

The Past and Future of the Right to Petition the European Parliament

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Abstract: This article critically evaluates the right to petition the European Parliament, a right which has not managed, to date, to constitute a credible alternative for citizens' participation in the EU. It argues that there are two main reasons for the shortcomings of this right. First, before Maastricht, the Petitions' Committee suffered the consequences of a broader decline of parliamentary petitions within and beyond Europe. Second, after Maastricht and Lisbon, the petition right was affected by the (partly complementary and partly divergent) rights to complain to the European Ombudsman and to sign or support a European citizens' initiative. In addition, and possibly as a consequence of the above reasons, throughout its life, the petition right and the Committee on Petitions more generally have not benefited from significant resources, while their visibility has been very limited. A comparative examination of the three rights (petitions, European Ombudsman, citizens' initiative) in terms of access, scope, user-friendliness and outcome is undertaken. Looking at the future of the petition right, in an era marked by the resurgence of online petitions, the article argues that the Petitions' Committee should strategically focus on areas which are not covered by the two aforementioned rights, namely the national level and broader policy choices in the EU, in order to maximize its input and relevancy within the EU's decision-making world.

I. Introduction

Although formally incorporated into EU primary law via the Maastricht Treaty as one of the rights of the (then) established EU citizenship, the right to petition the European Parliament has a long history. Indeed, existing records indicate that the first petition was submitted to the (then) 'European Parliamentary Assembly'

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in 1958.¹ Although what has become in the meantime the European Union (EU) has evolved considerably, addressing the EU's democratic shortcomings remains a persistent challenge.² Yet, it would be difficult to find much disagreement about this proposition: the European Parliament, throughout the various chapters of European integration, has significantly strengthened its constitutional and institutional position. The establishment of direct elections,³ *Les Verts*,⁴ the consolidation of the ordinary legislative procedure,⁵ among many other developments, have strengthened the role of the European Parliament.

Nevertheless, even though the European Parliament represents citizens in the EU, one of the key instruments that could, in principle, enable and facilitate citizens' participation, namely the right to petition the European Parliament under Article 227 TFEU, has not managed to establish itself as a credible avenue of citizens' participation in the EU. Indeed, the European Parliament's Committee on Petitions (Petitions' Committee, Committee on Petitions, PETI Committee), responsible for the handling and examination of petitions, has not succeeded in making an impact or engaging citizens. Put differently, the petition right has not achieved its stated objectives, namely to be 'the bridge between EU citizens and the EU institutions' or 'the door for the citizens of Europe to bring their concerns and ideas to the attention of their elected representatives'.⁶

The extent to which the weak EU petitions system is a paradox, considering the strengthening of the European Parliament that was outlined in the earlier paragraphs, is a question that cannot be readily answered. On the one hand, it could be argued that the strengthening of the European Parliament over the last decades should have incentivized *the European Parliament itself* to engage with EU citizens more meaningfully via the petition right. On the other hand, it could also be argued that citizens generally do not participate extensively in EU affairs;⁷ if anything, the percentage of EU citizens exercising their right to vote in

¹ F Piodi, 'The citizen's appeal to the European Parliament: Petitions 1958–1979' (2009) European Parliament Archive and Documentation Centre, p. 15.

² European Commission, 'Communication to the European Parliament and the Council: Shaping the Conference on the Future of Europe' COM(2020) 27 final. See also the classic account by A Follesdal and S Hix, 'Why there is a democratic deficit in the EU: A response to Majone and Moravcsik' (2006) 44 *Journal of Common Market Studies*, 533.

³ The first direct elections for the European Parliament took place in 1979. See further S Hix, A Noury, and G Roland, 'Power to the parties: Cohesion and competition in the European Parliament, 1979–2001' (2005) 35 *British Journal of Political Science*, 209.

⁴ Case 294/83, *Parti écologiste 'Les Verts' v European Parliament*, EU:C:1986:166.

⁵ M Kluger Dionigi and A Rasmussen, 'The ordinary legislative procedure' (2019) *Oxford Research Encyclopedia of Politics*, available at: <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1044?rskey=9rVwuw&result=1>.

⁶ Committee on Petitions, 'Guidelines' (2018) p. 3, available at: www.europarl.europa.eu/cmsdata/138889/1145997EN.pdf.

⁷ And the EU has had its own share of responsibility for this—but this is a matter that cannot be addressed in the present contribution.

European elections is probably still rather low.⁸ For these reasons as well, the petition right is a topic that requires thorough investigation—both in terms of the reasons behind this limited impact, as well as in terms of its future (and hopefully brighter) development. This is the purpose of the present study.

Despite its constitutional significance (the right to petition also features among the provisions of EU citizenship⁹ and the Charter of Fundamental Rights¹⁰) and long history, the paucity of contributions on the petition right in legal scholarship and beyond is rather surprising. Thus, this contribution seeks to fill a substantial gap, by devoting the deserved attention to the right to petition the European Parliament and, more broadly, the Committee on Petitions. It examines the past, but also the prospects, of this right. It traces its history and seeks to explain its shortcomings.

In this context, it is argued that petitions generally saw a decline in use and relevancy until approximately the beginning of the present century, when the establishment of effective systems of online petitions or e-petitions was introduced. This explains the limited relevancy until Maastricht. However, with the introduction of online petitions the right has enjoyed ‘something of a renaissance’¹¹—and yet this ‘renaissance’ has not been reflected, to date, in the European Parliament’s petition system. Thus, it is submitted that Post-Maastricht, the establishment of the right to complain to the European Ombudsman and the right to sign/support a European citizens’ initiative (after the Lisbon Treaty) injected complementary, even competitive, avenues of participation in the EU decision-making world, which meant that the petition right, once again, did not manage to attract significant attention from citizens and civil society organizations. A comparative examination of the conditions of access, scope, user-friendliness, and outcome of the three rights is undertaken. It is claimed that, despite points of overlap and divergence, petitions on many occasions might prove the least advantageous avenue for citizens who wish to pursue their interests. In addition to these challenges, throughout its life, the Committee on Petitions has not had sufficient resources or support from the European Parliament to undertake its functions, and its visibility has been inadequate.

In this context, the article argues that the Petitions’ Committee should reconsider its strategy with a view to finding a genuine ‘voice’ as a viable alternative

⁸ See K Reif and H Schmitt, ‘Nine second-order national elections: A conceptual framework for the analysis of European election results’, (1980) 8 *European Journal of Political Research*, 3. The extent to which this claim still stands, at least as forcefully as was the case in the past, is disputed (see eg S Hobolt, ‘A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections’ (2014) 21 *Journal of European Public Policy*, 1528; S Kritzinger et al. (eds), *Assessing the 2019 European Parliament Elections* (Routledge, 2020)).

⁹ See Articles 20(2)(d) and 24(2) Treaty on the Functioning of the EU (TFEU).

¹⁰ Article 44 of the Charter.

¹¹ R Hough, ‘Do legislative petitions systems enhance the relationship between parliament and citizen?’ (2012) 18 *Journal of Legislative Studies*, 479, at 491; see also S Rosenberger et al., ‘What Are Petitions Good for? Institutional Design and Democratic Functions’ (2020) *Parliamentary Affairs*, doi:10.1093/pa/gsaa058.

for citizens' participation in the EU. More specifically, it should focus on areas that are not 'covered' either by the European Ombudsman or the European citizens' initiative. It is proposed that the focus of the Committee gradually shift on the implementation of EU law by the member states (which would require more structured means of collaboration with the Commission) and on broader policy directions at the EU level which do not necessarily entail concrete legislative action. This strategy would enable the petition right to gain a sufficiently distinguishable character from the abovementioned complementary rights or avenues of participation.

The article is structured as follows. The next section provides some introductory remarks about the establishment, constitutional significance, yet limited relevancy, of the petition right. Following this, the claim that the petition right before Maastricht was affected by the broader decline of petitions is developed. The discussion then shifts to the post-Maastricht and Lisbon legal framework, and a comparative examination between the three rights (European Ombudsman, European citizens' initiative, and right to petition the European Parliament) is undertaken. The penultimate section considers the 'future' of this right and elaborates on how petitions can acquire a sufficiently distinguishable character. The last section offers some concluding remarks.

II. The establishment of the right to petition, its constitutional significance, and its limited relevancy

The right of petition as a practice traces back to the establishment of the Common Assembly of the European Coal and Steel Community; the European Parliamentary Assembly received its first petition in 1958.¹² However, the instrument was not widely used during the first years of operation: from 1958 to 1979 Parliament received only 128 petitions.¹³ Moreover, over half of these petitions stemmed from associations and Community officials.¹⁴ Importantly, it was a practice that originated from citizens: it was gradually established 'because citizens had the idea to send petitions to the European Parliament, not because officials or politicians in Brussels or Strasbourg thought that petitions would be a good thing'.¹⁵ Thus, as Harden observed, as a bottom-up process the petition 'should be cherished and fostered'.¹⁶

Particularly after 1979, when the first elections to the European Parliament took place, Parliament took further steps to formalise the conditions for the right

¹² Piodi (n 1), 7, 15.

¹³ Ibid 15.

¹⁴ Ibid 16.

¹⁵ I Harden, 'What future for the centralized enforcement of Community law?' (2002) 55 *Current Legal Problems*, 495, at 507–8.

¹⁶ Ibid 508.

to petition. These need not be discussed here at length.¹⁷ In 1989, provision was also made for the collaboration between Parliament and the Commission on allegations of infringement of Community law (in light of the Commission's role as guardian of the treaties¹⁸), the latter undertaking to examine promptly requests for assistance. The right to petition the European Parliament found its way in primary law only via the Maastricht Treaty, which also introduced the concept of citizenship of the Union.¹⁹ Moreover, it features in the Charter of Fundamental Rights under Article 44.

