Committee to which it has addressed concerns.

At the recent launch in Strasbourg of the Conference on the Future of Europe, President Von der Leyen emphasised that the EU should be seen to do more for its citizens. Further strengthening the petitions process could, I suggest, be one of its key objectives. Greater visibility of the role of petitions in political decision-making could help greatly in further assuring the connection of the EU to its citizens and their priorities, interest and concerns.

DL. 21:05:2021.