The current work of the Petitions' Committee is multi-dimensional and pertains to all EU policies. The Committee received 1,357 petitions in 2019,²⁰ a number which can be characterized as rather low. The top themes for petitions in that year concerned the environment, fundamental rights,²¹ justice, health, transport, and the internal market—among others.²² Environmental matters have featured consistently among the top subject matters examined by the Petitions' Committee.²³ In 2019, key issues raised by petitioners in that field included 'waste management, protection and preservation, plastics, water- and air pollution, nuclear energy and the impact of mining activities on the environment'.²⁴ Petitioners also contacted the Committee about Brexit, animal welfare, and compliance with the United Nations Convention on the Rights for Persons with

¹⁷ In 1981, the right was included in Parliament's Rules of Procedure (see A Pliakos, 'Les conditions d'exercice du droit de pétition' (1993) 29 *Cahiers de Droit européen*, 317); in 1987, a separate Committee on Petitions was established (H Surrel, 'Le "droit de pétition" au Parlement européen' (1990) *Revue du marché commun*, No 335, 219, at 222). The author explained: 'À l'origine, en 1953, l'examen des pétitions était de la compétence de la commission du règlement, des pétitions et des immunités. Par la suite, cette question fut longtemps du ressort de la commission juridique puis de la commission du règlement et des pétitions. Depuis le 21 janvier 1987, une commission des pétitions dotée d'un secrétariat renforcé, a été mise en place'. In 1989, a document referred to as 'interinstitutional agreement' in later publications (effectively an exchange of letters) acknowledged 'the custom of petitioning', while the institutions 'were pleased to note that the custom was becoming increasingly wide spread'; see 'Exchanges of letters between the European Parliament, the Council and the Commission of the European Communities', OJ C 120/1990, 16 May 1989.

¹⁸ See now Article 17 Treaty on European Union (TEU) and Article 258 TFEU.

¹⁹ On the introduction of EU citizenship see, among others, C Closa, 'The concept of citizenship in the Treaty on European Union' (1992) 29 *CML Rev*, 1137; S Douglas-Scott, 'In search of Union citizenship' (1998) 18 *Yearbook of European Law*, 29; J Shaw, 'The interpretation of European Union citizenship' (1998) 61 *Modern Law Review*, 293; P Magnette, 'European citizenship from Maastricht to Amsterdam: The narrow path of legitimation' (1998) 21 *Journal of European Integration*, 37.

²⁰ Report on the outcome of the Committee on Petitions' deliberations during 2019 (2020/2044(INI)) (hereafter PETI Report 2019), p. 17.

²¹ See also, in this respect, the study for the Petitions' Committee by E Spaventa, 'The interpretation of Article 51 of the EU Charter of Fundamental Rights: The dilemma of stricter or broader application of the Charter to national measures' (2016), PE 556.930.

²² PETI Report 2019, p. 25.

²³ See, among others, P Magnette, 'Vers une citoyenneté européenne directe? Pratiques du droit de pétition dans l'Union européenne' (2002) 9 *Revue internationale de politique comparée*, 65, at 71–2; P Kunzlik, 'The enforcement of EU environmental law: Article 169, the Ombudsman and the Parliament' (1997) 6 *European Environmental Law Review*, 46.

²⁴ PETI Report 2019, p. 30.

Disabilities.²⁵ It should also be noted that 29.9 per cent of petitions were deemed inadmissible²⁶—this is probably a low percentage, possibly related to the broad and flexible admissibility thresholds for petitions, a matter that is returned to in subsequent sections.

The constitutional significance of the right to petition exceeds its presence in the provisions on EU citizenship and the Charter—important as they are. Petitions are one of the most traditional forms of *participatory democracy*. They can serve one or more of the following purposes: as a means of seeking redress for grievances; to create opportunities for public debate; to initiate policy and/or legislative change. As such, the modern petition, alongside other forms of participatory democracy, should be viewed as complementing representative democracy²⁷—which, despite its broad acceptance as the predominant model of democracy, does face significant challenges.²⁸ However, only a petition system with ‘strong characteristics of participation’ will enable citizens to have a meaningful ‘input to representative forms of democracy’.²⁹

In the EU, especially after the Lisbon Treaty, a fresh debate on participatory democracy can be observed. The EU is founded on representative democracy,³⁰ but representation is complemented with participatory instruments under Article 11 TEU.³¹ It has been argued that ‘effective citizen participation . . . is a key indicator of a polity’s democratic legitimacy, as a criterion in its own right’.³² The conference on the future of Europe³³ should bring to the fore, it is hoped, the role of citizens and citizens’ participation in the EU. A plethora of scholarly accounts post-Lisbon have sought to contribute to the debate on how EU citizen

²⁵ Ibid p. 31. See also, in this respect, the study by M Priestley, M Raley and G De Beco, ‘The protection role of the Committee on Petitions in the context of the implementation of the UN Convention on the Rights of Persons with Disabilities’ (2016) PE 571.384.

²⁶ Ibid p. 19.

²⁷ See R Dalton, S Scarrow, and B Cain, ‘Advanced democracies and the new politics’ (2004) 15 *Journal of Democracy*, 124—calling such forms of participation ‘advocacy democracy’.

²⁸ For further discussion see, among others, S Alonso, J Keane, and W Merkel (eds), *The Future of Representative Democracy* (Cambridge University Press, 2011).

²⁹ C Bochel, ‘Petitions systems: Contributing to representative democracy?’ (2013) 66 *Parliamentary Affairs*, 798, at 812.

³⁰ See Article 10 TEU. In particular, Article 10(1) TEU states that ‘[t]he functioning of the Union shall be founded on representative democracy’, while Article 10(2) TEU that ‘[c]itizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.’

³¹ See further J Mendes, ‘Participation and the role of law after Lisbon: A legal view on Article 11 TEU’ (2011) 48 *CML Rev*, 1849. For a broader discussion of Articles 9–12 TEU (the ‘Provisions on Democratic Principles’) see also A von Bogdandy, ‘The European lesson for international democracy: The significance of Articles 9–12 EU Treaty for International Organizations’ (2012) 23 *European Journal of International Law*, 315.

³² J Organ, ‘EU citizen participation, openness and the European Citizens Initiative: The TTIP legacy’ (2017) 54 *CML Rev*, 1713, at 1716–17, referring to the work of Robert Dahl.

³³ See: <https://future.europa.eu/>.

participation can be enhanced.³⁴ In this context, being the link between citizens and the elected Members of the European Parliament, the petition right cannot be excluded from these discussions.

Nonetheless, the impact of this right has been, to date, very limited. This is acknowledged in reports and other documents produced by the European Parliament itself (and some of these originate, in fact, from the Petitions Committee). These documents share the common feature of underlining the significance of the right to petition as a means of strengthening political participation, while also emphasizing the constraints (and especially the lack of resources) to make this instrument a success. Covert and overt criticism is reserved, at times, towards other EU institutions, including—occasionally—the European Parliament.

Take the example of the 2014 report on the activities of the Committee on Petitions. Therein, it was observed 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’; yet, ‘the current level of human resources available within the petitions unit puts at risk the accomplishment of these fundamental principles’, whereas ‘*if fully respected in its essence*, the right to petition may strengthen Parliament’s responsiveness to EU citizens and residents’.³⁵ An interconnected (yet already existing since at least the Maastricht period³⁶) problem is delays in the handling of petitions. On this point, the 2014 report is revealing as it

warn[ed] about the persisting backlog in the treatment of petitions, which is due to the constraint in the human resources available within the Committee’s Secretariat, which in turn has a clear impact on the time available to process petitions and, in particular, to determine their admissibility; consider[ed] that such delays are not acceptable if the aim is to ensure service excellence, and that they not only undermine the effective right to petition, but also harm the credibility of the European institutions in the eyes of concerned citizens; exhort[ed] the responsible political and administrative instances of Parliament, in cooperation with the Committee on Budgets, to find an appropriate solution to ensure that the work of the Committee on Petitions can live up to the spirit of the Treaties.³⁷

³⁴ See, among others, S Garben et al. (eds), *Critical Reflections on Constitutional Democracy in the European Union* (Hart Publishing, 2019); A J Menéndez and E Olsen, *Challenging European Citizenship: Ideas and Realities in Contrast* (Palgrave Macmillan, 2019); D Levi-Faur and F van Waarden (eds), *Democratic Empowerment in the European Union* (Edward Elgar, 2018); M Dougan et al. (eds), *Empowerment and Disempowerment of the European Citizen* (Hart Publishing, 2012); J Organ and A Alemanno (eds), *Citizen Participation in Democratic Europe: What Next for the EU?* (Rowman & Littlefield, 2021).

³⁵ Report on the activities of the Committee on Petitions 2014 (2014/2218(INI)), recitals G, H (emphasis added) (hereafter PETI Report 2014).

³⁶ Saverio Baviera, ‘Les pétitions au Parlement européen et le médiateur européen’ (2001) *Revue du marché commun et de l’Union européenne*, No 445, 129, at 133. At the time (2001) the author partly attributed this problem to translation needs.

³⁷ PETI report 2014, point 4.

Similar recommendations can be found in the 2015 report.³⁸ An earlier resolution of 2001 by the European Parliament stated *inter alia* that the PETI Committee wished ‘to shorten the time spent on, and the deadlines set for, processing petitions, thus making the procedure and its outcome quicker, more transparent and more participatory’.³⁹ A later report of activities between 2014–2019 listed among the challenges of the Committee on Petitions the need to obtain ‘more commitment and action’ from other EU institutions and the member states, and also to ‘screen the impact’ of petitions⁴⁰ (it appears that follow-up studies are missing, in this respect). Promotion and awareness-raising remain persistent challenges.⁴¹

Scholarly contributions have also pointed to a number of associated challenges. It has been argued that the impact of this right might be limited in light of the absence of a ‘genuine first legislative chamber’ in the EU.⁴² Others (like the Committee’s reports that were discussed earlier) have pointed to *limited visibility* and *resources* in order for the Petitions’ Committee to perform its functions.⁴³ In this respect, it has been observed that ‘the European Parliament does not provide the appropriate resources to the Committee in order for the latter to deal with petitions rapidly and thoroughly’.⁴⁴ In 2011, a special Eurobarometer survey demonstrated that only 20 per cent of respondents believed that the petition right (among the options that were provided) was the most important ‘European citizen right’.⁴⁵ This clearly indicates that there is lack of awareness among EU citizens about this right.⁴⁶ Elsewhere,

³⁸ Report on the activities of the Committee on Petitions 2015 (2016/2146(INI)), point 7: ‘the secretariat of the Committee on Petitions is in immediate need of greater technical resources and more staff in order to guarantee diligent examination and a further reduction in the time taken to process petitions, while ensuring the quality of their treatment’.

³⁹ European Parliament, Report on the institution of the petition at the dawn of the twenty-first century (2000/2026(INI)), recital E.

⁴⁰ Achievements of the Committee on Petitions during the 2014–2019 parliamentary term and challenges for the future, (2019) PE 621.917, p. 31.

⁴¹ *Ibid.*

⁴² M Nentwich, ‘Opportunity Structures for Citizens’ Participation: The Case of the European Union’ (1996) 1 *European Integration online Papers*, available at: <http://eiop.or.at/eiop/pdf/1996-001.pdf>, at 7.

⁴³ See N Vogiatzis, *The European Ombudsman and Good Administration in the European Union* (Palgrave Macmillan, 2018) at 255.

⁴⁴ *Ibid.* (interview quoted by the author).

⁴⁵ The survey was not confined to EU citizenship rights in the strict sense as the right of access to documents and the right to good administration were also included on the list. See further Special Eurobarometer, ‘European Ombudsman’ (2011) 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>, p. 23.

⁴⁶ See also PETI Report 2014 (n 35) recital C. The 2011 Eurobarometer could perhaps be contrasted with the Flash Eurobarometer 373, ‘Europeans’ Engagement in Participatory Democracy’ (2013) available at: <http://europa.eu/eurobarometer/surveys/detail/1118>, in which respondents demonstrated awareness and use of petitions at the domestic or local level as a means of directly influencing decision making.

commentators have characterized the use of this right (seen against the overall population in the EU) as ‘negligible’.⁴⁷

How, then, to explain the limited relevancy of the petition right, despite its undeniable significance for citizens’ participation? This article argues that there are two key reasons for this, in addition to problems of resources and limited visibility, which are important constraints in and of themselves. The period before Maastricht was one in which petitions faced a general decline in use, and the EU right suffered from this trend as well. Nonetheless, the shift to online petitions in the twenty-first century has reinvigorated their use. Nevertheless, this resurgence cannot be observed in the EU. This brings us to the second reason: post-Maastricht (and, later on, post-Lisbon), the establishment of partly complementary instruments of participation, namely the right to complain to the European Ombudsman (Maastricht) and the right to support a European citizens’ initiative (Lisbon), have had an impact on petitions. Attention from citizens and civil society organizations shifted to these two rights, leaving the petition right as an alternative option. The two aforementioned reasons are, of course, connected to the question of limited resources and visibility: the EU institutions (including the European Parliament) have not attributed the necessary attention and resources to petitions because (pre-Maastricht) of the decline in petitions or (post-Maastricht and Lisbon) the higher relevancy of the European Ombudsman and the citizens’ initiative; and, in turn, with limited resources, the Committee on Petitions cannot improve its impact and visibility, thereby fuelling and perpetuating citizens’ perception as an instrument of limited significance. This is arguably a vicious cycle.

Before elaborating on these arguments, it is necessary to return to an earlier observation, namely that citizens generally do not participate extensively in the EU—the European elections often having served as an example to illustrate this point. In this context, the below remarks should not be seen as implying that citizens fully exercise all of their rights/opportunities for participation *except for* petitions, but rather as an investigation into whether the nature of the petition right or other complementary instruments have had a *further* impact on its use by citizens.

III. Petitions before Maastricht: Long history, decline, and resurgence

The right to petition has been described as an ‘ancient practice’.⁴⁸ In different shapes and forms, its origins could be traced back to ancient Roman times.⁴⁹ Its

⁴⁷ Kris Grimonprez, *The European Union and Education for Democratic Citizenship: Legal Foundations for EU Learning at School* (Nomos Verlagsgesellschaft, 2020) at 432.

⁴⁸ R Handley, ‘Petitioning parliament’ (1993) 21 *Federal Law Review*, 290.

⁴⁹ S Palmieri, ‘Petition effectiveness: Improving citizens’ direct access to parliament’ (2008) 23 *Australasian Parliamentary Review*, 121.

long history ‘[displays] a variety of roles across cultures’.⁵⁰ One of its variants was a form of ‘protest’ to the sovereign and, later on, parliament, the petition being ‘a record of that protest’.⁵¹ For some commentators, the right to petition (requiring citizens to meet, debate, and act collectively on the grievances) was closely associated with freedom of assembly.⁵² Others add that it ‘helped to nurture the yet unrecognized rights of press and assembly’.⁵³ The right to petition acquired the status of a constitutional right in some jurisdictions.⁵⁴ In the First Amendment to the US Constitution, the petition right is mentioned alongside free speech, press, freedom of assembly, and freedom of religion.⁵⁵ The modern administrative state was influenced by the petition process, which ‘performed an important democratic function in that it afforded a mechanism of representation for the politically powerless, including the unenfranchised’.⁵⁶ The instrument of petitions was widely used by abolitionists to end slavery.⁵⁷ Empirical evidence demonstrates that petitions ‘canvassed’ by women ‘had 50% or more signatories than did petitions on the same topics, passed through the same localities at the same times, but canvassed by men’.⁵⁸

It is generally accepted that from the start of the preceding century the use of this right gradually declined. This decline was drastic at the time when the European Parliament (as an Assembly) started to operate (ie *circa* 1950–1960). It goes beyond the purposes of this contribution to offer a comprehensive picture of the reasons behind this decline—and in any event, much depends on the

⁵⁰ C Leston-Bandeira, ‘Parliamentary petitions and public engagement: An empirical analysis of the role of e-petitions’ (2019) 47 *Policy & Politics*, 415.

⁵¹ Handley (n 48), 291. The right to petition was (more indirectly) recognized in Magna Carta and explicitly mentioned in the Bill of Rights 1688: ‘That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegal’. See further N B Smith, ‘“Shall Make No Law Abridging” . . . : An analysis of the neglected, but nearly absolute, right of petition’ (1986) 54 *University of Cincinnati Law Review*, 1153.

⁵² R Handley, ‘Public order, petitioning and freedom of assembly’ (1986) 7 *Journal of Legal History*, 123, at 138.

⁵³ Smith (n 51), 1167. Regarding free press, the author argued that ‘publications concerned with petitioning were not subject to prosecution in an era when punishment for seditious libel was commonplace’.

⁵⁴ S Higginson, ‘A short history of the right to petition government for the redress of grievances’ (1986) 96 *Yale Law Journal*, 142.

⁵⁵ It is worded as follows: ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances’.

⁵⁶ M McKinley, ‘Petitioning and the Making of the Administrative State’ (2018) 127 *Yale Law Journal*, 1538.

⁵⁷ M Sinha, *The Slave’s Cause: A History of Abolition* (Yale University Press, 2016). Therein, Sinha underlines (at 1) that the ‘history of abolition . . . centers African Americans in it. Abolition was a radical, interracial movement, one which addressed the entrenched problems of exploitation and disfranchisement in a liberal democracy and anticipated debates over race, labor, and empire’.

⁵⁸ D Carpenter and C Moore, ‘When canvassers became activists: Antislavery petitioning and the political mobilization of American women’ (2014) 108 *American Political Science Review*, 479, at 480. According to the authors, canvassers should be understood as ‘those who launched individual petitions and gathered signatures’.

specific jurisdiction concerned and context. Studies on different jurisdictions have pointed to some of these reasons, which may include (in the USA) the transformation of petitions from a process resembling 'litigation in court within the Congress' to an instrument that receives less attention or may even be ignored;⁵⁹ or the distribution of the examination of petitions from Congress to various offices within the executive and/or judiciary.⁶⁰ Elsewhere, it has been noted that citizens' disbelief in the 'efficacy of individual appeals' to Parliament and 'possibly also the extension of the franchise' contributed to the aforementioned reduction in use.⁶¹ Citizens' lack of trust in the petition system could be attributed to petitions' limited impact (or 'concrete action on the part of MPs').⁶² The establishment and/or empowerment of an ombud office may be an additional reason for the decline of petitions.⁶³ Beyond its limited use by citizens, in modern practice criticism has been levelled against petitions on other grounds as well: for example, a restrictive judicial interpretation of the term 'people' leads irregular migrants, victims of criminal activity, to refrain from reporting their conditions for fear that they will be deported.⁶⁴

In this context, the limited success of the European Parliament petition right until Maastricht should be viewed in the context of the aforementioned broader decline in the use of petitions. Evidence for this can also be found in the proposal to establish a 'Community' ombud office *circa* 1978; in response to the PETI Committee's objections to the idea (favouring instead the strengthening of the right to petition the Parliament) it was claimed that petitions, 'an ancient and traditional right of the citizen', could not address the need to shorten the distance between citizens and the European Communities.⁶⁵

The beginning of this century has seen, however, something of a reinvigoration of the petition right (in terms of citizens' use of or interest in this instrument), and this can be (partly or mainly) attributed to e-petitions. Indeed, parliaments have taken steps to alleviate the perceived ineffectiveness of petitions, primarily via reliance on online tools.⁶⁶ Petitions often require a minimum level of support

⁵⁹ M Blackhawk, 'Whatever happened to the right to petition?' (2020) Penn Today, available at: penntoday.upenn.edu/news/whatever-happened-right-petition.

⁶⁰ *Ibid*; see also McKinley (n 56) 1574–9.

⁶¹ House of Commons Information Office, 'Public Petitions' Factsheet (2010), p. 7.

⁶² Hansard Society Commission on Parliamentary Scrutiny, 'The Challenge for Parliament: Making Government Accountable' (2001) p. 86.

⁶³ Olivier Costa et al., 'Far away, so close: Parliament and citizens in France' (2012) 18 *Journal of Legislative Studies*, 294, at 305.

⁶⁴ M Wishnie, 'Immigrants and the right to petition' (2003) 78 *New York University Law Review*, 667. According to the author, there should be guarantees that petitioning law enforcement agencies for redress will not lead to deportation.

⁶⁵ 'Comments by Sir Derek Walker-Smith on behalf of the European Conservative Group on the draft Opinion (PE 54.056) by Mr. Rivierez on the appointment of an Ombudsman for the European Community' (1978) PE 56.100, © HAEU, Florence, PE0 2979.

⁶⁶ Leston-Bandeira (n 50); L Miller, 'e-Petitions at Westminster: The Way Forward for Democracy?' (2009) 62 *Parliamentary Affairs*, 162.

in order for the subject-matter to be discussed in parliament.⁶⁷ More generally, several legislatures have been reviewing their petition system with a view to furthering engagement with the public.⁶⁸

That being said, barriers to the petition right persist: ‘people with fewer resources, without internet access and less time due to family circumstances’ may not fully engage with innovative measures of citizens’ participation.⁶⁹ Lack of equality of access undermines the legitimacy of e-petitions.⁷⁰ Furthermore, a study of e-petitions in Germany found that ‘already existing gender and socioeconomic biases are exacerbated as e-petitioners tend to be predominantly men and have attained above average levels of formal education’.⁷¹ A further study in Australia, however, found that ‘women are significantly more likely than men to sign both written and e-petitions’, and that ‘Australians from a non-English-speaking background are underrepresented in the signing of written petitions but not of e-petitions’.⁷² Another pressing issue is the mismatch between citizens’ expectations and reality.⁷³

In parallel with the aforementioned initiatives to increasingly rely on e-petitions, a related driver for the reinforcement of petitions has been the need to improve openness and transparency in governance.⁷⁴ Often, the establishment of a *mandatory* Committee on Petitions in parliament (or one with an exclusive mandate to focus on petitions) could signify a renewed attention to the instrument.⁷⁵ Other reasons that have increased the interest in and usage of petitions include the declining trust in parliament or representative democracy (the expectation being that petitions should contribute towards restoring this trust⁷⁶) and, consequently perhaps, ‘the recognition by parliaments of the need for greater engagement with the public’.⁷⁷

⁶⁷ See, for example, P Norton, ‘Parliament and citizens in the United Kingdom’ (2012) 18 *Journal of Legislative Studies*, 403, at 416; R Lindner and U Riehm, ‘Broadening participation through E-Petitions? An empirical study of petitions to the German Parliament’ (2011) 3 *Policy and Internet*, 1.

⁶⁸ Hough (n 11), 479.

⁶⁹ C J Carman, ‘Barriers are barriers: Asymmetric participation in the Scottish public petitions system’ (2014) 67 *Parliamentary Affairs*, 151, at 169.

⁷⁰ S Wright, ‘E-petitions’ in S Coleman and D Freelon (eds), *Handbook of Digital Politics* (Edward Elgar, 2015), 136, at 144.

⁷¹ Lindner and Riehm (n 67) 19. See also T Escher and U Riehm, ‘Petitioning the German Bundestag: Political equality and the role of the internet’ (2017) 70 *Parliamentary Affairs*, 132.

⁷² J Sheppard, ‘Online petitions in Australia: Information, opportunity and gender’ (2015) 50 *Australian Journal of Political Science* 480.

⁷³ C Bochel, ‘Process matters: petitions systems in Britain’s legislatures’ (2012) 22 *Journal of Legislative Studies*, 368, at 369.

⁷⁴ See, for example, M Cavanagh, N McGavey, and M Sheppard, ‘Closing the democratic deficit? The first year of the Public Petitions Committee of the Scottish Parliament’ (2000) 15 *Public Policy and Administration*, 67.

⁷⁵ *Ibid.*, at 71; Hough (n 11), 484.

⁷⁶ R Dalton, S Scarrow, and B Cain, ‘Advanced democracies and the new politics’ (2004) 15 *Journal of Democracy*, 124; see also Escher and Riehm (n 71), 152.

⁷⁷ C Bochel, ‘Petitions systems: Outcomes, “success” and “failure”’ (2020) 73 *Parliamentary Affairs*, 233.

Nevertheless, despite the establishment of the web portal for petitions to the European Parliament in 2014,⁷⁸ which was no doubt an important and necessary development, a study comparing the year 2014 to 2018 demonstrated that the number of petitions ‘more than halved, probably also as a consequence of the introduction of the Webportal’.⁷⁹ This despite the fact that, not unexpectedly, the webportal has now become the main method of submitting petitions.⁸⁰ The above remarks clearly indicate that there are broader, institutional reasons which prevent the Committee on Petitions from making a more significant contribution to EU decision-making and gaining citizens’ trust as a viable avenue for participation. It will be argued that, post-Maastricht, the Petitions’ Committee faces some form of ‘competition’ (as an instrument of participation) from the European Ombudsman and, later on (Lisbon), from the right to submit a European citizens’ initiative.

IV. The right to complain to the European Ombudsman and support (or organize) a citizens’ initiative: Complementarity and competition

A. Establishment of the two instruments

It is useful to briefly outline the role of the Committee on Petitions prior to the establishment of the two instruments. Regarding the European Ombudsman, the Petitions’ Committee played a major role in the *delay* of the establishment of an ombud office in the EU’s institutional landscape. Indeed, significant ‘human capital’ was invested (for more than ten years) to prevent the creation of (at the time) a ‘Community Ombudsman’, because such a step was viewed as competition to the petitions system that was present (while not extensively used, however) since 1953.⁸¹

The right to organize and support a European citizens’ initiative (ECI) was established in the Lisbon Treaty, although it was also envisaged in the Constitutional Treaty.⁸² It is unclear how the plan to introduce a citizens’ initiative, widely discussed at the Convention on the Future of Europe, was viewed

⁷⁸ See ‘New petitions web portal: more transparent and user friendly’ (2014) available at: www.europarl.europa.eu/news/en/headlines/eu-affairs/20141119STO79618/new-petitions-web-portal-more-transparent-and-user-friendly.

⁷⁹ Achievements of the Committee on Petitions (n 40), 4, 47 (more specifically 2714 petitions in 2014 and 1220 in 2018).

⁸⁰ *Ibid* 48 (more specifically: webportal 71 per cent; letter 27 per cent; and email 2 per cent of the cases).

⁸¹ J-P Jarry, ‘The European Parliament and the establishment of a European Ombudsman: Twenty years of debate’, 1974–1995’ (2015) PE 538.885.

⁸² A Auer, ‘European Citizens’ Initiative: Article I-46.4 Draft Convention’ (2005) 1 *European Constitutional Law Review*, 79.

within the PETI Committee. What is known, however, is that the Committee proposed in two annual activity reports that initiatives concerning legislative reform should be considered by the *Committee on Petitions itself*.⁸³

From the above it can be deduced that the Petitions' Committee was strongly opposed to the creation of an EU ombud office; and it may reasonably be assumed that it was not particularly enthusiastic to the prospect of the ECI either. This is all the more important if seen in the light of the persistent problem of limited resources: for such resources were, partially at least, spent on preventive action, instead of proactive action that would strengthen the contribution and relevancy of petitions.

The subsequent discussion will provide a comparative examination of the three instruments in terms of access, scope, user-friendliness, and outcome. It is argued that, although the petition right 'scores' higher in the three first categories, the *outcome* (which is not particularly promising) is the key reason behind its limited success. Simply put, citizens will prefer to submit a complaint to the European Ombudsman or support an initiative *if they can*, because the prospects of follow-up action in both of these instruments are higher.

B. Access

Article 227 TFEU, as well as Article 44 of the Charter, specify that the right to petition is open to EU citizens but also to 'any natural or legal person residing or having its registered office in a Member State'. This right can be exercised 'individually or in association with other citizens or persons'. Article 227 (but not Article 44 of the Charter) also provides that the matter that will be the subject of a petition should affect the petitioner directly. This provision has essentially been treated (rightly, it is submitted) as a dead letter by the PETI Committee.⁸⁴ Nonetheless, it is noteworthy that, as Pliakos observed, an earlier (ie before Maastricht) version of this requirement was referring to the applicants being 'directly and individually concerned'.⁸⁵ As an institution of a *political* nature, the

⁸³ Report on the deliberations of the Committee on Petitions during the parliamentary year 2001–2002 (2002/2019(INI)), A5-0271/2002, point 5: 'Considers that the Treaties should provide for the possibility for citizens to initiate reform of Community law through petitioning the European Parliament'; Report on the deliberations of the Committee on Petitions during the parliamentary year 2002–2003 (2003/2069(INI)), A5-0239/2003, point 13: 'Proposes that the future constitutional Treaty make provision for significant groups of citizens to promote reforms of Community legislation on the basis of well-founded arguments verified during consideration of their petitions by this committee'. Both documents are cited in M Sousa Ferro, 'Popular legislative initiative in the EU: *Alea Iacta Est*' (2007) 26 *Yearbook of European Law*, 355, at 375.

⁸⁴ Baviera (n 36), 131. The author explained that the applicant did not have to be materially affected by the issue complained against, and that general interest petitions, which were affecting a large number of persons, were also deemed admissible even if concerning Union territory different from that of the applicant.

⁸⁵ Pliakos (n 17), 328.

Petitions' Committee rightly refused to follow the strict requirements for an action for annulment⁸⁶ under (what is now) Article 263(4) TFEU.⁸⁷

From the above it also follows that EU citizenship is not a requirement; in other words, EU residents (or legal persons) can also submit a petition to the European Parliament. A question arises as to whether the Committee can examine petitions from non-EU citizens and residents. According to Article 226(15) of Parliament's Rules of Procedure,⁸⁸

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 shall be registered and filed separately. The President shall send 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.

The above suggests that such petitions could be examined at the Committee's discretion. In addition, a petition may be submitted in one of the official languages of the EU—yet again, there is some flexibility if they are written in another language.⁸⁹

The right to complain to the European Ombudsman is also open to 'any citizen of the Union or any natural or legal person residing or having its registered office in a Member State' and can be submitted in any of the EU official languages.⁹⁰ It should be noted that the Treaty, as well as the European Ombudsman's Statute,⁹¹ provide that a complaint may also be submitted via a Member of the European Parliament (MEP). This process (which may be called the 'MEP filter') is rarely being used and constitutes an anachronism for a

⁸⁶ Ibid 332.

⁸⁷ As is known, private applicants who are not the addressees of an act need to demonstrate that they are directly and—this is more difficult—individually concerned, according to the *Plaumann* formula (Case 25/62, *Plaumann v Commission*, EU:C:1963:17, p. 107). Post-Lisbon, the requirements for regulatory acts (as interpreted by the Court in *Inuit*—Case C-583/11 P, *Inuit Tapiriit Kanatami*, EU:C:2013:625) are somewhat more relaxed as applicants need only show that they are directly concerned. The literature is vast but see, among others, A Albers-Llorens, 'Remedies against the EU institutions after Lisbon: An era of opportunity?' (2012) 71 *CLJ*, 507.

⁸⁸ The 2021 Rules of Procedure of the European Parliament (hereafter 'Parliament's Rules of Procedure') can be accessed at: https://www.europarl.europa.eu/doceo/document/RULES-9-2021-01-18-RULE-226_EN.html.

⁸⁹ Article 226(6) of Parliament's Rules of Procedure. In 2019, the languages most used for petitions were German (24.8 per cent), English (24.4 per cent), Spanish (13.5 per cent), and Italian (9.1 per cent). See PETI Report 2019 (n 20), 22.

⁹⁰ See Article 228(1) TFEU; see also Article 43 of the Charter. On the linguistic regime see Article 13 of the European Ombudsman's Implementing Provisions, available at: www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en.

⁹¹ Article 2(1) of Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) (hereafter the 'Statute'), [2021] OJ L 253/1.

modern ombud office. In any event, in reality its presence does not undermine access to the European Ombudsman.

The European Ombudsman also has the power to initiate inquiries on her own—these are termed ‘own-initiative’ or ‘strategic’ inquiries, and enable her to deal with broader, systemic issues within the EU administration.⁹² While the PETI Committee, too, has the faculty to produce an own-initiative report ‘with regard to an admissible petition’,⁹³ this instrument has rarely been used. Moreover, it is not entirely clear whether such a report can be launched without a pre-existing admissible petition. The instrument of own-initiative inquiries also enables the European Ombudsman to launch an investigation even when the complainant is not residing in the EU.⁹⁴

In this context, the applicable legal framework facilitates access to both instruments (one may observe that access to the petition right on some occasions might even be broader,⁹⁵ which is of course welcome from the point of view of citizens’ participation).

By contrast, the right to organize or support a European citizens’ initiative is open only to EU citizens. This follows both from the treaty text,⁹⁶ as well as the Regulation on the citizens’ initiative.⁹⁷ It appears that this was a deliberate constitutional choice to ‘promote a stronger “European political identity” (however narrowly defined that identity might be from the perspective of young people or [third country nationals])’.⁹⁸

In addition, the right to support a citizens’ initiative cannot be exercised individually, in the sense that, as a minimum requirement, the organizers of the initiative should reside in at least seven different member states so as to ‘encourage the emergence of Union-wide issues and to foster reflection on those issues’;⁹⁹ in addition, the support of the initiative (in terms of signatures) should also stem from at least one quarter of member states, while the initiative will be considered by the Commission only if one million signatures are collected (see also below on the role of the Commission).¹⁰⁰ Thus, the citizens’ initiative is a much more burdensome instrument: this has prompted commentary to the effect that the ECI is

⁹² See further Vogiatzis (n 43), in particular chs 2 and 5.

⁹³ See Article 227(3) of Parliament’s Rules of Procedure.

⁹⁴ See European Ombudsman, Annual Report 2004, p. 36.

⁹⁵ Among others, a petition does not have to be submitted ‘within two years of the date on which the facts on which it is based came to the attention of the complainant’ and does not need to be preceded by ‘the appropriate administrative approaches to the Union institution, body, office or agency concerned’ (Article 2(3) of the Ombudsman’s Statute).

⁹⁶ See Article 11(4) TEU.

⁹⁷ Articles 2(1) (right to support an initiative) and 5(2) (organizers) of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens’ initiative, OJ L 130 (hereafter ‘ECI Regulation’).

⁹⁸ M Dougan, ‘What are we to make of the citizens’ initiative?’ (2011) 48 *CML Rev*, 1807, at 1822. Dougan added that such choice may ‘not necessarily [be] one which every commentator would prefer’.

⁹⁹ Recital 16 and Article 5(1) of the ECI Regulation.

¹⁰⁰ See Article 3 of the ECI Regulation.

primarily addressed to civil society organizations that can mobilize citizens, with a view to achieving the required level of support.¹⁰¹ In any event, the comparative advantages of both the petition right and the right to complain to the Ombudsman, in terms of access to these instruments, are evident.

C. Scope

There are points of overlap and divergence between the three instruments in terms of scope (or, differently put, the potential subject matter of the petition/complaint/initiative). Let us start with the petition right. The text of the treaty is very broad: the subject matter of the petition should come within the Union's field of activity. From this, it follows that a petition may in principle concern a proposal for policy change (within the Union's field of activity), the implementation of EU law at the national level, requests for legislative change, a complaint against the EU administration—among others.

Indeed, although petitions to the European Parliament can concern the implementation of EU law at the national level, those pertaining to purely domestic matters with no connection to EU law will be declared inadmissible.¹⁰² Areas in which the delineation of the boundaries between Union and member state competence is unclear are likely to produce many inadmissible petitions.¹⁰³ In this context, a question arises regarding how the Committee deals with the (numerous) petitions that are received which allege an infringement of the rights guaranteed under the Charter.¹⁰⁴ An insightful study by Spaventa demonstrated that, generally, the Commission's position when receiving petitions from the Committee was justified and in accordance with the case law of the Court—with one notable exception.¹⁰⁵ However, she argued that there is a need 'for a more courageous use of the Charter in those situations that fall in any event within the scope of EU law, such as citizenship cases, and those that demand thorough fundamental rights scrutiny (especially in the case of asylum and in relation to the use of the European Arrest Warrant)'.¹⁰⁶

¹⁰¹ Dougan (n 98), 1847; J Greenwood, 'The European citizens' initiative and EU civil society organisations' (2012) 13 *Perspectives on European Politics and Society*, 325.

¹⁰² M Lindfelt, 'Article 44—The right to petition' in S Peers et al., *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing, 2014) 1151, at 1156.

¹⁰³ *Ibid* 1158 (with reference to environmental matters).

¹⁰⁴ As is known, in *Åkerberg Fransson* the Court of Justice clarified that the term 'implementing EU law' under Article 51 of the Charter effectively means 'acting within the scope of EU law'; Case C-617/10, *Åkerberg Fransson*, EU:C:2013:105, in particular paras 18–20.

¹⁰⁵ Spaventa (n 21). The author rightly expressed concerns, however, (on p. 29) about the Commission's position on the petition regarding the right to collective bargaining in Greece after the bailout measures: since the Memoranda of Understanding fell outside the scope of the Treaties, the Commission argued, the EU institutions concerned were not bound by the Charter. Yet, there is no such reference in Article 51 of the Charter that would suggest that the EU institutions should not comply with the Charter when acting outside the scope of EU law. See, accordingly, Joined Cases C-8/15 P to C-10/15 P, *Ledra Advertising Ltd*, EU:C:2016:701, para. 67.

¹⁰⁶ Spaventa (n 21), 35.

It should be noted that in *Schönberger*, probably the leading case before the EU judiciary on the petition right, the Court reached antithetical conclusions regarding the reviewability of the admissibility decision and the possible steps that the Committee wishes to take once the petition is declared admissible. As to the former stage, it held that:

a decision by which the Parliament considers that a petition addressed to it does not meet the conditions laid down in Article 227 TFEU must be amenable to judicial review, since it is liable to affect the right of petition of the person concerned. The same applies to a decision by which the Parliament, disregarding the very essence of the right of petition, refuses to consider, or refrains from considering, a petition addressed to it and, consequently, fails to verify whether it meets the conditions laid down in Article 227 TFEU.¹⁰⁷

The right to complain to the Ombudsman is narrower than petitions in at least two ways. First, the European Ombudsman's remit is confined to the EU institutions, bodies, offices, and agencies; matters pertaining to national administrations, even when they are implementing EU law, cannot be examined by the office.¹⁰⁸ This has, of course, prompted creative ways of collaboration between the national and the EU ombud offices, such as the 'EU queries' scheme.¹⁰⁹ Second, political matters have been deemed by the office to fall outside the mandate. In this respect, the key issue is where to draw the line between a 'political' matter and an 'administrative' matter—or, rather, a matter that would fall within the (wide) notion of maladministration employed by the EU ombud office. On this point opinions will differ¹¹⁰—but clearly, and contrary to the petition right, a complainant cannot turn to the European Ombudsman if they believe that the EU should follow a specific policy choice within the EU's fields of activity.

The scope of the right to support an ECI is shaped by the 'registration' or 'admissibility' stage, namely the Commission's decision as to whether the proposal will be registered; after that point, the collection of signatures may begin.¹¹¹ Scholarly reaction to some of the Commission's first decisions was rather critical.¹¹² Nevertheless, it has rightly been observed that the Court of Justice has

¹⁰⁷ Case C-261/13 P, *Schönberger v European Parliament*, EU:C:2014:2423, para. 22. The Court had stated earlier (at para. 17) that the 'right of petition is an instrument of citizen participation in the democratic life of the European Union. It is one of the means of ensuring direct dialogue between citizens of the European Union and their representatives'.

¹⁰⁸ See Article 228(1) TFEU.

¹⁰⁹ According to this scheme, a national ombud office submits a query within the scope of EU law to the European Ombudsman who, usually after consultation with the Commission, provides a non-binding reply. See further N Athanasiadou and N Vogiatzis, 'The EU queries: A form of extra-judicial preliminary reference in the field of maladministration?' (2021) 22 *German Law Journal*, 441.

¹¹⁰ See further on this point Vogiatzis (n 43), 243–79.

¹¹¹ See Article 6 of the ECI Regulation.

¹¹² See, for example, J Organ, 'Decommissioning direct democracy? A critical analysis of Commission decision-making on the legal admissibility of European Citizens' Initiative proposals' (2014) 10 *European Constitutional Law Review*, 422.

contributed to the ‘evolution’ of the legal admissibility test¹¹³—and, one may add, to the revision of the initial ECI Regulation insofar as the admissibility stage is concerned. Thus, if ECIs have to be rejected, sufficient reasons should be provided by the Commission;¹¹⁴ the Commission may partially register an ECI;¹¹⁵ and an ECI may concern the conclusion of international agreements.¹¹⁶ Despite these developments, however, the scope of an ECI is significantly narrower than that of the petition: essentially, the 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*’.¹¹⁷

D. User-friendliness

The right to petition the European Parliament and to complain to the Ombudsman can be considered user-friendly instruments. For the petition right, the catalyst has been the webportal, which enables the online submission of petitions. This was launched (rather belatedly) in 2014 to improve transparency and accessibility: among others, it provides electronic support and updates on the status of petitions.¹¹⁸ By way of comparison, the European Ombudsman had already launched an interactive guide in January 2009, which ‘aim[ed] to help individuals identify the most appropriate body to turn to with their complaint’.¹¹⁹ In some cases, complainants may be directed to the Committee on Petitions. In 2001, an electronic complaint form was added on the European Ombudsman’s website,¹²⁰ which—shortly after the enlargement of 2004—became available (at the time) in twenty-one languages.¹²¹ Once again, the question of resources for the PETI Committee is brought to the fore.

By contrast, the ECI is not a user-friendly instrument. The various stages or types of verification of signatures, problems with the online signature collection system, challenges for citizens who have exercised free movement rights, and further issues have been highlighted in scholarship and by civil society organizations.¹²² The new ECI Regulation contains some improvements, while the

¹¹³ See A Karatzia, ‘Revisiting the registration of European Citizens’ Initiatives: The evolution of the legal admissibility test’ (2018) 20 *Cambridge Yearbook of European Legal Studies*, 147.

¹¹⁴ Case T-646/13, *Minority SafePack v Commission*, EU:T:2017:59; see also, more recently, Case T-789/19, *Tom Moerenhout v Commission*, EU:T:2021:260.

¹¹⁵ Karatzia (n 113), 159–61.

¹¹⁶ Case T-754/14, *Michael Efler and Others v Commission (Stop TTIP)*, EU:T:2017:323.

¹¹⁷ Article 11(4) TEU and Article 1 of the ECI Regulation (emphasis added).

¹¹⁸ Report on the activities of the Committee on Petitions 2015 (2016/2146(INI)) points 33, 34. The portal can be accessed at: petiport.secure.europarl.europa.eu/petitions/en/home.

¹¹⁹ European Ombudsman, Annual Report 2009, p. 19.

¹²⁰ European Ombudsman, Annual Report 2001, p. 264.

¹²¹ European Ombudsman, Annual Report 2004, p. 158.

¹²² See, for example, C Berg and J Thomson (eds), ‘An ECI that works! Learning from the first two years of the European Citizens’ Initiative’ (2014) available at: https://citizens-initiative.eu/wp-content/uploads/2020/02/Berg_2014_Berg_Thomson_An_ECI_That_Works.pdf; M Conrad, A

Commission has shown willingness to help organizers in the collection process and in answering technical questions.¹²³ Overall, however, it is much easier to support a petition or complain to the European Ombudsman.

E. Outcome

The earlier comparative examination of the three instruments has revealed that the petition right is accessible, has the broadest scope and is (at least presently, that is, after the launch of the online petitions system) user-friendly. How, then, to explain its limited impact, use, and awareness among EU citizens? It is argued that the catalyst here is the outcome, in the sense that the petition process is not promising for citizens: if they can, they will prefer to organize and support an ECI or complain to the European Ombudsman, because via these two channels they are more likely to achieve their aims. This position requires some elaboration and several disclaimers.

To begin with, and turning to the EU judiciary again and the aforementioned *Schönberger* case, the Court also addressed therein the question of whether the Committee's follow-up action (or inaction), once the petition is deemed admissible, is judicially reviewable. The answer is in the negative, because:

where the Parliament takes the view that a petition meets the conditions laid down in Article 227 TFEU, it has a broad discretion, of a political nature, as regards how that petition should be dealt with. It follows that a decision taken in that regard is not amenable to judicial review.¹²⁴

Thus, the CJEU drew a distinction between admissibility and substance, taking the view that the 'right' or 'essence' of the petition is duly protected if the Court's review is confined to the admissibility stage, because of the discretion of political nature that Committee on Petitions enjoys. The CJEU added that a 'summary statement' of the reasons behind a negative decision is sufficient.¹²⁵ It should be noted, in this respect, that the CJEU's answer was different regarding the question of whether the Commission's follow-up to a successful ECI (the 'communication' of the Commission¹²⁶) is subject to judicial

Knaut, and K Böttger (eds) *Bridging the Gap? Opportunities and Constraints of the European Citizens' Initiative* (Nomos 2016).

¹²³ See, for example, the European citizens' initiative Forum, available at: europa.eu/citizens-initiative-forum/home_en. This role of the Commission is provided for under Article 4(2) of the ECI Regulation, which *inter alia* states that the Commission 'shall make an online collaborative platform for the European citizens' initiative available, free of charge'.

¹²⁴ *Schönberger* (n 107), para. 24.

¹²⁵ *Ibid* para. 23. This finding by the Court of Justice went against the earlier *Tegebauer* case decided by the General Court, where that Court found that the Committee was under more extensive reason-giving requirements; Case T-308/07, *Tegebauer v European Parliament*, EU:T:2011:466, para. 28.

¹²⁶ See now Article 15(2) of the ECI: 'the Commission shall set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking or not taking action'.

review.¹²⁷ Of course, one should avoid a rather simplistic conclusion that would suggest that, for the Court at least, the ECI appears to be more ‘important’ than the petition. Nevertheless, *Schönberger* was raised by the Commission with a view to arguing *for* non-reviewability of its communication. That argument was not accepted by the Court of Justice.¹²⁸

One may therefore ask: what can petitioners expect of the Committee? The Committee may decide to draw up an ‘own-initiative report’ regarding an admissible petition¹²⁹ or submit a short motion for a resolution to Parliament.¹³⁰ It can also organize fact-finding visits to the respective Member State or region; yet, as a general rule (and in light of resource implications) ‘fact-finding visits shall cover issues raised in several petitions’.¹³¹ More generally, own-initiative reports and fact-finding visits are used ‘in some exceptional cases’.¹³² It can also invite petitioners to a public hearing—but this opportunity, too, does not appear to be widely used.¹³³ Usually, the Committee will transfer the petition to another Committee in Parliament (depending on the subject-matter of the petition).¹³⁴ It can also request the assistance of the Commission ‘particularly in the form of information on the application of, or compliance with, Union law and information or documents relevant to the petition’.¹³⁵ The Committee may adopt guidelines for the treatment of petitions¹³⁶ and should prepare and present to Parliament an annual report of its activities.¹³⁷

¹²⁷ Case C-418/18 P, *Puppinck and Others v Commission*, EU:C:2019:1113. For further discussion see N Vogiatzis, ‘The Commission’s “Communication” on a successful European Citizens’ Initiative before the Court of Justice: ECJ (Grand Chamber) 19 December 2019, Case C-418/18 P, *Puppinck and Others v European Commission*’ (2020) 16 *European Constitutional Law Review*, 691.

¹²⁸ The Court pointed, in this respect, to differences between the two instruments in terms of—among others—admissibility, procedural requirements (the ECI is more burdensome than the petition for organizers and signatories), and the detail that is provided in the ECI Regulation about the Commission’s follow-up action, which indicated the possibility of reviewability. See further Vogiatzis (n 127), 708–9.

¹²⁹ Article 227(3) of Parliament’s Rules of Procedure, in conjunction with Article 54(1) of these Rules.

¹³⁰ Article 227(2) of Parliament’s Rules of Procedure. In that case there is a requirement that ‘the Conference of Committee Chairs is informed in advance and there is no objection by the Conference of Presidents’.

¹³¹ Article 228 of Parliament’s Rules of Procedure. According to the said provision, ‘Members [of the European Parliament] elected in the Member State of destination shall not be part of the delegation. They may be allowed to accompany the fact-finding visit delegation in an ex officio capacity.’

¹³² See ‘European Parliament: Petitions: FAQ’, available at: petiport.secure.europarl.europa.eu/petitions/en/faq, point 10.

¹³³ In 2019, for example, only three hearings were organized, partly jointly with other parliamentary committees (PETI Report 2019 (n 20) pp. 28–29); in 2018, four similar hearings were organized (Report on the outcome of the Committee on Petitions’ deliberations during 2018 (2018/2280(INI)), p. 11).

¹³⁴ ‘European Parliament: Petitions: FAQ’ (n 132).

¹³⁵ Article 227(5) of Parliament’s Rules of Procedure.

¹³⁶ Article 227(10) of Parliament’s Rules of Procedure.

¹³⁷ Article 227(7) of Parliament’s Rules of Procedure.

From the above it follows that, while the Committee has a range of options at its disposal, petitioners can expect very little in terms of concrete action. Of course, assessing the ‘success’ of a petitions system is a challenging task. Thus, although accounts stemming (mainly) from the political science literature have tried to establish criteria to measure the success of petitions (while acknowledging the ‘complexity of judging success’¹³⁸), significant remaining challenges include that ‘process evaluations are strongly connected to the outcome of the petition’, that ‘success in realising political voice relies on the *subjective assessment* of individual petitioners’,¹³⁹ and eventually, although ‘petitions systems are clearly very popular as a means of political participation, . . . the vast majority of petitioners are unlikely to get what they ask for’.¹⁴⁰ It is argued that petitioners are likely to achieve more if they support an ECI or complain to the European Ombudsman—provided, of course, that they meet the admissibility requirements for the latter instruments.

Regarding the ECI, it is clear that its outcome depends on how the Commission will exercise its broad discretion.¹⁴¹ To date, the Commission has not proved willing to ‘sacrifice’ its prerogative to initiate the legislative procedure under the treaties—a position which is, of course, *legally* compatible with the treaties,¹⁴² while clashing with institutional reality which indicates that the Commission is, in practice, heavily influenced in its legislative choices.¹⁴³ Nevertheless, for organizers and signatories, and despite the various shortcomings of the ECI process (both procedural, as well as in terms of outcome), the ECI still carries with it the ‘promise’ of inviting the Commission to submit a proposal for EU legislation. This promise, loose as it may be (in light of the Commission discretion), appears to be a more appealing avenue when compared to petitions.

In addition, there is no question that the European Ombudsman is perceived by citizens as more effective than the Petitions’ Committee. The relationship between the two offices is interesting. Leaving aside the Committee’s objections to the creation of an EU ombud office (see above), post-Maastricht it was soon established that a ‘concentric circles’ approach had to be followed: in other words, the inner circle would constitute ‘maladministration’, and complaints of this sort would be dealt with by the European Ombudsman, while the remaining

¹³⁸ See Bochel (n 77), 237.

¹³⁹ Escher and Riehm (n 71), 152 (emphasis added).

¹⁴⁰ Bochel (n 77), 236. If we shift attention to the EU case, it will become apparent that other benefits (or potential benefits) that have been identified in different petitions systems, such as ‘enhancing the relationship between parliament and citizen’ (see Hough (n 11), 491–2), cannot be observed in the EU petitions system either.

¹⁴¹ See N Vogiatzis, ‘Between Discretion and Control: Reflections on the institutional position of the Commission within the European citizens’ initiative process’ (2017) 23 *European Law Journal*, 250.

¹⁴² See A Karatzia, ‘The European Citizens’ Initiative and the EU institutional balance: On realism and the possibilities of affecting lawmaking’ (2017) 54 *CML Rev.* 177.

¹⁴³ Vogiatzis (n 141); see also P Ponzano, C Hermanin, and D Corona, *The Power of Initiative of the European Commission: A Progressive Erosion?* (Notre Europe, 2012).

complaints/petitions falling under the outer circle would be dealt with by the Petitions' Committee.¹⁴⁴ Simultaneously, the European Ombudsman undertook a commitment not to examine complaints on alleged maladministration against the Committee on Petitions.¹⁴⁵ In any case, and progressively, the impact of the office of the European Ombudsman has increased and overshadowed the Committee (at least in areas falling under the Ombudsman's mandate).¹⁴⁶ It is to be remembered that the European Ombudsman does not produce legally binding decisions but has a number of instruments available at their disposal, ranging from proposals for solutions to recommendations or even the submission of a special report to the European Parliament.¹⁴⁷ The Ombudsman also benefits from significant and extensive investigatory powers.¹⁴⁸

Overall, therefore, although the threshold to be met in order for citizens to submit a petition is rather low, while the subject matter of possible petitions is rather broad, this otherwise user-friendly instrument of citizens' participation has not managed, to date, to significantly contribute towards improving citizens' participation in the EU. The comparative examination of the three instruments that was undertaken here indicates that, overall, citizens can reasonably expect a better outcome if they approach the European Ombudsman or organize and support an ECI.

V. The future of the petition right: Focus on the national level and broader policy matters?

Where does the earlier discussion leave the Committee on Petitions? This article argues that the Committee should now strategically shift its attention to areas which are not covered by the European Ombudsman's remit and the ECI—most notably, to the implementation of EU law at the national level and broader policy choices which do not necessarily entail an invitation to the Commission to adopt a 'legal act', including EU legislation. Of course, the existing legal framework (including the text of Article 227 TFEU) would not enable the Committee to narrow down its mandate. Thus, what is proposed here would entail a *new strategy* and a more *precise focus*, rather than a revision of the legal framework.

¹⁴⁴ A Tsadiras, 'Of celestial motions and gravitational attractions: The institutional symbiosis between the European Ombudsman and the European Parliament' (2009) 28 *Yearbook of European Law*, 435.

¹⁴⁵ See, for example, European Ombudsman Annual Report 1995, pp. 9 and 15; Vogiatzis (n 43), 246–7.

¹⁴⁶ Tsadiras (n 144), at 457 observed that the Ombudsman has become 'a protagonist in the field of extra-judicial protection'.

¹⁴⁷ See, in particular, Article 4 of the European Ombudsman's Statute (n 91).

¹⁴⁸ See generally Articles 5–10 of the Statute.

The following justifications can be submitted in support of this proposal. To begin with, the Committee cannot, in the short term at least, establish itself at the ‘protagonist’¹⁴⁹ in the field of extra-judicial redress. Likewise, as the Court of Justice has also observed,¹⁵⁰ the ECI is designed in such way as to impose complex procedural requirements on organizers and signatories, and more concrete obligations on the Commission and/or other EU institutions (eg the ‘communication’ or the public hearing at the European Parliament¹⁵¹). This means that the Committee would need to focus on areas of work that are not covered by the aforementioned instruments. This recommendation is not based on a hierarchical classification of the participatory instruments—with the Committee hypothetically occupying the last place, in terms of significance. It is based on a genuinely complementary understanding of the various options that are available to citizens, and the need for the Committee on Petitions to find a distinctive ‘space’ therein.

It is also based on pragmatism: the Committee cannot possibly duplicate what the European Ombudsman or an ECI may achieve. One may wonder whether the Committee on Petitions itself could be deemed ‘responsible’, to some extent at least, for the current state of affairs. One might argue, for example, that the introduction as such of the right to complain to the European Ombudsman in the Maastricht Treaty, and the right to support an ECI initially in the Constitutional, and eventually in the Lisbon Treaty, could be seen as evidence that, for the drafters of the treaties at least, the full participatory potential of the petition right had not materialized. Moreover, if there has been one entity within the EU that has been, at times, particularly sceptical of the need to create an EU ombud office, that has certainly been the Petitions’ Committee. Yet, there is no ‘monopoly’ of defending or advancing the interests of EU citizens. EU citizens have already quite limited opportunities to make an impact on the EU’s decision-making world. In that sense, one might be excused for thinking that the years and resources that were spent in trying to block the establishment of the European Ombudsman could have been used to think of the added value and development of the petition right, so that it could make a stronger institutional presence and contribution in EU affairs.

Whatever the motivations behind the introduction of additional instruments and/or the Committee’s reactions, the present proposal advocates for complementarity, and not competition: the more opportunities citizens have to hold the EU and national administrations to account, to request information or even legislative and policy change, the better.

Nevertheless, it should be underlined that the Committee may only be partially responsible for the current state of affairs. Limited resources have historically

¹⁴⁹ Tsadiras (n 144), at 457, with reference to the European Ombudsman.

¹⁵⁰ See above nn 126–128.

¹⁵¹ See Articles 15 and 14 of the ECI Regulation (n 97), respectively.

been a key challenge for petitions. Others would perhaps point to the ‘limited accessibility and visibility’ of the European Parliament as a whole, despite its increase in power over the treaty amendments.¹⁵² Or perhaps it may be claimed that the political rights of EU citizenship (which include the petition right) are generally weaker when compared to free movement rights.¹⁵³ Yet, the weak political dimension of EU citizenship cannot explain the comparative advantage, in terms of relevancy, of the right to complain to the European Ombudsman (which also features in the EU citizenship provisions¹⁵⁴); and cannot explain why the ECI, despite its undeniable problems, has gathered substantial attention in the literature and from within the EU institutions.

It is now appropriate to develop further the aforementioned proposals on the future of the petition right. Regarding broader policy choices, it is indeed the case that not every citizen will be interested in requesting legislative change. That would be precisely the added value of the petition right: it could generate debates about broader policy choices in the EU, without the promise (or ‘threat’, if viewed as such by certain EU institutions) of legislative intervention. It is always useful to remember that the directly elected European Parliament may be the best forum for such debates. By contrast, it is argued that if the intention of petitioners is to request legislative change (or invite the Commission to propose a legal act), they should be encouraged to organize or support an ECI.

It should be clarified that it is not the purpose of the present account to ‘lessen’ the opportunities for participation that are available to EU citizens and residents. One of the advantages of a new strategy with a more precise focus (as opposed to legal intervention) could be that it would be sufficiently flexible to accommodate emerging gaps: for example, at present EU residents cannot organize or support an ECI. Given that such matters (requesting a proposal for legislation) are also outside the scope of the European Ombudsman’s mandate, EU residents should of course be perfectly entitled to submit a petition and thus request legislative change. Likewise, ECI organizers and signatories who have not managed to gather the necessary level of support could, of course, submit a petition (either individually or collectively) to the Petitions’ Committee. In fact, Parliament’s Rules of Procedure provide for this,¹⁵⁵ while also specifying that the Petitions’ Committee will be involved in the public hearings of successful initiatives.¹⁵⁶ But one wonders

¹⁵² H de Waele, ‘Union citizens and the European Parliament: Perception, accessibility, visibility and appreciation’ in P Minderhoud, S Mantu, and K Zwaan (eds), *Caught in between Borders: Citizens, Migrants and Humans: Liber Amicorum in honour of prof. dr. Elspeth Guild* (Wolf Legal Publishers, 2019), 175.

¹⁵³ Or even that EU citizenship primarily facilitates the internal market; see, for example, N Nic Shuibhne, ‘The resilience of EU market citizenship’ (2010), 47 *CML Rev.* 1597.

¹⁵⁴ See Articles 20(2)(d) and 24 TFEU.

¹⁵⁵ See Article 230(2) of Parliament’s Rules of Procedure: ‘Proposed citizens’ initiatives which have been registered . . . but which cannot be submitted to the Commission . . . since not all the relevant procedures and conditions laid down have been complied with, may be examined by the committee responsible for petitions if it considers that follow-up is appropriate’.

¹⁵⁶ See Article 222 of Parliament’s Rules of Procedure.

whether the Petitions' Committee should prioritize the strengthening of its institutional presence within the ECI process (in the context of an overall limited involvement, for better or worse, of the European Parliament in the ECI¹⁵⁷) or whether it should focus on finding a distinctive 'voice' within the existing alternatives. This account advocates for the latter option.

Let us now consider the crucial role that the Petitions' Committee can play regarding the implementation of EU law at the national level. As previously mentioned, the European Ombudsman cannot examine complaints concerning the domestic level, and an ECI is generally unlikely to concern action directed at a specific member state. Of course, the Petitions' Committee has been working on complaints of this sort for several decades. In accordance with the 2019 report (which broadly aligns with earlier reports), approximately 30–35 per cent of received petitions concern the EU.¹⁵⁸ Leaving aside approximately 5 per cent of received petitions that concern non-EU countries, the remaining petitions concern individual member states. Nevertheless, the proportion of work devoted to EU matters is still significant, which renders the earlier proposal for a clearer delineation with the ECI of relevance.

In this context, one of the key options that should be explored further by the Petitions Committee is 'fact-finding visits' to the member states concerned. In accordance with Article 228(1) of Parliament's Rules of Procedure, '[w]hen 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'.¹⁵⁹ Parliament appears to be aware of the significance of this 'prerogative' as, in its 2015 resolution on the work of the Committee, it 'expect[ed] that the full potential of this specific prerogative of the Committee on Petitions will be exploited in the upcoming years until the very end of the legislative period'.¹⁶⁰ Nevertheless, in the five-year period from 2014 to 2019 eleven fact-finding missions were organized; this number is rather low and perhaps points, yet again, to the question of resources.¹⁶¹

The topics have concerned, among others, non-consensual adoption in the UK and the possible discrimination of non-UK nationals; environmental and health matters further to a construction of an industrial port in Cyprus; EU funds for the maintenance of residential centres for persons with disabilities in

¹⁵⁷ See Vogiatzis (n 141), 265–6.

¹⁵⁸ PETI Report 2019 (n 20), 20–1.

¹⁵⁹ According to Article 228(3) of Parliament's Rules of Procedure, '[a]fter each visit, a mission report shall be drafted by 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 report is then forwarded to the Committee on Petitions for consideration and vote (Article 228(4) of Parliament's Rules of Procedure).

¹⁶⁰ Report on the activities of the Committee on Petitions 2015 (2016/2146(INI)), point 32.

¹⁶¹ Achievements of the Committee on Petitions (n 40), 12–14.

Slovakia; the possible infringement of the Water Framework Directive¹⁶² in Spain; difficulties in obtaining a personal identification number in Sweden; waste disposal in landfill sites in Italy.¹⁶³ More recently, the PETI Committee completed a fact-finding mission in Bulgaria, looking at a number of issues concerning consumer protection and waste management that were raised by petitioners.¹⁶⁴ From the above it follows that one of the considerations behind the selection of the visits is ‘geographical balance’.¹⁶⁵ The Committee may also commission studies on areas related to a fact-finding mission.¹⁶⁶

Further investment in fact-finding visits could be particularly important for the Commission in case it decides to initiate infringement proceedings against the member state concerned—given that the fuller the case, the easier it becomes for the Commission (should it wish to do so, in light of its broad discretion) to act. This matter is returned to below.

Additional opportunities for collaboration between the Petitions’ Committee and the national level should be possible. Consideration could be given to the role of and exchanges with national parliaments¹⁶⁷ or even national ombud offices.¹⁶⁸ Whatever shape that collaboration may take, it is evident that the working relationship between the Petitions’ Committee and the Commission is particularly important. Indeed, the Commission can be characterized as the Committee on Petitions’ ‘main partner in processing petitions’.¹⁶⁹ If the petitioner alleges an infringement of EU law at the national level, the petition will be transferred to the Commission. In this respect, one issue is, of course, whether the Commission interprets EU law correctly, with a view to establishing whether a matter falls within its scope (generally, it appears that it does so).¹⁷⁰ But a more recent study has focused on the crucial issue of whether the Commission’s follow-up to petitions is appropriate: among others, the authors opine that ‘[p]etitions do not

¹⁶² Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [2000] OJ L 327.

¹⁶³ Achievements of the Committee on Petitions (n 40), 12–14.

¹⁶⁴ ‘Mission report following the Fact Finding Mission to Bulgaria on 24–26 February 2020’ (2021) PE658.877.

¹⁶⁵ This was explicitly acknowledged in the visit to Slovakia in 2016: the mission sought to answer ‘questions related to the European Union’s impact on the quality of the lives of persons with disabilities who are institutionalized and thus not integrated in society. The choice of studying the subject matter in the Slovak Republic was that of geographical balance as regards the missions accomplished by PETI in the past’; Achievements of the Committee on Petitions (n 40), 37.

¹⁶⁶ See, for example, C Fenton-Glynn, ‘Adoption without consent: A study for the PETI Committee’ (2015) PE 519.236.

¹⁶⁷ See, for example, the EPRS briefing ‘The right to petition the European Parliament’ (2015) p. 7, available at: [www.europarl.europa.eu/RegData/etudes/BRIE/2015/559514/EPRS_BRI\(2015\)559514_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/559514/EPRS_BRI(2015)559514_EN.pdf).

¹⁶⁸ In his account, Harden (n 15) underlined both the role of petitions as well as that of national ombud offices in the enforcement of EU law. It should also be mentioned that both the Petitions’ Committee, as well as national ombud offices, are members of the ‘European Network of Ombudsmen’: www.ombudsman.europa.eu/en/european-network-of-ombudsmen/about/en.

¹⁶⁹ Achievements of the Committee on Petitions (n 40), 8.

¹⁷⁰ Spaventa (n 21).

seem to have a great impact on the Commission actions to deal with infringements of EU law', while also noting that insufficient information is available as '[t]here is no systematic register of the link between petitions and infringements or any other action taken by the Commission'.¹⁷¹ These are worrying findings which indicate that the relevancy of petitions should be increased, and of course that the Commission should be paying more attention to this instrument.¹⁷²

VI. Conclusion

The right to petition the European Parliament is an important instrument of citizens' participation and it also features among the EU citizenship provisions and the Charter of Fundamental Rights. Also taking into account the increasing influence of the European Parliament in the EU's decision-making world, as well as the persistent calls for the EU to become more democratic, accountable, and attentive to citizens' needs or complaints, it is obvious that the petition right (and the Committee on Petitions, by extension) should become more relevant—for citizens, as well as the EU institutions.

Looking at the 'past' of the petition right, this article has argued that from the period since its establishment and until the Maastricht Treaty, one of the key reasons behind its limited success was the broader decline in the use of petitions as an instrument of citizens' participation. Post-Maastricht and Lisbon, the introduction of the right to complain to the European Ombudsman and to organize and support an ECI have led citizens to choose alternative options (if they meet the admissibility requirements) that present them with the possibility of a better outcome. In this context, if these instruments are to be viewed as complementary, it is argued that the Petitions' Committee should strategically focus on areas that are not covered by the two aforementioned rights, and most notably the implementation of EU law at the national level and broader policy questions within the EU that do not necessarily entail proposals for legislative intervention. Regarding the national level, the cooperation with the Commission, in particular, should improve, and the impact of petitions (possibly through further use of fact-finding missions) on the initiation of infringement proceedings should be duly recognized.

Obviously, a brighter future for the right to petition the Parliament will have to involve additional resources for the Committee, and perhaps additional

¹⁷¹ M Moulac and M Ballesteros, 'Inter-institutional relations in the treatment of petitions: the role of the Commission' (2021) PE 659.507, pp. 23 and 51.

¹⁷² This is a longstanding problem. For example, Harden (n 15), at 507 observed: 'To the continued irritation of the Committee on Petitions, the Commission includes such cases [petitions complaining about infringements of EU law] in the register of cases that it has begun on its own initiative. The reality that this mislabelling conceals is that, in this kind of case, the Commission's activity under the Article [258] procedure is an essential element in making the right to petition effective'.

attention from Parliament itself. But the question of resources and visibility is inextricably linked with the strategy of the Committee: a clear message that it will undertake new priorities (without, of course, affecting existing rights of EU citizens and residents) will progressively build a distinct institutional presence within the existing opportunities for participation, which would then render even more urgent the additional investment in resources.

Overall, therefore, the petition right may not have been the most successful endeavour regarding citizens' participation in the EU. It is certainly not the only instrument that might have disappointed citizens, and some of the reasons behind such limited impact were external to the work of the Committee. Nevertheless, existing research has shown that, while barriers to petitions undoubtedly persist, recent decades have seen fresh attention turning to petition systems via reliance on online tools (and parliaments' realization that more has to be done to engage with citizens). The 'future' of the EU petition right that was proposed in this contribution does not, of course, constitute either a magical solution or a path without challenges. But it is based on a complementary reading of the various instruments available to citizens, that could (in due course) enable the Committee to improve its institutional presence and relevance .